Further Changes to WH&S Laws: Digital Work Systems: Time to Get Up to Date

We have for some time been dismayed at the lax approach taken to work health and safety issues by many strata owners corporations and even some strata managing agents. There are reasons this scenario has arisen, which in many cases involves a misconception that these concerns do not apply or will be dealt with by someone else.

WH&S Reforms

The issue has been compounded by developments in WHS law in recent years. In particular:

- Widespread reforms were made in late 2023, including:
    - Numerous new or amended provisions in relation to specific obligations, e.g. asbestos notices and registration of specified categories of workers.
    - Amendments clarifying that an officer of a PCBU (person conducting a business or undertaking) can be personally liable for a category one offence, i.e. exposing an individual, to whom the PCBU owes a health and safety duty, to a risk of death or serious injury or illness.
    - Significant increases in penalties for category 1, 2 and 3 offences, e.g. maximum penalties now approximately $10 million for a corporation and $2 million/10 years imprisonment for an individual.
    - Amendments (including increased penalties) to provisions prohibiting contracts providing indemnity or insurance in relation to monetary penalties.
    - Expanded regulatory authority enforcement powers.
- Increasing focus in the legislation and decided cases on duties relating to work at mental health, including the consequences of bullying and excessive workloads. For example:
    - Cases continue in which the central claim is psychological injury, e.g. as a result of bullying.
    - In May 2021, SafeWork NSW issued the Code of Practice for Managing Psychosocial Hazards At Work ("Code") as an approved code of practice under Section 274 of the Work Health and Safety Act 2011 ("Act"). This should be used if one has functions or responsibilities that involve managing, so far as is reasonably practicable, exposure to psychosocial hazards and risks to psychological and physical health and safety at work.

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- The Work Health and Safety Regulation 2025 ("Regulation") enhances requirements for managing psychosocial risks, including mandating application of control measures. It is clear that one now needs to be as concerned with these as with risks of physical injury. A good starting point would be to give consideration to the Code.

- The Work Health and Safety Amendment (Digital Work Systems) Bill 2025 is currently being considered by the New South Wales Parliament and proposes some interesting amendments to WHS law. In particular:

    - An amendment to Section 19 would expand the general duty to include a duty (so far as is practical, to ensure) the health and safety of workers is not put at risk from the use of digital work systems by the business or undertaking.

    - A new Section 21A would impose a duty:

        - to ensure, so far as is reasonably practicable, that the health and safety of a worker is not put at risk from the allocation of work by a digital work system used by the business or undertaking.

        - to consider whether the allocation of work by or using a digital work system creates or results in any of the following risks:

            - excessive or unreasonable workloads for workers at work in the business or undertaking,

            - the use of excessive or unreasonable metrics to assess and track the performance of workers at work in the business or undertaking,

            - excessive or unreasonable monitoring or surveillance of workers at work in the business or undertaking,

            - unlawful discriminatory practices or decision-making in the conduct of the business or undertaking.

These would have relevance primarily to transport services such as taxis, couriers and product and food delivery services, but could potentially extend into other areas if AI measures to allocate and/or monitor workloads were implemented.

Strata managing agents may be battling scheme complacency in relation to the issue, but it would be very much in strata managing agents' interests to push client schemes to address these issues. This would make responsive schemes' properties safer places to be, including for agency staff. This would also reduce schemes' exposure liability, which would in turn be very helpful in reducing agents' exposure to liability.

We have considerable experience with these issues and would be pleased to provide you with whatever assistance you may require. Please click more information to find out more about our WH&S package for strata agencies.

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Key takeaways

- Recent WHS reforms include significant increases in penalties for various offences.
- Officers of a PCBU can now be personally liable for serious health and safety breaches.
- The new legislation places a strong emphasis on managing psychosocial risks in the workplace.
- Digital work systems must now be assessed for their impact on worker health and safety.
- Strata managing agents need to address complacency regarding WHS compliance.

****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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