

Nature Conservation (Protected Areas Management) (Communications and Electrical Distribution Facilities) Amendment Regulation 2021

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Meaghan Scanlon, Minister for the Environment and the Great Barrier Reef and Minister for Science and Youth Affairs, provide this human rights certificate with respect to the *Nature Conservation (Protected Areas Management) (Communications and Electrical Distribution Facilities) Amendment Regulation 2021* made under the *Nature Conservation Act 1992*.

In my opinion, the *Nature Conservation (Protected Areas Management) (Communications and Electrical Distribution Facilities) Amendment Regulation 2021*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The *Nature Conservation Act 1992* (the Act) provides instructions on how development applications to install, maintain or use infrastructure on national parks should be dealt with. The Act contains strict criteria that must be satisfied before the chief executive can grant an authority for infrastructure.

Section 35(1) of the Act states that:

- (1) The chief executive may grant, make, issue or give a lease, agreement, licence, permit or other authority over, or in relation to, land in a national park if-
 - (a) the use under the authority is only for a service facility or an ecotourism facility; and
 - (b) if the use under the authority is for a service facility, the chief executive is satisfied-
 - (i) the cardinal principle for the management of national parks will be observed to the greatest possible extent; and
 - (ii) the use will be in the public interest; and
 - (iii) the use is ecologically sustainable; and
 - (iv) there is no reasonably practicable alternative to the use; and
 - (c) if the use under the authority is for an ecotourism facility, the chief executive is satisfied-
 - (i) the use will be in the public interest; and
 - (ii) the use is ecologically sustainable; and

- (iii) the use will provide, to the greatest possible extent, for the preservation of the land's natural condition and the protection of the land's cultural resources and values; and
- (d) the use under the authority is prescribed under a regulation made for this section to be a permitted use for the area.

Section 37(1) of the Act states that:

- (1) In this section authority means a lease, agreement, permit, or other authority (other than an authority permitting stock grazing or the location of beehives) -
 - (a) granted, made, issued or given under the former Act or the *Land Act 1962* over, or in relation to, a national park under the former Act; and
 - (b) in force immediately before the repeal of the former Act; and
 - (c) continued in force under this Act.former Act means the *National Parks and Wildlife Act 1975*
- (2) The chief executive may renew, or consent to the renewal of, an authority for the national park if the use under the authority is prescribed under a regulation made for this section to be a permitted use for the area.
- (3) The authority may only be renewed for –
 - (a) if no management plan is in force for the area when the renewal is granted – not longer than 10 years; or
 - (b) if a management plan is in force for the area when the renewal is granted – the term authorised under the plan.
- (4) The authority may be renewed subject to the conditions the chief executive considers appropriate.

The chief executive may not delegate the power under sections 35 and 37 of the Act, in accordance with section 141 of the Act.

The following proposed uses have been assessed and meet the requirements under section 35(1)(b) of the Act:

- operation and maintenance of an existing service facility (for communications use) by BAI Communications Pty Ltd in Pioneer Peaks National Park, identified as 'Authority Area A' within Lot 150 on NPW854 on QPWSAP000058;
- installation, operation and maintenance of a service facility (for communications use) by Optus Fixed Infrastructure Pty Ltd in Magnetic Island National Park, identified as 'Authority Area' covering part of Lot 456 on AP22485 on QPWSAP000177; and
- operation and maintenance of an existing service facility (for communications and electricity distribution use) by BAI Communications Pty Ltd in Wooroonooran National Park, identified as 'Authority Area A' to 'Authority Area P' over parts of Lot 19 on NPW970 on QPWSAP000149.

Before the chief executive may grant an authority under section 35 for the above activities, the use and the relevant national park must be prescribed under Schedule 3 of the *Nature*

Conservation (Protected Areas Management) Regulation 2017 (the Regulation) and requires the removal of a communications use as a prescribed use in Pioneer Peaks National Park under Schedule 4 of the Regulation.

The *Nature Conservation (Protected Areas Management) (Communications and Electrical Distribution Facilities) Amendment Regulation 2021* will prescribe the proposed uses in Schedule 3 of the Regulation and remove communications use in Pioneer Peaks National Park from Schedule 4 of the Regulation.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

Section 28 of the *Human Rights Act 2019* addresses the cultural rights of Aboriginal and Torres Strait Islander peoples. The subordinate legislation has been considered in terms of this right, to determine how the two interact and if the legislation will limit the right.

The effect of the subordinate legislation is to allow the chief executive, at his discretion, to approve an authority for –

1. BAI Communications Pty Ltd (BAI) to operate and maintain an existing communications facility at the Mount Blackwood site in Pioneer Peaks National Park. The site was established in 1970 by the Commonwealth of Australia under a 30-year lease issued under the *Land Act 1962*. In 1999, the lease was transferred to Broadcast Australia with the privatisation of the National Transmission Network under the *National Transmission Network Sale Act 1998* (Cth). On 1 January 2000, the facility was authorised under an authority issued under section 37 of the NC Act, for a term of 20 years. In 2019, Broadcast Australia was re-branded as BAI. The site includes three antenna support towers, four equipment shelters, four ground mounted satellite dishes, two water tanks, a fuel tank and associated communications equipment.
The facility is used for transmission of national and commercial television and radio services over a large area which includes Mackay and Proserpine. BAI has long term contracts with the Australian Broadcasting Commission (ABC) and Special Broadcasting Service (SBS), as well as other commercial and community television and radio broadcasters, and have indicated that they have no plans to upgrade or expand the footprint of the site.
2. Optus Infrastructure Pty Ltd (Optus) is seeking approval to install and maintain underground fibre optic cabling in Magnetic Island National Park from Arcadia Bay to Horseshoe Bay, to assist in providing more effective and reliable telecommunications services to the local area. Most of the installation will involve hauling fibre optic cabling through existing Telstra conduit which lies outside Magnetic Island National Park. A section of 128 metres will be installed in Magnetic Island National Park, as the existing Telstra ducting is blocked. The proposed works will be conducted within a walking track which has been previously disturbed and is considered the most environmentally sensitive option.
3. BAI operate and maintain an existing communications facility at the Mount Bellenden Ker site in Wooroonooran National Park. The site was established in 1972 by the Commonwealth of Australia under a 30-year lease issued under the *Land Act 1962*. In 1999, the lease was transferred to Broadcast Australia with the privatisation of the National

Transmission Network under the *National Transmission Network Sale Act 1998* (Cth). In 2019, Broadcast Australia was re-branded as BAI. The site includes a base station with two offices, a shed and structures to support a cable-car which is connected to a communications facility, located at the summit of Mount Bellenden Ker. The communication facility includes a communications tower, equipment shelters, three helipads (at various sites), associated communications equipment and electricity infrastructure to provide power for the cable car and the communications facility. Mount Bellenden Ker is used for transmission of national and commercial television and radio services over a large area which includes Cairns, Palm Cove, Innisfail and Atherton. BAI has advised that it has no plans to upgrade or expand the footprint of the site.

In terms of cultural heritage protection, all the proponents have provided an application under the Act to address how the activity will meet the management principles of a National Park, address public interest and to ensure that no practicable alternatives exist. An Environmental Management Plan is submitted to address the potential impacts of the activity on natural and cultural values of the National Park and outlines management measures proposed to mitigate against these impacts.

The applications under the Act address and consider how this human right might be impacted.

1. PIONEER PEAKS NATIONAL PARK

The Yuwibara People are the traditional owners of Indigenous Cultural Heritage area in this locality.

This site is pre-existing and requires re-authorisation under the Act. Currently, BAI operate under an Environmental Code of Practice which comprises assessment processes, staff induction and training and support resources to ensure the appropriate guidelines and protocols are established, monitored and enforced for the management of natural and cultural values and which are integrated into BAI's activities in the National Park.

2. WOOROONOORAN NATIONAL PARK

The Wanyurr Majay People are the traditional owners of Indigenous Cultural Heritage area in this locality.

This site is pre-existing and requires re-authorisation under the Act. Currently, BAI operate under an Environmental Code of Practice which comprises assessment processes, staff induction and training and support resources to ensure the appropriate guidelines and protocols are established, monitored and enforced for the management of natural and cultural values and which are integrated into BAI's activities in the National Park.

3. MAGNETIC ISLAND NATIONAL PARK

The Wulgurukaba People are the traditional owners of Indigenous Cultural Heritage in this locality. Whilst Native Title rights and interests have been surrendered under the Wulgurukaba People Indigenous Land Use Agreement QI2010/018, a working group has been established with Queensland Parks and Wildlife Service and Partnerships officers and the Wulgurukaba People to discuss management matters which may affect cultural heritage on the National Park.

The applications received from BAI and Optus for the proposed uses has also been assessed under the Act and has been determined to be in the public interest, ecologically sustainable and that there is no reasonably practicable alternative.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

Given that the nature of this legislation is administrative, and its effect is limited to two established communications sites and a site which was previously disturbed for the construction of a walking track, it is not anticipated that this legislation will affect the scope of the cultural rights of First Nations people.

(a) the nature of the right

The right to allow First Nations people to practice their culture, through their spiritual, material, and economic relationship with land, territories, coastal seas and other resources. The subordinate legislation is an administrative process and will not limit this right.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Not applicable

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Not applicable

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

Not applicable

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

Not applicable

(f) any other relevant factors

Not applicable

Conclusion

I consider that the *Nature Conservation (Protected Areas Management) (Communications and Electrical Distribution Facilities) Amendment Regulation 2021* is compatible with the *Human Rights Act 2019* because it does not limit human rights.

MEAGHAN SCANLON
MINISTER FOR THE ENVIRONMENT AND THE GREAT BARRIER REEF
MINISTER FOR SCIENCE AND YOUTH AFFAIRS

© The State of Queensland 2021