EXPLANATORY STATEMENT

National Transmission Network Sale (Exemption from Restrictions on Transfer of Assets—Liverpool) Notice 2021

Issued by the Authority of the Minister for Communications, Urban Infrastructure, Cities and the Arts

*National Transmission Network Sale Act 1998*

Purpose

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

Authority

Subsection 18(6) 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.

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) to the Australian Broadcasting Corporation (ABC), the Special Broadcasting Service Corporation, and particular community broadcasting services (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 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 for Communications, Urban Infrastructure, Cities and the Arts must give written approval to transfer 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 approval in accordance with subsection 18(3) of the Act.

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

1. 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;
2. 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 assets for the purposes of subsection 18(5):

1. Folio Identifier: 102/1268824 being Lot 102 in Deposited Plan 1268824, in the Local Government Area of Liverpool, Parish of St Luke and County of Cumberland; and
2. Folio Identifier: 103/1268824 being Lot 103 in Deposited Plan 1268824, in the Local Government Area of Liverpool, Parish of St Luke and County of Cumberland.

These assets form part of a parcel of land situated at Wonga Road, Prestons, New South Wales configured in the following four lots:

1. Folio Identifier: 1/740573 being Lot 1 in Deposited Plan 740573, in the Local Government Area of Liverpool, Parish of St Luke and County of Cumberland
2. Folio Identifier: 101/1268824, being Lot 101 in Deposited Plan 1268824, in the Local Government Area of Liverpool, Parish of St Luke and County of Cumberland
3. Folio Identifier: 102/1268824 being Lot 102 in Deposited Plan 1268824, in the Local Government Area of Liverpool, Parish of St Luke and County of Cumberland; and
4. Folio Identifier: 103/1268824 being Lot 103 in Deposited Plan 1268824, in the Local Government Area of Liverpool, Parish of St Luke and County of Cumberland.

The land at these lots are part of what was identified as site number 2060 (Liverpool) in Part 1 of Schedule A to the declaration made under subsections 9(1) and (2) of the Act dated 27 April 1999 and published in the Gazette on 29 April 1999.

Lot 1 is vacant land that was previously exempted from the operation of section 18 of the Act by the *National Transmission Network Sale (Exemption from Restrictions on Transfer of Assets – Liverpool) Amendment Notice 2018*.

Lot 101 is operational land that contains infrastructure used for the transmission of a nominated service (ABC AM services Local Radio 2BL, News on Radio 2PB and Radio National 2RN). This land remains subject to Ministerial consent prior to transfer, under subsection 18(1) of the Act.

Lots 102 and 103 do not contain infrastructure that is used for the transmission of a nominated service. It is adjacent to Lot 101. This exemption relates to Lots 102 and 103 only.

Ministerial consent has been provided for transfer of Lots 102 and 103 to a third‑party purchaser. Exemption of Lots 102 and 103, Liverpool, from the operation of section 18 of the Act, will be granted from the commencement of this instrument, as the Lots 102 and 103 are not needed to provide a nominated service for a nominated customer. Future transfers of Lots 102 and 103, site number 2060 (Liverpool), 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

BAI Communications Pty Ltd, trading as Broadcast Australia (BAI), on behalf of BAI’s wholly owned subsidiary Digital 4 Pty Ltd, wrote to the Minister requesting an exemption for Lots 102 and 103, Liverpool, from the operation of Section 18 of the Act.

The Department consulted with the ABC, as a nominated customer in relation to the proposed transfer of Lots 102 and 103, and the exemption of Lots 102 and 103 from future transfer. The ABC had no objections to BAI’s proposals.

Following an assessment of the request from BAI and the ABC’s views, the Minister decided to exempt Lots 102 and 103 from the requirement to seek the Minister’s approval to transfer these lots under the Act.

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—Liverpool) Notice 2021.*

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.

Subsection 18(5) provides that section 18 does not apply to assets that are exempted from the operation of this section by notice by the Minister under subsection 18(6).

Section 5 provides that, for the purposes of subsection 18(5) of the Act, the following assets (as identified by their Certificate of Title details), situated at Wonga Road, Prestons, New South Wales, will be exempt from the operation of section 18 of the Act:

1. Folio Identifier: 102/1268824 being Lot 102 in Deposited Plan 1268824, in the Local Government Area of Liverpool, Parish of St Luke and County of Cumberland; and
2. Folio Identifier: 103/1268824 being Lot 103 in Deposited Plan 1268824, in the Local Government Area of Liverpool, Parish of St Luke and County of Cumberland.

As a result, from commencement, the future owner of Lots 102 and 103, following their sale by Digital 4 Pty Ltd, 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*

**National Transmission Network Sale (Exemption from Restrictions on Transfer of Assets—Liverpool) Notice 2021**

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—Liverpool) Notice 2021* is to exempt assets in Liverpool, New South Wales, 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.