

# SCAWA 2021 Convention

**New WHS Legislation**

**New Asbestos legislation**

**COVID-19 Safety Action Plans**

Wal Dobrow  
Reserve Fund Plans  
BIV Reports Pty Limited  
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## The coming tsunami of safety requirements for WA Strata Managers - the new WHS Legislation

On 21 October 2020 the WA Upper House resolved to adopt the National Model Work Health and Safety legislation, and the *Work Health and Safety Act 2020 WA* (WHS Act) was assented to by the Governor on 10 November 2020. The WHS Act does not commence until proclamation, and proclamation will not occur until the Regulations have been finalised. This is expected to occur in January 2022.

The WHS Act will replace the existing Occupation Safety and Health legislation in WA, and parts of other Acts (Mines safety, petroleum, etc). Each State in Australia has adopted this National Model WHS legislation except for Victoria.

This new regime will require a very serious understanding of the legislation as well as the adoption of new terms and definitions to understand that legislation. One of the key changes is going away from the Employer to Employee type relationship, to one where a Person Conducting a Business or Undertaking (PCBU) has specific duties, responsibilities and obligations.

<b>WHS Penalties</b>	<b>Individual</b>	<b>Officer</b>	<b>Body Corporate</b>
<b>Industrial Manslaughter</b>	\$5,000,000 + 20 years imprisonment	\$5,000,000 + 20 years imprisonment	\$10,000,000
<b>Category 1 Offence (highest)</b>	\$340,000	\$680,000 + 5 years imprisonment	\$3,500,000
<b>Category 2 Offence</b>	\$170,000	\$350,000	\$1,800,000
<b>Category 3 Offence (least severe)</b>	\$55,000	\$120,000	\$570,000

However, it is not the scary monster that some people may think it is, and SCAWA will have appropriate training to assist both our Strata Manager members, contractors and owners in the compliance requirements for this new legislation.

Note that although the new WA WHS legislation will impose duties, responsibilities and obligations for some strata schemes, Strata Managers and others, AND their common law duty of care remains under the Civil Liability Act 2002, and the Occupiers Liability Act 1985 as well as the general duty to keep in good serviceable repair and properly maintain the common property under s91 of the Strata Titles Act 1985.

Why do we have WHS?

- 4.1% of Australian GDP for work related injury
- \$62Bn from \$1.5Tn GDP
- 102 fatalities to Oct 2021

Will the new WHS Legislation require me as a Strata Manager to change my business practices?

Yes. There will be a requirement to more closely monitor contractor management. For example, s19(3)(f) of the Act requires you to 'provide any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking'.

Even though contractors are engaged to work at a strata scheme, the Strata Manager is not necessarily in the 'Control' of a workplace but is in the 'Management' of a work place which can have a positive influence to ensure the health and safety of any person. That is, the Strata Manager can ensure that the contractor has appropriate insurances, licensing AND experience to carry out the work, and that the contractor has prepared a Safe Work Method Statement (SWMS). A Strata Manager does not have to understand the intricacies of the SWMS, but just to ensure one has been prepared. The duty remains the same for both the contractor and the Strata Manager. An extract of s20(2) of the WHS Act states

- (2) The person with management or control of a workplace must ensure, so far as is reasonably practicable, 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.

What if I only have residential properties? Will the new WHS legislation impact upon my business?

Yes, but only to the extent of contractor engagement and the conduct of your own business practices as a PCBU. Note that for residential properties the owners responsibilities under the Civil Liability Act 2002, the Occupiers Liability Act 1985 and s91 of the Strata Titles Act 1985 remains.

Does this change the way that I work with my employees?

Yes, there is a large series of duties, responsibilities and obligations in the conduct of your own business and the relationship that you have with your 'workers' (including your employees). Your employees and other persons also have obligations to ensure the health and safety of other persons around them. An example for (a) 'other persons' (occupiers and visitors) is that they have to positively react to warning signage when a contractor is working on site, (b) staff have to report to the PCBU any hazards to health and safety that they might encounter during their work.

What sort of things do I have to do differently?

Provide a Contractor Information Kit (Reserve Fund Plans provides one for their clients to use), amend your Work Orders to have appropriate engagement wording and disclaimers, engage more closely with your contractors and staff, keep records of the information provided to contractors and staff, prepare a Business Risk Management Plan.

Are there penalties if I do not carry out these new changes?

Yes, there are significant penalties. See the extracts below.

Where do I get guidance of the things that I have to carry out?

Speak with Wal Dobrow 0418 259 750 from Reserve Fund Plans and SCAWA documentation.

Will this WHS legislation require new Reports to be obtained?

Generally the National WHS Model exempts residential properties from obtaining an Asbestos Register and Asbestos Management Plan, however the owners' duty to warn visitors and other persons of any danger remains under the Civil Liability Act 2002 and the Occupiers Liability Act 1985. Regardless, **any PCBU (contractors) must have an Asbestos Register at their work place.**

## Relevant extracts of the new WHS Act for WA Strata Managers, owners and contractors

### New terms

#### ***Person conducting a business or undertaking*** (PCBU) (s5)

- (a) whether the person conducts the business or undertaking alone or with others; and
- (b) whether or not the business or undertaking is conducted for profit or gain.
- (2) A business or undertaking conducted by a person includes a business or undertaking conducted by a partnership or an unincorporated association.
- (4) An individual does not conduct a business or undertaking to the extent that the individual is engaged solely as a worker in, or as an officer of, that business or undertaking.
- (8) A strata company (established under the Strata Titles Act 1985) 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. (Note that the Regulations may change this to exclude a strata company that engages a worker as an employee, ie cleaner, gardener directly employed by the strata company)

***volunteer*** means a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses);

***officer*** (has fixed definitions, but is more easily described as a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking) (s4A)

#### ***worker*** (s7) carries out work in any capacity for a PCBU

- (a) an employee; or
- (b) a contractor or subcontractor; or
- (c) an employee of a contractor or subcontractor; or
- (d) an employee of a labour hire company who has been assigned to work; or
- (e) an outworker; or
- (f) an apprentice or trainee; or
- (g) a student gaining work experience; or
- (h) a volunteer; or
- (i) a person of a prescribed class.

***workplace*** is a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work.

**Duties not transferable** - a duty cannot be transferred to another person (s14)

**Person may have more than 1 duty** - by virtue of being in more than 1 class of duty holder (s15)

**More than 1 person can have a duty** - more than 1 person can concurrently have the same duty (s16)

Each duty holder must comply with that duty to the standard required by this Act even if another duty holder has the same duty.

**Management of risks** - a duty imposed on a person to ensure health and safety by (s17)

- (a) to **eliminate** risks to health and safety, so far as is ***reasonably practicable***; and
- (b) if it is not reasonably practicable to eliminate risks to health and safety, to **minimise** those risks so far as is reasonably practicable.

***reasonably practicable*** (s18), in relation to a duty to ensure health and safety, reasonably able to be done, taking into account and weighing up all relevant matters including

- (a) the **likelihood** of the hazard or the risk concerned occurring; and
- (b) the **degree of harm** that might result from the hazard or the risk; and
- (c) what the person concerned knows, **or ought reasonably to know**, about
  - (i) the hazard or the risk; and
  - (ii) ways of eliminating or minimising the risk; and
- (d) the availability and suitability of **ways to eliminate or minimise** the risk; and
- (e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, **the cost associated** with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

**Primary duty of care** (s19) – a PCBU must ensure, so far as is reasonably practicable, the health and safety of

- (a) workers engaged, or caused to be engaged, by the person; and
  - (b) workers whose activities in carrying out work are influenced or directed by the person, while the workers are at work in the business or undertaking.
- (2) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

- (3) Without limiting ss(1) and (2), a PCBU must ensure, so far as is reasonably practicable
- (f) the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking**

**\* Important for Strata Managers**

- (5) A self-employed person must ensure, so far as is reasonably practicable, the person's own health and safety while at work.

Note: A self-employed person is also a PCBU for purposes of this section (primary duty of care).

Note: Health means physical and psychological health - see section 4.

### Division 3 – Further duties of persons conducting businesses or undertakings

#### 20. Duty of PCBUs involving management or control of workplaces

- (2) The person with management or control of a workplace must ensure, so far as is reasonably practicable, 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.**

**\* Important for Strata Managers**

## Division 4 – Duty of officers, workers and other persons

### Duty of officers (s27) - if a PCBU has a duty or obligation an officer must exercise due diligence

*due diligence* includes taking reasonable steps –

- (a) to acquire and keep up-to-date knowledge of work health and safety matters; and
- (b) to gain an understanding of the nature of the operations of the business or undertaking of the PCBU and generally of the hazards and risks associated with those operations; and
- (c) to ensure that the PCBU has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking; and
- (d) to ensure the PCBU has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way; and
- (e) to ensure the PCBU implements processes for complying with any duty or obligation of the PCBU under this Act; and
- (f) to verify the provision and use of the resources and processes referred to in para (c) to (e).

**Duties of workers (s28)** - while at work, a worker must

- (a) take reasonable care for the worker's own health and safety; and
- (b) take reasonable care that the worker's acts or omissions do not adversely affect the health and safety of other persons; and
- (c) comply with any reasonable instruction that is given by the PCBU to allow the person to comply with this Act; and
- (d) cooperate with any reasonable policy or procedure of the PCBU relating to health or safety at the workplace that has been notified to workers.

**Duties of other persons at the workplace (s29)** - a person at a workplace must

- (a) take reasonable care for the person's own health and safety; and
- (b) take reasonable care that the person's acts or omissions do not adversely affect the health and safety of other persons; and
- (c) comply with any reasonable instruction that is given by the PCBU to allow the person conducting the business or undertaking to comply with this Act.

**Industrial manslaughter – crime (s30A)** Penalty for this subsection:

- (a) for an individual, imprisonment for 20 years and a fine of \$5 000 000;
- (b) for a body corporate, a fine of \$10 000 000.

### Links

The WHS Act

[https://www.legislation.wa.gov.au/legislation/statutes.nsf/law\\_a147282\\_currencies.html&view=asmade](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a147282_currencies.html&view=asmade)

Video - The WHS Legislation update

<https://vimeo.com/488390781>

Webinar – Modernisation of WA WHS laws

<https://vimeo.com/482935611/800510c66d>

Take Home Points**WHS Act**

New terms Person Conducting a Business or Undertaking (PCBU)  
 Workers - 9 classes  
 Due Diligence needs to be carried out  
 Officers have a duty  
 Workers have a duty  
 Other Persons have a duty  
 Reasonable Practicable  
 Primary Duty of Care

Key sections **s19(2)** A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

**s19(3)(f)** a PCBU must ensure, so far as is reasonably practicable, the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking.

**s20(2)** The person with management or control of a workplace must ensure, so far as is reasonably practicable, 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.

**s5(8)** A strata company 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.

**s5(9)** Subsection (8) does not apply if the strata company engages any worker as an employee. (read as, directly employs a person as an employee, ie not as a contractor or subcontractor, nor as a volunteer, etc)

Insurance Can cover legal fees, but cannot cover fines.  
 Companies cannot indemnify employees.  
 If you are fined, you are on your own.

Actions Obtain a Safety Report for each scheme  
 Obtain an Asbestos Report (Asbestos Register + Asbestos Management Plan) for each scheme built before 31 December 2000

## Asbestos

### **Chapter 8 of the WHS Regulations 2021**

Although the new WHS Regulation will impose the requirement for an Asbestos Register and Asbestos Management Plan for all workplaces, there are specific exemptions from that requirement for residential premises used only for residential purposes.

Regardless of the above, the Strata Company and Owners common law duty of care and civil liability remains. That is, if a dangerous material that could harm a person is on site, then that has to be addressed with appropriate control measures.

The WHS exemption does not extend to an exemption from being sued in negligence under the Civil Liability Act 2002.

#### Extract from the WA Government Guide to the WHS Regulations

- It imposes a general duty upon persons conducting a business or undertaking at a workplace about eliminating exposure to airborne asbestos at the workplace.
- It imposes duties upon a person with management or control of a workplace to identify asbestos or asbestos containing material at the workplace, to prepare and keep an asbestos register and an asbestos management plan
- Duty-holders under this Chapter 8 may have health and safety duties under sections 19, 20, 21 or 29 of the Act

As the WA WHS Regulations are still being prepared and no copy 'to date' is available, it is likely that the Model WHS numbering and requirements will be the same.

**When asked whether a Strata Scheme has to comply with the WHS legislation in regard to obtaining an Asbestos Register and Asbestos Management Plan, the answer is 'it depends'.**

Clause 7 of the WHS model regulation provides an exemption from the WHS legislation for a 'strata title body corporate' when it does not 'engage any worker as an employee', and also relates to common areas used only for residential purposes. That is, a purely residential strata scheme can engage workers as contractors, sub-contractors, volunteers, outworkers and the like (see the 12 x definitions under s7 WHS Model Act) and still be exempted from the provisions of the WHS legislation.

The exemption is lost if there is non- residential use of common property or a worker is engaged as an employee, ie caretaker.

Curiously, Clause 421 of the WHS Model Regulations states that residential premises used only for residential purposes do not have to obtain an Asbestos Register and Management Plan. See my comments on COVID-19 and working from home below.

#### Civil Liability Legislation – codified Common Law Duty of Care

People get embroiled with the question of whether the WHS legislation applies or not, when the correct question should be 'if I have likely asbestos or other dangerous material on my property under what legislation will I be sued for negligence if someone suffers harm?'



Section 5B of the Civil Liability Act (NSW, SA, WA, TAS) is the primary determinate of negligence where three key principles are to be considered by the Court (and the parties), being

1. was the risk foreseeable - a risk the person knew or ought to have known (owners cannot place their heads in the sand to somehow save themselves from being sued),
2. the risk was not insignificant, and
3. what precautions a reasonable person (in control or management) would take in those circumstances.

The Court also has to weigh up the probability and likely seriousness of harm, the social utility and the burden of taking precautions. Referred to as the 'time, cost and trouble'. Simply put, owed a duty of care, breached that duty and caused harm or damage.

### Asbestos and other dangerous materials

31 December 2003 is the key cut off date for asbestos use in Australia. Whether dangerous materials are Asbestos Containing Material (ACM), dioxin or some other dangerous chemical, or simply, broken glass, the test in negligence and causing harm is the same and is set out above.

### Asbestos Registers and Management Plans

There is no requirement to test every suspected substance because the legislation allows the Competent Person to 'assume' an item is ACM. The contractor would then treat that material as if it is ACM and follow the national Safe Work Practices that ensures safety for occupants, visitors and the contractors.

A good Asbestos Register will

1. have a proper Risk Assessment for each item describing the likelihood of being Asbestos as well as the Contamination Risk,
2. include references to the National Safe Work Practices,
3. be live documents with a Safety Action or Management Plan,
4. have recommended control measures (ie removal, encapsulating, sealing, signage), and
5. meet the respective State WHS legislative requirements.

### COVID-19 and working from home

There is guidance for people using their residence (or home address i.e. strata scheme) as a workplace and have stated even when occasionally working from home an Asbestos Register is required.

In May 2021 a workplace in South Australia was prosecuted and fined \$2,220 for not having an Asbestos Register. This is a wake up call for many people.

Note that the definition of 'worker' is very wide and includes volunteers, employees, contractors and sub-contractors, amongst others (see s7 WHS Act). Many town planning instruments allow home business type uses within residential buildings, and a home business or occupation which may cause a loss of the residential exemption under the WHS Reg.

Set out below is a sample summary of the asbestos penalties under the Model Regulations

WHS Reg Clause	Brief extract	Fine: Individual	Fine: Body Corporate
419	<b>Work involving asbestos or ACM – prohibitions and exceptions</b> A PCBU must not carry out, or direct or allow a worker to carry out, work involving (includes disturbing) asbestos.	\$6,000	\$30,000
420	<b>Exposure to airborne asbestos at workplace</b> A PCBU must ensure that the exposure standard for asbestos is not exceeded at the workplace.	\$6,000	\$30,000
<b>Part 8.3 Management of asbestos and associated risks</b>			
422	<b>Asbestos to be identified or assumed at workplace</b> (1) A person with management or control of a workplace must ensure, so far as is reasonably practicable, that all asbestos or ACM at the workplace is identified by a competent person (2) A person with management or control of a workplace must: (a) if material at the workplace cannot be identified but a competent person reasonably believes that the material is asbestos or ACM – assume that the material is asbestos, and (b) if part of the workplace is inaccessible to workers and likely to contain asbestos or ACM - assume that asbestos is present in the part of the workplace.	\$6,000	\$30,000
423	<b>Analysis of sample</b> A person with management or control of a workplace <u>may</u> identify asbestos or ACM by arranging for a sample of material at the workplace to be analysed for the presence of asbestos or ACM.	\$1,250	\$6,000
424	<b>Presence and location of asbestos to be indicated</b> A person with management or control of a workplace must ensure that: (a) the presence and location of asbestos or ACM identified at the workplace under cl. 422 is clearly indicated, <u>and</u> (b) if it is reasonably practicable to do so, indicate the presence and location of the asbestos or ACM by a label.	\$6,000	\$30,000
425	<b>Asbestos register</b> (1) A person with management or control of a workplace must ensure that a register (an asbestos register) is prepared and kept at the workplace. (2) The person must ensure that the asbestos register is maintained to ensure the information in the register is up to date. (6) This clause does not apply to a workplace if: (a) the workplace is a building that was constructed after 31 December 2003, <u>and</u> (b) no asbestos has been identified at the workplace, <u>and</u> (c) no asbestos is likely to be present at the workplace from time to time.	\$3,600	\$18,000
426	<b>Review of asbestos register</b> A person with management or control of a workplace where an asbestos register is kept must ensure that the register is reviewed and as necessary revised	\$3,600	\$18,000
427	<b>Access to asbestos register</b> (1) A person with management or control of a workplace where an asbestos register is kept must ensure that the asbestos register is readily accessible to: (a) a worker who has carried out, carries out or intends to carry out, work at the workplace, and.... (d) a person conducting a business or undertaking who has required, requires, or intends to require work to be carried out at the workplace.	\$3,600	\$18,000
428	<b>Transfer of asbestos register by person relinquishing management or control</b> If a person with management or control of a workplace plans to relinquish management or control of the workplace, the person must ensure, so far as is reasonably practicable, that the asbestos register is given to the person, if any, assuming management or control of the workplace.	\$3,600	\$18,000
429	<b>Asbestos management plan</b> (2) A person with management or control of the workplace must ensure that a written plan (an asbestos management plan) for the workplace is prepared. (3) A person with management or control of the workplace must ensure that the asbestos management plan is maintained to ensure the information in the plan is up to date. (5) A person with management or control of a workplace must ensure that a copy of the asbestos management plan for the workplace is readily accessible to: (a) a worker who has carried out, carries out or intends to carry out, work at the workplace, and ... (d) a person conducting a business or undertaking who has required, requires, or intends to require work to be carried out at the workplace.	\$6,000	\$30,000
430	<b>Review of asbestos management plan</b> (1) A person with management or control of a workplace that has an asbestos management plan must ensure that the plan is reviewed and as necessary revised in certain circumstances.	\$3,600	\$18,000

## What is COVID-19?

COVID-19 is a disease caused by the Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2).

'CO' stands for Corona,

'V' for Virus,

'I' for Infectious,

'D' for Disease, and

'19' being the year of discovery

The Coronavirus is commonly referred to as 'COVID-19', and these terms are used interchangeably in our community.

## Legislation - Common Law Duty of Care + WHS

In addition to compliance with the WHS legislation, the owners have to comply with the Civil Liability legislation which imposes a duty of care upon Strata Committees, Building, Facilities and Strata Managers to the occupants of the properties that they manage or control, and the need to take precautionary measures against a risk that is foreseeable, and that a reasonable person knew or ought to have known.

### Civil Liability Act 2002

#### 5B General principles

(1) A person is not negligent in failing to take precautions against a risk of harm unless:

(a) the risk was foreseeable (that is, it is a risk of which the person knew or ought to have known), and

(b) the risk was not insignificant, and

(c) in the circumstances, a reasonable person in the person's position would have taken those precautions.

(2) In determining whether a reasonable person would have taken precautions against a risk of harm, the court is to consider the following (amongst other relevant things):

(a) the probability that the harm would occur if care were not taken,

(b) the likely seriousness of the harm,

(c) the burden of taking precautions to avoid the risk of harm,

(d) the social utility of the activity that creates the risk of harm.

Separately, WHS legislation requires workplaces to be safe for all persons, including occupants, visitors and contractors attending strata and community properties.

It is therefore prudent that people in the management or control of a strata or community property take action against COVID-19 risks (among others) that they uniquely face in a strata scheme.

**Due to close contact with shared areas, choke points and surfaces, living in strata can be a COVID-19 super-spreader environment.**

A specialist COVID-19 Safety Plan provider is engaged when Owners, Strata Managers and others do not want to take the personal responsibility and liability for preparing an effective Plan. This is a simple risk transfer exercise, ie why take responsibility for something that you are really not an expert in.

### **The Six Principles of COVID Safety**

- ⊙ Practise physical distancing - apply density quotients - display signage and posters
- ⊙ Wear a face mask - always carry - currently mandatory in most settings
- ⊙ Practise good hygiene – frequently clean AND disinfect - display signage and posters - provide sanitiser
- ⊙ Keep electronic records and act quickly - get tested - develop a Contingency Plan - use Govt QR Code - develop a Notification Plan - develop Risk Assessments
- ⊙ Avoid interactions in enclosed spaces - use outdoor activity - increase natural air flow - use electronic meetings and interactions
- ⊙ Create workforce bubbles - group people into rosters - avoid overlapping interactions

A good COVID-19 Safety Plan will include each of the above principles and recommend appropriate control measures. For example, who to contact and what steps to take if someone in your strata scheme gets a positive COVID-19 result.

### **How to manage unvaccinated or vaccinated people who do not want to share their status?**

Short answer: you cannot. All you can do is ask for someone's vaccination status. If they refuse to answer then you are stuck, and even if they break health restrictions, ie a gathering of more than 2 unvaccinated people, no face masks inside common areas, etc, you are personally powerless to enforce these restrictions beyond forwarding the matter to the Police or NSW Health.

A Strata Committee that follows the current Health Orders are not personally responsible to ensure enforcement by all people, the Committee simply has to 'act reasonably'. It is not for the Committee or another resident to heavily police or enforce.

There is no legal requirement in strata schemes to show vaccination certificates (reciprocal or otherwise) as this is not considered 'reasonably practicable' from SafeWork Australia. Although vaccination is one measure of reducing the risk of transmission, Health Department websites state that a vaccinated person can still be a carrier.

### **Remember that each individual is responsible for their own actions or omissions and can be individually sued.**

Just as Owners have unlimited liability in regard to negligent actions or omissions on the property that they are responsible for, each individual has personal responsibilities to ensure that their own actions or omissions do not cause harm to any person.

A solution for a Committee may be to require a QR Code registration into all common facilities, which would not breach the privacy argument because there is no distinction between a vaccinated or a non-vaccinated person. However, the Government tracing system would record their vaccination status. Some current Government responses are to provide a contact tracing QR Code that records a person's vaccination status and details for access to a public venue.

In addition, the best protection for the Committee is to place additional and appropriate signage.

### **What considerations should steer a Committee to open shared facilities?**

There is always a risk of being sued for negligence if appropriate control measures are not put in place to eliminate or minimise any potential harm to any person. Commonly known as a Duty of Care. With COVID-19, this has not changed, and COVID-19 is still a hazard that the Owners have to deal with.

COVID-19 is a risk that

- (1) is foreseeable,
- (2) is not insignificant (people can die, have organ degradation), and
- (3) has to be addressed from a reasonable persons approach, ie appropriate risk assessments and control measures MUST be put in place, engage a professional and the like.

#### **How can the Committee protect themselves and the scheme?**

- Engage a professional to provide a COVID-19 Safety Action Plan
- Fill in and follow the guidance within the Plan
- Implement the recommended control measures
- Periodically review the Plan and Health Orders

Some current information is available for the re-opening of public outdoor pools. It is up to the common sense of the Committee to employ practical control measures in regards to their own scheme, using their own knowledge of their property, their residents, and employing COVID Safe procedures.

#### **What measures should be considered?**

- Use of 'bubbles' (family or similar safe bubbles), ie roster the use of a shared facility and split by a 'safety bubble', ie Jones family from 9-11am, Smith group from 12-2 pm, etc,
- provide sanitisers, and maintain a higher state of hygiene vigilance,
- more ventilation for indoor areas where possible,
- place signage reinforcing the message of COVID-19 Safety,
- cordon off areas to maintain spacing between people, and apply density quotients,
- minimise congregation (ie arrive, swim, leave)
- QR Code or other record keeping at every entry to the facility

#### **Risk Transfer or Risk Mitigation**

Obtaining a COVID-19 Safety Action is not a Risk Transfer exercise, it is a Risk Mitigation exercise where the current risk of the scheme is reduced.

A proper COVID-19 Safety Action Plan will have a Contingency Plan (in a Positive Case Event, or Lock Down); a Notification Plan; Risk Assessments, amongst other things.

**The purpose of implementing a COVID-19 Safety Action Plan is more than simply meeting your Civil Liability and WHS legislative obligations, it is keeping your family, visitors, and fellow residents safe from COVID-19.**

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