

We will help you meet your obligation by:

- ❑ 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 annually.
- ❑ 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.

Summary

The consequences of a serious accident can be dire. Not only do you have to deal with the possibility of OH&S fines and jail terms but also the claim from the injured party or bereaved relatives. The whole process including court case can normally take about six years. The toll it takes in terms of time, stress and costs are something that many people do not consider. Often they are worse than any financial burden.

Those who ignore the Occupational Health and Safety legislation do so at their peril. Legal opinion and the Act make it clear that the common property is a workplace and action must be taken to ensure compliance with your obligations.

As a legal expert in the area of Occupational Health and Safety said recently: -

"Incidents do and will occur. Doing something to prevent them is simple and easy with professional advice. Cleaning up after an accident will always be too little, too late."

If you have any further queries or need to engage the services of a professional safety audit company call us now and we will do all we can to help you out.

Our total Occupational Health and Safety solution is available to you at a very competitive price and is backed by our 100% satisfaction guarantee.

- ❑ Deal with professionals who understand your's and your client's needs and responsibilities within the context of current government legislation avoiding future legal problems
- ❑ Professionals who specialises in Owners Corporation industry work understanding the diplomacy needed to maintain ongoing relationships between owners corporation and owners corporation managers
- ❑ Reports which can be easily read and understood by anybody
- ❑ Communication that means important issues are discussed and your time is not wasted with unnecessary phone calls or emails
- ❑ Keeping the best interests of both unit owners and managers at the forefront of considerations dealing with professionals who guarantee their work

Bibliography

- Occupational Health & Safety Act 2004

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

Call us now 1300 136 036

Or fax us on 1300 136 037

Or email: enquiry@solutionsie.com.au

"You create communities; we help make them better places to live"



MEETING YOUR OH&S OBLIGATIONS

How to avoid a \$943,000 fine and 5 years jail.

Massive Fines have recently been introduced under the new Occupational Health & Safety Act 2004. The Victorian government has significantly increased fines for breaches of the Act – an Owners Corporation can now be penalised a whopping \$943,290, by 'failing to ensure the workplace is safe'.

Occupational Health and Safety is all about risk management. The name of the game is to firstly be aware of your obligations and then to have a total solution that effectively manages your risks. The recommendations in this document are based on our experience in doing over 8,500 OH&S audits of the common property of residential and commercial strata buildings throughout Australia.

What are your risks?

As an Owners Corporation/Owners Corporation manager you are exposed to a number of risks relating to your occupational health and safety obligations and common law responsibilities.

The Owners Corporations responsibilities and risk can be clearly divided into two areas: -

1. The Owners Corporation has a responsibility to **ensure that the common property is safe**. Specifically that it is free from health and safety risks for people working including self-employed contractors, volunteer workers and employees and that there is appropriate, safe access to and from the common property for others including members of the public, visitors, tenants, etc.
2. That the Owners Corporation/Owners Corporation manager **engages quality contractors properly**, that is; in such a way that if an accident should happen it does not create any major issues for the owners corporation/owners corporation manager.

If actions are taken to ensure these two areas of risk are handled effectively then an Owners Corporation and its Manager can move forward knowing its obligations have been met to the best of their ability and if anything does go wrong they can show they took appropriate action as far as is practicable.

Is the common property considered a workplace under the Occupational Health and Safety Act?

Yes. The Occupational Health and Safety Act 2004 Part 1 Section 5 clearly states the definition of a workplace as being: -

'a place, whether or not in a building or structure, where employees or self-employed persons work.'

Services:

- 10 Year Maintenance Plan & Updates
- Occupational Health & Safety
- Insurance Valuations
- Balustrade Testing
- Asbestos Report
- Essential Safety Measures Assessment

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The common property of an Owners Corporation scheme clearly fits into this category, and the Owners Corporation clearly has control of this area.

What else does the Act say?

Extracts from the 'Occupational Health and Safety Act 2004'

Division 5 Section 26 (1) states: - **'Duties of persons who manage or control workplaces'**

'A person who (whether as an owner or otherwise) has to any extent the management or control of a workplace, must ensure so far as is reasonably practicable that the workplace and means of entering and leaving it are safe and without risks to health'

'To eliminate risks to health and safety' or 'if it is not reasonably practicable to eliminate risks to health and safety, to reduce those risks ...'

Indictable Offence (as stated in *Table of Penalties – Summary of the OH&S Act 2004, June 2005*)

Section 26 (1): - For a 'person who manages or controls a workplace, failing to ensure the workplace is safe.'
– Refer to Fines (as reproduced on page 3)

Part 4 Section 35 (1) nominates the **duty of employers** as: -

(a) identifying or assessing hazards or risks to health or safety at a workplace... (b) making decisions about the measures to be taken to control risks to health or safety at a workplace ... (c) making decisions about the adequacy of facilities for the welfare of employees;

Part 1 Section 5 states that **employee means**: - *'a person employed under a contract of employment'*

For the purposes of the above section: - Part 4 Section 35 (2) sub-section (1) states: -

'(a) a reference to an employee of an employer includes a reference to an independent contractor engaged by the employer and any employees of the independent contractor'

The selection of above definitions and extracts are designed to help clarify in the readers mind the obligations that affect Owners Corporations.

How does a Owners Corporation / Owners Corporation Manager discharge their obligations to provide a 'working environment that is safe and without risks to health'?

The OH&S Act says that the obligation is to, as far as is practicable, maintain a workplace that is safe and without risks to health.

The question is: **How do you take reasonable precautions and exercise proper diligence to ensure this happens?**

Owners Corporate can effectively meet their obligations by: -

- ❑ Identifying hazards on the common property; and
- ❑ Assessing risks that may result because of the hazards; and
- ❑ Deciding on control measures to prevent, or minimise the level of the risks; and
- ❑ Implementing control measures; and by
- ❑ Monitoring and reviewing the effectiveness of the measures.

And: **Who can you use to do this?**

It stands to reason that a properly qualified OH&S inspector working for a professional company should be engaged to conduct these inspections/audits. They should be scrutinised in the same way we recommend contractors be scrutinised in the information provided below on contractors.

Note that under Part 3 Section 23 (2) of the OH&S Act that

'An employer must so far as is reasonably practicable

(b) 'employ or engage persons who are suitably qualified in relation to occupational health and safety to provide advice to the employer concerning the health and safety of employees of the employer.'

Solutions *ie's* safety audit service has been specifically designed to directly assist in meeting your OH&S responsibilities and indirectly mitigate your common law duty of care.

What are the fines?

\$943,290 per offence for a company/owners corporate.

\$188,658 per offence for an individual.

With a **jail sentence of 5 years**

Won't insurance cover any fines?

No. Fines and penalties are in almost every case not covered by an insurance policy. A fine indicates you have not fulfilled your obligations under law and this is specifically excluded from all insurance coverage we know of. Some insurance policies cover damages awarded in a court of law and legal costs, they do not cover punitive damages awarded in court or fines and penalties. Some owners corporation public liability policies have an amount that can be claimed as a fighting fund against fines or penalties considered unwarranted or unfair, one major provider to the owners corporation industry has an amount of \$20,000 for a fighting fund. You would no doubt have first to prove to the insurance company that the fine was unwarranted to get access to the fighting fund.

Solutions *ie* approached a few of the larger insurance companies (on your behalf) to argue that those Owners Corporations that had had their common property areas OH&S audited had significantly reduced theirs and the insurance companies and therefore should qualify for lower premiums.

They responded by pointing out that their policy conditions included the requirement that Owners Corporation must comply with all relevant Australian laws, Acts, Standards and relevant legislation. They said that in fact a Owners Corporation that could be shown to have not complied with their OH&S legislative requirements would have a high probability of having any claims denied.

We understand that many of the new insurance company's application form now ask if a safety audit of the common property has been done, one can only assume that they take this into some account when assessing their risks. As you are probably aware most insurers have gone away from their previous policy of accepting all the buildings in a Owners Corporate management company's portfolio whether a good or bad risk in order to maintain all the Owners Corporate management company's business.

They now say they are refusing insurance on buildings that are in their opinion a high risk. In some cases they are auditing the buildings themselves for risks and insisting on a list of often very expensive modifications that are based on an extremely conservative approach to risk management. (We know because we do them for them.) The cost of this audit is obviously recovered by them in the premium charged.

Experience has shown there is simply no doubt that dealing with these risks yourself using a specialist company like Solutions *ie* will provide you with cheaper and more flexible options for your risk management. It's a bit like an industry driving self regulating rather than waiting for the government to impose regulation. Self-regulation will always be better for the industry (as the financial services industry found out recently).

Is complying with safety audit recommendations expensive?

Usually NO. In most cases recommendations will relate to things like: Signage (\$50), Cleaning of driveways (\$1-3 per m2), high-lighting of trip hazards (\$not much), installation of an RCD (Residual Current Device) on community power circuits (\$150-\$200), replacement of a light bulb (\$2-60 depending on who does it), replacement of non-compliant pool gate latches (\$60-\$160), obtaining MSDS for any chemicals/cleaners stored (a phone call and a fax). Most risk management is relatively cheap, the trick is to proactively identify and deal with it, as the consequences of non- action can be extreme, \$250,000 and 5 years jail.

What is the service we offer?

Our experienced properly qualified professional inspectors, who have the combined experience of 7,000 OH&S reports, will inspect your Common Property and provide you with an informative and easy to read report to ensure you have peace of mind and a low risk common property area.