

A quarterly performance review and report quality assessment is done for every inspector employed by the company. This assessment includes examining the accuracy of report data, personalisation/customisation of reports, site and client contact commitments being met, report detail and in the case of Sinking Fund Plans 'massaging' of maintenance timing and levies increases to ensure the most efficient use of funds. These items are assessed and marked against Key Performance Indicators and feedback for any possible improvement is discussed with the inspector.

What is the service we offer?

Solution ie's qualified Risk Assessment Officers will inspect your Common Property and provide you with an informative and easy to read safety report to ensure you have peace of mind and a record of action to meet your obligations should an accident happen.

Solutions ie will:

- Clearly identify hazards and provide digital photographs illustrating their location.
- Assess risks that may result because of the hazards.
- Assist you in deciding on control measures to prevent, or minimise the level of risks present and future.
- Provide the necessary tools to allow you to implement control measures and take the hassle out of compliance.
- Monitor and review the effectiveness of these measures as needed by you.
- Provide the Building Manager (if there is one) with a basic introduction to the important elements of Occupational Health and Safety and risk management.
- Provide telephone support in the event of an incident to advise what should be done and how.
- Provide policies and procedures for engaging and managing commonly used contractors and commonly performed tasks.

Conclusion

The answer to your OH&S risk management issues is simple, call us now and we will put together a report that makes risk management easy and inexpensive. Call **1300 136 036** today.

WARNING - The Owners Corporations who refuse to spend money on risk management and maintenance are your biggest risk. Their common property is where accidents are likely to happen. Don't let them put you at risk.

Quote from a prominent OH&S lawyer:-

"You never win an OH&S case you only minimise your losses."

All services provided by Solutions IE are supplied on the basis of 'Supply Terms and Conditions' which are available from our Office and from our website www.solutionsie.com.au

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- Cost Allocation Reports

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Phone 1300 136 036

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How can you easily and inexpensively meet your Occupational Health & Safety requirements for the common property of your strata schemes?

When an executive committee member asks you an OH&S question you need to have the answer at hand. To assist you with this, all of the most commonly asked questions are answered for you below.

This document will show you what obligations you and your Owners Corporations have and how to meet your OH&S obligations simply and inexpensively.

OH&S is an issue that cannot afford to be ignored by Owners Corporations or Strata Managers and ignorance is no longer an excuse, in fact it compounds your risk. Invest 5 minutes here to find out more.

TO SAVE TIME AND GET THE BEST OUT OF THIS DOCUMENT, SIMPLY SCAN THE QUESTIONS INSIDE TO FIND THOSE ANSWERS YOU NEED AND THEN READ THE RISK MANAGEMENT PLAN AT ITS END

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INTRODUCTION - What are your OH&S obligations?

Due to the definitions and structure of the OH&S Act and regulations, a Strata Manager and an Owners Corporation share a responsibility to **ensure that the common property is assessed and checked to be a safe environment**. Specifically-that the common property is free from health and safety risks for people working there including volunteer workers, self-employed contractors, and employees (should there be any).

An Owners Corporation also owes an obligation to all those using the common property including members of the public, visitors, tenants and owners to ensure that there is appropriate, safe access into and out of the common property, and that the common property itself is safe.

Meeting these obligations is simple, inexpensive and essential for peace of mind. Effective risk management allows an owners corporation and its strata manager to move forward with managing the business of a Strata Scheme knowing its obligations have been met to the best of their ability and, should anything go wrong, prove they took these reasonable steps to protect people's safety.

What are the maximum fines under the Occupational Health & Safety (OH&S) Act?

According to the OH&S Regulations generally the maximum fines for non-compliance are:

- '(a) in the case of a corporation (being a previous offender)— **\$825,000**, or
 (b) in the case of a corporation (not being a previous offender)— **\$550,000**, or
 (c) in the case of an individual (being a previous offender)— **\$ 82,500 or imprisonment for 2 years, or both**, or
 (d) in the case of an individual (not being a previous offender)— **\$ 55,000.**'

However in the event of very serious accidents the maximum possible fines are now:

**\$1.65 million for Owners Corporations and
 \$165,000 for individuals and up to 5 years jail**

Obviously very serious penalties and if you compare this with the cost of a OH&S Audit, which ranges from under \$35 a lot for a 10 lot building to under \$20 per lot for a 50 lot building and less as buildings grow in size.

Hasn't there been some form of residential exemption?

The exemption did not in anyway fully relieve an Owners Corporation of its OH&S responsibilities and in reality places the Strata Manager in a difficult position should an owners corporation believe this. This is due to the fact that a Strata Manager clearly has an obligation to any contractor they instruct to do maintenance work on common property, and that obligation cannot be met without the Owners Corporation also meeting theirs. More on obligations later in this document, first let us look at why the residential exemption is ineffective:

- The residential exemption only exempted clauses 33 to 44 of the OH&S Regulations 2003 (that being only 10 out of 600+ pages of the Act and Regulations). Most of the obligations included in clauses 33 to 44 are repeated in other parts of the Act & Regulation.
- Sections of the Act & Regulations that still apply include obligations relating to:
 - Plant and equipment being registered, safe to use and properly maintained. This includes lifts pumps, fans, generators, amusement devices, portable electrical equip., switchboards, etc.
 - Chemical substances which must be properly stored, labeled and used. This includes common chemicals found on almost every common property including cleaning chemicals, pool chemicals, gas cylinders, fuel and oil.
 - Chapter 2 and section 4.3 repeats all exempted obligations and applies to any voluntary work done, building managers, or part-time workers.

What about the risks from Civil Actions?

Recent newspaper articles state that NSW is now the most litigious place in the western world. There are a large volume of personal injury litigations that often have the following characteristics:

- 6-8 years to conclude the case during which time you are in and out of court.
- All parties end up in court when litigators take a scattergun approach.
- Large punitive damages (fines) that are not covered by insurance.
- Large monetary awards to the injured parties.
- Had the building been properly maintained the accident would not have happened.
- The accident was reasonably foreseeable.
- Most recent cases relate to slips, trips and falls, swimming pool accidents, electrocution and falling from balconies.

An OH&S report is about making the common property safe for workers, however it will of course identify many of the hazards that cause personal injuries and lead to personal injury litigation.

Your smart Risk Management Plan.

1. Put a motion up at all Owners Corporation AGMs that an OH&S Risk Assessment be done to ensure a safe working environment
2. Experience has proven that in order to get the motion passed a Strata Manager needs to highlight the high fines and relative low cost of the report and the foolhardiness of inaction. Ask the executive committees "What happens when something goes wrong?" and ensure the motion is passed.
3. Order the initial safety report.
4. Should an OH&S motion get voted down; Ask a person on the committee to become the maintenance contact at the building and let them know you will send all trades people to them for instruction. This takes you, the Strata Manager/Strata Management Company out of the picture. Why? - The person instructing the tradesperson is the 'controller' of that person and has obligations including providing a safe working environment. (This will at least relieve one area of obligation but not all.)

Who can you trust your OH&S risk management reports to?

Solutions ie Pty Ltd was founded in 1984 and has grown to be the industry leader in both size and expertise for strata reports in Australia. Their accumulated knowledge and experience was earned while creating over 40,000 reports for Owners Corporations.

Quality

The company is fully and properly insured for all services offered; they have a systems based work methodology and rigorously apply the highest standard to their processes. The team who creates your reports are fully trained and accredited in their areas of expertise and are continually updating their skills. All our reports come with a 100% satisfaction guarantee.

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Doesn't the Executive Committee share the OH&S responsibilities?

The OH&S Regulations also has a section for when there is more than one party responsible to meet an obligation. It states:

'If more than one person has a responsibility with respect to a particular occupational health and safety matter under this Regulation:

- (a) each such person retains responsibility for the matter, and
 (b) the responsibility is to be discharged in a coordinated manner.'

These extracts from the Act and Regulations make it very clear that a Strata Manager/Strata Management Company cannot simply put up a motion for an OH&S report that is voted down and then happily go about organising contractors.

There are very clear obligations that have to be met, including obligations owed to contractors instructed by the Strata Manager/Strata Management Company. These are the facts and create a very difficult situation for a Strata Manager/Strata Management Company that is expected to organise maintenance for an Owners Corporation who have also voted down a motion to get an OH&S safety report done.

Does my management agreement affect my obligations?

You cannot contract out of your OH&S obligation. You can only meet an obligation by demonstrating you have acted to meet that obligation. So a paragraph in a management agreement that states the Strata Manager/Strata Management Company takes no responsibility for OH&S issues is worthless as obligations have to be acted on and met and cannot be contracted out of.

If you have delegated responsibilities under your management agreement it usually increases your obligations under OH&S, as you may owe obligations to further parties.

What do you need to do to meet your obligations?

You need a suitably qualified and preferably suitably insured and experienced company to conduct the following steps based on the relevant Australian Standards:

1. Inspect the common property and provide a report that clearly identifies hazards;
2. Assess the risks that may result from those hazards;
3. Assist you in deciding on control measures to prevent, or minimise the level of risks present and future;
4. Provide the necessary tools to allow you to implement control measures in a hassle free manner;
5. Monitor and review the effectiveness of these measures annually or upon request.

Won't the Owners Corporation be up for a massive cost to implement the OH&S report's recommendations?

No. In most cases recommendations will relate to things like: Signage (\$50-\$150), Cleaning of driveways (\$1-3 per m²), high-lighting of trip hazards (\$not much), installation of an RCD on community power circuits (\$150-\$200), replacement of a light bulb (\$2-\$80 depending on who does it). Most risk management is relatively cheap, the trick is to identify and deal with it.

There is an art to not only identifying hazards but also in recommending the most cost effective and common sense approach to preventing or minimising risks created by the hazard.

- OH&S risk management covers a lot more than just the OH&S Act & Regulations. OH&S legislation is what is commonly termed umbrella legislation and a professional OH&S assessment company must check compliance with many other Australian Standards and related legislation including:-
 - AS3000-2000 wiring rules – switchboard signage, cabinet and RCD.
 - Swimming pool and spa pool, fence, signage and other compliance issues.
 - Safety aspects relating to sections of the Australian Building Code and the Domestic Construction Manual including the geometry of stairs, balustrades and head clearance heights.
 - Confined spaces compliance assessment.
 - Hazmat (Hazardous Materials) including cleaning fluids, gas and pool chemicals for correct storage, Material Safety Data Sheets and labeling.
 - Very importantly - Knowledge of recent court cases and court decisions to ensure latest known risks are assessed.
- It is also apparent that anyone working from home negates the residential exemption. The exemption only applies to parts of a building where there is no 'commercial use'. 'Commercial use' is defined as where there is a 'business that is carried on for profit.' A recent OH&S case where 12 workers successfully claimed for accidents while working at home clearly defined their activities as commercial and their homes as workplaces. Details were:
 - The ruling defined the worker's houses and units as workplaces.
 - Most were Mums working from home using a computer and phone.
 - This case defined their activities as commercial and Telstra (their employer) had an obligation to ensure their home workplaces were safe.

The court clearly saw their activity as commercial in nature and created a new and more expansive definition of what a commercial activity and a workplace are.

Almost every strata complex has people operating full or part-time home based businesses – network marketing and internet based businesses are examples. There is no doubt that these are for profit activities and are therefore defined as commercial use.

Solutions ie contacted Workcover when the residential exemption was first put in place and asked what they defined 'commercial use' of a residential unit as? They said they would probably refer to what the local municipal council defined it as. On investigation every council had a different definition, the universals seemed to be that 'commercial use' was any business operating from a residential unit that needed deliveries, had clients visiting and employed people other than the occupant.

Even without the Telstra court case it would be hard for any Owners Corporation to state with certainty that there are no commercial operations in their complex

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In short the residential exemption is ineffective and does not relieve an Owner's Corporation or its Strata Manager of responsibility and obligations under the OH&S Act and its Regulations, nor other Acts and Australian Standards that apply to the common property.

Timing and the ineffective residential exemption

The ineffective exemption was put in place on 1st November 2002 and ended on the 30th October 2007, it was for 5 years. Regardless of whether the exemption is extended for another 5 years or not the statute of limitations on claims for personal injury from work or other accidents is 7 years. This means that an injury that happened on day one of the exemption period has a further 2 years claim period after the exemption is finished. So even assuming you believed the residential exemption was valid and not full of holes, you would be continuously gambling that the exemption be extended and if it were not you would be left with a long trail of OH&S risks of up to 7 years.

Is the common property considered a workplace?

Yes. The OH&S Act has the following definitions:

'work means work as an employee or as a self-employed person.'

'place of work means premises where persons work.'

'premises includes any place, and in particular includes:

(a) any land, building or part of any building'

Does the condition of and risks associated with the common property need to be assessed?

Yes, the Act states specifically that risks attributable to the condition of the premises/common property are part of the risks that affect workers and must be assessed. These obligations are further enforced as they are the same workers to whom you owe an obligation to provide a safe working environment as an 'occupier' and/or as a 'controller' (see references & definitions below):

Risks arising from activities at work:

For the purposes of this Act, risks arising out of the activities of persons at work include risks attributable to:.....

(c) the condition of premises (or any part of premises) used for the purposes of an undertaking.'

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

No. Strata Building Insurance does not cover you for fines, penalties or punitive damages awarded by courts. Insurance policy documents also require all lawful statutory obligations are met which include OH&S obligations. Recent articles written by the biggest strata insurance companies in Australia stated the importance of safety reports and why they are an integral part of an Owners Corporation's responsibilities.

What obligation does a Strata Scheme have?

To ensure the common property is a safe environment for workers (including those conducting maintenance/repairs), tenants, owners and visiting members of the public.

Isn't an Owners Corporation better off claiming ignorance?

No. The courts look dimly and with disbelief upon this stance. Ignorance is simply not an excuse and non-action is seen as a form of negligence leading to increased penalties. The OH&S regime and legislation has been in force for more than 20 years now and has received massive amounts of media publicity. Courts are now fining those who admit they did nothing to meet their OH&S obligations lower amounts than those who claim ignorance or fabricate a defence at the last moment. They are calling it a 'utilitarian plea' that saves wasted court time.

Does the Executive Committee Member (and Strata Manager) have a duty under the Act?

Yes. Part 2A 32A(5) states:-

'If a corporation owes a duty of care under Part 2 (which a Strata Scheme does) with respect to the health or safety of any person, any director or other person concerned in the management of the corporation is taken also to owe a duty.'

What risks does a Strata Manager/Strata Management Company have from buildings that do not have a current OH&S report in place?

By putting up a motion for an OH&S report to be done a Strata Manager has met a professional and legal responsibility to make an Owner's Corporation aware of its obligations.

Should the motion be voted down the Strata Manager/Strata Management Company has a risk associated with organising maintenance. As the person instructing the contractor to do work, (regardless of whether is on behalf of the Owner's Corporation). The Strata Manager/Strata Management Company has a very clear obligation to the contractor to ensure that the workplace they are sending them to has been safety assessed and is a safe working environment.

Should the contractor have an accident due to the state of the common property then the Strata Manager/Strata Management Company will be held accountable. In the ensuing investigation The Strata Manager/Strata Management Company will be required to demonstrate how it met its obligation to provide a safe working environment for the contractor to whom they owed a duty of care. Claiming the safety of the contractor was the obligation of the Owners Corporation will not wash.

How does the OH&S Act capture a Strata Manager/Strata Management Company in its obligations?

Through definitions for an 'Occupier' and a 'Controller', whom both have obligations as described throughout this document. See the underlined words below:-

'Occupier of premises includes:

(a) a person who, for the time being, has (or appears to have) the charge, management or control of the premises, or

(b) a person who, for the time being, is in charge (or appears to be in charge) of any operation being conducted on the premises.'

The person in control is the person who instructs the contractor in this instance.

'Controller of premises includes:

(a) a person who has only limited control of the premises concerned, and

(b) a person who has, under any contract or lease, an obligation to maintain or repair the premises concerned.'

There is no doubt that these definitions capture a Strata Manager/Strata Management Company and places many obligations directly onto them, especially when organising maintenance.

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