

Safety Reports In Strata Schemes And Occupiers Liability

Regrettably, it is common for people to sustain injuries while on the common property of strata buildings and those injuries frequently lead to personal injury claims.

Insurers of strata owners corporations faced with such claims need to consider whether to accept liability. This is an area where the law does not apply strict liability, but rather liability to exercise reasonable care. Accordingly, this requires consideration of the level of care exercised by the owners corporation and its strata managing agent.

Some key considerations:

- Was the injury the result of a hazard pertaining to the common property, e.g. a slip and fall risk or the result of an event, e.g. another person dropping something from a balcony?
- If an event, what responsibility can reasonably be attributed to the owners corporation for the event? Did the event involve action by a person for whom the owners corporation is legally liable, e.g. an employee? If not, was it the case that the owners corporation could not prevent the action or took reasonable steps to try to prevent it?
- If a hazard, had the owners corporation been made aware of the hazard, e.g. by it having been raised at a meeting or in correspondence? If not, was it the case that the owners corporation was not aware of the hazard and could not reasonably be expected to be aware of it?
- If a hazard of which the owners corporation could reasonably be expected to be aware, did the owners corporation take steps to identify and address the issue, e.g. commissioning and considering a report from an appropriate consultant? If it did, was it the case that the owners corporation was taking reasonable steps to address the issue?

It has become increasingly more common for owners corporations to obtain safety reports, particularly following the introduction of the work health and safety legislation in 2012, which led to increasingly more strident advice from lawyers and strata managers about the need for such reports. Various reports are commonly obtained, including general safety audits and specific reports, e.g. in relation to workplace safety, fire safety, asbestos or plant and equipment and an owners corporation could have obtained one or more of these.

- If a hazard relating to circumstances about which the owners corporation commissioned a report, which did not properly identify the issue or the appropriate solution, was that properly attributable to the owners corporation? Was it instead attributable to the consultant who provided the report, either by failing to provide the report commissioned or due to deficiencies in the report?

In our experience, a successful defence to a claim is most likely where it can be demonstrated that:

- The claim related to a hazard of which the owners corporation was not aware and could not reasonably be expected to be aware; or
- The owners corporation and/or its strata managing agent took reasonable care to identify and address the hazard; or
- Liability was properly attributable to another party, e.g. an expert consultant who provided a deficient report; or
- There was a failure to disclose the risk to the public liability insurer.

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15 April 2015