

Kerin Benson Lawyers Fact Sheet 6

Work Health & Safety and Unit Plans in the A.C.T

The legislation:

On 1 January 2012 the *Work Health and Safety Act 2011* (“the Act”) came into force, imposing duties on a ‘person conducting a business or undertaking’ (“PCBU”). Section 19 of the Act provides that the primary duty of a PCBU is to ensure, as far as reasonably practicable, the health and safety of their workers.

Does it apply to unit plans?

A PCBU includes not for profit organisations and unincorporated associations (section 5 of the Act), therefore an owners corporation is a PCBU for the purposes of the Act. However, regulation 7 of the *Work Health and Safety Regulations 2011* provides an exemption for owners corporations that are constituted under the *Unit Titles (Management) Act 2011*. The exemption applies if:

- the owners corporation is responsible for any common areas used only for residential purposes; and
- the owners corporation does not engage any worker as an employee (see the ‘Does Your ACT Units Plan Have an Employee’ factsheet).

It should be noted that there is no exemption for community title schemes or company title buildings. See the table below for information on whether the duties will apply to your scheme.

Type of scheme	Do the duties apply?
Residential	Residential unit plans without employees will be exempt from duties under the Act
Mixed use (residential & commercial)	Mixed use unit plans without employees will be exempt from duties under the Act, however the exemption will only apply to those common areas that are solely used for residential purposes

NEWCASTLE
P: 02 4032 7990
271 Bruncker Road
ADAMSTOWN NSW 2289

SYDNEY
P: 02 8706 7060
Level 8, 65 York Street
SYDNEY NSW 2000

CANBERRA
P: 02 6140 3270
Level 6, 39 London Circuit
CANBERRA CITY ACT 2600

KERIN BENSON LAWYERS
ABN 53 168 995 266
www.kerinbensonlawyers.com.au
Fax: 02 8706 7061

Commercial / Industrial	Commercial and industrial unit plans will be subject to duties under the Act irrespective of whether they have employees or not
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What if the owners corporation is not an exempt PCBU?

If the owners corporation is not an exempt PCBU it will be subject to the duties of the Act. See the table below for the relevant duties, penalties for non-compliance and guidance on how to comply with the duties:

Duty	Penalty for non-compliance	How to comply
Ensuring the health and safety of workers in the workplace (s19).	If the owners corporation fails to comply with these duties it can incur a penalty of up to \$3,000,000 (s31). Volunteer officers of the owners corporation are exempt from being prosecuted personally under the Act (s34) except in relation to their duties as a worker or other persons in the workplace. Officers of owners corporations in the A.C.T. should also be aware that they face potential criminal	Officers of the owners corporation (i.e. members of the executive committee) must exercise due diligence to ensure that the owners corporation complies with its duties under the Act (s27). In order to exercise due diligence, we recommend that the scheme does the following: <ul style="list-style-type: none"> engage a qualified WHS expert to inspect the property and prepare a Risk Assessment Report identifying potential
Ensuring that 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 (s20).		
Ensuring the fixtures, fittings and plant are without risks to the health and safety of any person (s21).		
Ensuring that the WorkSafe authority is notified of particular incidents (s38).		

<p>Ensuring, that if the scheme has an employee, that the owners corporation has a workers compensation insurance policy under section 147 of the <i>Workers Compensation Act 1951</i>.</p>	<p>liability under the industrial manslaughter provisions in Part 2A of the <i>Crimes Act 1900</i> if the owners corporation employs a worker who dies. A worker can be an employee, an independent contractor or a volunteer. A breach of these provisions carries a penalty of up to 20 years imprisonment.</p>	<p>risks and suggesting control measures to address these risks (then implement control measures or suitable alternatives and repeat annually)</p> <ul style="list-style-type: none"> • keep a record of all WHS incidents (complete incident reports and notify Worksafe whenever an incident arises) • resolve at a general meeting to take out relevant insurance (e.g. worker's compensation insurance etc.)
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Current as at 1 August 2015. The above information is not, and is not intended to be, legal advice. It is a summary and should not be treated as a comprehensive review of the applicable legislation.