

RESERVE FUND PLANS + LOOKUPSTRATA

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1300 55 18 30
Specialists in Strata



LookUpStrata

WA WEBINAR: PRACTICAL METHODS TO REDUCE RISK IN YOUR STRATA SCHEME

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Practical Steps

1. Understand Hazards + Risks
2. Practical steps to reduce risk
3. Control Measures
4. Three Buckets
5. Legal - where is the 'risk' line drawn



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Understand Risk

1. Owners Unlimited Liability

2. Hazard + Risks



3. Types - Property damage + Personal injury
building (maintenance = insurance = financial)
physical (trip, slip, falls = legal = financial)
other (fire, mechanical, security, traffic, etc)

Practical Steps to reduce property damage Risk

a. Sealing elevated walkways



Fix the cause
not the symptoms



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Practical Steps to reduce property damage Risk

b. Waterblast and silicone sealing surfaces



Fix the cause
not the symptoms



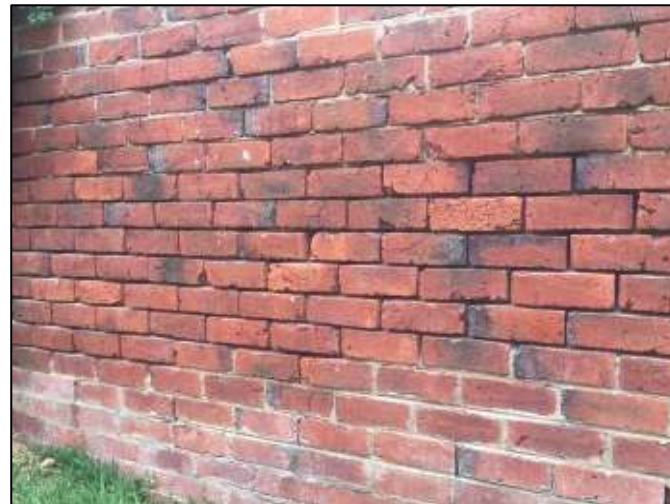
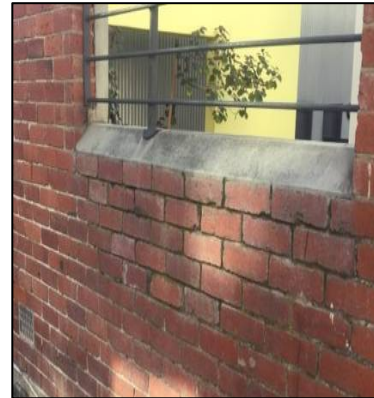
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Practical Steps to reduce property damage Risk

c. Sealing fretting mortar and brickwork



Fix the cause
not the symptoms

Practical Steps to reduce property damage Risk

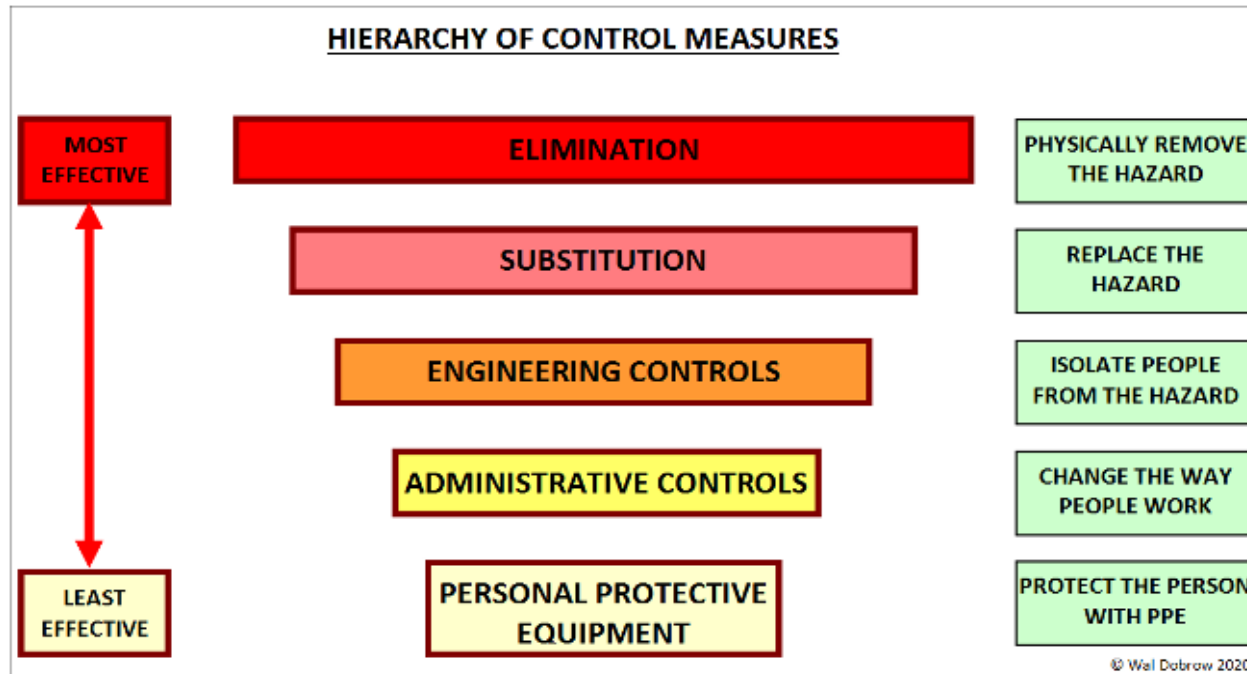
d. Convert internal downpipes to be external



Fix the cause
not the symptoms

Control Measures

to Minimise or Eliminate Hazards or Risks



Examples: Non-slip finishes, barriers, signage, insurance, high-light hazards, checklists, easy mechanisms to report hazards, engage professional Safety + Asbestos Reports

Practical Steps to reduce Personal Injury Risk



Single handrail



Two handrails are better



Fix issues sooner



Stair nosings



Highlight paint



Wet weather mats



Physical barriers



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Practical Steps to reduce Personal Injury Risk



Pedestrian traffic conflicts (add signage)



Pot plants on balconies

Signage



THREE BUCKETS of Strata Safety

Civil Liability +
Occupiers Liability

WHS



Legal - existing Civil Liability

s5B - Civil Liability Act 2002

1. Risk not insignificant
2. What the reasonable person would have done
3. What you knew OR **ought to have known**



Owners already have unlimited liability

Legal - WHS

Work Health & Safety Act 2020 +
WHS (General) Regulations 2022

Started 31 March 2022

What does that mean to Lot Owners?

- More Reports, more Checklists
- More evidence of compliance

Owners get Safety + Asbestos Reports



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Legal - WHS

'Workplace' “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”

Lot Owners, CoO, Strata Companies are captured as **'Other Persons'** by the WHS legislation (s29)

29. Duties of other persons at the workplace

(a) take reasonable care for their own health and safety; and

(b) take reasonable care that **their acts or omissions** do not adversely affect the health and safety of other persons; and

(c) comply with any reasonable PCBU instruction

Owners get Safety + Asbestos Reports



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Legal - WHS - Asbestos

Reg 421 - exempts residential premises used only for residential purposes from Regs 425 to 430

(obtaining an Asbestos Register and Asbestos Management Plan),

until it becomes a Workplace and built prior to Dec 2003, or likely has asbestos present; then,

Regs 425 + 429 Apply and an Asbestos Register and Asbestos Management Plan MUST be available at the Workplace

Remember: Civil Liability bucket - the Duty to warn of any danger remains

*** Asbestos is a hazardous material and has to be 'assumed' or 'identified' in order to provide a safer workplace**



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Legal - WHS - Asbestos - Fines

		Individ -ual	Body Corp
422	Asbestos identified or assumed at workplace by competent person	\$7,000	\$35,000
423	May identify asbestos or ACM by arranging for a sample	\$1,450	\$7,000
424	If reasonably practicable to do so, indicate location of ACM by label	\$7,000	\$35,000
425	Must ensure Asbestos Register is prepared + kept at the workplace	\$4,200	\$21,000
	(6) This clause does not apply to a workplace if: (a) the workplace is a building constructed after 31 Dec 2003, <u>and</u> (b) no asbestos has been identified at the workplace, <u>and</u> (c) no asbestos is likely present at the workplace from time to time.		
426	Review of Asbestos Register	\$4,200	\$21,000
427	Access to Asbestos Register	\$4,200	\$21,000
428	Transfer of Asbestos Register by person relinquishing mgt or control	\$4,200	\$21,000
429	Must ensure Asbestos Management Plan for workplace is prepared	\$7,000	\$35,000
	Must ensure Asbestos Management Plan maintained + is up to date	\$7,000	\$35,000
	Must ensure Asbestos Management Plan readily accessible to worker	\$4,200	\$21,000
430	Review of asbestos management plan at least each 5 years	\$4,200	\$21,000



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Legal - WHS - Fines

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



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Legal - where is the 'line' drawn?

Civil Liability Act 2002 - precautions taken by the Reasonable Person

s5C - **Court is to consider**

- (a) the probability of harm if care were not taken;
- (b) the likely seriousness of the harm;
- (c) the burden of taking precautions to avoid the risk;
- (d) the social utility of the activity that creates the risk.

WHS Act 2020 - Reasonably Practicable

s18 - reasonably able to be done, weighing up

- (a) the likelihood of the hazard or the risk; and (b) the degree of harm; and
- (c) what the person 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 and
- (e) after assessing the above, **the cost** associated with eliminating or minimising the risk, including
 - whether the cost is grossly disproportionate to the risk.

Time, cost & trouble v the amount of risk



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Legal - Case Law

The litmus test of 'reasonable person' was best said in a Victorian case where the judge said 'it is not what comes up in cross examination' i.e. you don't have to be the smartest legal mind on the planet as the test, you just have to put in place appropriate safety measures that the reasonable person would do. WD

The Reasonable Person Test



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Legal - Case Law

Pavlis v Wetherill Park Market Town [2013] NSWDC 331 (27 May 2013)

Section 5B of the Civil Liability Act 2002 requires the owner and occupier to act reasonably with respect of the **risks of foreseeable injury**. The reasonable act of a shopping centre owner does not include having the chemical knowledge to know whether a particular product renders a surface safe for pedestrian traffic.

The Civil Liability Act requires a consideration of what a reasonable person in the position of the defendants would have done **or should have known** and done. In my view, and I find, the risk of slipping on a wet tiled floor was reasonably foreseeable and should have been reasonably foreseeable both to the owner and managing agent. However, **they did foresee the risk and they acted on it**. As I have said, the owner instructed and the agent arranged the painting of the floor with a non-slip paint. Those measures were reasonable, in my view, and adequately, at least on the face it, **addressed the risk of harm**

The Reasonable Person Test



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Legal - Case Law

Yeung v Santosa Realty Co Pty Ltd [2020] VSCA 7 (6 February 2020)

.. in that he failed to 'make sure that the premises are maintained in good repair'... if, in December 2013, Hunter had inspected the premises, she would have detected the defects in the back stairs and caused them to be repaired, at the modest cost of \$572, and Potter's fall would not have occurred... the fundamental breach in this case was the failure of the managing agent to carry out the inspection it was required to carry out and to identify the necessary repair....

judgment for the plaintiff in the sum of \$433,899.80 plus interest in the sum of \$40,960 and that the defendants pay the plaintiff's costs (including reserved costs) on an indemnity basis.

Premises maintained and in good repair



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Legal - Case Law

Wu v Carter [2009] NSWSC 355 (14 May 2009)

The Court held that the managing agent had a duty to inspect the property and complete a condition report. The agent was held to have a duty of care to warn the tenant Ms Wu that the balustrade was defective.

The Court held that **a layman's push and pull test** would have discovered the defect in the balustrade.

The Court held that the failing to repair the railing rested more with the OC than with the managing agent's failure to carry out an adequate inspection of the property at the commencement of the lease.

The Court awarded \$750,000 in damages apportioned 25% to the agent and **75% to the OC for failing to maintain common property**. The injured party resolved her action by consent with the owners of the subject lot and the strata manager in their favour.

OC failure to maintain Common Property



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Legal - Case Law

Ridis v Strata Plan 10308 [2005] NSWCA 246 (1 August 2005)

Negligence - Personal injury - Occupiers' liability - Breach of duty of care - Nature and extent of OC statutory duties of maintenance and repair - Resident injured when glass in front door shattered over his arm - Whether OC under a duty to inspect and replace glass in accordance with current safety standards - Whether OC duty to inspect common property over and above that of occupier at common law

Per McColl JA: Nothing ... suggested that the legislature intended to impose on an OC a standard of care higher than that imposed by the general law of negligence upon the occupiers of property .. The duty of care owed by an occupier of premises to entrants is to take such care as is reasonable in the circumstances ... an occupier has not breached that duty of care by not inspecting their premises for the purpose of discovering unknown and unsuspected defects ... Act directed to circumstances where something in the common property is no longer operating effectively, is defective or damaged or has fallen into disrepair
Jones v Bartlett considered.

The obligation in subsection (3) that the OC have regard to “safety” imports an obligation of reasonableness not absolute safety

Extent of OC to inspect for safety issues



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What you have learnt

1. Understanding Hazards and Risks
2. Practical steps to reduce Property + Personal risk
3. Control Measures
4. Three buckets (Civil Liability, WHS, right thing to do)
5. Legal - where is the 'risk' line drawn

What to do now..

1. Obtain a Safety Report and Asbestos Report
2. Follow recommendations
3. Record evidence of Reasonable Steps taken
4. Monitor and Review



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Questions?



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