

# ***Bannermans Lawyers***

## ***Strata Update***

### ***Strata Schemes and Telecommunications Facilities – 3G & 4G***

Telecommunications carriers (“**Telco Carriers**”) have extensive tower networks to provide mobile phone and data services to their customers, and are constantly expanding their networks with additional equipment, or adding new equipment to existing sites. This practice is currently amplified with many Telco Carriers rolling out the “4G” next generation networks, which requires new equipment to be installed. Even where a carrier has “3G” equipment in a given location to service customers, rolling out the “4G” network requires the installation of new equipment, which the Telco Carrier may want to install on an existing site, or on a new site.

There are a number of key issues for owners corporations in relation to current and proposed Telco Carrier installations, including the following key issues:

#### **1. Telco Carriers’ statutory access powers**

Given that Telco Carriers’ networks benefit the community at large, there is a range of complex Commonwealth legislation in place which grant Telco Carriers powers to access property, and in many instances, to install and maintain equipment regardless of whether the land owner/occupier is willing to accept the installation.

However, despite their statutory powers, Telco Carriers will often endeavour to reach agreement with land owners regarding installation and ongoing occupancy rights (leases or occupancy licences), without exercising those statutory powers. The statutory powers can then be used as a fallback if a land owner is unwilling, or considered to be too difficult to deal with.

That said, in some cases the Telco Carriers will exercise their statutory powers from the word go.

#### **2. Sequence of events for Telco Carriers’ statutory access powers**

If a Telco Carrier elects to exercise their statutory access powers, the typical statutory regime can be broadly summarised as follows:

Event	Timeframe
a. Telco Carrier to give notice (" <b>Access Notice</b> ") to the land owner/occupier	At least 10 business days notice of proposed access/activity
b. Land owner/occupier has an opportunity to object (" <b>Objection Notice</b> "), and to have the matter referred to the Telecommunications Industry Ombudsman (" <b>TIO</b> ") for determination	At least 5 business days notice prior to proposed access/activity
c. Telco Carrier to make reasonable efforts to consult with owner/occupier	Within 5 business days of receiving Objection Notice
d. Telco Carrier to make reasonable efforts to resolve the objection set out in Objection Notice	Within 20 business days of receiving Objection Notice
e. If objection not resolved, Telco Carrier to respond to owner/occupier	Within 25 business days of receiving Objection Notice
f. Owner/occupier may require the Telco Carrier to refer the objection to the TIO for determination.	Within 5 business days of receiving Telco Carrier's response

Please note: These timeframes may be shorter in certain circumstances.

### 3. Owners corporation's must act immediately

Failure to comply with the timeframes under the statutory access regime will result in these rights being lost. Accordingly, an owners corporation (as for all land owners) must act immediately if they wish to exercise their rights. This action is likely to include:

- Upon receipt of Access Notice, promptly consider, and issue valid Objection Notice within the required timeframe
- Negotiate terms with Telco Carrier

Please note, realistically, compliance with the statutory timeframes may be difficult for owners corporations to comply with if they hold formal meetings, unless notices for executive meetings are issued immediately. Executive committees may need to consider making informal decisions, and instructing the managing agent to issue relevant communications on behalf of the owners corporation in order to avoid losing statutory rights.

### 4. Commercial terms to negotiate

Commercial terms that are wise to be negotiated with a Telco Carrier include:

- **Occupancy fee or rental to be paid:** Ensure you are receiving adequate market based remuneration which would normally involve some negotiation
- **Indemnities:** Ensure that the documentation includes adequate indemnities and releases to adequately protect the owners corporation and its lot owners and occupiers
- **Change of equipment or adding new equipment:** You should try to require that the Telco Carrier cannot install additional equipment, or replace equipment without consent from the owners corporation.

- **Co-locations:** Telco Carriers enter into co-location agreements with other Telco Carriers, whereby they allow those Telco Carriers to install their equipment on the first Telco Carrier's site. You should attempt to procure agreement for additional fees to be payable to the owners corporation if there are co-locations.
- **Legal fees:** Payment of your legal fees.

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