Tim Sheehan and Paul Wood’s Guide to Body Corporate / Owners Corporation Statutory Compliance

An Outline of What Every Committee Member Needs to Know Before they Join a Committee
Tim Sheehan has been with SSKB since May 2000, initially working with developers to structure new projects. In 2004 he was appointed Chief Executive Officer and in 2007 became a Director. He holds bachelor degrees in law and commerce as well as a certificate IV in body corporate management. Prior to joining SSKB Tim spent 5 years as a solicitor practicing in the areas of strata development, management rights and body corporate law. During this time he was a regular contributor to industry journals and a past President of Strata Communities Australia (QLD). Married with 4 children, Tim’s interests include Rugby Union (QLD Reds), finding and implementing emerging technologies and horse racing. Tim’s vision for SSKB is to build a team committed to making a positive difference in the lives of lot owners.

Paul has over 15 years industry experience including community management, management rights, accounting and development. He joined SSKB in 2001 as a body corporate manager with a large portfolio of prestigious Brisbane buildings. Due to Paul’s accounting background he was appointed as the Group Financial Officer in 2004, he then opened our Victorian office along with establishing a large management rights operation. In September 2007 Paul was appointed as a Director of SSKB. Previously Paul held the position of company accountant for a developer, gained valuable experience working for an international chartered accounting firm, as well as owning and operating management rights for over three years.

Disclaimer:
The material in this book is not meant to be definitive legal advice. It is a guide which will point you in the right direction. If you have particular concerns then we encourage you to speak with your SSKB community manager and the community manager will either answer the query or together you can find the particular professional with the information necessary to make a positive difference for your body corporate. Also, remember that legislative requirements may have changed at the time you are reading our information.
Dear Committee Member,

We applaud you for taking on an important role in the management of your body corporate.

The committee makes significant decisions to ensure the long-term wellbeing of the community titles scheme, and as such, must be educated and informed in their responsibilities.

This is a guide to the statutory compliance issues that face all bodies corporate. It is designed to be clear and simple, so that you can feel confident in your responsibilities. Its aim is to protect lot owners and the committee, by informing you of statutory issues you need to be aware of and compliant with.

Statutory compliance is more than compliance with the relevant body corporate Act, such as the Body Corporate and Community Management Act of Queensland. There are many other pieces of legislation that a committee member should have awareness of, in order to cover statutory compliance. At SSKB, we make a positive difference by guiding you through the minefield of legislation.

We understand that shouldering the responsibility of the body corporate’s statutory obligations can be tough. We hope that by providing you with an overview of your obligations, breaking the issues down and pointing you to those who may help, we can make a positive difference in your lives.

Tim Sheehan

Paul Wood
Initial explanatory notes for the reading of Tim Sheehan and Paul Wood’s Guide to Body Corporate/ Owners Corporation Statutory Compliance

- To improve readability and brevity, this guide has been written primarily with the statutory framework of Australia and Queensland in mind. References are made to New South Wales and Victorian law but generally the principles are applicable across all the states of Australia, and even internationally.

- As this publication is mainly based on the Queensland framework, we have elected to use the term ‘body corporate’. This is a generic term and relates to bodies corporate in Queensland, and owners corporations in Victoria and New South Wales. Please consider the terms interchangeable.

- When Victorian legislation is referred to specifically, the term ‘owners corporations’ will be used. There are two kinds of owners corporation:
  - *Prescribed Owners Corporations* are those comprising more than 100 lots or receiving more than $200,000 in fees in a financial year.
  - *Non-Prescribed Owners Corporations* are those under both the above thresholds.
Warren Buffett has said:

“It is only when the tide goes out you see who is swimming naked.”

The Guide to Body Corporate Statutory Compliance will help keep you covered if your tide ever goes out.
Workplace Health & Safety Obligations

4 LEGISLATION: WORK HEALTH AND SAFETY ACT 2011

5 RISK ASSESSMENT REPORT

8 REGISTERS

8 INCIDENT REPORTS
**Legislation: Work Health and Safety Act 2011**

The Work Health and Safety Act 2011 is the national legislation regulating safety in workplaces. It is the result of the harmonisation of individual state and territory legislation, providing Australian workers with consistency and equity. The goal of this legislation continues to be the 'significant and continual reduction in the incidence of death, injury and disease in the workplace'.

By January 2013, all states and territories except for Victoria and Western Australia had signed on to the harmonised legislation.

**How does it apply to bodies corporate?**

WHS laws apply to any PCBU (person conducting a business or undertaking). This means if at any time the body corporate (even of a wholly residential building) employs a worker, hires a contractor, or has a volunteer worker on the common property, they are subject to the WHS Act & Regulations. Bodies corporate need to be continuously vigilant to meet their WHS requirements to protect them against any potential claim.

**The legislation states**

"PCBU’s must ensure, so far as is reasonably practicable, the health and safety of workers and other persons”.

**Actions for bodies corporate**

Act, don’t react. There is an onus on the body corporate to demonstrate that it has been proactive to reduce, and keep reduced, the risks on site.

The following are steps your body corporate should take to fulfil this obligation.
**Risk Assessment Report**

The potential risks on body corporate property are numerous. They include:

<table>
<thead>
<tr>
<th>Roof top anchor points</th>
<th>Car park height</th>
<th>Non-potable water</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wheel stops</td>
<td>Gym rules and servicing</td>
<td>Pool fencing</td>
</tr>
<tr>
<td>Pool handrails</td>
<td>First aid</td>
<td>Balustrades</td>
</tr>
<tr>
<td>BBQ gas</td>
<td>Storm water</td>
<td>Asbestos</td>
</tr>
<tr>
<td>Chemicals</td>
<td>Exit signs</td>
<td>Pool water quality</td>
</tr>
</tbody>
</table>

This is not an exhaustive list. As the body corporate you do need to take steps to ensure the risks are addressed. You can do this by discharging the responsibility to an expert.

It is legal for you to change the brakes in your car, but would you do it? Or would you allocate the responsibility to an expert in the area?

For your body corporate to show that they have identified and addressed any risks, a Risk Assessment Report must be performed annually by an individual holding a Certificate IV in Workplace Health and Safety. By identifying and addressing any risks, your body corporate meets its obligations under the Act.

The report should include a rating of risk.
Example:

<table>
<thead>
<tr>
<th>LIKELIHOOD:</th>
<th>CONSEQUENCES:</th>
<th>How severely it hurts someone (if it happens)?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>INSIGNIFICANT</td>
<td>(no injuries)</td>
</tr>
<tr>
<td></td>
<td>MINOR</td>
<td>(first aid treatment only)</td>
</tr>
<tr>
<td></td>
<td>MODERATE</td>
<td>(medical treatment)</td>
</tr>
<tr>
<td></td>
<td>MAJOR</td>
<td>(extensive injuries)</td>
</tr>
<tr>
<td></td>
<td>CATASTROPHIC</td>
<td>(death, multiple deaths)</td>
</tr>
</tbody>
</table>

**ALMOST CERTAIN** - expected in most circumstances

|             | HIGH          | HIGH          | ACUTE         | ACUTE         | ACUTE         |

**LIKELY** - will probably occur in most circumstances

| MODERATE    | HIGH          | HIGH          | ACUTE         | ACUTE         |

**POSSIBLE** - might occur at some time

| LOW         | MODERATE      | HIGH          | ACUTE         | ACUTE         |

**UNLIKELY** - could occur at some time

| LOW         | LOW           | MODERATE      | HIGH          | ACUTE         |

**RARE** - may occur, only in exceptional circumstances

| LOW         | LOW           | MODERATE      | HIGH          | HIGH          |
And recommending actions:

<table>
<thead>
<tr>
<th>ITEM #</th>
<th>HAZARD</th>
<th>RISK RANKING</th>
<th>RECOMMENDATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Shared Access</td>
<td>MODERATE</td>
<td>It is recommended that the body corporate install a shared access sign at the entrance to the property to advise motorists of the speed limit and that pedestrians also use the roadways.</td>
</tr>
</tbody>
</table>

**Actions for bodies corporate**

- Each committee member must read and understand the report
- Agree to suggested control measures or identify suitable alternatives
- Implement the control measures
- Review the effectiveness of the control measures periodically

It is recommended that each committee have Workplace Health and Safety as a standing agenda item.

**Victoria**

In Victoria, obtaining an annual Risk & Safety Report is not legally required but is considered “Industry Best Practice”. Owners corporations are strongly encouraged to undertake them and implement the recommendations.
Registers

You body corporate can improve health and safety by ensuring the following:

- Maintain a Register of Contractors which lists approved licensed and reputable contractors. This protects you from unsafe workmanship and losses. It also provides you with a record of contractors who have entered the premises.
- Check that contractors are insured for the work they will be performing. Keep copies of their insurance documents in an Indemnity Register.
- Under the WHS Act, workers must take reasonable care of their own health and safety. Contractors should provide you with a Safe Working Method Statement, which you should keep in a register. This covers the body corporate from liability in the event of an incident where the statement was not followed.

You should ensure all the Registers and Statements become part of the permanent body corporate records. The Registers and Statements should be reviewed at meetings.

Incident Reports

Under the Work Health and Safety Act, certain incidents must be reported to the relevant state’s Work Health and Safety Authority. An incident which results in serious injury, illness or involves a dangerous event must be reported if it occurs as the result of a business or undertaking.

A body corporate must:
- Keep blank incident forms in the foyer or somewhere easily accessible
- Notify the facilities manager and/or body corporate manager of the incident
- Complete an incident report and notify the relevant state authority
- Keep a record of lodged incidences for five years from the date of notification
Who can help?

Where your body corporate has a resident manager, the resident manager should be intimately involved with Work Health and Safety matters, and your body corporate can gain assistance in meeting these obligations by engaging a facilities management company such as StarBMS. These companies will perform all required reports and will only use contractors who provide licensing, insurance and safe work method details.

Make sure you discuss Workplace Health and Safety at your next committee meeting.

<table>
<thead>
<tr>
<th>WORKPLACE HEALTH &amp; SAFETY</th>
<th>STATUS</th>
<th>NOTES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk Assessment Report (Annual)</td>
<td>Last Carried Out : By:</td>
<td></td>
</tr>
<tr>
<td>Register of Contractors</td>
<td>Located :</td>
<td></td>
</tr>
<tr>
<td>Contractors Indemnity Register</td>
<td>Located :</td>
<td></td>
</tr>
<tr>
<td>Safe Working Methods Register</td>
<td>Located :</td>
<td></td>
</tr>
<tr>
<td>Incident Reports</td>
<td>Located : Action Required:</td>
<td></td>
</tr>
</tbody>
</table>
Many of the unsafe circumstances I have encountered while performing risk assessments are due not to malice or bad intent, but an absence of diligence or through the need for more education.

In one instance an inexperienced building manager, realising he had insufficient storage, placed rubbish bins and other various items out of the way - *in front of a fire escape*. The potential for tragedy was huge – and the body corporate would be responsible.

In another case, a building manager was organising the pool chemicals for his building. Looking for space in his pool shed, he left the various chemicals on the only flat surface he could find: a gas fired pool heater. What a recipe for disaster.

Luckily, these situations were identified and resolved before any tragedy occurred. However, if a fire had broken out, or an explosion had occurred due to these circumstances, the responsibility could lie with the body corporate.

By having the foresight to engage an expert company experienced in identifying risks and providing solutions, you can avert potential tragedies. Taking this step may protect your body corporate from legal action, and other persons from harm.

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*A word from Chris Nezmah, General Manager of Star BMS:*

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14 BUILDING CERTIFICATE OF CLASSIFICATION

16 ASBESTOS

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22 PLUMBING – BACKFLOW PREVENTION CERTIFICATE

23 ELECTRICAL

24 BUILDING DEFECTS
## Sinking Fund Forecast/ Maintenance Plan

Sinking funds exist so that when major repairs and replacements are necessary for common property, plant or equipment, the money is available, avoiding the need for the owners at that time to have a significant special levy imposed upon them. Contributions to the sinking fund are included in levies; the particular amount contributed is derived from the sinking fund forecasts.

Sinking fund forecasts estimate the life expectancy and cost of replacement or repair of structures, plant and equipment over the life of the building, and the levy is set accordingly to ensure sufficient funds are put aside. The levy is the “savings” of the body corporate.

Requirements for sinking fund forecasts differ between states under the following legislation:

- **QLD**: The Body Corporate and Community Management Act 1997
- **NSW**: Strata Schemes Management Act 1996
- **VIC**: Owners Corporation Act 2006

<table>
<thead>
<tr>
<th>NAME</th>
<th>MANDATORY FOR ALL BODIES CORPORATE</th>
<th>REQUIRED FORECAST</th>
<th>REVIEW</th>
</tr>
</thead>
<tbody>
<tr>
<td>QLD Sinking Fund</td>
<td>![Yes]</td>
<td>Minimum 10 years</td>
<td>Every 2-5 years depending on the size and type of building</td>
</tr>
<tr>
<td>NSW Sinking Fund</td>
<td>![Yes]</td>
<td>Minimum 10 years</td>
<td>Within the first 5 years</td>
</tr>
<tr>
<td>VIC Maintenance Plan</td>
<td>![Yes] Mandatory for Prescribed Owners Corporations ![No] Optional for Non-Prescribed Owners Corporations</td>
<td>10 years</td>
<td>No review required by law – but a review every 5 years is considered best practice.</td>
</tr>
</tbody>
</table>
Actions

Your body corporate should regularly review its sinking fund forecast. A forecast that covers a 15 year period and makes allowance for replacements and repairs over the expected life of the building is favoured over the minimum 10 year forecast. Levies should be set at the amount indicated in the forecast and reviewed if there are unexpected expenditures.

When it is time for your sinking fund forecast to be reviewed, the following options are available:

- In Queensland, the body corporate must engage a suitably qualified person to prepare the forecast;
- In New South Wales, the forecast may either be performed by an expert individual or business, or may be done by the body corporate itself.

The committee then has a duty to consider the information in the forecast and set a prudent sinking fund levy to ensure sufficient funds are collected.

Please remember, a sinking fund forecast is an actuarial calculation and it is different from a Capital Works Program. A Capital Works Program is part of the strategic plan for any prudent committee. The Capital Works Program details improvements and upgrades of the common property, which is more than just replacing and maintaining the existing property.

Who can help?

Facilities management companies, such as StarBMS, employ experts who will prepare and deliver a Sinking Fund Forecast, a Maintenance Plan and a Capital Works Program.

If you are doing a Sinking Fund Forecast yourself

A brief overview to preparing a sinking fund forecast is:

Step 1 – List all common property, plant and equipment;
Step 2 – Estimate when replacement or repairs will be needed;
Step 3 – Estimate costs of replacing or repairing items; and
Step 4 – Set levy at an amount that will ensure funds will be available when needed, allowing for inflation and the time value of money.
Building Certificate of Classification

The Building Act 1975 (QLD) requires building owners and bodies corporate to possess and prominently display a Certificate of Classification. Generally, the Building Certificate of Classification is issued upon the completion of construction. The certificate contains important information such as the use, maintenance requirements, and fire safety information of the building.

Classification Summary of Buildings and Structures defined in the Building Code of Australia

<table>
<thead>
<tr>
<th>CLASSES OF BUILDING</th>
<th>Class 1</th>
<th>Class 1a</th>
<th>Class 1b</th>
<th>Class 2</th>
<th>Class 3</th>
<th>Class 4</th>
<th>Class 5</th>
<th>Class 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class 1</td>
<td>Class 1a</td>
<td>A single dwelling being a detached house, or one or more attached dwellings, each being a building, separated by a fire-resisting wall, including a row house, terrace house, town house or villa unit.</td>
<td>A boarding house, guest house, hostel or the like with a total area of all floors not exceeding 300m², and where not more than 12 reside, and is not located above or below another dwelling or another Class of building other than a private garage.</td>
<td>A building containing 2 or more sole-occupancy units each being a separate dwelling.</td>
<td>A residential building, other than a Class 1 or 2 building, which is a common place of long term or transient living for a number of unrelated persons. Example: boarding-house, hostel, backpackers accommodation or residential part of a hotel, motel, school or detention centre.</td>
<td>A dwelling in a building that is Class 5, 6, 7, 8 or 9 if it is the only dwelling in the building.</td>
<td>An office building used for professional or commercial purposes, excluding buildings of Class 6, 7, 8 or 9.</td>
<td>A shop or other building for the sale of goods by retail or the supply of services direct to the public. Example: café, restaurant, kiosk, hairdressers, showroom or service station.</td>
</tr>
</tbody>
</table>
Class 7

| Class 7a | A building which is a car park. |
| Class 7b | A building which is for storage or display of goods or produce for sale by wholesale. |

Class 8

A laboratory, or a building in which a handicraft or process for the production, assembling, altering, repairing, packing, finishing, or cleaning of goods or produce is carried on for trade, sale or gain.

Class 9

A building of a public nature -

| Class 9a | A health care building, including those parts of the building set aside as a laboratory. |
| Class 9b | An assembly building, including a trade workshop, laboratory or the like, in a primary or secondary school, but excluding any other parts of the building that are of another class. |
| Class 9c | An aged care building. |

Class 10

A non habitable building or structure -

| Class 10a | A private garage, carport, shed or the like. |
| Class 10b | A structure being a fence, mast, antenna, retaining or free standing wall, swimming pool or the like. |

Only certain buildings or structures under the Queensland Building and Construction Commission (QBCC) - formerly the Building Services Authority, classification structure are exempt from this requirement:

<table>
<thead>
<tr>
<th>Class</th>
<th>MUST POSSESS A CERTIFICATE OF CLASSIFICATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class 1a</td>
<td>✗</td>
</tr>
<tr>
<td>Class 10</td>
<td>✗</td>
</tr>
<tr>
<td>Class 1a - 9c: All other buildings</td>
<td>✓</td>
</tr>
</tbody>
</table>

If your body corporate does not have a Certificate of Classification you can obtain one from your council for a fee, or you can instruct SSKB to assist you.
New South Wales

New South Wales does not have a Certificate of Classification. Instead, it has a *Final Occupation Certificate* stating the building is suitable for occupation and outlining any specific directions or restrictions.

**Victoria**

Before a new home (including apartments and units) can be occupied, the Building Act 1993 requires that an Occupancy Permit be issued. A building surveyor will assess the building from a health and safety point of view, considering whether important features such as smoke alarms, sanitary facilities, and hand rails are in place and operational. The building surveyor may request statements from electricians and plumbers before confirming the building is suitable for occupation. While inspecting the building, the surveyor will also list the essential safety measures (smoke detectors, fire hydrants, sprinkler systems) in the building, and outline how they should be maintained. This will assist owners corporations in fulfilling their fire compliance obligations (outlined in the Fire Compliance section on page 29).

**Asbestos**

Asbestos is comprised of six naturally occurring minerals. Asbestos was widely used during the late 19th Century due to such desirable qualities as sound absorption, fire resistance capability and affordability. The use of asbestos was especially popular in the construction industry, appearing in thousands of different materials. As such, many older buildings contain asbestos. It is now known that asbestos is a serious health hazard and exposure can result in asbestosis, mesothelioma and lung cancer.

Under the Work Health and Safety Act 2011, employers have a responsibility to ensure so far as is reasonable the health and safety of workers. If a body corporate engages any worker as an employee, the requirements of the Act then apply.
Under the Work Health and Safety Regulation 2011 asbestos audits must be performed on buildings built before the 31st of December 2003. This audit must be undertaken by a competent person and an asbestos register produced. The responsibility then falls to the body corporate to ensure the register is kept on site, and is reviewed as required. A copy should also be kept with the body corporate manager as part of the body corporate records.

The Asbestos Containing Materials Register must state either:

- The date of assessment, location, risk assessment and control measures

OR

- That no asbestos or ACM is present at the workplace.

The Asbestos Containing Materials Register must be:

- Kept up to date
- Reviewed at least every five years
- Kept at the workplace
- Made available to all workers

**Asbestos Management Plan**

If asbestos is identified, a management plan must be produced. It must include:

- Reference to the asbestos register
- Safe work procedures
- Procedures for dealing with incidents in relation to asbestos
- List of workers performing work with asbestos

The body corporate must ensure their responsibilities under the Act are met, and may find help in discharging these obligations by engaging the services of an expert in the area.
Pool Safety

Safety Certificates

Bodies corporate have specific responsibilities when it comes to pool safety. These obligations are outlined in the Queensland Development Code MP3.4.

The code states that all pools must be registered with your local government. Further, shared pools such as in a strata scheme, must have a Safety Certificate which states that your pool is compliant with legislative requirements.

Do you have a Safety Certificate for your shared pool?

YES

It must be displayed prominently at the entrance to the pool or building

The Safety Certificate is valid for one year. It is the pool owner’s responsibility to ensure the pool complies at all times with the Pool Safety Standard

NO

Find a licensed Pool Safety Inspector to carry out a safety check

If compliant, you will be issued with a Safety Certificate

If not compliant you will be issued with a nonconformity notice and must rectify all issues identified before being issued a Safety Certificate

You must act quickly - you are in breach of the legislation

If you do not have a Safety Certificate for your shared pool, you must act quickly to comply with the legislation.
New South Wales

In New South Wales, under the Swimming Pools Amendment Act 2012, all multi-occupancy developments must hold a Current Compliance Certificate, which has a validity period of three years. All pools must be on the New South Wales register.

Victoria

Victorian legislation covers only installation and initial fencing of pools under the AS1926.1-2007 – Safety barriers for swimming pool.

Pool signage

Under the Queensland Development Code MP3.4, all pool owners are required to display a sign that complies with Guideline 7 CPR by the 30th November 2015, or earlier if the property is to be sold or leased. The sign must be:

- Attached to the safety barrier of the pool, displayed near the pool or otherwise visible by those near the pool
- 300mm x 300mm
- Made of weather proof and durable material
- Include a prominent instruction on how to act in an emergency, including: phoning an ambulance, staying with the injured person, calling for help and providing first aid.
The New South Wales Swimming Pools Act 1992 states that a CPR sign which is in good condition and can be read from a distance of three metres should be located near the pool.
Warning signs are also required in Queensland and New South Wales when a pool is being constructed. In New South Wales, a common sign is sufficient; Queensland sign specifications are available on the Department of Housing and Public Works website.
**Lift Plant Registration**

Under the national Work Health and Safety Act 2011, certain types of machinery and equipment (plant) must be registered with the relevant state authority. Lifts, escalators and moving walkways are included in this requirement. An obligation lies with the body corporate, as the entity in control of plant, to ensure it has been registered with the relevant state Health and Safety Authority before it may be used.

Bodies corporate must:

- Have the item of plant inspected either:
  1. in accordance with the manufacturer’s recommendations; or
  2. in accordance with the recommendations of a competent person; or
  3. annually, if not practical to comply with option 1 or 2
- Include a safety declaration from a competent person with the plant registration application
- Pay an annual fee for registration
- Keep a record of all testing, inspection and maintenance of plant

For assistance with this issue, bodies corporate should contact their lift service company.

**Plumbing – Backflow Prevention Certificate**

Backflow occurs when water from the plumbing supply contaminates a property’s water supply. To prevent this from occurring, every connection to the drinking water supply must have a backflow prevention device.
Relevant legislation

NSW: Plumbing and Drainage Act (2011)
VIC: Victorian Plumbing Regulations (2008)

Multiple residence and commercial buildings have a higher risk of backflow, and as such must have a backflow prevention device. The particular device required will depend on the property and its use.

Bodies corporate are obligated to:

- Install a backflow prevention device;
- Register the device with the local government; and
- Have the device checked and certified annually by a licensed contractor.

Keep a copy of your Backflow Prevention Certificate onsite. For further advice, bodies corporate should contact a licensed plumber.

Electrical

Residual Current Devices (RCDs) or ‘safety switches’ are an important part of maintaining a safe environment. RCDs disconnect electrical circuits when an imbalance is detected in the current, preventing serious injury to persons. The national Work Health and Safety Regulations require workplaces to have an RCD protecting all circuits; for bodies corporate, this means having functional RCDs in common property areas.

RCDs must be checked every six months by the facilities manager or building supervisor, and every two years by a licensed electrician. Your body corporate should receive confirmation from the electrician that the RCDs meet electrical standards, or a report of remedial actions. All documentation should be stored onsite, as well as within the body corporate records held by the body corporate manager.
Building Defects

There is no such thing as a perfectly constructed building.

Every new building will have imperfections, some of which will be defects which should be remedied by the original builder. Management of the defects is a usual process in the life of every new body corporate. Bodies corporate should identify and address defects as soon as possible for the following reasons:

- Building defects can worsen over time, causing extensive damage
- There are statutory time limits on claims for defective work through the Queensland Building and Construction Commission (QBCC) and through common law

QBCC claims

The QBCC outlines defective work in two categories:

**Category 1 examples:** leaking roof, health and safety issues, or structural inadequacy.

**Category 2 examples:** poor finishing detail, or minor cracking of plasterboard.
Your body corporate should take the following actions:

1. **Obtain an independent Engineer’s Report to identify any defects and list recommendations for rectification.**

2. **Notify the builder of the defects identified. Give the builder a specific time frame to rectify all defects. Be vigilant in following up the builder within the given time.**

3. **If the builder fails to rectify the defects in this time frame, lodge a complaint with the QBCC including all requested information and attachments. Bodies corporate should at this stage consider engaging an expert to assist in the QBCC complaint application and following matters.**

   - **For category one defects:** Complaints should be lodged with the QBCC within three months of the defect being identified. Complaints can be lodged up to six years and three months from the practical completion of works.

   - **For category two defects:** Within six months of the date of practical completion of works: contact the contractor for rectification as they are obliged to provide a six month warranty. If the issue is then not resolved: lodge a complaint with the QBCC within seven months of the date of practical completion of works.
**NB:** The term ‘practical completion of works’ is a complicated one, and it can be very relevant to the timing of claims. The QBCC defines ‘practical completion of works’ to be when building work has been completed in accordance with the contract. However, you may be unable to locate the Building Contract. An alternative is taking the date from the Certificate of Classification as the date when work was completed. The important thing for bodies corporate is to act quickly when defects are identified to avoid running out of time under the QBCC claims framework.

The QBCC cannot assist with:

- Work that is valued at $3,300 or under
- Electrical work
- Complaints regarding contract fulfilment or money disputes

In Victoria, the Victorian Building Authority is the body responsible for the regulation and monitoring of builders in the state. Your community manager can provide further assistance and advice.

**Common law claims**

Owners also have rights under common law. You may bring a claim for damages against a contractor for breach of contract resulting in defects, UNLESS such a right is specifically excluded in the contract. The statutory limitation on common law claims is six years from the date of breach – which will have occurred during the construction period. The involvement of a lawyer is essential in any common law claim.

**Who can help?**

Your body corporate should have a knowledgeable person assist them in complicated QBCC and common law matters. Your community manager will be able to provide you with a list of engineers to complete your report, and they are also familiar with QBCC processes. If your building defects are serious, you may consider promptly engaging an experienced construction lawyer for expert advice.
<table>
<thead>
<tr>
<th>BUILDING ELEMENTS</th>
<th>STATUS</th>
<th>NOTES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sinking Fund Forecast</td>
<td>Last reviewed:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>By:</td>
<td></td>
</tr>
<tr>
<td>Certificate of Classification</td>
<td>Classification:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Class:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Displayed:</td>
<td></td>
</tr>
<tr>
<td>Asbestos:</td>
<td>Yes/No</td>
<td></td>
</tr>
<tr>
<td>Audit for buildings built prior to Jan 2004</td>
<td>Last Carried out:</td>
<td></td>
</tr>
<tr>
<td>Asbestos Register displayed and reviewed annually</td>
<td>Yes/No</td>
<td></td>
</tr>
<tr>
<td>Asbestos Management Plan</td>
<td>Yes/ No</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Located:</td>
<td></td>
</tr>
<tr>
<td>Lift Plant Registration</td>
<td>Displayed: Yes / No</td>
<td></td>
</tr>
<tr>
<td>Backflow Prevention Certificate</td>
<td>Contractor:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Last Carried Out:</td>
<td></td>
</tr>
<tr>
<td>Pool Safety Certificate and Signage</td>
<td>Last Carried Out:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Certifier :</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Signage: Yes / No</td>
<td></td>
</tr>
<tr>
<td>Residual Current Device Compliance Certificate</td>
<td>Last Carried Out:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Certifier:</td>
<td></td>
</tr>
<tr>
<td>Building Defects</td>
<td>Engineer’s Report Obtained: Yes/No</td>
<td></td>
</tr>
</tbody>
</table>
Fire Compliance Obligations

30 Queensland Legislation

32 An Explanation of the Key Elements in Fire Safety Compliance

34 New South Wales Legislation

36 Victorian Legislation
Queensland Legislation


This legislation exists to prevent loss of life, injury to persons, and loss of property in situations of fire emergencies. Its two main goals are ensuring:

1. Safe evacuation is possible during a fire emergency
2. Fire safety installations are maintained

Your body corporate is responsible for the safety of any person in your building in the event of a fire. This is an onerous responsibility. Ensuring your body corporate is compliant with the Fire Safety Regulations can be a difficult process. The best thing your body corporate can do is engage the services of a licensed and reputable company to ensure adherence to the legislation. These companies, such as StarBMS, can undertake Fire Compliance Audits to identify areas of non-compliance and recommend steps to rectify any issues.

It is important to note that all buildings must be compliant at all times. The QFRS may impose fines at any time for non-compliance.

The flowchart on the next page outlines areas that must be compliant with legislation.
Fire Compliance Obligations

HOW SHOULD YOU ENSURE COMPLIANCE?

Refer to the Building Classification, which can be sourced from the local council

- Don’t Know
- Is your body corporate a class 1a building?
  - NO ACTION REQUIRED
  - YES

- A fire evacuation plan must be drafted and kept in the building
- An evacuation co-ordinator must be appointed and trained
- Must be reviewed annually
- Signs must be displayed in units used for short term letting
- An Occupiers Statement must be drafted and sent to the QFRS annually
- Fire protection equipment (extinguishers, hoses, pumps etc) must be tested
- Evacuation signs must be displayed in all common areas

Ensure compliance requirements are met

- An evacuation practice must be performed annually
- All workers in the building must be trained in General Evacuation and First Response
- All records / documents must be stored on-site as well as a copy off-site
- Signs must be displayed in units used for short term letting
- An Occupiers Statement must be drafted and sent to the QFRS annually

Does the building have over thirty workers

- NO
- YES

Is the building over 25m (8 storeys) tall?

- NO
- YES

A qualified Fire Safety Adviser (FSA) must be appointed

THE BUILDING IS COMPLIANT

If building has FSA (see below) must be FSA. No workers = no training needed

Should be someone on site. Can be anyone (resident, tenant, on-site manager)
An Explanation of the Key Elements in Fire Safety Compliance

A Class 1a building is a detached house, or one or more attached dwellings, each being a building, separated by a fire-resisting wall (refer to the Building Code of Australia classification table on page 14 of this publication).

Fire Safety Advisors are required for any residential buildings over 25 metres tall, or any building with 30 or more workers. They must complete an accredited training course from the QFRS and must re-certify every three years. A FSA is required by law to provide or arrange first response evacuation instruction and evacuation coordination instructions. Additionally, a FSA may assist the body corporate in:

- Developing the Fire & Evacuation Plan, and Evacuation Sign & Diagram
- Reviewing the Fire & Evacuation Plan, and Evacuation Sign & Diagram
- Liaising with the QFRS during building inspections
- Advising of breaches of the regulations

The committee and the Fire Safety Advisor should communicate often, exchanging information which may impact the evacuation plans and training schedules.

An Occupiers Statement is a summary of the testing and maintenance performed on the fire installations at your building.

All buildings that are not classified 1a buildings are required to engage one or more licensed providers to maintain their fire equipment. The fire service provider will present your body corporate with an Annual System Condition Report containing details of all testing and maintenance work completed on a particular item of equipment that year. As you will then have a number of reports, you must collate the details into an Occupiers Statement. A prudent body corporate will allocate the responsibility of preparing the statement to an individual so that it is not overlooked. The Occupiers Statement must be completed and signed by a representative of the body corporate (an occupier or a committee member) and a copy sent annually to the Queensland Fire and Rescue Service. Additional copies must be kept on site and off site.
In this way, the body corporate is attesting to the fact that their fire safety equipment has been tested and maintained by a competent provider.

**Fire and Evacuation Plans** must be produced by someone licensed with the Queensland Building and Construction Commission. They must be kept on site. Wardens and any other members of the evacuation team must be familiar with the Fire and Evacuation Plans. Prudent committee members will have read and understood the plans. A copy may be kept in common areas for easy access.

**A Fire Safety Installation Checklist** listing all fire safety equipment for your building (emergency lifts, fire curtains, fire doors etc) should be kept to facilitate the completion of the Occupiers Statement. This checklist should be provided at the certification stage of a new building, or, if this hasn’t occurred, a fire maintenance company can advise the body corporate on what equipment has been installed.

**Fire and Evacuation signs** must be reviewed every five years, or after any major change to the building. They must be displayed in a prominent manner in all common areas; and must also be displayed in each short-term letting unit.

**Evacuation Coordinators** are required in all buildings. They must complete Fire and Evacuation Training quarterly.

**Evacuation Practices** must be carried out annually in any building not classified as a Class 1a building. This includes residential buildings with no workers.

**Worker Training:** All workers in a building require two kinds of evacuation training:

- **General Evacuation Training:** learning the procedure for evacuating the building safely according to the Fire and Evacuation Plan.

- **First Response Training:** correct procedure for use of fire extinguishers, hose reels and fire blankets.

If the building has a Fire Safety Advisor, they must conduct the training for the workers.
Critical defects: If your fire equipment maintenance provider has issued you with a critical defect notice, you must rectify it within one month. Proof of rectification must be attached to the annual Occupiers Statement.

Fire records must be kept on site and available for QFRS inspection. Records include:

- Fire and evacuation plan
- Training records
- Evacuation practice record
- Records of maintenance
- Occupier statement
- Certificate of classification

A copy of all records must be also kept off site.

New South Wales Legislation

The NSW Environmental Planning and Assessment Regulation 2000 also places an obligation on building owners or owners corporations to ensure the safety of persons in their building in a fire. Buildings must have essential fire safety equipment installed as per the Building Code of Australia. Owners corporation must maintain records of fire safety equipment testing and maintenance, and must lodge these details annually with the council in an Annual Fire Safety Statement.
Actions for your body corporate:

**IS YOUR BODY CORPORATE COMPLIANT?**

- Refer to the Building Classification, which can be sourced from the local council

Is your body corporate a class 1a building?  
- YES  
  - NO ACTION REQUIRED
- NO  

Is the building totally compliant?  
- YES  
  - Audit completed identifying areas that don’t comply with a quote for rectification
  - Present the quote to the committee
  - With committee approval, work is instructed and completed
  - THE BUILDING IS COMPLIANT
- DON’T KNOW  
  - Request a Fire Compliance Audit
  - Are you sure?
- NO
**Victorian Legislation**

Victoria’s fire compliance legislation is outlined under the Victorian Building Regulations 2006. As with Queensland legislation, the requirements affect all buildings not classified as 1a or 10 under the Building Code of Australia (see classification table on page14).

The legislation outlines ‘Essential Safety Measures’ which are life and fire safety systems designed to ensure the safety of occupants. These measures include, but are not limited to:

- Early warning systems
- Fire doors
- Fire extinguishers
- Exit signs
- Passage ramps
- Smoke alarms

Under the regulations, you, the owners corporation, are required to maintain the Essential Safety Measures of your building.

Your responsibilities vary depending on the age of your building:

<table>
<thead>
<tr>
<th></th>
<th>ANNUAL ESSENTIAL SAFETY MEASURES REPORT</th>
<th>OCCUPANCY PERMIT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Built after 1 July 1994</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Built before 1 July 1994</td>
<td>✔</td>
<td>✗</td>
</tr>
</tbody>
</table>
An **Occupancy Permit** lists the Essential Safety Measures present in that particular building in five categories:

1. Egress and Access  
2. Electrical Services  
3. Fire Detection and Suppression Equipment  
4. Fire Resistance  
5. Mechanical Services

It also details the frequency and type of maintenance required for each Essential Safety Measure. Your owners corporation should be provided with the Occupancy Permit by the building surveyor when the building is suitable to be occupied.

An **Annual Essential Safety Measures Report (AESMR)** lists the

- Essential Safety Measure maintained
- The person performing the maintenance
- The date of maintenance

**Actions for Owners Corporations**

- For buildings built before the 1 July 1994, consider engaging an expert to identify and list the Essential Safety Measures present
- Consider engaging specialised services to create and enact a maintenance schedule, and to prepare the AESMR
- The building owner (owners corporation) or an agent of the owner, must sign the AESMR by the 13th of June of each year
- Have records of all maintenance, your occupancy permit, and your AESMR on site. The municipal building surveyor or Chief Officer of the fire brigade can check for compliance at any time.
<table>
<thead>
<tr>
<th>FIRE COMPLIANCE</th>
<th>STATUS</th>
<th>NOTES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fire Compliance Audit</td>
<td>Last carried out:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>By:</td>
<td></td>
</tr>
<tr>
<td>Fire and Evacuation Plan</td>
<td>Located:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Review Due:</td>
<td></td>
</tr>
<tr>
<td>Evacuation Signage</td>
<td>Located:</td>
<td></td>
</tr>
<tr>
<td>Evacuation Signage in Units (short term letting)</td>
<td>Signage in place</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Yes / No</td>
<td></td>
</tr>
<tr>
<td>Has an evacuation co-ordinator been trained and appointed</td>
<td>Yes/No</td>
<td></td>
</tr>
<tr>
<td>Fire Safety Advisor Appointed</td>
<td>Name:</td>
<td></td>
</tr>
<tr>
<td>Evacuation Practice Last Carried out</td>
<td>Date:</td>
<td></td>
</tr>
<tr>
<td>Have all workers been trained in evacuation and first response training</td>
<td>Yes / No</td>
<td></td>
</tr>
<tr>
<td>Fire Equipment Tested</td>
<td>Date:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Frequency:</td>
<td></td>
</tr>
<tr>
<td>Occupiers Statement Sent to QFRS</td>
<td>Date Sent:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Signed By:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Copy Located:</td>
<td></td>
</tr>
<tr>
<td>Fire Compliance Documents Stored on Site</td>
<td>Yes / No</td>
<td></td>
</tr>
<tr>
<td>Copies stored offsite</td>
<td>Location:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Yes/ No</td>
<td></td>
</tr>
</tbody>
</table>
Financial Obligations

40 Tax Returns
41 GST Filings
42 Australian Business Number (ABN)
43 Audit
44 Appointment of a Public Officer
Under Australian Tax Law, your body corporate must fulfil certain financial obligations.

**Tax returns**

**Legislation:** Taxation Ruling IT 2505 – Income Tax: bodies corporate constituted under strata title legislation.

Australian Tax Law requires that bodies corporate lodge a tax return for their assessable income in the financial year. The rate and threshold of taxation applied to bodies corporate is the same as that for public companies.

Examples of assessable income include:

- Interest
- Dividends
- Other moneys gained from the investment of funds (e.g. sinking fund)

Your body corporate may claim as deductions any expenses incurred in carrying out its administrative role.

NB: Assessable income does not include levies, due to the principle of mutuality:

One cannot make a profit out of oneself, income can only be derived from outside sources.

Please note: bodies corporate keep their own accounts according to a unique financial year, but they must prepare returns based on the 1 July to 30 June financial year.

**Who can help?**

Your body corporate committee is responsible for ensuring all statutory obligations are met, but SSKB can help. As we manage your financial details, we collect and store details of income, interest and expenses for the financial year period. If your body corporate nominates SSKB as their tax agent, we will
Financial Obligations of Bodies Corporate

fill out and submit your tax return. If your body corporate nominates another tax agent, we will provide them with the financial data necessary to complete the tax return.

**GST Filings**

Recently, the ATO has classified bodies corporate to be ‘not-for-profit’ entities. This means the GST registration threshold for bodies corporate has increased.

<table>
<thead>
<tr>
<th>GST turnover in excess of $150,000?</th>
<th>✓ Required to register for GST</th>
</tr>
</thead>
<tbody>
<tr>
<td>GST turnover projected to be in excess of $150,000?</td>
<td>✓ Required to register for GST</td>
</tr>
<tr>
<td>GST turnover below $150,000?</td>
<td>✗ Not required to register for GST</td>
</tr>
</tbody>
</table>

**NB:** If your body corporate intends to distribute profit or interest earned between its members, it is not considered ‘not-for-profit’ and the previous $75,000 threshold will apply. This will rarely be the case.

If your body corporate is currently registered for GST, but is considered ‘not-for-profit’ with a GST turnover of $150,000 or less, you may:

- Cancel the current GST registration
- Remain voluntarily registered and report annually
- Continue with current reporting and lodgement requirements

**How is the GST turnover calculated?**

**Gross Business Income – GST = GST Turnover**

GST registration is available online [www.ato.gov.au](http://www.ato.gov.au); through your tax agent or BAS agent; or with a paper form.
Who can help?

If your body corporate has a GST turnover in excess of $150,000, or is considered to be a ‘for profit’ entity, SSKB will calculate and pay your GST obligations quarterly.

If your body corporate nominates another agent, or decides to look after the GST filing itself, the following options are available:

- Calculate GST and report quarterly
- Calculate GST quarterly and report annually
- Pay GST instalment amount quarterly and report annually.

The SSKB Accounts Team is experienced and knowledgeable in this area and is available to answer your questions or concerns. Contact the team through your community manager.

Australian Business Number (ABN)

Your ABN is a unique number which identifies your business or entity to the tax office and other government departments.

Bodies corporate that need to register for GST must have an ABN. Otherwise, an ABN is not compulsory, but it allows you to:

- Complete a Business Activity Statement (BAS)
- Claim GST credits
- Obtain an Australian domain name
- Avoid Pay As You Go (PAYG) tax on payments you receive

Who can help?

Our Development Consulting Team (DCT) manages all ABN applications online for new schemes.
Audit

The requirement for a body corporate to be audited differs between states:

<table>
<thead>
<tr>
<th></th>
<th>QLD</th>
<th>NSW</th>
<th>VIC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Audit</td>
<td>Required unless passed by special</td>
<td>Required for schemes numbering over 100</td>
<td>Required for Prescribed Owners</td>
</tr>
<tr>
<td></td>
<td>resolution*</td>
<td>lots</td>
<td>Corporations</td>
</tr>
<tr>
<td></td>
<td>Required for Prescribed Owners</td>
<td>Optional for Non-Prescribed Owners</td>
<td>Corporations</td>
</tr>
<tr>
<td>Legislation</td>
<td>The Body Corporate and Community</td>
<td>The Department of Fair Trading / Strata</td>
<td>The Owners Corporations Act 2006</td>
</tr>
<tr>
<td></td>
<td>Management Act 1997</td>
<td>Schemes Management Act 1996</td>
<td></td>
</tr>
</tbody>
</table>

*The Body Corporate and Community Management Act 1997 states that audits will occur annually UNLESS a special resolution is passed at the AGM. This resolution must state:

“That the body corporate’s statement of accounts for the financial year (insert year) not be audited.”

Who may perform the audit?

Your body corporate may not be audited by a committee member, body corporate manager or any associate of these persons.

In addition to these requirements, and in line with New South Wales and Victorian legislation, the person undertaking the audit must be:

- Registered as a company auditor
- A member of the CPA Australia
- A member of the Institute of Chartered Accountants, or
- A member of the National Institute of Accountants
What then?
You must ensure your auditor provides the committee with their audit findings. In Queensland, a report must be sent out with the next annual general meeting notice. In Victoria, the audit is presented to the committee at their next meeting.

Who can help?
SSKB can provide bodies corporate with a selection of auditors from which to choose.

Appointment of a Public Officer
Law requires that for each entity that conducts business or earns income, a Public Officer must be appointed. This person’s role is to be the liaison between the ATO and the entity in tax matters. The Public Officer must ensure the entity complies with all obligations, and is liable for penalties should this fail to happen.

A body corporate must appoint a public officer within three months of its commencement. The person appointed must:

- Be over 18 years old
- Ordinarily reside in Australia
- Understand the nature of the appointment
- Be recorded with the ATO as the Public Officer
- Be able to satisfy Proof of Identity Requirements

For all bodies corporate managed by SSKB, Anne Clements (General Manager of Client Care) is appointed as the Public Officer.
Administration Obligations

46 RECORD KEEPING
46 QUEENSLAND
47 NEW SOUTH WALES
48 VICTORIA

48 COMMITTEES
48 QUEENSLAND
51 NEW SOUTH WALES
51 VICTORIA

52 GENERAL MEETINGS
52 QUEENSLAND
54 VICTORIA
56 NEW SOUTH WALES
Record Keeping

Queensland

Required statutory registers
In Queensland, under the Body Corporate and Community Management Act, bodies corporate are required to prepare and maintain records. The following is an overview of the records required; more detail is available in the Act.

The roll of lots and entitlement
This register should include:

- Details of original and current lot owners, including contact details
- The contribution and interest schedule lot entitlement
- ACN or ABN if the owner is a corporation

Owners are required to provide this information.

Register of assets
For any asset worth over $1,000, the following details must be recorded:

- Description of the asset
- Whether it was purchased or a gift
- The date it became a body corporate asset
- If a purchased asset: the cost, and name and address from whom it was purchased
- If a gifted asset: an estimated cost, and name and address of donor

Register of engagements and authorisations
When a body corporate manager or service contractor is engaged, or a letting agent authorised, details of their agreement must be recorded. The register must include contact details of the contractor, a description of their duties and remuneration, their commencement date and the term of their duties, as well as the powers they are authorised to use. In addition, the register must contain an original, executed copy of contract or arrangement.
Register of authorisations affecting common property
In some situations, a service contractor or letting agent may be granted permission to occupy an area that would normally be common property, for example an office or storage space. If this occurs, the details of this common property occupation authority must be recorded in a register. This register should also reflect any improvements made to common property by a lot owner for their own benefit.

Register of allocations under exclusive use by-law
This register must contain the details of any common property either allocated or re-allocated, for example, a car space or storage space reserved for a specific lot owner.

Register of restricted or reserved issues
Under the Act there are certain issues that cannot be resolved at committee meetings. Some examples include changing levies or starting court proceedings. The body corporate may, at a general meeting, also decide that other issues are restricted issues for the committee. The details of these issues must be recorded in the Register of Restricted Issues to be decided by the body corporate at a general meeting.

New South Wales
Similarly, in NSW under the Strata Schemes Management Act (1996), the owners corporation must keep the following records:

- Strata roll
- Levy register
- Common Seal
- Minute book
- Accounting records
- Cash books
- Receipt book
- Financial statements
- Register of all notices and order
- Executive Committee voting papers
- Proxy forms
- Meeting notices
- All correspondence
**Victoria**

The Owners Corporation Act 2006 requires an owners corporation to maintain the following records:

- Contact details of lot owners
- Rules
- Meeting minutes
- Resolutions
- Ballot results
- Proxies
- Voting papers or ballots
- Correspondence
- Assets and liabilities
- Financial statements (including tax returns and GST records)
- Insurance policies
- Maintenance plans
- Notices
- Contracts
- Leases and licences

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**Committees**

**Queensland**

Under the Queensland Body Corporate and Community Management Act, the committee is described as the ‘executive arm’ of the body corporate, charged with effecting lawful decisions made. All bodies corporate must have a committee, unless a body corporate manager is engaged to fulfil this function.

**The committee**

- A minimum of three, and a maximum of seven voting members
- Must have chairperson, secretary and treasurer positions (more than one position may be held by the same person)
- Body corporate managers or caretaking service contractors are non-voting members, and are not counted when calculating the minimum and maximum number of committee members
How is a committee elected?

- Nomination notices are sent out a minimum of three - six weeks before the end of the body corporate financial year;
- Nominations are to be returned to the secretary before the end of the body corporate financial year to be valid;
- Positions may be filled from nominations received, if not, positions may be appointed at the annual general meeting
- A ballot occurs if nominations exceed the required number
- All votes are of equal value
- Proxies cannot be used for committee elections

Who can be on the committee?

Committee positions are open to financial members and owners of lots. A non-owner may be a committee member if they are:

- Nominated by a financial member and is a family member
- Acting under an owner’s power of attorney
- The director or nominee of a company owner
- Under the commercial module in QLD a person nominated by a financial member

What are the general duties of committee members?

Committee members have legal responsibilities akin to those of a company director under the Corporations law. Some basic committee member duties include:

- Attend all committee meetings
- Read meeting notices prior to attending the meeting
- Organise common property repairs and maintenance

Executive committee members with special duties often discharge these responsibilities by the appointment of a body corporate management company, such as SSKB.
The management company is then authorised to:

- Call motions for the AGM
- Call nominations for the committee
- Prepare and send meeting notices
- Receive votes, except where a returning officer is appointed
- Prepare and distribute the meeting minutes

**What are the powers of the committee?**

The committee can make any decision except for those listed under the Act as restricted issues. These issues, such as changing levies, must be decided by the body corporate at a general meeting. Under the Act, a decision of the committee is considered a decision of the body corporate.

**Spending limits**

The Act regulates how body corporate money may be spent. The following table outlines how your committee may authorise expenditure:

<table>
<thead>
<tr>
<th>TYPE OF SPENDING</th>
<th>RELEVANT LIMITS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Committee Spending</td>
<td>- The amount last set as the relevant limit by the body corporate at a general meeting; or</td>
</tr>
<tr>
<td></td>
<td>- $200 x the number of lots in the scheme</td>
</tr>
<tr>
<td>Major Spending</td>
<td>- The amount last set as the relevant limit by the body corporate at a general meeting, or the lesser of $1100 x the number of lots in the scheme; or</td>
</tr>
<tr>
<td></td>
<td>- $10,000</td>
</tr>
<tr>
<td>Basic Improvement Limits</td>
<td>- $300 x the number of lots in the scheme (subject to the committee spending limit)</td>
</tr>
<tr>
<td>Ordinary Resolution Improvement Range</td>
<td>- An amount that is more than the basic improvement limit and less than $2000 x the number of lots in the scheme</td>
</tr>
<tr>
<td>An amount over the Ordinary Resolution Improvement Range</td>
<td>- Special resolution.</td>
</tr>
</tbody>
</table>
**New South Wales**

All owners corporations are required to have an executive committee, numbering from one - nine members. Lot owners, company representatives of corporation owners, or a person nominated by an owner are eligible for committee membership. The powers of the committee are restricted in the same way as under Queensland legislation.

**Victoria**

The committee of the owners corporation, unless it is resolved otherwise, is delegated the powers and functions of the owners corporation.

<table>
<thead>
<tr>
<th>Owners corporation with 13 or more lots</th>
<th>Must have a committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owners corporation with less than 13 lots</td>
<td>May have a committee</td>
</tr>
</tbody>
</table>

**The committee must have**

- At least three, and not more than 12 members
- A chairperson
- A secretary

**Committee members**

- Must be a lot owner or hold a proxy for a lot owner
- Once elected, the committee members hold office until a new committee is elected

**How is a committee elected?**

A lot owner or someone holding a proxy for a lot owner may nominate for election before or at the annual general meeting.
What are the general duties of committee members?

- Ensure decisions are recorded in minutes
- Report the activities of the committee to the owners corporation at each annual general meeting
- Ensure new committee members are aware of legislative requirements
- Act in accordance with the Owners Corporation Act (2006)

What are the powers of the committee?

Subject to the rules of the owners corporation, a committee can make any decision except those requiring a unanimous resolution or a special resolution.

General Meetings

Queensland

There are three types of general meetings:
- The First Annual General Meeting (AGM)
- Subsequent Annual General Meetings
- Extraordinary General Meetings

What are the obligations for the first AGM?

The Act outlines meeting obligations for bodies corporate. Particular requirements are made for the first Annual General Meeting (AGM).

The first AGM must be held within two months of the first of the following occurring:
- More than 50% of the scheme is no longer owned by the original owner
- six months has elapsed since the commencement of the scheme

The first AGM agenda must include:
- Budget review and the establishment of levies
- Insurance review
- Committee election
The custody and use of the body corporate seal
Confirming or changing the restricted issues for the committee
Confirming or amending the by laws
Appointing, or resolving not to appoint, an auditor

What are the obligations for following AGMs?

Every other AGM must be held within three months of the end of the body corporate financial year. Written notice must be given to the owner of each lot and must include:

- Notice of the AGM and an agenda accompanied by a list of motions for consideration
- A proxy form and a company nominee form
- A voting paper for open motions
- A secret voting paper for secret ballot motions
- Any explanatory material and documentation as required by the Act and Regulations

Standard motions to be voted on at the AGM include:

- Confirming the minutes of previous meeting
- Adopting financial statements
- Deciding whether to have an audit
- Approving the budget (for administration and sinking funds)
- Fixing of contributions
- Approving insurance

Notice must be given to owners at least 21 days prior to the date of the meeting.

For an AGM, a quorum is reached with 25% of the votes, provided two voters are physically present.

A copy of the AGM minutes must be distributed to owners within 21 days.
Extraordinary General Meetings

If issues arise which need to be decided before the next AGM, an extraordinary general meeting may be held. This meeting may be called by the committee, secretary, or a lot owner with a request signed by the owners of at least 25% of all lots in the scheme. If a request is received from a lot owner, the EGM must be called within 14 days, and held within six weeks of the date of submission of the request.

Victoria

There are three types of meetings:
- The first annual general meeting
- Annual general meetings
- Special general meetings

What are the obligations for the first AGM?

The first AGM must be convened within six months of the registration of the plan. At this meeting the applicant for registration of the plan of subdivision must provide the following documents:
- The owners corporation register
- Minute, account and other record books
- Maintenance plans
- Plan of subdivision and building plans
- A copy of the Act and the Regulations
- Any contracts, leases and licences
- Any insurance policies
- The common seal of the owners corporation
What are the obligations for following AGMs?

Subsequent AGMs must be held if the owners corporation receives or pays out money during the financial year. An AGM must be held within 15 months of the previous AGM. It must cover:

- Income and expenditure
- Assets and liabilities
- Maintenance work and the maintenance plan
- A committee report
- An owners corporation manager’s report
- Complaints

The AGM is also used to:

- Appoint a committee
- Consider a maintenance program and budget for the next financial year.

The quorum for an AGM is at least 50% of the total votes.

Owners corporation actions

You must send a written notice to all lot owners at least 14 days before the meeting. This must include financial statements, budget, previous meeting minutes and an agenda.

Special General Meetings

Special General Meetings are any meeting other than the AGM. They may be called by the chairperson or secretary of the committee, or the owners corporation manager. Written notice must be given to each owner at least 14 days before the meeting, including:

- Time, date, and place of meeting
- An agenda
- Text of any special or unanimous resolution to be moved
- A statement that the lot owners has the right to appoint a proxy
New South Wales

In New South Wales, an AGM must be held every year, with a notice sent out seven days before. A quorum is reached with 25% of votes. Issues and motions discussed during the AGM are standard across the states.

Who can help?

There are many obligations to be met under the body corporate legislation, and some can get quite confusing. This is where SSKB can help. Our SSKB website www.sskb.com.au and the Living in Strata website www.livinginstrata.com.au are full of helpful information. They also link you to strata specialists who can answer your questions. As your body corporate management company, SSKB can take responsibility for agendas, notices, motions, counting votes, and recording and distributing minutes. We exist to make a positive difference in the life of your body corporate.
59 QUEENSLAND AND NEW SOUTH WALES

60 VICTORIA
What obligations does my body corporate have in terms of insurance?

The following information outlines the responsibilities of bodies corporate under the:

Body Corporate and Community Management Act 1997 (QLD), Strata Schemes Management Act 1996 (NSW) and the Owners Corporation Act 2006 (VIC).

<table>
<thead>
<tr>
<th></th>
<th>MINIMUM PUBLIC LIABILITY INSURANCE FOR COMMON PROPERTY OF $10 MILLION</th>
<th>FULL REPLACEMENT COVER FOR BODY CORPORATE ASSETS (I.E. POOLS, FENCES)</th>
<th>BUILDING INSURANCE</th>
<th>CONTENTS INSURANCE (FOR CONTENTS WITHIN LOTS)</th>
<th>VOLUNTARY WORKERS INSURANCE</th>
</tr>
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<tbody>
<tr>
<td>QLD</td>
<td>☑</td>
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<td>☑</td>
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<td>Included in building insurance</td>
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<tr>
<td>NSW</td>
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<td>Included in building insurance</td>
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<tr>
<td>VIC</td>
<td>☑</td>
<td>☑</td>
<td>☑*</td>
<td>☒</td>
<td>Optional</td>
</tr>
</tbody>
</table>

* If the strata scheme consists of two lots, which are physically detached and have no common property, the owners corporation may decide by unanimous resolution that each lot owner arrange their own insurance.
Queensland and New South Wales

In Queensland and New South Wales, different building insurance requirements apply to particular types of community titled property:

<table>
<thead>
<tr>
<th>Building format plans (i.e. units in a high rise)</th>
<th>✓ required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard format plan lots with no common walls (i.e. freestanding houses)</td>
<td>✗ not required</td>
</tr>
<tr>
<td>Standard format plan lots with common walls (such as townhouses or duplexes)</td>
<td>✓ required</td>
</tr>
</tbody>
</table>

Building insurance must cover:

- Earthquake, explosion, fire, lightning, storm, tempest, and water damage;
- Glass breakage; and
- Damage from impact, malicious act and riot.

It must also be for the ‘full replacement value’ – which includes the repair or replacement costs, removing debris, and paying for professionals and tradespeople required.

Lot owners are responsible for contents insurance and public liability cover within their lot.

Excesses

Body corporate policies should also include a clause allocating responsibility for the payment of an excess. Generally, the lot owner pays the excess for damage affecting one lot, while the body corporate will pay the excess if damage affects more than one lot, or a lot and common property.
Actions for bodies corporate

Building insurance
Bodies corporate must:

- Obtain an independent valuation for the replacement value at least once every five years
- Insure the building for at least that much
- Include the valuation details in the notice of the annual general meeting

General insurance
Bodies corporate must

- Advise lot owners at the AGM of each insurance policy it holds and their details
- Consider a motion to review each insurance policy annually

Under Queensland legislation, bodies corporate must also calculate and update contributions for insurance premiums based on the interest schedule lot entitlement. New South Wales legislation is silent on this issue.

Victoria
Your insurance obligations are outlined in the Owners Corporation Act (2006). Two kinds of insurance are mandatory:

- Reinstatement and Replacement Insurance
- Public liability insurance
Insurance Obligations

**Reinstatement and Replacement Insurance** must be taken out for all buildings on common property and the sum insured must be more than the value of the buildings. It must cover:

- Replacement, repair and rebuilding
- Demolishing and removing debris
- Architect and surveyor costs
- Driveways and fences

Prescribed owners corporations must have the buildings on common property valued every five years, and this report must be presented at the next AGM.

**Public Liability Insurance** of not less than $10 million must be held by the owners corporation.

NB: 2 lot subdivisions are exempt from these insurance requirements.

**Voluntary insurances** that an owners corporation may choose to include are:

- Voluntary workers insurance
- Workers compensation
- Common property contents (e.g. carpet and paintings in a foyer)

**Who can help?**

If your body corporate or owners corporation has any concerns regarding their insurance requirements, contact your community manager who will point you in the right direction to obtain specialist advice. Insurance advice may only be given by the holder of an appropriate financial services qualification.

It is usual for the community manager to assist in the administration of insurance matters and to receive a disclosed commission from the broker or agent.
Star Building Management Services  
Phone: 07 3252 2720  
enquiries@starbms.com.au  
www.starbms.com.au

Workplace Health and Safety Queensland  
Department of Justice and Attorney-General  
Phone: 1300 369 915  
www.justice.qld.gov.au

WorkSafe Victoria  
Phone: 1800 136 089  
info@worksafe.vic.gov.au  
www.worksafe.vic.gov.au

WorkCover NSW  
Phone: 13 10 50  
contact@workcover.nsw.gov.au  
www.workcover.nsw.gov.au

Queensland Building and Construction Commission  
Phone: 1300 272 272  
www.qbcc.qld.gov.au

Queensland Fire and Rescue Service  
Phone: 13 74 68  
www.fire.qld.gov.au

Australian Taxation Office  
Phone: 13 28 69  
Fax: 02 6216 2830  
www.ato.gov.au

Body Corporate and Community Management  
Department of Justice and Attorney-General  
Phone: 1800 060 119  
Fax: 07 3227 8023  
BCCM@justice.qld.gov.au  
www.justice.qld.gov.au

The Owners Corporation New South Wales Fair Trading  
Phone: 13 32 20  
www.fairtrading.nsw.gov.au

Owners Corporations  
Consumer Affairs Victoria  
Phone: 1300 55 81 81  
consumer@justice.vic.gov.au  
www.consumer.vic.gov.au

Victorian Building Authority  
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