



# ABMA BUILDING MANAGEMENT CODE

Frequently Asked Questions

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WHS Compliance for Building Owners &  
Managers



# **WHS COMPLIANCE**

For Building Owners & Managers

## **Frequently Asked Questions**



### **WHS COMPLIANCE FOR COMMUNITY TITLES SCHEMES**

#### **1. What WHS legislation applies to community titles schemes in Queensland?**

- 1.** The Work Health & Safety Act 2011 (Commonwealth)
- 2.** The Work Health & Safety Regulation 2011 (Commonwealth)
- 3.** The WHS Codes of Practice, including (but not limited to): -
  - 1.1.3.1** How to Manage WHS Risks
  - 1.1.3.2** Managing the Work Environment & Facilities
  - 1.1.3.3** WHS Consultation, Co-operation & Co-ordination
  - 1.1.3.4** Managing Noise & Preventing Hearing Loss
  - 1.1.3.5** Hazardous Manual Tasks
  - 1.1.3.6** Confined Spaces
  - 1.1.3.7** Managing the Risk of Falls in the Workplace
  - 1.1.3.8** Safety Data Sheets for Hazardous Materials
  - 1.1.3.9** Labelling of Workplace Hazardous Materials
  - 1.1.3.10** How to Safely Manage Asbestos
  - 1.1.3.11** First Aid in the Workplace
  - 1.1.3.12** Managing Electrical Risks in the Workplace
  - 1.1.3.13** Managing Hazardous Chemicals in the Workplace
  - 1.1.3.14** Excavation Work
  - 1.1.3.15** Demolition Work

#### **2. What does the WHS legislation prescribe as duties and responsibilities?**

- 2.1** The WHS legislation requires the Body Corporate to provide and maintain a work environment that does not impose any risk to health and safety.
- 2.2** The Body Corporate is required to prove vigilance under the WHS legislation in the form of a safe physical environment (i.e. records of maintenance of the common property) as well as a documented management system (i.e. WHS Management Plan).
- 2.3** Development of a WHS Management Plan must include documented evidence of the following strategies: -
  - 1.** Developing, implementing and reviewing safe systems of work for the common property workplace
  - 2.** Monitoring the health of the workers working on the common property, including insuring workers are competent, insured and capable of doing their work safely
  - 3.** Maintaining the infrastructure in good working condition on the common property and keeping records of maintenance to the statutory standard
  - 4.** Collaborating and consulting with workers on the common property around health and safety matters and repairing hazards as they are identified by the workers

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5. Providing coordination, supervision, training and instruction of workers to enable them to work safely on the common property and keeping records of this instruction.

**S19(3)(c); Section 19 of the WHS Act 2011** refers to "*Safe systems of work*" [Body Corporate] must ensure that a documented "safe system of work" is in place with respect to works occurring on the common property. A documented "*safe system of work*" is also called a WHS Compliance Management Plan. All workers on the common property and the Committee should be inducted into the WHS Plan at least once annually

### 3. Are all community titles schemes liable under the WHS legislation?

3.1 The WHS legislation describes a liable person as a "*person conducting a business or undertaking*" ("**PCBU**"). Examples of PCBU's include: -

1. Bodies Corporate who engage workers to do work on the common property
2. Caretakers, building managers, Facilities Managers, handymen
3. Service Contractors
4. Strata Managers

3.2 A Body Corporate in Queensland would be considered a PCBU in any of the following circumstances: -

1. Engages workers to work on common property
2. Has a Caretaker, Facilities Manager or handyman that works on the common property
3. Has high risk plant installed (e.g. a lift, a fire protection system)
4. Has higher risk infrastructure that may pose a risk to the health and safety of Occupants and/or Visitors to the common property if not properly maintained (e.g. swimming pool, spa)

**S33; Section 33 of the WHS Act 2011** refers to "*WHS duty*" [Body Corporate] and all PCBU's (including the Caretaker or Facilities Manager) have duties under the WHS Act, which are generally to manage the workers on the common property in such a way as to keep them safe from harm; and, to ensure their own work activities performed on the common property are done safely.

### 4. Our community titles scheme is 100% residential, so shouldn't we be exempt from WHS compliance?

4.1 Any Body Corporate is deemed to be a PCBU (as per Item 2 above) unless that Body Corporate has a formal, site-specific written advice from a lawyer to the contrary.

### 5. Do WHS compliance requirements extend to work occurring inside the apartments?

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- 5.1 Where the Body Corporate is concerned, WHS legislation only relates to work occurring on the common property.
- 5.2 Work happening inside private apartments, at the request and appointment of the Occupant, is not a Body Corporate matter, however work being done by the Letting Agent inside a private apartment within the Letting Pool is a different issue. The Letting Agent is a PCBU and the unit within the Letting Pool becomes its "workplace", so WHS obligations apply.
- 5.3 WHS requirements only impact on the Body Corporate in circumstances where work occurring inside private apartments spills out onto common property (e.g. builders site bin stored on common property), or the work requires access to common property infrastructure (e.g. turning power off at the electricity meter board or turning water off at the mains to do work inside the apartment).
- 5.4 The Body Corporate could not reasonably be expected to know when works are occurring within private lot interiors and additionally, do not have ultimate control over what occurs inside private lot interiors.

#### **6. If someone hurts themselves on common property is this a WHS issue?**

- 6.1 WHS relates to workers in a workplace.
- 6.2 If a worker has an incident in their workplace then this is a WHS issue. For example, the Body Corporate has engaged a contractor to repair the swimming pool and that contractor cuts his hand working on the pool repair project. This is a workplace incident.
- 6.3 If a non-worker has an incident in a workplace, this is also a WHS issue. For example, the swimming pool is not adequately enclosed/barricaded by the contractor and an Occupant has been able to access the swimming pool area, then has an accident inside the contractor's workplace. This is a workplace incident.
- 6.4 If a non-worker has an incident on the common property, this is not a WHS issue. For example, the swimming pool repairs are complete and the swimming pool is fully functional and open for shared use, however an Occupant slips/falls during the normal course of enjoying the pool facility. This would be a Public Liability incident; not a WHS incident.

#### **7. What is required by community titles schemes under the WHS legislation?**

- 7.1 The intention of the WHS legislation is to ensure that the entity in control of the workplace is taking action to ensure the workplace is safe. The entity deemed to be in control of the common property is the Body Corporate and its appointed Committee.
- 7.2 The WHS legislation also seeks to ensure that workers are responsible for risk assessing their own workplace and ensuring that their own work practices are safe. Documented risk assessments and safe work method statements must be supplied

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- by the worker to the Body Corporate prior to commencing the work on the common property.
- 7.3 The WHS legislation requires that, in addition to safe site/work practices, the worker must have a documented WHS Management Plan. The worker must supply its WHS Plan to the Body Corporate prior to commencing work on the common property.
- 7.4 The worker must only do work for which he/she is deemed competent to undertake and hold the relevant qualification and mandatory insurance. The Body Corporate must request copies of Certificates of Currency and licence prior to work commencing on the common property.
- 7.5 Workers must all be appropriately indemnified by the entity in control of the workplace, prior to commencing work. The Body Corporate must provide a work order instruction confirming the worker is authorised to work on the common property.
- 7.6 The "workplace" in a community titles scheme is the common property.
- 7.7 A "worker" is any entity or individual undertaking work on the common property, including service contractors, employees, volunteers and consultants.
- 7.8 In a community titles scheme, the entity ultimately in control of the workplace is the Body Corporate via its elected Committee. Duties may be delegated to other PCBU's (e.g. building manager or strata manager) however liability cannot be transferred.
- 7.9 The Body Corporate must ensure that all infrastructure within the common property is maintained to the relevant Australian Standards requirements and functions as it was intended when built. Records of maintenance must be retained for six (6) years to provide an audit trail of diligence.
- 7.10 Notifiable incidents must be reported to the WHS Department.
- 7.11 Workers must be inducted into the site by the Body Corporate at least annually and records of site induction retained on file.
- 7.12 Workers must undertake a risk assessment of the workplace prior to commencing works on the common property. Any hazards identified in the workers risk assessment must be remedied by the Body Corporate prior to commencing works and within 28 days.
- 7.13 Any hazardous materials stored on the common property must be properly handled, labelled, stored and registered by the Body Corporate. Hazardous Materials Registers must be readily available to the emergency service providers in the event of an emergency.
- 7.14 Any restricted access areas on the common property must be properly managed by the Body Corporate.

**Part 6.5; Division 1; s316; Section 316 of the WHS Regulation 2011** refers to "*General construction induction training*"

[Body Corporate] must ensure trade contractors are inducted into the work place [common property] and that records of this induction are retained and available upon request. The WHS legislative requirement is to induct all workers into the workplace at least every 2 years. Industry recommendation for Body Corporate worker inductions to be carried out annually.

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#### 8. Is a WHS Plan mandatory for a community titles scheme?

- 8.1 All PBCU's must have a documented system outlining the safety management plan for the workplace.
- 8.2 The Body Corporate must have a documented safety management plan for the common property of the scheme.
- 8.3 The building manager, caretaker, facilities manager and/or handyman must all be inducted into the Body Corporate WHS Plan prior to working on the common property.
- 8.4 All workers working on the common property must have their own WHS Plan and be inducted into the Body Corporate WHS Plan.
- 8.5 The Body Corporate must nominate an individual/entity to be accountable for ensuring all workers are inducted into the Body Corporate WHS Plan.
- 8.6 The WHS Plan must be reviewed annually to remain compliant.

**s78; Section 78 of the WHS Act 2011** refers to "*WHS committee meetings*" [Body Corporate] must ensure that the Committee are managing safety issues on the common property and are having meetings at least quarterly to discuss WHS matters. A "*safety committee meeting*" is generally referred to as a "*Tool Box Talk*" in the construction and manufacturing industry. In the community titles sector the easiest solution is to add a new Agenda item to each Committee Meeting: - WHS Matters. The Body Corporate and its building management team need to provide an audit trail of discussing safety matters on at least a quarterly basis.

#### 9. What must be in the WHS Plan for a community titles scheme?

- 9.1 A WHS Policy – A "statement" outlining the PCBU's duty, liability and commitment to management of WHS requirements.
- 9.2 Legal identification of the Body Corporate, including the nominated representative accountable to discharging and implementing the WHS Plan.
- 9.3 Contact details for the Body Corporate for issuance of Notices from the WHS Department.
- 9.4 Site access rules and a documented process for ensuring all workers understand the rules.
- 9.5 Site induction procedure and a documented process for ensuring all workers are site inducted (at least annually) prior to working on the common property. Site induction to include evacuation procedures, assembly point, controlled substance and restricted access issues, etc.
- 9.6 Sign-in register and a documented process for being able to locate workers at any time (should an emergency arise) while they are working on the common property.
- 9.7 Restricted access protocol and a documented process for ensuring access to controlled spaces is limited to authorised parties only.
- 9.8 A documented process of engaging workers that will ensure compliance with the Body Corporate WHS Plan, site access rules and reporting requirements.

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- 9.9A documented process of ensuring workers are licensed/insured prior to engagement.
- 9.10 A documented process of harvesting workers WHS Plan prior to engagement and ensuring it is current and complete.
- 9.11 A documented process of harvesting the pre-start risk assessment from the worker prior to commencing the work on the common property and managing any hazards identified in the workplace by the worker.
- 9.12 A documented process of reporting notifiable incidents occurring in the workplace.
- 9.13 A documented process of harvesting the exit survey from the worker at the conclusion of the works to confirm no incidents occurred during the works.
- 9.14 A documented process for the registering and safe storage of hazardous materials on the common property.

**Division 5; Subdivision 1; s352;** Section 352 refers to “*Control of risk obligations of persons conducting businesses or undertakings and general obligations relating to management of risk*”

Records of reviewing workplace management and risk control plan (e.g. WHS Plan) are required to be supplied upon request.

#### 10. Does the Body Corporate need to do a safety audit of the common property?

- 10.1 The WHS legislation requires the worker to undertake a risk assessment (“safety audit”) of his/her own workplace. For example, the pool repair contractor must undertake a risk assessment of the pool area that he/she will be working on prior to commencement and immediately report any identified hazards within the work area to the Body Corporate for management.
- 10.2 It is not mandatory for a Body Corporate to do a safety audit of the common property under the WHS legislation, however the Body Corporate insurer may recommend a safety audit is done for insurance reasons.
- 10.3 Hazards identified in a workers risk assessment or other third party safety audit become “known liabilities” and must be remedied within 28 days.

**Part 1.2 s12 of the WHS Regulation 2011** states that *assessment of risks to health and safety associated with workplace hazards may only be conducted by the worker who is deemed competent to assess hazards in his/her class of work.*

#### 11. Who reports WHS incidents?

- 11.1 A WHS incident must be reported within 24 hours.
- 11.2 The worker and/or works supervisor must report the incident to the Body Corporate Nominated Representative.
- 11.3 The Nominated Representative must report the incident to the Committee.

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- 11.4 The Committee must manage the incident and any hazards, risks, claims, property damage, illness, injury, loss, etc. arising out of the incident urgently.
- 11.5 Notifiable incidents include (but are not limited to):-
1. Incident resulting in illness or injury;
  2. Psychological (or stress related) illness or injury;
  3. Incident resulting in death;
  4. Electrical shock incident;
  5. Breaches of WHS legislation;
  6. Near miss incidents.
- 11.6 Notifiable incidents occurring in the workplace must be reported to the Body Corporate within 24 hours of finding out about the event.
- 11.7 The Body Corporate must report the following incidents to the WHS Department immediately: -
1. Incident resulting in illness or injury;
  2. Incident resulting in death;
  3. Electrical shock incident; and
  4. Any works or undertakings that breach WHS requirements.
- 11.8 Incident reports must be retained on file for six (6) years.

**Division 5; Subdivision 1; s352; Section 352** refers to "*Control of risk obligations of persons conducting businesses or undertakings and general obligations relating to management of risk*"

Under s352 : -

The Body Corporate is required to regularly review the control measures stated in s38, in circumstances where an incident occurs or safe work practises are amended such as:-

1. Any change to the safety data sheets
2. Any workplace incident that occurs on the common property (WHS Plan has to be formally reviewed to ensure that "type" of incident does not occur again)

A record of regularly reviewing the incident reporting measures and safe work management controls is required to be kept on file and available upon request.

## 12. How does the Body Corporate control hazards?

- 12.1 Controlling hazards is a systematic approach to eliminating or reducing the risk to the health and safety of the worker. The Body Corporate, via its WHS Management Plan, must include a documented system for managing workplace hazards, including: -
1. Hazard identification by the worker (via pre-start risk assessment)
  2. Collaboration between the worker and the Body Corporate regarding workplace hazards and their management
  3. Communication of identified hazards to all stakeholders, including warnings issued, exclusion zone, barricading, isolation, etc. if necessary

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4. Body Corporate Committee planning and action around elimination or reduction of the hazard in a timely fashion
5. Reporting and documentation by the Body Corporate to ensure full audit trail of vigilance around the hazardous situation
6. Body Corporate to monitor and review the effect of the hazard management action plan, including: -
  - 12.1.6.1 Was the hazard eliminated?
  - 12.1.6.2 Is the workplace risk reduced to an acceptable level?
  - 12.1.6.3 Is there anything further we can do to improve the workplace?
  - 12.1.6.4 Are all PCBU's and stakeholders aware of the change/situation?
  - 12.1.6.5 What can we do to ensure our workers are not exposed to this risk in the future?
  - 12.1.6.6 Do we now need to review our Body Corporate WHS Management Plan?

#### 13. Why do we need to "review" our WHS Plan?

- 13.1 The Body Corporate WHS Plan must be reviewed [at least] annually to ensure compliance. The review involves reflection on the adequacy and relevance of the WHS Plan throughout the past year. The Body Corporate needs to ask questions, such as: - Did the WHS Plan preserve the health and safety of the workplace adequately? Can we improve anything? Are our records of compliance up-to-date? Did any legislation change throughout the year that we need to know about? The Body Corporate is required to refresh policies and procedures wherever they are no longer relevant or effective.
- 13.2 If a Notifiable Incident occurs during the year, this is evidence that the Body Corporate WHS Plan may not be 100% effective. Another review is therefore required to update the WHS Plan to ensure it is adequate following the incident.
- 13.3 If there is any "change to the workplace" a review of the WHS Plan is required. In a community titles scheme, a change to the workplace could include: -
  1. Alterations to common property
  2. Change of Committee
  3. Change of Nominated Representative of the Committee
  4. Change of building manager
  5. Adverse event occurring on the common property (e.g. flood, storm, machinery breakdown, security breach)

Public Liability insurance and Work Cover is mandatory for workers in Queensland and the Body Corporate must be able to prove that all "workers" are fully insured before working on the common property. As insurances are renewed annually, this is the first reason why the Body Corporate must have an annual review of their WHS Plan. A current Certificate of Currency on all workers Public Liability and Work Cover insurance must be kept on file by the Body Corporate and available upon request.

#### 14. What is a "psychological injury"?

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14.1. The WHS legislation defines “health” as either physical well-being or psychological well-being. A psychological injury in the workplace is an illness or other adverse health condition arising out of workplace stress.

14.2 The psychological well-being of a worker can be adversely affected by workplace factors such as prolonged work pressures, a traumatic event, unmanaged fatigue, a poorly maintained or designed workplace, inadequate tools to do the work and of course, bullying, racism and harassment.

14.3 Adverse effects of psychological injury arising from a stressful workplace can present in emotional outbursts, absenteeism, reduced productivity or performance, high turnover of staff, sick leave, depression and suicidal tendencies.

#### 15. Who has duties to prevent a “psychological injury” from happening in the workplace?

15.1. In a community titles scheme the Body Corporate is the PCBU and is therefore responsible for managing all hazards in the workplace – including psychological hazards. The most common incidences of psychological injury occurring on the common property include: -

**15.1.1** Lot Owner/s injured by other Lot Owner/s

**15.1.2** Lot Owner/s injured by a service contractor (e.g. Caretaker under a Caretaking Agreement)

**15.1.3** A service contractor (e.g. Caretaker under a Caretaking Agreement) injured by Lot Owner/s

15.2 Examples of psychological injuries arising in the workplace are well documented, however studies have shown the following circumstances tend to more frequently give rise to stress related illness: -

**15.2.1** Excessive workload and/or time pressure

**15.2.2** Uncomfortable (dirty, hot/cold/wet) workplace

**15.2.3** Inadequate “tools” or equipment to do the work

**15.2.4** Low job control, where the worker is unable to refuse aggressive clients, is overtly micro-managed and/or excluded from making decisions that impact on his/her work

**15.2.5** Confusion and lack of clarity around duties and/or delivery standards

**15.2.6** Lack of support or poor relationships with managers, supervisors and clients

**15.2.7** Lack of workplace justice, where bias consistently and adversely impacts on the worker for no clear reason

The PCBU must eliminate the risk of psychological hazard in the workplace via a system of controls. The most effective means of controlling a workplace hazard is always via workplace systems, as opposed to tackling individuals. Workplace systems survive individuals and ensure a common standard across the organisation. In contrast, experts agree that control measures designed to deal with individuals are less likely to take effect.

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#### 16. What happens if an accident occurs on the common property?

16.1. If a workplace incident occurs on the common property resulting in injury, death or significant property damage, it is likely that an investigation will follow.

16.2. If a complaint is lodged with the WHS Department or Safe Work Australia (or other authority) relating to breaches of WHS legislation occurring in the workplace (i.e. on common property) it is also likely that an investigation will follow, even in circumstances where the complaint is frivolous or mischievous.

#### 17. What happens during a WHS incident (or alleged WHS breach complaint) investigation?

17.1. During an investigation into an alleged WHS breach or a workplace incident, the investigators will look into two areas: -

**1. Documentation** – Records and audit trail

**2. Workplace** – The work site, including infrastructure, plant, tools, equipment, etc. on the common property

17.2. The investigation will review all parties that contributed to the incident or alleged breach, including: -

**1.** The building owner (i.e. Body Corporate or Owners Corporation)

**2.** The entity and/or individual nominated to control the documentation on behalf of the building owner (e.g. the strata manager, the Committee, the building manager)

**3.** The entity and/or individual nominated to control the common property site and/or workplace (e.g. the Committee, the building manager, the project manager)

17.3. The investigation will seek to apportion blame across the stakeholders to the incident. There is always a combination of stakeholders in an incident that occurs on the common property of a community titles scheme and the legislation would see that all stakeholders have a responsibility to ensure the workplace is safe. It is not generally one individual stakeholders "fault", however, if all documentation and physical workplace factors are compliant, the investigation may rule a "Nil Fault" incident whereby no party is apportioned blame.

17.4. If documentation is not in order the stakeholders may be issued with an "**Improvement Notice**" and required to remedy via the development and implementation of a site-specific and compliant WHS Management Plan within 28 days.

17.5. If the workplace is deemed unsafe, the stakeholders may be issued with a "**Stop Work Notice**" and required to evacuate the site and remedy the safety hazard/s before work can restart.

17.6. In circumstances where the common property is deemed unsafe during the investigation, the Occupants may be ordered to evacuate the building and not be able to return until such time as safety upgrades have been completed to the satisfaction of the authorities and a "**Clearance**" or "**Permit to Occupy**" is issued.

#### 18. Can a Body Corporate or building manager be penalised if there is a WHS incident?

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18.1. Any PCBU found responsible (or partially responsible) for a workplace incident can be liable under the WHS legislation.

18.2 PCBU's found liable risk fines of up to \$600,000 per individual and custodial sentences of up to 5 years in jail. Individuals include (but are not limited to): -

1. Committee members
2. Employees of the strata management business
3. Employees of the building management or facilities management business
4. Employees of the service contracting business
5. Employees of the agents of the Landlord

18.3 The PCBU entity found liable risk fines of up to \$3,600,000 per entity. Entities include (but are not limited to): -

1. The Body Corporate or Owners Corporation
2. The strata management business
3. The building management or facilities management business
4. The letting business
5. The Landlord and/or its agency business

### **19. Examples of WHS incident investigations in our industry include: -**

#### **19.1 Small electrical fire inside a Unit causes building to be evacuated for 12 months: -**

A small electrical fire occurred in the switchboard of a Unit causing fire to burn up the riser to many floors above. The riser compartment forms part of the common property so it became a Body Corporate issue. Fire damage was limited to the electrical wiring and riser compartment, however smoke damage did occur in many of the other Units as well as the common property.

The investigation revealed that the Body Corporate had no WHS Plan, inadequate records of maintenance for the common property electrical and/or fire protection system, no evacuation plan, no Thermoscan records of the switchboards and no Asbestos Register. Asbestos was discovered in the switchboard and particles had dispersed throughout the building carried by the smoke from the fire.

The Units were deemed unsafe for occupancy and the building was ordered to be evacuated until forensically cleaned of all Asbestos particles.

#### **19.2 Disgruntled competitor "dobbs" building works contractor into WHS Department: -**

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A disgruntled competitor lost the tender for a lucrative façade refurbishment project in the city and later on (when the works were underway) lodged a complaint with the WHS Department relating to unsafe height work practices.

The ensuing investigation revealed that neither the Body Corporate nor the building manager had a WHS Management Plan and an “Improvement Notice” was issued upon the Body Corporate.

A “Stop Work Notice” was issued upon the building works contractor – not for unsafe height work practices, but for non-compliant documentation (WHS Plan).

#### **19.3 Disgruntled Lot Owner “dobbs” onsite building manager into WHS Department: -**

A disgruntled Lot Owner (not a Committee Member) lodged a complaint with the WHS Department for unsafe work practices relating to the onsite caretaker working from a ladder at height. The WHS *Code of Practice for Managing the Risk of Falls in the Workplace* deems any work from a ladder to be high risk and the WHS investigation revealed that the building manager did not have a WHS Plan with conforming *Safe Work Method Statements* for high risk work.

The Body Corporate and building manager were issued with an “Improvement Notice” and required to satisfy the documentation and safe work practices requirements of the legislation and Codes of Practice within 28 days.

The WHS Plan is required to include (among other things) Safe Work Method Statements, records of training and induction, Certificates of Currency for mandatory insurances and competency certificates or occupational license for specialist works. The building manager can only undertake works on the common property that he is competent to do, has insurance cover for and has a documented WHS Plan for.

#### **19.4 Building manager succeeds in seeking orders around bullying and harassment from Committee: -**

A resident unit manager initiated proceedings to seek orders under the WHS legislation (relating to psychological injury) to require the Committee to cease bullying and harassment behaviour in the workplace. The resident unit manager was successful and the adjudicator ordered that the Committee cease and desist.

The common property workplace must be maintained free from hazards that have the potential to adversely impact on the health and safety of workers – including mental health.

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#### **19.5 Death on common property joins Committee, Caretaker and Strata Manager into a claim: -**

A Chairperson for a Committee instructed the Caretaker to engage a building contractor to undertake common property improvement works, despite being warned by the strata manager that the building contractor was unlicensed and uninsured.

The building contractor started the works as instructed by the Caretaker and failed to secure the workplace after hours. An Occupant, returning from an outing, stumbled into the workplace after dark, had a fall and died as a result.

The strata manager was able to provide sufficient audit trail to prove WHS vigilance under its Body Corporate Management Agreement, however the Body Corporate, its elected Committee Chairperson, the appointed Caretaker and building works contractor were not as fortunate.

#### **19.6 Property damage in a workplace incident on the common property: -**

A taxi was dropping Guests to a resort hotel when it crashed into the barricades installed around the boom lift plant being operated by the painting contractor. The taxi was damaged in the incident and the taxi company lodged a complaint with the WHS Department against the Body Corporate and the painting contractor.

A WHS investigation followed and the following stakeholders were audited: -

1. The Body Corporate and its Committee
2. The building manager
3. The letting agent
4. The painting contractor
5. The painting project manager
6. The taxi driver
7. The taxi company

The Body Corporate had a "WHS Compliance Management Plan" in place, having been developed and implemented by a specialist contractor. The Committee and the building manager had both been inducted into the WHS Plan. The investigation deemed that the WHS Plan was satisfactory so no "Improvement Notice" was issued with respect to the Body Corporate WHS documentation.

The Body Corporate had engaged a specialist project manager to manage the painting workplace and the project manager was also inducted into the Body Corporate WHS Plan. The project manager and the painting service contractor both had their own compliant WHS

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Plans, so the investigation deemed that the service contractors WHS documentation was satisfactory and therefore no "Improvement Notice" was issued.

The audit of the common property in general included a review of Body Corporate maintenance records for the infrastructure within the scheme land. The Committee and building manager were able to produce a full six (6) years history of maintenance of the common property to the legislative standards, so the Body Corporate records were 100% compliant and no "Improvement Notice" was issued.

The audit of the painter's workplace reviewed the height safety, barricades, signage, hazardous materials management, PPE, safe work practices, plant operation, Log Books, licensing, training records, tool box sessions, reporting and record keeping. The exclusion zone, spotters and other hazard management strategies employed to protect the workplace were heavily scrutinised as this was where the taxi incident occurred. After reviewing photos, mobilisation plans, witness statements and all Incident Reports (lodged by all stakeholders) it was determined that the taxi driver ignored barricades, stop signs, two spotters yelling at him to "Stop!" and the accident naturally followed. Everything was deemed to be in order with the painters and no "Improvement Notice" was issued.

However, when asked to supply its WHS documentation, neither the taxi company nor the driver were unable to provide a WHS Plan and were subsequently deemed non-compliant. The taxi was considered to be a "workplace" and the taxi driver to be a PCBU. Nil blame was therefore apportioned to the Body Corporate, the building manager, the project manager and/or the painting contractor. An "Improvement Notice" was issued upon the taxi driver and Taxi Company.

#### **20. Body Corporate WHS Plan checklist – What do we need?**

20.1. The Body Corporate can start by reading Chapter 17 of the ABMA Building Management Code© for more information on WHS implementation guidelines for Bodies Corporate and their building management teams.

20.2 If in any doubt, engage the services of a WHS specialist consultant to assist in developing and implementing a site-specific WHS Compliance Management Plan. The ABMA has a Register of Accredited Industry Practitioners ("Performance & Compliance Assessors") who are trained to provide reliable assistance.

20.3 Questions and comments about this fact sheet may be lodged with the ABMA via [www.abma.com.au](http://www.abma.com.au) on the "**Public Comment Form**" or the "**My Question Form**".

# WHS COMPLIANCE

## For Building Owners & Managers

### Frequently Asked Questions



20.4 **General WHS Checklist:** - As a minimum, can you say “Yes” to the following: -

ITEM	DETAIL	YES/NO
1	Do we have a Nominated Representative on our Committee who is accountable to the WHS Plan in our scheme?	
2	Are we properly insured?	
3	Are we signing in & registering all workers to the common property?	
4	Is all our common property plant, equipment & infrastructure maintained to the required standard & functioning as intended?	
5	Are our records of maintenance in order?	
6	Are our Certificates of Compliance in order?	
7	Has our WHS Compliance Management Plan, Evac Plan, etc. been reviewed in the past 12 months?	
8	Is our Committee Nominated Representative and all service contractors inducted into our WHS Compliance Management Plan?	
9	Do we have current records of service contractor’s license, insurance & WHS Plan on file?	
10	Are we engaging a Project Manager for our capital works projects to ensure the site safety aspects are properly managed?	
11	Are our service contractors undertaking a pre-start risk assessment & reporting workplace hazards to us?	
12	Are we remedying reported hazards (including fire system defects) within 28 days (or 7 days if critical defects)?	
13	Are our service contractors reporting workplace incidents?	
14	Are we reporting Notifiable workplace incidents?	
15	Are all hazardous materials on the common property registered?	
16	Are we managing our Principal Contractor obligations?	
17	Are we up-to-date with the latest legislation?	
18	Are we having a Committee discussion about WHS matters on the common property at least quarterly and are we ensuring this discussion is Minuted in the Committee Meeting Minutes?	