

Workplace Health and Safety Queensland

Information in this fact sheet relates to the *Work Health and Safety Act 2011* which applies from 1 January 2012.

Apartment owner occupiers and bodies corporate

Units, apartments and townhouses operating under a community title scheme (sometimes also known as 'strata title') have a body corporate established to administer the common property of the complex on behalf of the owners of lots within the complex. While most will be owner occupied or leased to tenants, some complexes will vary by:

- operating as holiday rental properties
- having mixed purpose use, for example shops and restaurants on the ground floor of a high rise residential unit block
- having on-site management to oversee property management and rental.

Does the owner of an individual unit, apartment or townhouse have a duty under the *Work Health and Safety Act*?

An owner or occupier of a unit, apartment or townhouse used for residential purposes does not have duties under the *Work Health and Safety Act 2011* (the Act). The only time they would have duties under the Act is if the premises becomes a workplace on a temporary or ongoing basis, for example, when a contractor is engaged to carry out work at the premises. For more information about this situation, refer to the *Residential premises* fact sheet.

Does a community title body corporate have a duty under the Act?

Under the Act, a body corporate responsible for any common areas used only for residential purposes is not regarded as a person conducting a business or undertaking (PCBU).

However, if the body corporate engages any worker as an employee, it will be a PCBU and

have duties under the Act, to ensure so far as is reasonably practicable:

- the health and safety of its workers in the workplace
- the workplace, the means of entering and exiting the workplace and anything arising from the workplace are without risks to the health and safety of any person
- the fixtures, fittings and plant are without risks to the health and safety of any person.

In addition, if the body corporate is responsible for common areas used for commercial purposes (for example, shops or restaurants), then it has duties of care under the Act for these areas.

Do the body corporate officers have a duty under the Act?

Where the body corporate is responsible for common areas used only for residential purposes (and so is not regarded as a PCBU) then officers of the body corporate do not have officer duties under the Act.

However, if the body corporate is a PCBU, then the body corporate officers must exercise due diligence to ensure that the body corporate complies with its duties under the Act. For more information on the duty of officers, please refer to the *Due diligence* fact sheet.

Does an on-site manager for a body corporate have a duty under the Act?

A body corporate may decide to engage or employ an on-site manager to arrange for contractors to carry out maintenance and other work on the common property of the

residential complex, and/or arrange for short term property rentals.

If the body corporate engages an on-site manager as an employee, the body corporate would have the PCBU duty of care under the Act and other applicable duties. In this case, the on-site manager would be a worker for the PCBU and have a worker's duty of care under the Act.

If the body corporate engages an on-site manager to carry out work as a contractor (not as an employee), and the body corporate is responsible for common areas used only for residential purposes, the body corporate would not be a PCBU under the Act. In this case, the on-site manager would have duties of care under the Act, for example, if the on-site manager is self-employed. Then the manager would have the duty of a PCBU.

When a manager lives on-site, the manager may be a resident using their domestic premises to carry out work for the body corporate or there may be a separate office area for managing the complex.

For more information

Further information on workplace health and safety and the new laws is available at www.worksafe.qld.gov.au or by calling the WHS Infoline on 1300 369 915.

For more information on how the Act applies to domestic premises, please refer to the *Residential premises* fact sheet.

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