

**INSIDE: Body Corporate offences from a Lawyer's perspective...what do they mean for you?**

## QFRS advice clarified

In recent months, there have been a number of queries raised by Body Corporate Managers and the need for clarification in regards to advice received from the Queensland Fire and Rescue Service. To resolve these issues, we met with the Building Fire Safety in Queensland's Manager.

### 1. **Why are there Class 1a buildings (townhouses & standalone houses) that have Certificates of Classification that certify them as Class 2?**

There are many buildings that are clearly Class 1a buildings that have been classified as Class 2. The cause of this has been identified as some of the older provisions of the Building Act (pre 1992). For buildings built after 1992, it is in my opinion that this was caused by building certifiers who were not following the definitions in the Building Code of Australia. It would have seemed a harmless thing at the time, but the consequences when 1a's don't have to comply with the *Fire and Rescue Services Act & Regulations* and Class 2's do is significant in terms of cost and effort. All Class 1b – 9 buildings must comply. The information sheet recently released by the QFRS suggests that a building that meets the definition of a Class 1a does not have to comply with the requirements of the *Building Fire Safety Act & Regulation*, even if it has been classified as a Class 2 building.

The Building Code of Australia defines a Class 1a building as one or more buildings, which in association constitute -

- “(a) *Class 1a – a single dwelling being –*
- (i) *A detached house; or*
  - (ii) *One of a group of two or more attached dwellings, each being a*

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### **Legal advice from Lawyer Andrew Suttie**

Solutions ie approached Andrew Suttie from Nicholson's Solicitors to provide us with a legal perspective on S151 of the *Fire and Rescue Service Act 2004* – Implications for Body Corporate Committees and service providers. Andrew Suttie wrote:

S151 of the *FRSA* provides that where a Body Corporate commits an offence under the *FRSA*, each person who is an Executive Officer of the Body Corporate is taken to have committed the offence and may be prosecuted and punished.

An Executive Officer of the Body Corporate “captures anyone who is concerned or who takes part in the management of the Body Corporate.” In our view, the definition includes the members of the committee as well as a Body Corporate Manager and service contractor engaged by the Body Corporate under the provisions of the *Body Corporate and Community Management Act 1997*.

The penalties for offences under the *FRSA* are potentially severe and include hefty fines and imprisonment.

### **Recommendations to reduce the likelihood of prosecution and punishment**

It is in the best interests of anyone who is concerned in the management of a Body Corporate to ensure to the greatest extent possible that the Body Corporate discharges its obligations under the *FRSA*. Where a body corporate commits an offence under the *FRSA*, a relevant individual can only avoid prosecution where they can prove:

1. The offence was committed without the person's knowledge; and
2. The person could not have prevented the commission of the offence by exercising a reasonable degree of diligence.

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## **QFRS advice clarified continued from Page 1...**

*building separated by a fire-resisting wall, including a row house, terrace house, town house or villa unit; which is not located above or below another dwelling or another Class of building other than a private garage.*

In compliance with the *Building Fire Safety Regulation 2008*, previously classified Class 1a buildings and now buildings that meet the definition of a Class 1a building are exempt from requirement, while all other buildings in Class 2 are still required to comply.

### **2. Fire Safety Advisers (FSAs) – how do we define 30 plus workers? High occupancy buildings are defined as:**

- More than 25m in height (this is generally buildings nine stories and above); or
- Has more than 30 workers; or
- Is an at-risk licensed building under the *Fire and Service Act 1990*; or
- For Class 6, 7, 8 or 9 buildings (non-residential) or areas of a building if the floor area is more than 18,000 m<sup>2</sup>.

One of the requirements for high occupancy buildings is to appoint an FSA. This is different from the requirement that all buildings are required to appoint a fire Evacuation Coordinator.

### **3. What does an FSA do and whose responsibility is it to appoint them?**

An FSA is a qualified person who is familiar with all aspects of building fire safety. It is their primary duty to provide advice to the occupiers of the building to ensure that appropriate emergency planning has taken place and that appropriate instruction and training is undertaken within the required timeframe. Any training in a high occupancy building must be delivered either by an RTO, by the FSA or by a qualified person appointed by the FSA.

It is important to identify who has the responsibility to appoint the FSA. The QFRS has now clarified that they see the responsibility for this resting with the occupier of a workspace that employs more than 30 workers and not with the Body Corporate. This has large consequences. Unless the Body Corporate employs more than 30 workers (highly unlikely), they have no obligation to appoint an FSA under this provision. Also, a building could have 300 workers in it and yet no one has a requirement to

appoint an FSA. Why? If there are no more than 30 workers in each tenancy/lot, then an FSA does not need to be appointed. FSAs are engaged by an occupant of a tenancy when they employ more than 30 workers. This is now not a Body Corporate issue in almost all circumstances for buildings below 25 metres.

### **4. In what circumstances can an Evacuation Coordinator who lives and works offsite be appointed? What are their responsibilities and who can they be?**

The Queensland Fire and Rescue Service has sought legal advice on how they can police the appointment of Evacuation Coordinators and how much influence the QFRS can exert on who can be appointed.

The result states that the QFRS are unable to tell Bodies Corporate who they can or can't appoint as an Evacuation Coordinator. This is in contrast to the previous requirements of the Evacuation Coordinator having to be a member/owner of the Body Corporate. The responsibilities of the Evacuation Coordinator include:

- Being familiar with the Evacuation Plan and the coordination instructions in the plans;
- Running an Evacuation Practice onsite annually;
- The Body Corporate must ensure they are trained yearly and have records to document the training.

The Evacuation Coordinator must be familiar with and understand the Fire and Evacuation

Plans and coordination instructions in the plans. They must be trained yearly and have records to prove this has been completed. They must also run an Evacuation Practice annually. Ideally, they would be someone who lives or works in the building to which they have been appointed.

Solutions ie have been conducting Evacuation Practices for a large number of clients and have now extended their services to being appointed as the Evacuation Coordinators.

**5. What is the requirement for keeping records onsite?**

The *Building Fire & Safety Regulations 2008* legislation states:

*71 Keeping plans and other documents*

*(2) The owner or occupier must keep a copy of the plan or document –*

*(a) In the building in a way that it is reasonably likely not to be damaged in the event of a fire or hazardous materials emergency; and*

*(b) In a secure place in other premises.*

Onsite, it has been made clear that a lockable metal filing cabinet will fulfil this requirement and that a fireproof safe is unnecessary. As many managers know, for many smaller schemes there is nowhere to store the metal filing cabinet and therefore an alternative option is needed. The idea of a lockable metal wall mounted cabinet was discussed and agreed to be an acceptable option. Dimensions allowing two shelves of A4 size folders were suggested by the QFRS. Solutions ie will find a suitable cabinet and offer a supply and installation service to take care of this obligation for Bodies Corporate. #

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**Legal Advice from Lawyer Andrew Suttie continued from Page 1...**

Legal advice recommends that committees and other relevant service providers engage an independent expert to regularly assess compliance with the *FRSA*. This will reduce the potential for offences by the Body Corporate and reduce the flow-on effect of S151 to relevant individuals.

We recommend that where a committee submits a motion for approval of work in compliance with the *FRSA*, it should provide a very detailed explanatory note outlining the consequences of non-compliance and recommendations that the work be undertaken. It should include a statement that the committee strongly urges owners to vote in favour.

Similarly, where a Body Corporate Manager or service contractor has been engaged by a Body Corporate, they should take steps to ensure any relevant party is aware of the obligations under the *FRSA*. This might involve providing information about the *FRSA* to the Body Corporate; urging the Body Corporate to have regular inspections for compliance with the *FRSA*; amending their agreements to clarify their role under the *FRSA*; advising owners at meetings of the *FRSA* issues and implications for non-compliance and ensuring their recommendations are minuted.

Difficulties will arise in situations where the Body Corporate refuses to approve motions which have been submitted for the purpose of compliance with the *FRSA*, notwithstanding the recommendations of an active committee, Body Corporate manager and service contractor. In this circumstance, the relevant individuals can follow-up with correspondence to the Body Corporate advising of the consequences of non-compliance. They could also take it a step further by making an application to an adjudicator seeking orders that the Body Corporate has failed to act reasonably. #

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# HUMOUR



**WARNING – DO NOT READ THESE IF YOU ARE POLITICALLY CORRECT**

## **The Little Johnny Series**

### **Who's stupid?**

A new teacher was trying to make use of her psychology courses. She started her class by saying, "Everyone who thinks they're stupid, stand up!" After a few seconds, Little Johnny stood up. The teacher said, "Do you think you're stupid, Little Johnny?" "No, ma'am, but I hate to see you standing there all by yourself!"

### **The Train Conductor**

A mother was working in the kitchen, listening to her five-year-old son playing with his new electric train in the living room. She heard the train stop & her son saying, "All of you bastards who want off, get the hell off now, 'cause this is the last stop! And all of you bastards who are getting on, get your ass in the train, cause we're going down the tracks."

The horrified mother went in & told her son, "We don't use that kind of language in this house. Now I want you to go to your room and stay there for TWO HOURS. When you come out, you may play with your train, but I want you to use nice language."

Two hours later, the son came out of his bedroom and resumed playing with the train.

Soon the train stopped and the mother heard her son say, "All passengers who are disembarking the train please remember to take all of your belongings with you."

We thank you for travelling with us today and hope your trip was a pleasant one".

She hears the little boy continue, "For those of you just boarding, we ask you to store all of your hand luggage under your seat. Remember, there is no smoking on the train. We hope you will have a pleasant and relaxing journey with us today."

As the mother began to smile, the child added, "For those of you who are pissed off about the TWO HOUR delay, please direct your complaints to the fat b\*\*\*h in the kitchen."

## **Can security doors be fitted to fire doors in residential units?**

Formerly, any kind of security door fitted to a fire door assembly was required to be removed to ensure the fire door remains compliant with the regulations of the QFRS.

The QFRS has released an information sheet which has stated that it is reviewing this requirement with the Department of Infrastructure and Planning (DIP) for residential units.

Consequently, there is an amnesty on removing all security and screen doors from fire doorsets.

According to the Australian Standard of fire doors (AS) 1905.1, the complete assembly of a fire door is known as a fire doorset. This includes the frame, door and hardware fitted.



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