Work Health and Safety Implementation Guide

Implementing a Work Health and Safety (WHS) policy is crucial for strata schemes and community associations in NSW to manage risks and ensure safety for all residents.

A PRACTICAL GUIDE FOR STRATA SCHEMES AND COMMUNITY ASSOCIATIONS

A. INTRODUCTION

Getting a WHS policy in place can seem an intimidating project, but it really doesn't have to be that way. The content of this guide is to show you how your scheme or association can adopt a policy and maintain it over time with a minimum of inconvenience. In fact, you may discover that the procedures and disciplines it produces spares you a lot of the inconvenience which you would otherwise have had over time.

As a starting point, it would be wise to consider some threshold issues, because they give shape to what you are trying to achieve and also outline the case which may need to be made to those within the scheme or association not sold on the need for a WHS policy:

- Schemes and associations have different circumstances and consequently have different types and levels of risk. However, they all have risk. It is just a question of degree. It is common for schemes and associations to be complacent about risk. There are many reasons for this. One is a perception that accidents are things that happen to other people, e.g. we haven't had that problem (yet). Another is a perception that someone else will take the necessary action, e.g. a government authority or strata manager. Another is a perception that residential strata schemes are not subject to WHS laws. All of these are misconceptions. They are highly unreliable at best and in most cases flat-out wrong. Even if they were correct, circumstances can change quickly, resulting in unexpected liability for which no precautions have been taken. Further, WHS liability is just one of a set of related risks, all of which can potentially be mitigated by adoption of a WHS policy.

- A scheme or association which has not addressed WHS issues will not avoid having to deal with them. Instead, they will have to deal with them in the far worse context of a death or injury having occurred and proper care being difficult to demonstrate. In those circumstances, the scheme or association and its office bearers are likely to be on the wrong end of a negligence action, a WHS prosecution and possibly other criminal prosecutions, in relation to which they may be uninsured. In the case of WHS prosecutions, insurance is limited to defence costs (and often woefully inadequate even for that) and prohibited for the actual penalty, which can be massive. In any event, who wants to live or work in a scheme which is not safe, particularly given that the persons likely to be killed or injured won't be anonymous strangers; they could be neighbours, workmates, friends or family. The takeaway points here is that adopting a WHS policy and the procedures and disciplines which will flow from doing so will go a long way to addressing these risks and reducing the likelihood that a scheme or association will need to deal with such situations. It would aid in trying to achieve a safe working and living environment, while at the same time reducing the likelihood of potential future liabilities funded by owners through levy contributions, possibly even

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substantial special levies.

- A common misconception about a WHS policy is that it is a set of obscure instructions which will be forgotten or ignored, i.e. getting in the way of common sense. However, done correctly, a WHS policy can be the exact opposite. It can be a means of harnessing the common sense of those involved in the scheme or association. Specifically, we see a good WHS policy as having the following features:

    - A set of known procedures, by which those involved in the scheme or association can address potential and actual hazards and incidents. Someone who observes a hazard or incident will know to whom it should be reported for response in the event of a hazard or the identity of trained first aiders and location of first aid equipment in the event of an injury.

    - A record of experienced hazards and incidents, which will enable the committee and WHS manager to monitor risk and address it with appropriate action such as remedial works, training and insurance.

    - A set of written guidelines, commonly called safe work statements, specifying safe ways of going about activities relevant to the scheme or association. A template WHS policy will typically contain a set of generic safe work statements aimed at common situations. Over time, a scheme or association can adapt these or create new statements to reflect its own experience. Although this is an important and useful part of the policy, it is less important than establishing a mechanism for reporting and actioning hazards and incidents and is something which can be addressed over time. Accordingly, a scheme or association need not be intimidated by a perceived need to foresee and develop a protocol for every conceivable risk and instead apply a policy of continuous improvement based on experience.

    - Development of a safety oriented culture within the scheme or association, which will likely be an inevitable consequence of creating the framework outlined above.

B. GETTING STARTED

As with all projects which can initially appear intimidating, we suggest breaking this down into bite-size pieces and dealing with them in order one by one. Specifically, we suggest the following:

1. Select a person to drive the project

More people will be required over time, but for now pick someone with the time, motivation and attributes to pursue this. As this will involve dealing with a number of people in different capacities, good communication skills will be essential. Non-essential (but useful) attributes will include WHS experience, good knowledge of the scheme or association, ideally over a lengthy period of time, persistence and strata committee membership. The temptation may be to address this as a strata committee or to choose multiple people to spread the load and that is fine if that works for you. However, there are arguments against this. Formal decisions are not required at this point and involving multiple people could just slow things down, as one ready to push forward awaits another's availability.

The rest of this "getting started" section will be addressed to the person chosen.

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2. Make yourself a tea or coffee

In some schemes or associations, you may feel the need for something stronger, but we recommend against that. Having made yourself your preferred beverage, sit down and have a think. In particular, have a think about the following:

- What is the WHS culture like within our scheme or association? Are the scheme or association generally tuned into this issue or will it be necessary to do some promotional work to get people engaged?

- What human resources do we have within our scheme or association? For example:

    - Have we engaged a strata managing agent? What level of support has the agent agreed to provide in relation to these issues? How experience/skillful are the agent's staff in relation to these issues?

    - Do we have strata committee members or others (e.g. lot owners) with useful experience/training in relation to WHS issues specifically or safety generally? This could have various applications. For example, a particular scheme might have someone more suited than others to fulfil the role of WHS manager. Alternatively, a scheme might have no one suitable and available and need to outsource this. Another scheme might have suitable for at least preliminary action in relation to certain types of hazard or incident e.g. trades persons. Another scheme might have persons with medical or first-aid experience. This could be the beginnings of a database for use by the WHS manager.

- What are the risks faced by our scheme or association? Are we residential or commercial or industrial? Even if we are residential, do we have sections of common property being used for commercial purposes or are owners conducting home occupations? Do we have employees? Do we directly engage contractors? Is our common property a workplace for anyone else, e.g. strata managing agent staff, building management staff, cleaners and other contractors? Are there any currently known hazards, e.g. asbestos contaminated materials, hazardous plant and equipment or unrepaired damage? Is any installed plant and equipment the subject of manufacturer or supplier guidelines and are we complying with those? Have we commissioned a common property safety audit? If so, did it recommend action and have we taken it?

- Alerts/subscriptions – subscribe to monthly newsletters and updates.

- Monitor the safety alerts by date site.

- Review the WH&S codes of practise for relevant codes.

3. Make some notes.

Put together some notes for the purpose of discussing the issue further at a committee meeting. In particular, address the following:

a. Persons within the scheme or association who might be suitable to act as WHS manager.

b. Persons who might otherwise be able to assist with WHS issues, at least on a preliminary basis, e.g. trades persons and persons with medical or first aid training.

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c. The extent to which the common property of the scheme or association represents a workplace for any persons, whether employees of the scheme or association, employees of its strata managing agent, employees of its building manager, persons granted licenses to use common property for commercial purposes, persons using lots for commercial or industrial purposes or home occupations and employees of contractors engaged by any of the above.

d. Known hazards or other WHS issues pertaining to the scheme, which might need to be specifically addressed in a WHS policy.

4. Arrange a committee meeting

Arrange a strata or association committee meeting for the purpose of transitioning to the next stage, “making it happen”.

Section 3 "Making it Happen" will be addressed to that committee.

C. MAKING IT HAPPEN

1. Conduct a strata committee meeting

At this meeting, the committee will need to deal with at least the following issues:

- Consider the report put together by the project leader.
- Consider WHS/safety culture within the scheme or association and whether further promotional work will be required.
- Consider the reporting structure preferred by the scheme or association, e.g. whether it has a preferred WHS manager and preferred frequency/format for reporting to the committee.
- Consider the extent to which work is being carried out on common property or association property and the extent to which this needs to be addressed under the WHS policy framework or review of relevant contracts, e.g.:
    - The scheme or association has employees of its own - suggesting the need for employment contracts requiring compliance with WHS and other policies, a WHS policy and associated training and procedures.
    - Third-party employees working on common property, e.g. employees of the strata managing agent, building manager, contractors, common/association property licensees - suggesting the need for review of the relevant contracts and associated work orders.
    - Third-party employees passing through common property, e.g. employees of commercial lot owners or residential lot owners engaged in occupations - suggesting the need to consider a by-law.
- Consider whether a suitable consultant should be engaged to provide a report as to any WHS or other safety issues need to be addressed under the WHS policy framework or review of relevant contracts and

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the most appropriate means of doing so.

- Consider engagement of a legal advisor to advise in relation to these issues, provide a template WHS policy, review relevant contracts and draft associated documents such as motion to adopt WHS policy and revised quotation request/work order.

2. Engage Legal Representation

Engagement of legal advisers experienced with WHS issues will make this a much easier task. In particular, such legal advisers will be able to assist you with the following crucial issues:

- Reviewing relevant contracts, e.g. your agency agreement with your strata managing agent, your building management agreement with your building manager, your license agreement with licensees of common property areas and your quotation request/work order used with contractors, to determine whether any amendments are required to ensure compliance with your WHS framework.

- Providing a template WHS policy and suite of template safe work statements.

- Providing advice in relation to broader WHS issues, e.g. whether further advice from a suitable consultant or a by-law may be required.

- Providing advice as to resources which will be useful to the WHS manager, e.g. access to relevant codes of practise and government authority safety alerts.

- Providing template notices and motions for the purpose of convening a general meeting to adopt the WHS policy and make a by-law if required.

3. Engage a Consultant

This will generally not be required at this stage. However, it could be required in certain circumstances e.g. where:

- The scheme or association has employees of its own, with whom it does not have a written employment contract.

- The common property or association property involves unresolved building defects, which require remedial works and in the interim present a hazard to safety.

- The common property or association property involves unresolved hazards, e.g. hazardous plant and equipment, in relation to which safe work statements are required, i.e. statements as to how the equipment may safely be used.

4. Convene a General Meeting

This meeting would need to consider at least the following:

- The issues considered at the strata committee meeting and the strata committee's recommendations in relation to them.

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- If a suitable consultant has been engaged to provide a report, that report.
- The legal adviser's advice in relation to review of relevant contracts, with a view to authorising the committee to negotiate the requisite amendments.
- The legal adviser's advice in relation to the proposed WHS policy, with a view to adoption of the proposed WHS policy and associated safe work statements.
- Requisite further action implementing the proposed WHS policy, e.g. appointing a WHS manager.
- The legal adviser's advice in relation to whether a by-law is warranted, with a view to making any such by-law.
- Whether further action is required, in the form of remedial works.
- Whether further action is required, in the form of advice from suppliers in relation to guidelines for use of existing infrastructure.
- Whether further action is required, in the form of promotion of the WHS policy to third parties, noting that the minutes of the meeting may be inadequate for this purpose and that some form of statement may be preferable, with a view to authorising the secretary to prepare this document.

5. Implement Decisions of General Meeting

As required.

How can we help?

A strata managing agency agreement will usually leave it to an owners corporation to comply with its own work health and safety obligations that became issues in this case. Bannermans Lawyers can assist owners corporations with:

1. Providing a WH&S policy to comply with its obligations;
2. Motions for committee members;
3. Suitable inclusions in quote requests addressing the Act;
4. Advice concerning managing compliance and risks associated with WH&S; and
5. Access to webinars to assist with training.
6.

If you are interested in acquiring any of the above, please contact Bannermans Lawyers on 02 9929 0226 or on **enquiries@bannermans.com.au** for advice on how to proceed.

The above guide is a step-by-step process on how your scheme or association can adopt a policy as a PCBU and maintain it overtime. Before implementing a work health & safety policy, please ensure you do your due diligence and take out quiz to determine if you require one.

Bannermans Quiz: I'm an Owner – Does my scheme need a WH&S policy?

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Owners WH&S Package

A bespoke WH&S policy developed for owners corporations to protect their duty of care as a PCBU! Including motions for committee members, work order amendments & webinar training.

Key takeaways

- Adopting a WHS policy is essential for managing risks in strata schemes and community associations.
- Complacency about safety can lead to significant liabilities and legal issues.
- A well-structured WHS policy can harness common sense and improve safety awareness among residents.
- Failure to address WHS issues can result in severe consequences, including negligence actions.
- Implementing a WHS policy can help create a safer living environment and reduce potential future liabilities.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

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