



# WORKPLACE HEALTH AND SAFETY ACT 2011

## Obligations for the Body Corporate

The WHSA 2011 which came into effect in January 2012 clearly sets out the obligation on a person conducting a business or undertaking (PCBU).

It will now be very important for members of bodies corporate to be aware of their obligations under the new laws. Whilst the body corporate will be exempt from the new WHSA if its only responsibility is for common areas used **only** for residential purposes, it **will** fall under the definition of a PCBU (person conducting a business or undertaking) if -

- it employs anyone ;
- any of the lots or common property are used for what could be considered non-residential purposes such as - lots being used for short term rentals (holiday letting) or student accommodation;
- commercial use of any of the lots (ie home offices or a letting business under a management rights business);
- leases over common property for things like telephone towers;

- the common property is used for any commercial purpose whatsoever (ie training;); and
- the body corporate allows owners to perform work like gardening or maintenance on common property.

All bodies corporate will need to immediately understand whether or not they are a PCBU. It is anticipated that most bodies corporate will, at some, time fall under the definition of a PCBU.

The Act also defines a workplace as “any place where work is, is to be, or is likely to be performed by a worker, self-employed person or employer”. Therefore Bodies Corporate, who have the responsibility for the common areas of the premises, must ensure the safety of persons entering those premises. The WHSA imposes obligations on officers to exercise what is called due diligence.’ This means that they need to proactively understand the obligations in the WHSA and ensure they have in place appropriate plans and strategies to deal with the WHSA obligations.

To protect the Bodies Corporate against penalties imposed by this legislation, in the event of an injury occurring to a person whilst in the common areas, Committees should seriously consider the development and implementation of a workplace health and safety hazard identification and control programme which is relevant to individual schemes. This can be undertaken by:-

- Conducting a Workplace Health and Safety Audit,
- Depending on the amount of plant and equipment, consider implementing a Log Book of Maintenance
- Consider implementing a Contractor Entry Permit book
- Identify a register of Contractors
- Implement a Safe Working Methods Register
- Regular audits of your common property workplace to identify risks

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We have attached certain sections of the Act to assist in understanding the obligations.

**Section 17 Management of Risks** clearly states that the duty imposed on a person to ensure health and safety requires the person –

- (a) to eliminate risks to health and safety, so far as is reasonably practicable; and
- (b) if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable

## **S18 What is reasonably practicable in ensuring health and safety**

In the Act, **reasonably practicable**, in relation to a duty to ensure health and safety, means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters including—

- a) the likelihood of the hazard or the risk concerned occurring; and
- (b) the degree of harm that might result from the hazard or the risk; and
- (c) what the person concerned knows, or ought reasonably to know, about—
  - (i) the hazard or the risk; and
  - (ii) ways of eliminating or minimising the risk; and
- (d) the availability and suitability of ways to eliminate or minimise the risk; and
- (e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

## **S 19 Primary duty of care**

- (2) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.



## Review of By-Laws

The following items are suggestions as to why a review of the by-laws to assist in ensuring duty of care is carried out by the body corporate:

1. Reviewing by-laws for *WHS Act* compliance. What are the rules that apply to everyone?
2. Providing advice on height limits for workers (which includes resident managers). What is acceptable without fall protection?
3. Providing advice on the responsibilities of the resident manager with respect to the body corporate. Management rights agreement rarely deals fully with *WHS Act* issues.
4. Drafting specific policies and procedures to ensure compliance with *WHS Act* obligations in a body corporate context. These are the ongoing rules that will apply to the body corporate going forward (as example, vegetation management, storage of substances, maintenance of plant and equipment, induction of tradespeople etc).
5. Providing advice on the set up and implementation of incident reporting systems that comply with the statutory framework.