



The Institute of Strata Title Management

The Institute of Strata Title Management (ISTM) is the peak industry body for strata title management in New South Wales.

The ISTM's 1300-strong membership includes strata managers, who hold either a license or a certificate of registration, employees of strata businesses, and suppliers of products and services to the strata industry and to owners corporations.

ISTM has a range of current capabilities in education, representation and provision of information.

Education

ISTM currently provides entry level training into the industry and ongoing professional development. Moving forward, ISTM will register as an RTO providing the full range of accredited programs (Certificate levels 3 and 4), a more vigorous professional development program linked to levels within the Centre of Professional Development and a range of management training. Additionally ISTM will negotiate educational pathways within the secondary and tertiary sectors.

Representation

ISTM currently represents the industry in NSW through representation on the national body (NCTI), discussion with government and representation of the views of members through public relations activities. Moving forward, ISTM will engage a broader range of the strata sector to provide one voice.

Information and decision support

ISTM is currently a point of reference for the industry for information and interpretation of strata legislation and regulations. ISTM provides information through newsletters, online and telephone. Moving forward, ISTM will develop a knowledge hub and research centre to collate industry data and drive research in the sector. This data will be provided exclusively to members and forms a key aspect of the member value proposition and engagement strategy. In addition the ISTM supports academic research for emergence of research based rather than reactive legislative change.



Membership Scope

The strata title industry has a wide range of stakeholders beyond strata title managers and employees. These include Property developers, architects, local government planning officers, solicitors, accountants, tradespeople, insurers, bankers, property valuers, quantity and land surveyors, tourism policy-makers, hotel owners and retirement village operators are among the extended strata title management family.

ISTM's membership is organised across the industry sectors as follows:

Licensed Managers (Licensed Manager Chapter): Open to strata managers in their own business, and employed strata managers who hold a License.

Suppliers (Supplier Chapter): Suppliers of goods & services to the Strata industry.

Strata Certificate holders (Associate Chapter): Open to holders of a Strata Certificate, who generally include employed strata personnel.

Students (Associate of the Institute): Open to trainees and students planning to become strata managers. Non-voting membership.

Corporate (Corporate Members): Open to a company or corporation controlled by a member of the Institute and to strata companies and to suppliers of goods and services to the strata industry. Non-voting membership.

Group Title Scheme: Open to schemes, not to individual persons.



Overview

Over the past five years, a significant majority of residential strata titled schemes in NSW have operated as though their owners corporations are exempt from the *Occupational Health and Safety Act 2000* (OHS Act).

This belief was founded in the existence of an Exemption Order under the *Occupational Health & Safety Regulation 2001*¹. Upon expiry of this order on November 1, 2007, NSW WorkCover released a further order² that sees a virtual continuation of the initial exemption.

From the application of the first order in October 2002, ISTM became increasingly concerned about owners corporations' interpretation of the order as a blanket exemption from their OHS obligations.

Private dwellings are exempt from the Act and the Regulation, however both oblige those who 'control' premises that are used as a *place of work* to ensure those premises are safe and without risks to health.

Obligations therefore exist for any type of strata scheme (whether full residential, or mixed residential and commercial) where **common property** is used by contractors or by the clients of residents who operate a home business.

Legal advice reinforced the ISTM's concerns conveying that, under the former and now most recent order, owners corporations are exempt from OHS requirements only in certain limited situations – and that the exemption for private dwellings is not sufficiently broad to exclude coverage or common areas of strata titled premises.

ISTM maintains that this new order only prolongs the confusion within owners corporations about their obligations, and extends the risks for both owners in strata titled apartments and their strata managing agents.

¹ Order No.2 Occupational Health & Safety Regulation 2001 (NSW), Occupational Health and Safety Act 2000

² Exemption Order No. 014/07 Occupational Health & Safety Regulation 2001 (NSW), Occupational Health and Safety Act 2000



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Continued reluctance within owners corporations to accept their obligations under the legislation not only puts residents as private individuals at risk of the consequence of OHS breaches, but places strata managing agents in a difficult position. Strata management companies and agents must comply with all applicable obligations under the OHS Act and Regulations.

That is, a strata managing company has an obligation as an employer to ensure the safety of their own employees and contractors:

- When performing work on the premises of any type of strata scheme, and
- As a 'controller of premises' in relation to the common property of any strata scheme.

Owners Corporations Obligations

Neither Exemption Orders have exempted owners corporations from the following obligations under the OHS Act:

- Owners corporations must ensure that no safety risk is apparent for any contractors or voluntary workers engaged to perform work on common property. This includes cases where a resident conducting a home business invites their clients to the premises, and those clients traverse common areas
- As controllers of premises, owners corporations have an obligation under clauses 33 to 44 in relation to common property, to:
 - Identify hazards and assess risks;
 - Eliminate or control risks;
 - Review risk assessment and control measures;
 - The provision of information to other persons who have responsibilities under the OHS Regulation to enable the other persons to fulfil their responsibilities;
 - Ensure safe access is provided to the workplace and to prevent any falls;
 - Ensure safety in relation to electricity and electrical installations; and
 - Ensure that where the premises contain asbestos or asbestos containing materials that the proper risk assessment and control measures are carried out.



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- Owners corporations must comply with obligations in relation to maintenance and registration of plant affecting public safety, that is, lifts, scaffolding, gas cylinders, amusement devices and boilers and pressure vessels

Recommendations

The experience of ISTM members is that the vast majority of residential strata title schemes have interpreted the former and latest exemption as a blanket exemption from compliance with the OHS Act. The exemption only applies to owners corporations in certain limited situations.

Strata title managing agents have continued their attempts to convince residential strata titled schemes of the need to fully comply with the OHS Act, with minimal success.

ISTM believes that if government and regulators want to ensure compliance with the OHS Act, by residential strata titled schemes, then there is no option other than to remove Exemption Order No. 014/07.

ISTM therefore urges government and the regulator NOT to incorporate the current exemption into legislation, due to its propensity to create uncertainty, inequity in application and more complex litigation should injury occur.

ISTM also urges the government to provide a penalty provision for Owners Corporations that do not comply with OHS legislation

