

## **EXPLANATORY STATEMENT**

### **National Transmission Network Sale (Exemption from Restrictions on Transfer of Assets—Kelso) Notice 2017**

Issued by the Authority of the Minister for Communications

#### *National Transmission Network Sale Act 1998*

The *National Transmission Network Sale Act 1998* ('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 particular national transmission assets.

Subsection 18(1) of the Act provides that the Minister for Communications 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.

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(2) of the Act further provides that 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:

- (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.

The purpose of this instrument is to exempt a specified asset from the operation of section 18 of the Act, so that after a specified date the owner of the asset need not seek written approval from the Minister before transferring the asset.

The parcel of land situated at Greens Beach Road, Kelso, is configured as a single lot being Lot 2 on Plan 135047. This lot contains infrastructure that was previously used to broadcast ABC AM Local Radio services. Therefore, Lot 6908 was a regulated asset for the provision of a nominated service, and as such, its transfer is currently subject to Ministerial consent under section 18(1) of the Act. Ministerial consent has been provided to transfer assets at this location to a third-party.

Exemption of the Kelso site from the operation of section 18 of the Act will be granted from 8 December 2017 onward on the grounds that, following the cessation of the AM Local Radio nominated service on 13 April 2006, the site no longer provides a nominated service for a nominated customer. Future transfers of Lot 2 on Plan 135047 will therefore not require Ministerial approval.

Once made the instrument is subject to Parliamentary scrutiny and disallowance.

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.

#### Notes on Clauses

Clause 1 provides that the name of the Instrument is the *National Transmission Network Sale (Exemption from Restrictions on Transfer of Assets—Kelso) Notice 2017*

Clause 2 provides that the instrument will take effect on 8 December 2017.

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

Clause 4 is a definitions clause.

Clause 5 is the main operative clause.

Clause 5 provides that the asset comprising a lot of land located at Greens Beach Road, Kelso, Tasmania, will be exempt from the operation of section 18 of the Act. (The land is also identified by its Certificate of Title details). As a result the lot owner will no longer need to obtain the Minister's written approval before transferring the asset.

## Consultation

Broadcast Australia wrote to the Minister requesting an exemption from the operation of section 18 of the Act. Section 18 of the Act requires the Minister to approve a transfer of original assets or replacement assets under this Act for that transfer to have legal effect.

In considering this request the Minister took the ABC's views into account. As the Kelso site is no longer used for the provision of a nominated service, the ABC raised no objection to exempting the site from the operation of section 18 of the Act.

## **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—Kelso) Notice 2017**

This Declaration 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—Kelso) Notice 2017* is to exempt an asset in Kelso, Tasmania, 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 Declaration does not engage any of the applicable rights or freedoms.

#### **Conclusion**

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