

EXPLANATORY STATEMENT

National Transmission Network Sale (Exemption from Restrictions on Transfer of Assets—Sydenham) Notice 2019

Issued by the Authority of the Minister for Communications and the Arts

National Transmission Network Sale Act 1998

Purpose

The purpose of this instrument is to exempt an asset in Sydenham, Victoria from the operation of section 18 of the *National Transmission Network Sale Act 1998* (the Act), so that, from the commencement of this notice, the owner of the asset need not seek written approval from the Minister before transferring the asset.

Authority

Subsection 18(6) of the Act enables the Minister to, by legislative instrument, give a notice for the purposes of subsection 18(5) exempting assets from the operation of section 18.

Background

The Act regulates the ownership and management of particular assets that were formerly part of the national transmission network. The network was privatised in 1998. The network is used to provide a range of analog transmission services and incidental services (nominated services) for the Australian Broadcasting Corporation (ABC), the Special Broadcasting Service Corporation, and particular community broadcasters (collectively, the nominated customers).

Section 18 of the Act regulates the transfer of original assets and replacement assets.

An original asset is an asset transferred from the Commonwealth under section 9 of the Act. Original assets were transferred through a Gazette notice made by the Finance Minister (Commonwealth Gazette No. S179 (29 April 1999)). Under section 3 of the Act, a replacement asset means an asset that is a replacement for an original asset; or an asset that replaces a replacement asset due to the previous application of the definition.

Subsection 18(1) of the Act provides that the Minister must give written approval of the transfer of an original asset or replacement asset before the time of transfer, otherwise the transfer will be of no effect.

Subsection 18(2) of the Act further provides that if a person makes a written application to the Minister for approval of a proposed transfer, the Minister must approve the transfer unless he refuses under subsection 18(3) of the Act.

Subsection 18(3) provides that the Minister may refuse to approve a transfer on 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.

Subsection 18(5) of the Act provides that section 18 of the Act does not apply to an asset that the Minister exempts from the operation of this section in a legislative instrument made under subsection 18(6) of the Act.

This notice exempts the following asset for the purposes of subsection 18(5): Lot B on Plan of Subdivision 817647S being the land in Certificate of Title Volume 12062 Folio 254, situated at 250A Taylors Road, Delahey, Victoria (Lot B).

The asset is part of a parcel of land situated at Delahey, Victoria, which is configured in two lots: Lot A on Plan of Subdivision 817647S being the land in Certificate of Title Volume 12062 Folio 253, situated at 148 Sydenham Road, Delahey (Lot A), and Lot B. The land at these lots was identified as site number 3047 (Sydenham) Part 1 of Schedule A to the declaration in the Gazette notice referred to above. The exemption relates to Lot B only.

Lot B does not contain infrastructure that is used for the transmission of a nominated service. Lot B is adjacent to Lot A, which does contain infrastructure used for the transmission of a nominated service (ABC AM Local Radio and Radio National). However, Lot A is a regulated asset and its transfer remains subject to Ministerial consent under subsection 18(1) of the Act.

Exemption of Lot B from the operation of section 18 of the Act will be granted from the commencement of this instrument as the asset is not needed to provide a nominated service for a nominated customer. Future transfers of Lot B, site number 3047 (Sydenham), will therefore not require Ministerial approval.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment 1.

Consultation

Broadcast Australia (BA) wrote to the Minister requesting an exemption for Lot B, Sydenham, from the operation of section 18 of the Act.

The Department consulted with the ABC, as a nominated customer in relation to an adjacent Lot (Lot A). In considering this request the Minister took the ABC's views into account.. The ABC raised concerns about the potential impact of new developments on the land on its transmission of its AM radio services.

BA conducted a technical assessment (which was subsequently peer-reviewed) to determine the maximum building height for developments on Lot B. The assessment concluded that the maximum building height should be 9 metres (nearest to the operational land), gradually increasing to 27 metres (furthest from the operational land) to ensure compatibility with the ABC's technical specifications for its services. BA consulted the ABC on the assessment and peer review. In addition, BA committed to a number of measures to appropriately reduce the risk that future purchasers of the land might breach the building height limits: it undertook to impose a restrictive covenant on the title for Lot B, impose a building height restriction on the third party purchaser within the sales agreement, and request the Brimbank City Council impose planning controls over future development of the land. BA also noted its ongoing obligations to maintain transmission services for the ABC from Lot A and to ensure continued access for the ABC to the BA sites and transmission facilities from which ABC services are provided.

Following an assessment of the ABC's concerns and BA's undertakings, the Minister decided to exempt Lot B, Sydenham from the requirement to seek the Minister's approval to transfer the lot. While there remains some risk that developments on Lot 80B might have an adverse affect on ABC transmissions from the adjacent site, the Minister considered that on balance, the mitigation measures agreed to by BA are appropriate in addressing this risk.

Notes on Sections

Section 1 provides that the name of the instrument is the *National Transmission Network Sale (Exemption from Restrictions on Transfer of Assets—Sydenham) Notice 2019*.

Section 2 provides that the instrument will commence on the day after it is registered.

Section 3 provides that the instrument is made under subsection 18(6) of the Act.

Section 4 is a definitions provision.

Section 5 is the main operative provision.

Section 5 provides that the asset identified as Lot B on Plan of Subdivision 817647S (being the land in Certificate of Title Volume 12062 Folio 254), located at 250A Taylors Road, Delahey, Victoria, will be exempt from the operation of section 18 of the Act. As a result the lot owner will no longer need to obtain the Minister's written approval before transferring the asset.

Attachment 1: Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Disallowable Legislative Instrument

The purpose of the *National Transmission Network Sale (Exemption from Restrictions on Transfer of Assets—Sydenham) Notice 2019* is to exempt an asset in Sydenham, Victoria, from the operation of section 18 of the *National Transmission Network Sale Act 1998* (Act), so that the owner of the asset need not seek written approval from the Minister before transferring the asset.

Human rights implications

This instrument does not engage any of the applicable rights or freedoms.

Conclusion

This instrument is compatible with human rights as it does not raise any human rights issues.