



National Transmission Network Sale Act 1998

No. 130, 1998

**An Act relating to the sale of the National
Transmission Network**

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National Transmission Network Sale Act 1998

No. 130, 1998

An Act relating to the sale of the National Transmission Network

[Assented to 21 December 1998]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *National Transmission Network Sale Act 1998*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Definitions

In this Act, unless the contrary intention appears:

ABC means the Australian Broadcasting Corporation.

ACCC means the Australian Competition and Consumer Commission.

access seeker has the same meaning as in Part XIC of the Trade Practices Act.

ancillary service means a service that is ancillary to a national broadcasting service and is carried by means of an analog main carrier signal that is used for the transmission of the national broadcasting service.

Archives Act means the *Archives Act 1983*.

asset means:

- (a) any legal or equitable estate or interest in real or personal property, including a contingent or prospective one; and
- (b) any right, privilege or immunity, including a contingent or prospective one.

broadcasting service has the same meaning as in the Broadcasting Services Act.

Broadcasting Services Act means the *Broadcasting Services Act 1992*.

carrier licence has the same meaning as in the Telecommunications Act.

commercial broadcasting licensee means:

- (a) the holder of a commercial television broadcasting licence (within the meaning of the Broadcasting Services Act); or
- (b) the holder of a commercial radio broadcasting licence (within the meaning of the Broadcasting Services Act).

Commonwealth asset means an asset of the Commonwealth.

Commonwealth liability means a liability of the Commonwealth.

community broadcasting licensee means the holder of a community broadcasting licence (within the meaning of the Broadcasting Services Act).

community broadcasting service has the same meaning as in the Broadcasting Services Act.

company means a body corporate.

declared remote area means an area specified by the Minister, in writing, for the purposes of this definition.

declared successor means a person declared under section 22 to be a declared successor.

emergency service organisation means:

- (a) any of the following organisations (including those consisting wholly or partly of volunteers):
 - (i) a police force or service;
 - (ii) a fire service;
 - (iii) an ambulance service;
 - (iv) a coast guard service, rescue service or emergency service; or

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- (b) any other organisation specified by the Minister, in writing, for the purposes of this paragraph.

exempt re-transmission means a re-transmission covered by section 212 of the Broadcasting Services Act.

government body means:

- (a) a State or Territory; or
- (b) an authority of a State or Territory; or
- (c) a local government body of a State or Territory.

instrument includes a document.

land registration official, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

liability means a liability, duty or obligation, including a contingent or prospective one.

national broadcasting service has the same meaning as in the Broadcasting Services Act.

NBS transmitter licence means a transmitter licence (within the meaning of the Radiocommunications Act) for a transmitter that is for use for transmitting a national broadcasting service to the public.

nominated customer has the meaning given by section 15.

nominated purpose, in relation to a person who is a nominated customer, means a purpose specified in section 15 as a purpose for which the person is a nominated customer.

nominated service has the meaning given by section 14.

non-profit body means an incorporated body that:

- (a) is not carried on for the purposes of profit or gain to its individual members; and

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- (b) is prohibited by its constituent document from making any distribution of money or property to its individual members.

NTC or **National Transmission Company** means a company to which assets or liabilities are transferred under section 9.

open narrowcasting television service has the same meaning as in the Broadcasting Services Act.

original asset means an asset transferred from the Commonwealth under section 9.

radiocommunication has the same meaning as in the Radiocommunications Act.

Radiocommunications Act means the *Radiocommunications Act 1992*.

replacement asset means an asset that is a replacement for:

- (a) an original asset; or
- (b) an asset that is a replacement asset because of a previous application of this definition.

SBS means the Special Broadcasting Service Corporation.

share, in relation to a company, means a share in the company's share capital.

site has the same meaning as in Part 5 of Schedule 1 to the Telecommunications Act.

specified, in relation to an asset, liability or instrument, means specified or identified (whether by reference to a class or by any other means).

telecommunications access regime means:

- (a) Part XIC of the Trade Practices Act; and
- (b) any other provisions of the Trade Practices Act that relate to the operation of that Part; and

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- (c) sections 62 and 68, subsection 70(5) and Parts 30, 31 and 32 of the Telecommunications Act; and
- (d) any other provisions of the Telecommunications Act that relate to the operation of the provisions specified in paragraph (c).

Telecommunications Act means the *Telecommunications Act 1997*.

telecommunications carrier rules means:

- (a) Part 1 of Schedule 3 to the Telecommunications Act; and
- (b) any other provisions of the Telecommunications Act that relate to the operation of that Part.

telecommunications facility means a facility within the meaning of the Telecommunications Act.

telecommunications transmission tower has the same meaning as in Part 5 of Schedule 1 to the Telecommunications Act.

Trade Practices Act means the *Trade Practices Act 1974*.

4 Crown to be bound

- (1) This Act binds the Crown in the right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

5 External Territories

This Act extends to all the external Territories.

6 Extra-territorial operation

This Act extends to acts, omissions, matters and things outside Australia, whether or not in a foreign country.

Part 2—Sale of the National Transmission Network

7 Fixtures on non-Commonwealth land

- (1) The Minister for Finance and Administration may, by notice in the *Gazette*, declare that this section applies to network facilities specified in the notice.
- (2) At the end of the day on which the notice is published, any specified network facility that is a fixture on non-Commonwealth land:
 - (a) is severed from the land and remains severed; and
 - (b) vests in the Commonwealth;by force of this section.
- (3) In this section:

network facility means any asset used, or formerly used, by the Commonwealth in connection with the transmission of a broadcasting service.

non-Commonwealth land means land not owned by the Commonwealth.

8 Effect of Lands Acquisition Act on past grants etc. of interests in land

- (1) If an instrument made or executed before the commencement of this Act was expressed to grant or transfer an interest in land to or from the Commonwealth, then section 9 is to be applied on the basis that the grant or transfer is not invalid, and is taken never to have been invalid, solely because the grant or transfer was not made in accordance with the requirements of the Lands Acquisition Act.
- (2) In this section:

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interest in land has the same meaning as in the Lands Acquisition Act.

Lands Acquisition Act means the Act for the time being in force relating to the acquisition of land by the Commonwealth and associated matters.

9 Transfer of assets and liabilities

- (1) The Minister for Finance and Administration may, by notice in the *Gazette*, declare all or any of the following, in relation to a company specified in the notice:
 - (a) a specified Commonwealth asset vests in the company at a time specified in the notice (the *transfer time*), without any conveyance, transfer or assignment;
 - (b) at the transfer time, the company becomes the Commonwealth's successor in law in relation to the transferred asset;
 - (c) a specified instrument relating to the transferred asset continues to have effect after the transfer time as if a reference in the instrument to the Commonwealth or to the National Transmission Agency were a reference to the company.
 - (2) The Minister for Finance and Administration may, by notice in the *Gazette*, declare all or any of the following, in relation to a company specified in the notice:
 - (a) a Commonwealth liability specified in the notice ceases to be a Commonwealth liability at a time specified in the notice (the *transfer time*) and becomes a liability of the company;
 - (b) at the transfer time, the company becomes the Commonwealth's successor in law in relation to the transferred liability;
 - (c) a specified instrument relating to the transferred liability continues to have effect after the transfer time as if a reference in the instrument to the Commonwealth or to the National Transmission Agency were a reference to the company.
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- (3) Declarations in relation to both assets and liabilities may be included in the same notice. The same notice may include declarations in relation to more than one asset or liability.
- (4) A declaration under this section has effect according to its terms.

Note: The assets and liabilities that can be transferred under this section include assets and liabilities that consist of rights and obligations under contracts.

10 Exemption from stamp duty and other taxes

- (1) In this section:

exempt matter means the transfer of an asset or a liability under section 9 to a company at a time when all the shares in the company are owned by the Commonwealth.

- (2) Stamp duty or other tax is not payable under a law of a State or Territory in respect of:
 - (a) an exempt matter; or
 - (b) anything done (including a transaction entered into or an instrument made, executed, lodged or given) because of, or for a purpose connected with or arising out of, an exempt matter.

11 Registration of transfers of land

- (1) This section applies if:
 - (a) any right, title and interest in particular land vests in a company under this Act; and
 - (b) there is lodged with a land registration official a certificate that:
 - (i) is signed by an authorised person; and
 - (ii) identifies the land, whether by reference to a map or otherwise; and
 - (iii) states that the right, title and interest has become vested in the company under this Act.

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- (2) The land registration official may:
 - (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
 - (b) deal with, and give effect to, the certificate.
- (3) A document that appears to be a certificate under subsection (1) is taken to be such a certificate, and to have been properly given, unless the contrary is established.
- (4) In this section:
 - authorised person* means:
 - (a) the Minister for Finance and Administration; or
 - (b) a person authorised by the Minister for Finance and Administration, in writing, for the purposes of this section.

12 Part does not place person in breach of contract etc.

The operation of this Part is not to be regarded as:

- (a) placing a person in breach of contract or confidence; or
- (b) otherwise making a person guilty of a civil wrong; or
- (c) placing a person in breach of any contractual provision prohibiting, restricting or regulating:
 - (i) the assignment or transfer of any asset or liability; or
 - (ii) the disclosure of any information; or
- (d) releasing any surety from any of the surety's obligations in relation to a liability that is transferred to a company under this Part.

Part 3—Access to services etc.

13 Deemed application of telecommunications access regime

- (1) The telecommunications access regime has effect in relation to a nominated service in accordance with this Part.
- (2) The telecommunications access regime has effect as if:
 - (a) each nominated service were a declared service within the meaning of Part XIC of the Trade Practices Act; and
 - (b) each provider of a nominated service were:
 - (i) a carrier (within the meaning of the Telecommunications Act); and
 - (ii) the holder of a carrier licence; and
 - (c) each nominated customer were a service provider within the meaning of Part XIC of the Trade Practices Act.

14 Nominated services

- (1) Each of the following is a *nominated service*:
 - (a) the carriage of broadcasting services, where:
 - (i) the provider of the carriage service is an NTC or a declared successor; and
 - (ii) the carriage service is to be provided, to any extent, using assets that are original assets or replacement assets; and
 - (iii) the carriage service is to be provided for the purpose of analog transmission, or for purposes that include analog transmission;
 - (b) the carriage of ancillary services, where:
 - (i) the provider of the carriage service is an NTC or a declared successor; and

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- (ii) the carriage service is to be provided, to any extent, using assets that are original assets or replacement assets;
 - (c) the provision of access to sites or telecommunications transmission towers, where:
 - (i) the provider of the access is an NTC or a declared successor; and
 - (ii) the sites or towers are original assets or replacement assets.
- (2) If a carriage service referred to in paragraph (1)(a) is to be provided for the purpose of analog transmission and also for other purposes, then the carriage service is a *nominated service* only to the extent to which it is to be provided for the purpose of analog transmission.
- (3) In this section:
- analog transmission* means transmission of a broadcasting service to the public using an analog modulation technique.

15 Nominated customers

- (1) The telecommunications access regime applies only in cases where the access seeker is a nominated customer and is seeking access for a nominated purpose.
- (2) The ABC and SBS are nominated customers for the purposes of:
 - (a) the carriage of national broadcasting services or ancillary services; and
 - (b) access to sites or telecommunications transmission towers for purposes connected with national broadcasting services or ancillary services.
- (3) A non-profit body is a nominated customer for the purposes of access to sites or telecommunications transmission towers, where that access is for community or educational purposes connected with an open narrowcasting television service.

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- (4) A community broadcasting licensee is a nominated customer for the purposes of:
 - (a) the carriage of broadcasting services solely or principally for the purpose of supplying the service known as Radio for the Print Handicapped; and
 - (b) access to sites or telecommunications transmission towers for purposes connected with a community broadcasting service.
- (5) An emergency service organisation is a nominated customer for the purposes of access to sites or telecommunications transmission towers for purposes connected with radiocommunication transmissions by the organisation.
- (6) A commercial broadcasting licensee is a nominated customer for the purposes of access to sites or telecommunications transmission towers for purposes connected with providing a commercial broadcasting service in a declared remote area.
- (7) A non-profit body is a nominated customer for the purposes of:
 - (a) the carriage of broadcasting services for the purpose of an exempt re-transmission; and
 - (b) access to sites or telecommunications transmission towers for purposes connected with an exempt re-transmission.
- (8) A government body is a nominated customer for the purposes of:
 - (a) the carriage of broadcasting services for the purpose of an exempt re-transmission; and
 - (b) access to sites or telecommunications transmission towers for purposes connected with an exempt re-transmission.
- (9) The same person or body can be a nominated customer under more than one of the preceding subsections.

16 Miscellaneous modifications of telecommunications access regime

- (1) The following provisions of the Trade Practices Act do not apply:
 - (a) subsections 152AB(2), (3), (4), (5), (6), (7) and (8);
 - (b) paragraph 152AR(4)(b);

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- (c) subsections 152AR(5), (6), (7) and (8);
 - (d) Division 6 of Part XIC;
 - (e) paragraph 152CQ(1)(b).
- (2) Subsections 152AR(12) and 152CQ(9) of the Trade Practices Act have effect as if “13 September 1996” were replaced by “30 October 1997”.
- (3) Section 152AH of the Trade Practices Act has effect as if the following matters were substituted for the matter in paragraph 152AH(1)(e):
- (a) whether the technical and operational quality of the declared service are at least equivalent to the benchmark level;
 - (b) whether the access seeker would receive fault detection, handling and rectification of a technical and operational quality and timing at least equivalent to the benchmark level.
- (4) Section 152CR of the Trade Practices Act has effect as if the following matters were substituted for the matter in paragraph 152CR(1)(f):
- (a) whether the technical and operational quality of the declared service are at least equivalent to the benchmark level;
 - (b) whether the access seeker would receive fault detection, handling and rectification of a technical and operational quality and timing at least equivalent to the benchmark level.
- (5) For the purposes of this section, the *benchmark level* is the level specified by the Minister, in writing, for the purposes of this section.

17 Relationship with other access regimes

- (1) If a nominated service becomes a declared service for the purposes of the telecommunications access regime in accordance with section 152AL of the Trade Practices Act, then this Act does not prevent the application of the telecommunications access regime in relation to:

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- (a) access to the declared service by persons who are not nominated customers; or
 - (b) access to the declared service by nominated customers for purposes other than nominated purposes.
- (2) A notification must not be given under section 44S of the Trade Practices Act in relation to an access dispute if:
- (a) the dispute relates to a nominated service; and
 - (b) the third party is a nominated customer who is seeking access for a nominated purpose.
- (3) The ACCC must not accept an undertaking under section 44ZZA of the Trade Practices Act if any of the terms and conditions set out in the undertaking relate to access to a nominated service by a nominated customer for a nominated purpose.

Part 4—Restrictions on transfer of assets

18 Minister's approval required for transfers of original assets or replacement assets

- (1) A transfer of an original asset or a replacement asset by any person is of no effect unless approved in writing by the Minister before the time of transfer.
- (2) If a person makes a written application to the Minister for approval of a proposed transfer, the Minister must approve the transfer, unless the Minister refuses under subsection (3).
- (3) The Minister may refuse to approve a transfer on any of the following grounds:
 - (a) the Minister has reason to believe that the transfer might jeopardise continued access by a nominated customer to a nominated service for a nominated purpose;
 - (b) any other prescribed ground that relates to matters covered by paragraph 51(v) of the Constitution.
- (4) Application may be made to the Administrative Appeals Tribunal for review of a decision by the Minister under subsection (3) refusing to grant an approval.
- (5) This section does not apply to assets that are exempted from the operation of this section by notice by the Minister in the *Gazette*.

Part 5—Transmitter licences

19 Transfer of transmitter licences to ABC and SBS

- (1) The Minister may, by notice in the *Gazette*, declare that this section applies to the ABC, or to the SBS, in relation to specified NBS transmitter licences that are held by the Commonwealth.
- (2) At the end of the day on which a notice is published under this section, the specified licences vest in the ABC, or the SBS, by force of this section.
- (3) No fee or tax is payable under a law of the Commonwealth in respect of the transfer of a licence under this section.

Section 20

Part 6—Powers and immunities of NTC or declared successor

20 Deemed application of telecommunications carrier rules

- (1) The telecommunications carrier rules have effect in accordance with this Part, in relation to an NTC or declared successor, in relation to any telecommunications facility that satisfies the following conditions:
 - (a) the facility is owned by the NTC or the declared successor;
 - (b) the facility:
 - (i) is an original asset consisting of land; or
 - (ii) is an original asset and is located at land on which there is located a telecommunications transmission tower that is either an original asset or a replacement asset; or
 - (iii) is a replacement asset and is located at land on which there is located a telecommunications transmission tower that is either an original asset or a replacement asset.
- (2) The telecommunications carrier rules have effect as if the NTC or declared successor were:
 - (a) a carrier (within the meaning of the Telecommunications Act); and
 - (b) the holder of a carrier licence.
- (3) This Part does not apply to an NTC or declared successor at any time when the NTC or declared successor is actually the holder of a carrier licence.

21 Miscellaneous modifications of telecommunications carrier rules

The following provisions of Schedule 3 to the Telecommunications Act do not apply:

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- (a) Divisions 2 and 3 of Part 1;
- (b) Division 6 of Part 1;
- (c) subclause 44(2) and clauses 46, 47 and 53.

Part 7—Miscellaneous

22 Declared successors

- (1) The Minister may, by notice in the *Gazette*, declare a person to be a declared successor for the purposes of this Act.
- (2) A notice under subsection (1) has no effect unless the person is the owner of an original asset, or a replacement asset, on the date on which the notice is published.
- (3) Application may be made to the Administrative Appeals Tribunal for review of the following decisions of the Minister:
 - (a) a decision to declare a person to be a declared successor;
 - (b) a decision to refuse to declare a person to be a declared successor;
 - (c) a decision to revoke a declaration made under this section.

23 Delegation

- (1) The Minister may, by writing, delegate any of the Minister's powers under this Act to:
 - (a) the Secretary to the Department; or
 - (b) a person holding, or performing the duties of, a Senior Executive Service office in the Department.
- (2) In exercising a delegation, the delegate must comply with any directions of the Minister.

24 Immunity from State and Territory regulatory laws

- (1) A State regulatory law does not apply, and is taken never to have applied, in relation to any protected activity that occurred before the commencement of this Act.
 - (2) Subsection (1) is not intended to imply anything about:
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Section 24

- (a) the application, in relation to a protected activity, of any law of a State or Territory (other than a State regulatory law); or
 - (b) the application of any law of a State or Territory in relation to an activity other than a protected activity.
- (3) A State regulatory law does not apply to a site or telecommunications facility that:
- (a) is owned by the Commonwealth, an NTC or a declared successor; and
 - (b) was used at any time before the commencement of this Act in connection with a protected activity.
- (4) A rule of the common law relating to trespass does not apply to a site or telecommunications facility that:
- (a) is owned by the Commonwealth, an NTC or a declared successor; and
 - (b) was used at any time before the commencement of this Act in connection with a protected activity.
- (5) Subsections (3) and (4) do not apply to a building, structure or other telecommunications facility that commenced to be constructed after the commencement of this Act.
- (6) In this section:
- activity** includes an act.
- law** includes:
- (a) a provision of a law;
 - (b) subordinate legislation or a provision of subordinate legislation.
- protected activity** means an activity carried out:
- (a) by the Commonwealth; or
 - (b) for or on behalf of the Commonwealth by an agent, employee or contractor of the Commonwealth;

Section 25

solely or principally in connection with the provision of a broadcasting service in the broadcasting services bands (within the meaning of the Broadcasting Services Act).

State regulatory law means a law of a State or Territory that relates to any of the following matters:

- (a) town planning;
- (b) the use of land;
- (c) tenancy;
- (d) powers and functions of local government bodies;
- (e) standards applicable to the design, or manner of construction, of a building, structure or facility;
- (f) approval of the construction, occupancy or use of a building, structure or facility;
- (g) alteration or demolition of a building, structure or facility;
- (h) the protection of the environment;
- (i) dangerous goods;
- (j) licensing in relation to:
 - (i) carrying on a particular kind of business or undertaking;
or
 - (ii) conducting a particular kind of operation.

25 Application of Trade Practices Act to sale of shares in NTC

For the avoidance of doubt, it is declared that section 50 of the Trade Practices Act applies to the acquisition from the Commonwealth of shares in an NTC.

26 Lands Acquisition Act does not apply

The *Lands Acquisition Act 1989* does not apply in relation to anything done under this Act.

27 Commonwealth records

- (1) This Act does not authorise a Commonwealth record (within the meaning of the Archives Act) to be transferred or otherwise dealt with except in accordance with the provisions of the Archives Act.
- (2) A Commonwealth record (within the meaning of the Archives Act) must not be transferred to a person under this Act unless the Australian Archives has given permission under paragraph 24(2)(b) of the Archives Act.

28 Compensation for acquisition of property

- (1) If:
 - (a) apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms; and
 - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;the Commonwealth is liable to pay the person a reasonable amount of compensation in respect of the acquisition.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

- (3) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

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29 Disallowable instruments

The following are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*:

- (a) an instrument made for the purposes of the definition of ***declared remote area*** in section 3;
- (b) an instrument made for the purposes of paragraph (b) of the definition of ***emergency service organisation*** in section 3;
- (c) an instrument made under subsection 16(5);
- (d) a notice under subsection 18(5).

30 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

[*Minister's second reading speech made in—
Senate on 25 November 1998
House of Representatives on 10 December 1998*]

(139/98)