



WATER SERVICES
ASSOCIATION OF AUSTRALIA

WSAA SUBMISSION

Possible amendments to telecommunications
carrier powers and immunities

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To the Department of Communications and the Arts
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Submission response - Possible amendments to telecommunications powers and immunities

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About WSAA

The Water Services Association of Australia (WSAA) is the peak body that supports the Australian urban water industry. Our members provide water and sewerage services to over 20 million customers in Australia and New Zealand and many of Australia's largest industrial and commercial enterprises. WSAA facilitates collaboration, knowledge sharing, networking and cooperation within the urban water industry. The collegiate approach of its members has led to industrywide advances to national water issues.

WSAA welcomes the opportunity to provide a submission to the Department of Communication and the Arts 'Possible Amendments to telecommunications carrier powers and immunities' Consultation Paper, June 2017.

Summary of the water industry position

As set out in the discussion paper the Telecommunications industry has requested significant changes to their powers and immunities under Schedule 3 of the Telecommunications Act 1997. With respect to water infrastructure, WSAA considers that the benefits conferred on Telecommunications Providers by these changes need to consider the additional costs and risks that these could impose on Australia's water infrastructure providers and the community more generally. It is vital that the Department and Telecommunications Providers acknowledge that protecting public health is the paramount objective for managing drinking water systems and that the proposed changes cannot compromise attainment of that objective.

Under Council of Australian Government (COAG) arrangements, nationally, water services infrastructure is designated as part of an essential service and critical infrastructure.

The proposed amendments to telecommunications carrier powers and immunities pose significant security and potential downstream water quality health risks. Co-location of communications infrastructure with sensitive water service infrastructure can, through aggregation, increase the risk to the community and compromise the security sensitivity of particular sites. In these cases the Telecommunications Providers accessing the site must, financially and organisationally, contribute to the enhanced security risk assessment and infrastructure security enhancements required to mitigate this heightened risk.

Increases to the size of permissible infrastructure on storage tanks and other prominent locations also has implications on visual aesthetics for the community. The management of the community relationship falls to the water utility, not those whose infrastructure is installed on their assets. There needs to be greater equity in the relationship between the telecommunications equipment owner and the water utility in this respect.

Separately, water services infrastructure has not been designed for the co-location and addition of appurtenant communications infrastructure. Excessive weight has the potential to cause structural damage to water utility assets. In addition, the footprint and radiation hazard from such equipment can impede safe access for critical maintenance of water utility infrastructure.

It is recommended that for each installation a structural certification should be undertaken by the Telecommunications Provider, in order to address the structural concerns. Such an approach should avoid potential future injury to personnel from inappropriate construction and installation practices. In terms of ongoing accessibility to sites it is essential that Telecommunication Providers undertake adequate consultation with water utilities. This would avoid situations where access covers and hatches become inaccessible because of inappropriate installations. It would ensure telecommunications infrastructure is appropriately sited so as to minimise risks to drinking water quality and inappropriate installations are avoided.

Any extension or modification of the allowable communications infrastructure presents a community risk for the delivery of safe drinking water services. As noted, the safety of drinking water supplied to customers is of paramount concern to WSAA's members; it must not be compromised for any other objective.

The key issue is ensuring that telecommunications equipment and associated installation/removal activities do not directly, or indirectly, lead to the contamination of the drinking water supply, or adversely impact on operational activity undertaken to manage and maintain the water supply asset.

Under the legislation, any telecommunications worker can access secure facilities, and spill chemicals or damage sites during the installation and removal of equipment, all without the need to report such issues to the affected water utility. All these actions can adversely impact on drinking water quality, but under circumstances where the water utility has no control regarding the equipment used, the quality of workmanship or the chemicals used. Given the current Federal Government's view of the criticality of these assets and community dependence on the supply of safe water, this situation is not tenable.

A mechanism needs to be established to enable water utility infrastructure to be classified separately within the legislation, in a manner consistent with the currently stated views of COAG and the Federal Government that water utility assets are critical infrastructure nationally. This is necessary to ensure the maintenance of drinking water quality and the structural integrity of assets used to maintain this quality, whilst minimising aesthetic issues for the community. Appropriate consultation with water utilities is an essential element to be incorporated into future revisions of the code. Further, in protecting water utility assets it is desired that the telecommunications asset owner takes full responsibility for all risks the proposed changes would precipitate.

There is a lack of protection of public utility infrastructure under the Telco Act. WSAA Queensland members have set out how this is manifested in that jurisdiction (Box 1).

Context

Drinking water reservoirs have long been an attractive “host” for telecommunications infrastructure because of their often elevated locations. Reservoirs were, however, not constructed with this future additional use in mind. There are ongoing issues with the materials used for rooves, competing, but complementary, needs for access to infrastructure for maintenance activities, and the way telecommunications infrastructure has been installed.

This is not solely as a result of the actions of telecommunications providers. Local governments and other water service providers have also entered into hosting arrangements, with suitable financial compensation, but often with less than suitable controls. There is a recognition from the water industry that this position needs to change.

The release of the ‘consultation paper’ is a useful prompt for this discussion. However, the manner in which the document was released and the short time period allowed for consultation are not conducive to a trusting and forward thinking relationship. WSAA has been disappointed to learn of the release of the paper through our members, and not through direct engagement from the Department. When we contacted our peers in other peak bodies, such as the Water Directorates, it appears that none of the peak bodies for the urban water industry were contacted directly by the Department on this matter. This approach is disappointing and concerning, given that the consultation document presents a position that clearly benefits the telecommunications industry, with minimal engagement or consideration for the impact on key stakeholders. WSAA and our members are keen to work with the Department on a path towards resolving the differences outlined in this document in a manner that is both transparent and supportive of all stakeholders.

Current issue with Schedule 3 of the Telecommunications Act

There is a lack of protection of public utility infrastructure under the Telco Act. In particular clause 37 of the Schedule 3 to the Telco Act allows a carrier to engage in low-impact facility activities despite a law of a State “about the use of the land”. As a result of a decision by the Federal Court of Australia in *Gold Coast City Council v Satellite & Wireless Pty Ltd* (2014) 143 ALD 19 (Satellite’s Case), water utilities cannot refuse a carrier access in relation to a low-impact facility activity on the grounds of section 192 of the Water Supply (Safety and Reliability) Act 2008 (Qld) (Water Supply Act).

Although water utilities can object (in limited circumstances) to the carrier’s proposed Land Access and Activity Notice (LAAN) under Telecommunications Code of Practice 1997 (the Code), there is no express right under the telecommunication regulatory regime for a utility to refuse carrier access to land it owns or occupies on the grounds that such access would interfere with infrastructure (for example, water supply reservoirs). There is an inconsistency between section 192 of the Water Supply Act and section 37 of Schedule 3 to the Telco Act. In *Satellite’s Case*, the Federal Court held that whilst there was an inconsistency between section 192 of the Water Supply Act and section 37 of Schedule 3 to the Telco Act, the carrier was (in any event) permitted to install the low impact facility under the exemption that applies to State laws that are “about land”.

Water utilities in Queensland have experienced that section 192 of the Water Supply Act cannot operate concurrently with the Telco Act despite the provision of section 38 of Schedule 3 to the Telco Act. In our view, an amendment is urgently required to section 37(f) of Schedule 3 to the Telco Act to overcome the determination of Satellite's Case to exclude interference with public utility infrastructure from the ambit of its operation.

Comments on Consultation Paper

Specific comments on the "possible amendments to telecommunications carrier powers and immunities" consultation paper are provided in the table below. Note that, as a general comment, all installations on water utility infrastructure or land should be undertaken in consultation with that utility. Any attachments to an existing water utility structure should require structural certification to ensure that the combined structure will not collapse, or be otherwise structurally compromised.

Consultation paper reference	LIFD or Code section	Comment
P4 Overview		<p><i>"The telecommunications industry has indicated that the changes could lead to significant time and cost savings and improved services to the community."</i> It is important that this is not to the detriment of other essential services, or service providers, such as water utilities.</p> <p>Water Utilities are concerned by the scale of legislative amendments which are proposed for low impact facilities. Water utilities are not financially funded for, and should not have to financially absorb, the additional maintenance, repair and operating costs the proposed changes would require.</p>
P7 Low-impact facilities determination		As noted, the current view of the Federal Government, and many State Governments, is that Drinking Water Supplies are critical infrastructure. A separate classification is requested for these assets as part of any determination.
P9 Regulatory impact statement		The determination is clearly a matter for the Department. However, if made, the changes are likely to create costs for the community through their impact on other essential services, namely the provision of safe drinking water. These costs need to be quantified.
P10, Section 1. Definition of Co-located facilities.	LIFD Part 1, Section 1.3	This note to the definition does not include distance, and, when coupled with the clarification <i>'an antenna being installed on the roof of a commercial building near a pre-existing radio communications antenna is not a co-located facility because it is not being installed in or on an original facility or public utility structure. As such it is not subject to the co-location rules in Part 7 of the Schedule of the LIFD, but is subject to the other requirements applying to a facility of the kind being installed.'</i> , will substantially increase the amount of equipment that can be installed on water utility sites. This has the potential to significantly increase water utility reservoir maintenance costs, affect the structural integrity of assets, and increase compliance costs with respect to radiation safety.

P10 Section 2. Local government heritage overlays	LIFD Part 2, Section 2.5 (7A)	There may be a risk that matters listed in a heritage overlay or other kind of heritage map list or other document (however described) relating to heritage under a local government by-law, rule or conservation for an area of environmental significance will be excluded and jeopardised.
P11 Section 3. Radio shroud as ancillary facilities	LIFD Pt 3,3.1(4)	The proposal is to make Shrouds part of the ancillary facility. Whilst less visually intrusive than other supports, shrouds can inhibit access to a water utility asset and place additional loading on assets, particularly during periods of high wind. Either the shrouds should not be part of an ancillary facility, or, if they are to be included, then it is imperative that the telecommunications company installing them obtains a structural certification for the proposed works.
P12, Section 4. Size of radiocommunications and satellite dishes	LIFD Schedule , Part 1, Items 1A and 5A	<p>The impact of the increase in antenna dish size, from 1.8 to 2.4m, will reduce access to water utility assets for maintenance and will increase the load on these facilities from wind shear. Additionally, the integrity of the public utility infrastructure being used to host telecommunications facilities has not been scoped. There is the potential for unscoped risks to water utilities on the safety of structures once the telecommunications facilities are installed.</p> <p>Consultation with the water utility and structural certification should be required. Also, the impact of dish size on RF EME risk is uncertain and needs to be quantified.</p>
P13, Section 5. Maximum Heights of antenna protrusions on buildings	LIFD Part 1, Item 3	A proposal to increase antenna heights by up to 5m. Whilst this does provide a degree of added protection from RF EME it creates potential structural issues, and if supporting struts are used then they can create additional issues regarding access for maintenance of the water infrastructure asset. There are also potential visual amenity issues for the community. As a minimum, structural certification should be undertaken by the telecommunications carrier for each installation. However, it is also recommended that prior engagement with the water utility is required for each installation, in order assess the suitability of the proposed installation.
P14, Section 6. Use of omnidirectional antennas	LIFD Part 1, Item 4	<p>The primary issue with these antennae is the impact of RF EME on workers, which then restricts access for maintenance of the water infrastructure asset. This change requires greater clarification.</p> <p>Wind shear and impacts on the structure has not been scoped. Structural certification undertaken by the telecommunications carrier would be required for each telecommunication installation. This would delay telecommunications works, be difficult to resource, and costly to both the telecommunications carriers paying for the structural certification, and the water utilities due diligence checking of structural assessment for each installation.</p>
P14, Section 7. Radiocommunications	Part 1, Items 6 and 6A	This amendment is intended to ensure all small radio communications facilities are covered by the LIFD, regardless of the size of their wireless coverage footprints. It would give carriers greater flexibility to improve mobile and wireless

facilities	<p>broadband coverage for customers using a wider variety of small radio communications facilities, without the need for state and territory planning approvals. Under the Mobile Base Station Deployment Code carriers would still be required to notify local authorities and nearby residents about any proposed mobile base station facilities.</p> <p>There are concerns that this may raise the number of cabinets installed on the same infrastructure causing congestion (for example, there is limited space on rooftops of water utility reservoirs) and load considerations. Such an amendment is supported, provided a structural certification is obtained to confirm the suitability of the utility infrastructure to support the facility.</p>
P15, Section 8. Equipment installed inside a non-residential structure in residential areas	<p>LIFD Part 1, Item 8A</p> <p>If adopted, this amendment would allow equipment installed inside a structure located in residential areas to be low-impact, provided that the structure, or the building the structure is attached to, is not for residential occupancy or use under applicable planning laws. For example, this would allow equipment to be installed inside a commercial building in a residential area.</p> <p>This amendment is not supported. It poses significant security concerns in terms of access to critical infrastructure by unknown persons. In addition, it allows the potential for an antenna to be positioned inside a water tank roof. The penetrations of the roof in this circumstance could compromise the quality of water in the tank.</p> <p>There is a security risk to water utilities if this is occurring inside buildings in the water treatment plant on the basis that there is potential for a loss of control over drinking water quality.</p> <p>A lot of water utility structures in Australia were built before 1960s and roof spaces were not designed to host services/telecommunication facilities. Scheduling of maintenance of structures would be complicated by needing to arrange access with telecommunications carriers, which may delay critical repairs or reduce the ability of water utilities to carry out its functions as a public utility.</p>
P16, Section 10. Radiocommunications lens antennas	<p>LIFD Part 1, Item 10</p> <p>Installation of Lens Antenna's. This is a substantive installation – i.e. up to 4 x4 m, with a maximum height of 5m. The addition of such a structure to water utility infrastructure is inappropriate and not supported. A facility of this size is not suited to be attached to a public utility structure. Design implications for weight loading (and wind shear impacts).</p> <p>This lens antenna is a significant increase in the footprint for the telecommunications infrastructure. Increased compliance costs would be likely for water utilities for example, ensuring safety requirements are met due to the potential for exposure to radiation hazards.</p>
P18, Section	<p>LIFD</p> <p>It is again critical to acknowledge that while drinking water</p>

11. Cabinets for tower equipment	Part 3, Item 2A	<p>service providers already have existing relationships with telecommunications providers, with equipment located at or on drinking water reservoirs, the primary purpose of a water tower is to assist in supplying safe drinking water.</p> <p>An additional piece of equipment located near a tower of up to 3 metres in height may create significant access issues, depending on the site. Each installation and site must be evaluated on a case-by-case basis. Again, this needs to be undertaken in consultation with the asset owner/water utility and only occur where operationally practicable. Electrical safety could be compromised if the telecommunications carriers use different fuses and cut-outs from the standards used by the water utility.</p>
P18, Section 12. Size of solar panels used to power telecommunications facilities	LIFD Part 3, Item 7	<p>This amendment proposes to increase the allowed area for solar panel installation up to 12.5m in rural areas. This size of installation will have a significant impact on water storage facilities. Such installations should require agreement from the water utility, prior to any installation occurring, and a structural certification of the work.</p> <p>Implications for Water utilities include increased compliance costs, for example, ensuring solar accreditation is met and addressing reflectivity.</p>
P18, Section 13. Length of trench that can be open to install a conduit or cable	LIFD Schedule , Part 4, Item 1	<p>Any restriction of access to a drinking water reservoir must be negotiated with the water service provider to allow effective emergency responses. This is non-negotiable.</p>
Section 14 Cable & conduit installation on or under bridges	LIFD Schedule , Part 4, Item 2	<p>Water utilities have dam walls and weirs that act as bridges. We recommend that dams and weirs are excluded (these are not to be considered with the ambit of bridges).</p> <p>Carriers must provide their own conduits rather than utilising existing conduit space which has the potential to impact of future site water infrastructure upgrades. New installation on structures must be certified by a registered engineer (pre and post construction), considering the likelihood of flooding damage, overtopping and safety.</p> <p>Engineering concerns regarding bridges include damage done during installation, and the costs involved in protecting or relocating conduits (and cables) during bridge maintenance or replacement, or in the case of flood damage. This is not an insignificant or isolated issue.</p>
P19, Section 15. Volume restrictions on co-located facilities	LIFD Part 1, Section 1.3 and Schedule , Part 7,	<p>A significant change to the volume restriction in terms of the area occupied by telecommunications equipment. This is not supported, unless it is undertaken in consultation with, and with the agreement of, the water utility concerned, and it is done on a case-by-case basis.</p> <p>An increase to the footprint of telecommunications equipment</p>

	Items 2 and 3	<p>has the potential to inhibit safe access for maintenance of the water infrastructure asset. It also has implications for the ability of the structure to support the additional equipment. This would require Structural Certification for approval. The placement of such structures should never be allowed to impede continuous safe access to the structure, and associated hatches and walkways.</p> <p>At present the LIFD and the telecommunication regulatory regime does not define public utility structures in terms of their ability to provide co-location opportunities, and capacity and therefore volume cannot be assessed at all. In addition to this, there are no regulatory bodies with oversight of this issue. This is resulting in degraded infrastructure assets that are so covered in telecommunications facilities they are not able to be accessed safely to undergo maintenance as required with original facilities.</p>
P22, Section 17. Clarify amendments for joint venture arrangements.	Tel Code Section 1.4(4)	<p>Not accepted. This could create uncertainty as to which entity is undertaking work on a site and there should be complete disclosure when working on sensitive infrastructure sites.</p> <p>Water Utilities are concerned about the implications of having only one signatory regarding insurances, liabilities and warranties and how these are shared/operate amongst the carriers involved in the joint venture arrangement, in particular if the carrier parties are in dispute or in the absence of any formal joint-venture agreement in place or the legislation not providing for joint-several liability and requirement for adequate insurance arrangements. If this proposal proceeds, then:</p> <ul style="list-style-type: none"> - a definition of “joint-venture arrangement” needs to be included in Schedule Dictionary of the Code; and - any joint-venture arrangement should require all carrier parties to the joint-venture to enter into a formal joint-venture agreement which contain joint-several liability provisions and adequate insurance arrangements.
P22, Section 18. LAAN objection periods	Tel Code, Sections 2.31, 4.32 and 6.31	<p>These changes reduce the notification period for objections to 5 days from the receipt of a notice. This timeframe is too short to provide a considered response to applications (detailing the method for attachment of low impact facilities to public utility structures, not just the carrier’s standard/generic design drawings and a photomontage). The objective is to avoid delays – a preferred approach would be early engagement with water utilities about proposed works. A reduction in the timeframe would require more detailed applications, with clearer documentation, on proposed works than is currently provided by most telecommunications companies.</p> <p>Water utilities have experienced with the receipt of some LAANs, carriers have provided very poor description of proposed activities.</p>

P23 Section 19. Allow carriers to refer land owners and occupier objections to the TIO	Tel Code Sections 2.32, 2.36, 4.32, 4.37, 6.32, and 6.36	<p>Not accepted. This could result in condensing the period of time for resolution of access matters between the water utility and the Carriers through an early reference to the Ombudsman by the Carrier.</p> <p>It potentially shortcuts the process for meaningful feedback and pre-empts the basis for a land owner's/occupier's reasons for objection to a LAAN. It is also likely to cause confusion between the parties (the carrier/land owner/public utility) as to who will be lodging the objection with the TIO and may also cause:</p> <ul style="list-style-type: none"> - multiple and potentially inconsistent objections being lodged by each party with the TIO; or - failure to lodge an objection (within the prescribed time period) because a party anticipates the other party will be lodging the objection but does not do so. <p>Additionally, it should not be at the carrier's "own discretion" as any discretion could be exercised by carriers to circumvent the requirements under clause 4.6 of the Code which require carriers to make "reasonable efforts" to enter into agreements with public utilities if a low impact facility activity of a carrier is likely to effect the operations of a public utility.</p>
P25 Section 20. Further suggestions for updates to the Tel Code	Tel Code, various sections	<p>The following updates to the telecommunication regulatory regime is recommended:</p> <ol style="list-style-type: none"> a. amendment to section 37(f) of Schedule 3 to the <i>Telco Act</i> to provide an express exclusion for "<i>interfering with public utility infrastructure</i>"; b. add new subclause (c) to sections 2.26, 4.26 and 6.26 to the effect "<i>details of the actions taken by the carrier to co-locate with another carrier established on the land affected by a land entry activity.</i>"; c. add new subclauses to sections 2.30, 4.31 and 6.30 of the Code to give effect to a new reason for objection which relates to '<i>public utility infrastructure</i>' and '<i>interfering with the operations of a public utility</i>'; d. add new clause to give effect to requiring carriers to formally notify public utilities when a LAAN is being withdrawn by the carrier and where the notification has not occurred any new LAAN (relating to the same activity/land) delivered by the carrier is deemed to be invalid; e. add new clause to give effect to allowing public utilities to be able to directly refer objections to the TIO at the end of the consultation period if a carrier refuses to make reasonable efforts to entering into an agreement with a public utility where the proposed activity is likely to affect the operation of the public utility; f. add new clause to give effect to: <ol style="list-style-type: none"> i. that the placement of telecommunication facilities and cables and other infrastructure by a carrier is not a right in perpetuity (for example, refusal by a carrier to remove telecommunication facilities that have reached end of life and

		<p>must be demolished/removed from the land at the carrier's cost);</p> <p>ii. requiring telecommunication mandatory removal of redundant telecommunication equipment within a prescribed period of time (for example, within 25 business days);</p> <p>g. provide legislative framework to require carriers to:</p> <p>i. have a LAAN accompanied by certification endorsed by a registered engineer; and</p> <p>ii. provide engineering certification post completion of the installation of low impact facilities to ensure its structural integrity;</p> <p>h. provide legislative framework which requires carriers to engage in forward planning sessions with public utilities;</p> <p>i. provide a legislative framework for public utilities to notify carriers that it requires relocation of its telecommunication facilities to accommodate water infrastructure upgrades/operational works; and</p> <p>j. provide a legislative framework for the TIO to undertake mandatory and regular audits of installation of telecommunication equipment to ensure carriers are complying with the requirements of telecommunication regulatory regime.</p>
P25, Section 21. Allowing some types of poles to be low-impact facilities		<p>Not accepted. Poles of 12 metres in height, and 500mm diameter, should require a formal application and should not be allowed under Low Impact.</p> <p>In regard to public utility land in rural areas, this proposed amendment will allow a pole to be a low-impact facility requiring no development approval and being available as a co-location opportunity. This effectively removes development approval requirements and does not provide the public utility an opportunity in regard to siting or design and likely to effect the operations of a public utility including future upgrades of dams and water infrastructure.</p> <p>Electrical safety could be compromised if the telecommunications carriers use different fuses and cut-outs from the standards used by the utility.</p> <p>Visual impacts of these towers could impact neighbours adjoining utility sites and recreational users.</p>
P25, Section 22. Portable temporary communications facilities		<p>Not accepted. The installation of temporary communication facilities should require formal approval and not be allowed under Low Impact. There are recent examples where a temporary installation was requested ahead of a formal application. To allow these installations as Low Impact could undermine the approvals process.</p> <p>The timeframe for how long they would remain is not currently defined. It should be assessed on an individual basis where proposed for public utility land and facilities.</p>
P27, Section 23. Replacement	27	<p>Not accepted. This could result in two towers on a site at the same time if only for a short time. Also, the intended 20m radius could move a tower to a less acceptable location from</p>

mobile towers	<p>the water utility's infrastructure security or safety perspective, as well as adversely impacting visual amenity.</p> <p>Any new replacement should be viewed as a new structure and should not be considered a low-impact facility. It should be assessed for design and siting on the land to protect public utility assets and reduce impacts to public utility functions. A public utility should be able to assess any new proposal to ensure it does not affect its operations including future expansion.</p>
P28, Section 24. Tower height extensions	<p>28</p> <p>Not accepted. A 10m extension under Low Impact introduces unnecessary risks to the water utilities infrastructure sites, both in safety terms and commercial terms. Also visual amenity is likely to be impacted.</p>