Can Local Water Utilities and telecommunications Carriers happily co-exist?

Greg Ryan, Manager Utility Excellence
What is the Telco Act 1997 and why should I care?

Provides the regulatory framework for Telecommunications Carriers, including licence conditions and penalties for non-compliance.

Sets framework for commercial agreements and where these cannot be reached, for Carrier Immunities under Schedule 3.

Sch 3 provides some powers for Carriers to inspect land, and to install and maintain facilities, and some immunities to some State and Territory Laws esp. for ‘Low Impact Facilities’.

Note: water tanks and towers are classified as Low Impact Facilities under the Telecommunications (Low-Impact Facilities) Determination 1997.
Key aspects of water industry engagement with Telco Act

- **DOCA - consultation paper**: (23 changes to Telco and Low Impact Facilities Acts)
- **Water industry response**: (WSAA and Water Directorates)
- **Water industry meetings with DoCA**: Water industry forms Working Group under WSAA and
- **DOCA agrees to pause 13 changes to Telco Act**: Working Group develops case studies and log of issues
- **WSAA and Water Directorates**: DoCA outlining concerns over legacy Telco issues
- **DoCA convenes meeting of Landowners and Telcos**: DoCA convenes Powers and Immunities Reference Group (PIRG - Landowner and Telco peak bodies)
- **First PIRG output - emergency shutdown and streamlined communications protocols**: Ongoing PIRG meetings

Timeline:
- **Jun 2017**: DOCA - consultation paper
- **July 2017**: Water industry response
- **Sept 2017**: Water industry meetings with DoCA
- **Oct 2017**: DOCA agrees to pause 13 changes to Telco Act
- **Apr 2018**: Working Group develops case studies and log of issues
- **May 2018**: WSAA and Water Directorates
- **Jun 2018**: DoCA outlining concerns over legacy Telco issues
- **Jul 2018**: DoCA convenes meeting of Landowners and Telcos
- **Nov 2018**: First PIRG output - emergency shutdown and streamlined communications protocols
- **Nov 2019**: Ongoing PIRG meetings
Carriers must make reasonable efforts to enter into an agreement with a public utility, where it is to engage in an activity that is likely to affect that public utility's operations.

The agreement must provide the manner in which the Carrier will engage in the:
- inspection or land; or
- installation of; or
- maintenance of a facility

Should a contract not be feasible then Carriers can invoke Schedule 3 of the Act which allows installation of equipment without contract.
<table>
<thead>
<tr>
<th>Schedule 3 and Code of Practice conditions on Carriers</th>
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<tbody>
<tr>
<td><strong>Do as little damage as possible</strong></td>
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<td><strong>Interferes ALAP with a utility, roads, and paths,</strong></td>
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<td><strong>traffic &amp; use of land</strong></td>
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<td><strong>Inspect facilities, investigate dangerous facilities</strong></td>
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<td><strong>Best practice design to minimise degradation of the environment and visual amenity</strong></td>
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<tr>
<td><strong>Compliance with international agreements</strong></td>
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<tr>
<td><strong>Protect the environment</strong></td>
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<td><strong>Notify landowner, road authority and utilities</strong></td>
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<td><strong>Agreements with utilities</strong></td>
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<td><strong>Ensure reasonable passage for roads etc</strong></td>
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<tr>
<td><strong>Minimise noise</strong></td>
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<tr>
<td><strong>Use good engineering practice</strong></td>
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<tr>
<td><strong>Protect the safety of persons and property</strong></td>
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<tr>
<td><strong>Best practice design to minimise degradation of the environment and visual amenity</strong></td>
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<tr>
<td><strong>Maintain records for overhead cable, underground facilities &amp; towers (Sch1)</strong></td>
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<td><strong>Reasonable steps to co-locate and cooperate with another Carrier or utility</strong></td>
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Notifications and Objections

Pre-LAAN
- Inspection – notification under Sch. 3 or agreement
- Clause 11 of the Telco Act – public utility agreements
- Carrier-landowner relationships

Grounds for objection
- Using the land
- Location on land
- The date – start, engage or stop
- Likely effect on the land

LAAN
- At least 10 Business Days Notice
- Can object until 5 days before activity starts (usually)
- 20 days for Carrier to resolve objection

- Proposal to minimise the detriment and inconvenience and to do as little damage as possible

TIO
- Objector may ask the Carrier to refer the objection to the TIO
- TIO can deal with an objection, including by directing Carrier
- Carrier cannot proceed until objection is resolved
- Note: there is no appeal process against a final TIO ruling
Compliance and Enforcement

- Schedule 1
- Schedule 3
- Code of Practice
- Deployment Code

Raise concern with carrier

Complaint to ACMA (s.509)

Civil penalties up to $10m
Direction to carrier
Formal warning to carrier
Revocation of carrier licence
So there shouldn’t be any issues - right?

Risks from Telco equipment on water tanks

- Site security
- Worker Health and Safety
- Restricted reservoir access/egress
- Ability of owner to operate, inspect, maintain, upgrade and replace assets
- Water quality - potential contaminant entry
- Structural integrity
Site security
Worker health and safety
Restricted access
Water Quality risk
Water quality risk/ Structural integrity
Structural integrity
Why are these issues arising?

1) Landowners are not aware of their rights

2) Landowners don’t effectively lodge complaints e.g.
   - 1 complaint lodged with ACMA since 2011 (from water industry)
   - Few complaints lodged with TIO

3) Legacy issues from change of landowner

4) Poor contracting by Landowners

5) Strong legal approach by some telco’s and limited resourcing of landowners

6) Carriers and their subcontractors not behaving appropriately
Other compounding factors

1) Not all Carrier equipment is labelled
2) AMTA EME mapping is based on theoretical calculations
3) It is a criminal offence to shut off Carrier equipment
   1) Emergency shutdown protocols are unclear or non-existent
4) No central desk for contact information or to identify Carriers
5) Complaint process to the TIO requires notification to Carrier, process is not always clear
6) Complaint process to AMCA far from intuitive
What can you do?

1) Become aware of your rights and enforce them
   a) NSW/Qld Water Directorate documents - Third Party Infrastructure on Water Supply Reservoirs Guidelines

b) If in receipt of a LAAN under Schedule 3
   • Determine if you want to object
   • Lodge an objection with the telco to be registered with TIO
   • If the Telco doesn’t lodge with TIO or comply then complain to ACMA

c) Make use of water industry working group under WSAA and the Water Directorates

d) If there are facilities that you don’t believe meet the requirements of Schedule 3 - object to ACMA (irrespective of whether a LAAN has been issued or not!)
How are WSAA and the water Directorates helping?

1) Educating the industry
   - Including the use of standard templates for contracts and lodging of objections to a LAAN or with ACMA.

2) Developing a more level playing field - Participating in the Powers and Immunities Reference Group
   - Group of Peak bodies for telco Carriers, water, roads, rail, facilities and power, along with the regulators and key government bodies – ACMA, DOCA, AMTA
   - Objective – to improve the functioning between Carriers and landowners
     - Emergency shutdown protocols
     - Effective labelling
     - Up to date contact lists and complaint protocols
     - Medium term – clarification of authorising and operating environment
Twitter
@wsaa_water
@greg_ryan

LinkedIn
Water Services Association of Australia

Web
www.wsaa.asn.au