

## EXPLANATORY STATEMENT

*National Transmission Network Sale Act 1998*

### ***National Transmission Network Sale (Exemption from Restriction on Transfer of Assets—Minor Portions of Land) Notice 2019***

Issued by the Authority of the Minister for Communications, Cyber Safety and the Arts

#### **Authority**

Section 18 of the *National Transmission Network Sale Act 1998* (the Act) provides that the Minister must give written approval of any transfer of an original asset or a replacement asset before the time of transfer, otherwise the transfer will have no effect. 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 of the Act.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that a power to make an instrument includes a power, exercisable in the like manner and subject to the like conditions (if any), to repeal, rescind, revoke, amend or vary any such instrument.

#### **Purpose and operation of the instrument**

The purpose of the *National Transmission Network Sale (Exemption from Restriction on Transfer of Assets—Minor Portions of Land) Notice 2019* (the instrument) is to exempt minor portions of land (where that land is part of an original asset or replacement asset, which is the site of a broadcasting transmission tower) from requiring transfer approval, where those portions of land are transferred to a local government authority for the purposes of that authority.

The instrument contains two further circumstances that must be met for the transfer of an asset to be exempt from requiring approval. The first is that the transfer does not jeopardise the provision of broadcasting services from the site of the broadcasting transmission tower. The second is that the transfer does not jeopardise continued access to the site by the owner or occupier of the site, or by a nominated customer.

The instrument repeals and replaces the *Class exemption (No. 1 of 2000)* (the previous instrument) made for the purposes of subsection 18(5) of the Act, which is due to sunset on 1 October 2019. The instrument remakes the previous instrument without making any major substantive changes, with any changes intended to modernise the drafting of the previous instrument. The instrument sets out circumstances in which certain assets can be transferred without seeking approval.

#### **Background**

Section 18 of the Act applies to the transfer of an original asset or a replacement asset by any person, whether or not the person is a National Transmission Company.

The Hon. Ian Gordon Campbell, as the then Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts, made the previous instrument on 3 October 2000 under subsection 18(5) of the Act. The instrument is due to sunset on 1 October 2019.

The previous instrument was also expressed to be made under subsection 46(2) of the *Acts Interpretation Act 1901* as it was in force at the time, which ensures a power to make an

instrument specifying a matter to be exercised by specifying that matter by class. This provision has since been repealed and replaced by subsection 13(3) of the *Legislation Act 2003* (the LA). This instrument is made in accordance with subsection 13(3) of the LA.

The Department assessed whether the *Class exemption (No.1 of 2000)* was efficient and effective in achieving the Government's objective of exempting minor portions of land from requiring transfer approval, where those portions of land are transferred to a local government authority for the purposes of that authority. As a result the Department considers the *Class exemption (No. 1 of 2000)* remains fit for purpose, necessary and relevant for transfer of original assets and replacement assets.

The instrument is a legislative instrument for the purposes of the LA.

### **Documents referred to or incorporated by reference**

The instrument defines one term (broadcasting transmission tower) by reference to the *Broadcasting Services Act 1992*, which is publicly available on the Federal Register of Legislation (Series number [C2004A04401](#)).

### **Consultation**

The Department consulted BAI Communications Pty Ltd (BAI), the ABC and SBS in accordance with section 17 of the LA. BAI is a National Transmission Company for the purposes of the Act. The ABC and SBS are listed as nominated customers in the Act. BAI, the ABC and SBS did not object to remaking the instrument.

### **Regulatory impact assessment**

The Office of Best Practice Regulation (OBPR) considers the instrument to have only a minor impact. As a result, a regulatory impact statement is not required (OBPR reference number 25417).

### **Statement of compatibility with human rights**

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 2.

## **Attachment 1: Details of the *National Transmission Network Sale (Exemption from Restriction on Transfer of Assets—Minor Portions of Land) Notice 2019***

### **Section 1—Name**

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

### **Section 2—Commencement**

Section 2 provides for the commencement of the instrument. The instrument will commence on the day after it is registered on the Federal Register of Legislation.

### **Section 3—Authority**

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

### **Section 4—Definitions**

Section 4 defines expressions used in the instrument. In particular, it defines the expressions ***broadcasting transmission tower*** and ***relevant local government authority***.

The expression ***broadcasting transmission tower*** has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*, which is currently defined by clause 2 of that Schedule to mean:

- a tower; or
- a pole; or
- a mast; or
- a similar structure;

used to supply:

- a broadcasting service by means of radiocommunications using the broadcasting services bands; or
- a datacasting service provided under, and in accordance with the conditions of, a datacasting licence.

Several of those terms (such as broadcasting service and datacasting service) are also defined in subsection 6(1) of the *Broadcasting Services Act 1992*.

A ***relevant local government authority*** for land is an authority of the State or Territory responsible for the local government of the area in which the land is located.

### **Section 5—Schedules**

Section 5 provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and that any other item in a Schedule to the instrument has effect according to its terms. There is only one Schedule to the instrument, which repeals the *Class exemption (No. 1 of 2000)*.

### **Section 6—Exemption of minor portions of land**

Subsection 6(1) exempts certain assets from the operation of section 18 of the Act in certain circumstances. Assets covered by this exemption do not require the approval of the Minister for the transfer to be effective.

The exemption applies to any asset that is comprised of minor portions of land forming part of an original asset or replacement asset, where that original or replacement asset is a site of a broadcasting transmission tower (as defined in section 4).

The exemption applies where such an asset is transferred to a relevant local government authority (as defined in section 4) for the purposes of that authority. Subsection 6(2) clarifies that the purposes of a relevant local government authority include road widening and the creation of footpaths. This provision is not exhaustive of the possible purposes of a relevant local government authority.

However, the exemption only applies if the transfer of the relevant asset does not jeopardise:

- the provision of broadcasting services from the site of the broadcasting transmission tower; or
- continued access to the site of the tower by:
  - the owner or occupier of the site; or
  - a nominated customer.

This exemption only applies to the operation of section 18 of the Act. Other provisions of the Act will continue to apply according to their terms in relation to an asset exempted by this instrument.

### **Schedule 1—Repeals**

Item 1 of Schedule 1 repeals the *Class exemption (No. 1 of 2000)* (the previous instrument).

The previous instrument was registered on the Federal Register of Legislation on 1 January 2005 (when the substantive provisions of the LA commenced). Accordingly, the previous instrument is due to sunset on 1 October 2019 in accordance with item 10 of the table in subsection 50(2) of the LA.

In 2015, the *Acts and Instruments (Framework Reform) Act 2015* (AIFR Act) amended section 18 of the Act to change the power to make notices of exemption from subsection 18(5) to the new subsection 18(6). A transitional provision in item 349 of Schedule 3 to the AIFR Act deemed the previous instrument to continue in force as if it had been made under subsection 18(6) of the Act. Accordingly, while the previous instrument was originally expressed to be made under subsection 18(5) of the Act, it is being repealed under subsection 18(6) of the Act.

## **Attachment 2: Statement of Compatibility with Human Rights**

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

### ***National Transmission Network Sale (Exemption from Restriction on Transfer of Assets—Minor Portions of Land) Notice 2019***

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 Restriction on Transfer of Assets—Minor Portions of Land) Notice 2019* is to exempt minor portions of land (being the site of a broadcasting transmission tower) from requiring transfer approval, where those portions of land are transferred to a local government authority for the purposes of that authority.

The instrument contains two further circumstances that must be met for the transfer of an asset to be exempt from requiring approval. The first is that the transfer does not jeopardise the provision of broadcasting services from the site of the broadcasting transmission tower. The second is that the transfer does not jeopardise continued access to the site by the owner or occupier of the site, or by a nominated customer.

#### **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.