

Is Your Strata Scheme Exempt From Complying With WH&S?

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The answer is “Yes” if it fits within the narrow exemption under clause 7 of the Work Health & Safety Regulation 2017 set out below.

- (1) For the purposes of section 5(6) of the Act, a strata title body corporate that is responsible for any common areas used only for residential purposes may be taken not to be a person conducting a business or undertaking in relation to those premises.
- (2) Subclause (1) does not apply if the strata title body corporate engages any worker as an employee.
- (3) For the purposes of section 5(6) of the Act, an incorporated association may be taken not to be a person conducting a business or undertaking if the incorporated association consists of a group of volunteers working together for 1 or more community purposes where—
 - (a) the incorporated association, either alone or jointly with any other similar incorporated association, does not employ any person to carry out work for the incorporated association, and
 - (b) none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the incorporated association.
- (4) In this clause, strata title body corporate means an owners corporation constituted under the [Strata Schemes Management Act 2015](#).

However, many strata schemes and group title arrangements do not fall within this narrow exemption and therefore need to comply with WH&S obligations, for instance:

1. Strata schemes where common property is partly or wholly used for non-residential purposes, such as:
 - a) common property loading dock used for commercial purposes;
 - b) common property area used for visitor parking of the commercial vehicles;
 - c) short term letting;
 - d) common property concierge desk; and
 - e) where there is a lease or licence of common property for non-residential purposes e.g. crane, scaffolding, rock anchor, telecommunications facilities.

2. Strata schemes which employ a facilities manager and is liable to pay PAYG and superannuation.
3. Community schemes or company title buildings which employ facilities managers or strata managers to fulfill their duties.
4. Work from home trend impacts, create a significant expansion of point 1 above as Safe NSW specifies the home is also a workplace if work for home occurs and this could lead to the common areas being used for non-residential purposes.
5. Other commercial type usage of common property anomalies.

Please note that an exempt strata scheme could become a principal contractor with WH&S obligations when high risk construction contract over \$250,000 is entered into:

[Work Health and Safety Regulation 2017](#)

Therefore, those group title arrangements who are not exempt, will need to comply with WH&S obligations.

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Prepared by Bannermans Lawyers

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