

What every owner ought to know about Work Health and Safety

The *Work Health and Safety Act 2011* has dramatically affected the manner in which an owner must consider their duties under the law, especially in regard to the health and safety of any workers engaged on their property.

A recent Code of Practice entitled “*How to Manage Work Health and Safety Risks*” highlights the need for a regular safety audit of the common property on your building. With a maximum fine of \$3,000,000 for Owners Corporations and \$600,000 for individuals (with the possibility of 5 years jail), the small cost of a safety audit makes sense. Recent court cases demonstrate that there is a real risk in ignoring safety issues on your common property, and often the costs of litigation can be significantly more than the maximum fines.

What are the newly adopted maximum fines?

Under the *Work Health and Safety Act 2011*, the maximum fines are now:

\$3 million for Owners Corporations

**\$600,000 for individuals such as committee members and owners
and/or 5 years jail**

Please note these fines are the maximum possible fines and would apply to serious accidents.

Does the executive committee member have a duty under the Act?

Yes. The duties contained within the Act apply to ‘*persons conducting a business or undertaking*’, and Section 5 of the Act specifies this to include an Owners Corporation, the occupiers of a lot, a Strata Manager and any person that may engage a contractor or worker on the common property.

What obligations does a Strata Scheme have?

To ensure the common property is a safe environment for workers (including those conducting maintenance/repair), tenants, owners and visiting members of the public. Note: Some of these obligations relate to the *Work Health and Safety Act 2011* and some to your duty of care under civil law. All are responsibilities of the Strata Scheme and its various stakeholders.

Wasn't there a residential exemption from part of the regulations?

Good question! Section 7 of the *Work Health and Safety Regulations 2011* provide an exemption for any common areas used only for residential purposes. However, this exemption does not apply if:

- The Owners Corporation has engaged a service contractor or a letting agent;
- One or more occupiers of the lots conduct a business (including a home business) from their lot and their lot is accessible via the common property;
- One or more lots are used for short-term accommodation.

As it is almost impossible to ensure occupiers do not conduct business from their lots (which may include working from home in any capacity), the reality is that this exemption has very little application and should not be relied upon at all. No comfort here, unfortunately.

Won't our insurance pay for any fines and penalties?

No. Insurance does not cover you for fines, penalties or punitive damages awarded by courts. Your insurance company will also not go to jail for you. Your policy will also require you to meet all your statutory obligations.

Aren't we better off claiming ignorance?

No. The courts look dimly and with disbelief upon this stance. Ignorance is simply not an excuse and will often be seen as a form of negligence leading to increased penalties.

How do we get a safety report commissioned?

Just ask for a safety inspection to be conducted and a report created for your strata scheme. The report costs less than you think, as it covers the implementation of its recommendations. A quality report will identify hazards and show you how to implement control measures. It will also strike a balance between the likelihood of an accident and the severity of the injury and cost. It is all about identifying your options and finding the best inexpensive satisfactory solution.

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