

Teys Lawyers - WHS Fact Sheet for Executive Committees

Why do owners corporations and community associations have responsibilities under the Work Health and Safety Act 2011 effective from 1 January 2012?

All strata schemes engage workers either as employees or independent contractors to come on to the common property, even temporarily to do work. Therefore the Act always applies to some extent. If the scheme employs workers, or is responsible for common property used for commercial purposes (eg shops, offices, restaurants) there is a higher duty of care than a residential scheme without employees.

Do executive committee members of owners corporations and community associations have additional duties under the Work Health and Safety Act 2011?

Yes, committee members each have a personal duty to exercise due diligence to ensure that the owners corporation or community association complies with its duties under the Work Health and Safety Act. This duty requires executive committee members to be proactive in ensuring that the owners corporation or community association complies with its duty. This duty applies whether or not there has been an incident and irrespective of a prosecution.

What is due diligence?

In demonstrating due diligence, executive committee members will need to show that they have taken reasonable steps to:

- Acquire and update knowledge about health and safety;
- Understand hazards and risks associated with operations on common property;
- Ensure that appropriate resources and processes are used to eliminate or minimise risks to health and safety;
- Implement processes for receiving and responding to information about incidents, hazards and risks;
- Establish and maintain compliance processes; and
- Verify the provision and use of resources.

What are the penalties for breach of health and safety duties?

Category	Owners Corp / CA	Individual Committee Member	Worker or Other
Recklessness / risk of death or serious injury / illness	\$3 million	\$600,000, 5 years jail or both	\$300,000, 5 years jail or both
Breach of duty / risk of death or serious injury / illness	\$1.5 million	\$300,000	\$150,000
Breach of duty	\$500,000	\$100,000	\$50,000

Are these fines covered by the strata scheme's Directors and Officers insurance?

No. Office bearer's legal liability insurance excludes fines, penalties, punitive, exemplary or aggravated damages.

How do we comply with our obligations?

Follow the advice of your strata manager who has been specifically trained on how to comply with Work Health and Safety Act obligations and how to go about demonstrating that this has been done. This will involve having a safety report completed, implemented and reviewed annually. The cost of this will be between \$500 - \$1,000 depending on the size of your building.

Aren't we better off not knowing what is wrong?

No. Ignorance is not an excuse and non-action is a form of negligence. Courts take a dim view of this stance. Schemes and their executive committee members taking this position will be subjected to higher level fines.

Won't the owners be up for massive costs to implement the recommendations?

No. Most safety recommendations will be relatively low cost; signage (approx. \$200 - \$300), cleaning of driveways (up to \$5 / sqm), highlighting trip hazards (incidental). Most major work will be required any way under the Strata Schemes Management Act 1996 and should be funded by annual sinking fund contributions.