

Time for a quick Risk Management Review

By Wal Dobrow, Director, BIV Reports

With nearly all States adopting the harmonised Work Health and Safety legislation (other than Victoria), and with Western Australia commencing on 31 March 2022, it is opportune to quickly review your basic Strata Risk Management.

I wrote a Risk Management 10 Commandments document for SCA Victoria a few years ago, my current National version is set out below.

1. Have an offer and acceptance wording on the bottom of your Work Order

To minimise Risk, I like the Offer and Acceptance approach to complete the contract, that when crafted correctly, sets out the detailed obligations of the contractor upon accepting the Work Order. Words to the effect of 'Upon accepting this Work Order the contractor warrants that they will comply with relevant legislation and in particular the Work Health and Safety legislation; maintain appropriate insurances, licensing, competency, accreditation, and be current in the type of work to be carried out.'

2. Make sure that each contractor undertakes

- to provide a Safe Work Method Statement
- maintain insurances - Worker Comp, Public Liability, Professional Indemnity, etc
- to be current and competent in the task
- to be licensed and accredited, where necessary
- to carry out Job Safety Assessments for the specific property and tasks

3. Review your Contractor agreements

Have each Contractor acknowledge the WHS legislation and their duties, obligations, and general responsibilities. Review for any changes to legislation, and to encompass the points raised in this article.

Consider adding that the contractor acknowledges that you have provided sufficient information for the contractor to complete their task (so you comply with s19(3)(f) of the WHS Act - relevant in most States).

(f) the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking

4. Review and inform your Owners of their responsibilities for Common Property and Civil Liability

Each State legislation has a (strict) duty for Strata or Community schemes to maintain and repair common property and keep the property safe for any person.

Under the Civil Liability Act in each State (Wrongs Act in Victoria), the principles are the same. Owners cannot avoid being sued in negligence by claiming that they did not know about an obvious issue, because one of the key principles in civil liability and negligence is what you knew or **ought to have known**. The other two key principles relate to the risk being significant, and what the reasonable person would have done in the circumstances.

5. Review your Strata Manager Agreements

- Owners have unlimited liability in their schemes, avoid wearing the cloak of responsibility for no reason
- Maintain the law and arrangement of the Principal and Agent
- Simplify the Indemnity clause
- Check compliance against current legislation

6. Have your owners obtain a Safety Report on their property

WHS Act s20 (2) The person with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace and anything arising from the workplace are without risks to the health and safety of any person. The Strata Manager is the person in the management (not control) of the workplace.

How would anyone know or prove that the workplace that they send a contractor to, or that their property is safe without obtaining a proper Safety Report, with a Risk Assessment (Identify, Analyse and Evaluate) for each identified item, and make practical recommendations.

7. Have your owners obtain an Asbestos Report (Register and Management Plan) on their property

When a contractor attends a property it becomes a 'workplace', regardless of the residential use exemption.

It is mandatory for each workplace to have an Asbestos Register and Management Plan.

WHS Regulation 425 Asbestos Register

(1) A person with management or control of a workplace must ensure that a register (an asbestos register) is prepared and kept at the workplace.

(4) The person is not required to prepare an asbestos register for a workplace if a register has already been prepared for that workplace.

8. Provide the Safety Report and Asbestos Report to each contractor carrying out work on site

To comply with both Civil Liability and WHS legislation, particularly s19(3)(f) in Point 3 above.

9. Understand your role as a PCBU to owners, contractors, staff and others

WHS Act s19(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.

10. Understand the Six Principles of Due Diligence

The WHS Act requires all 'officers' to implement due diligence, see s27(5).

- up-to-date knowledge of WHS matters
- understand the nature of the business
- provide resources and processes
- receive information regarding incidents
- implement processes for compliance
- verify the provision of resources and processes