

## PROPERTY APARTMENTS

# Wake-up call for body corporates

Safety laws have made owners vulnerable to litigation, writes **Ben Hurley**.

If you own an apartment, here's one reason not to wag your body corporate meetings. If the building has health and safety issues that aren't immediately addressed, you could end up sharing a multimillion-dollar compensation bill with a small number of owners.

The growing responsibility shouldered by apartment committees was thrown into the spotlight in 2010 when Catherine Nicita of Abbotsford won a test case in the NSW Supreme Court. The body corporate ignored her requests to fix problems with common property that were causing costly leaks into her apartment. She was awarded damages of \$255,000, which would have to be shared between the remaining four units.

Since then, legislation has become more onerous and there are further changes to come, particularly on securing windows.

Figures from the Children's Hospital at Westmead show that, on average, one child falls from a window each week in Australia, often from leaning against flyscreens.

"There are many examples in the broader liability and personal injury space where compensation required for a severely brain-injured toddler would run into tens of millions of dollars," says Mark Lever, chief executive of Strata Community Australia.

"The fear is that it's only a matter of time before there is a damages award of this magnitude as a result of a head injury from a fall out of an apartment. This could potentially bankrupt an entire building."

NSW laws mandate apartment committees to have a minimum \$10 million public liability insurance policy, but Lever thinks it should be \$20 million.

Law firms specialising in strata issues say new work health and safety regulations adopted by most states this year contain loopholes that leave apartment owners vulnerable. Even government WorkCover authorities are understating the risk, they say.

"In a litigious society there is an increasing market for potential plaintiffs against body corporates," says Colin Grace of Grace Lawyers. "More and more we're defending



these actions on behalf of body corporates."

The new WHS legislation demands that strata committees ensure the health and safety of workers on the premises. A court can award a penalty of up to \$3 million if someone is hurt or killed because of a safety threat that was ignored. The legislation targets commercial, industrial and retail strata properties and exempts residential.

But Grace says the laws are not clear enough to give certainty to residential apartment owners.

"They haven't been clear in the

definition. WorkCover says it's very clear, but if you have at least half a dozen lawyers arguing about it, it can't be that clear," Grace says.

The problem revolves around who is defined as a person carrying on a business or undertaking, known in legal jargon as a PCBU. WHS departments say if you are in a residential unit you are not a PCBU, regardless of what business activities you are undertaking.

But Grace says the actual legislation differs from how bureaucrats are representing it in public materials. Someone could be found to be a PCBU for activities

The prospect of a \$3 million fine has got the attention of body corporates.

Photo Glenn Hunt

including short-term letting, operating a home business and getting courier deliveries, or maintaining work-related vehicles at home, he says.

There are also some grey areas to do with common areas in mixed-use buildings that have residential and commercial areas. If a worker is hurt in a common area it could come back to bite the body corporate.

There are other maintenance laws that specify apartment owners have a duty of care to immediately fix safety hazards.

Greg Haywood, chief executive of strata management company, BCS, says the prospect of \$3 million fines in the new WHS legislation is a wake-up call for apartment committees that have long turned a blind eye to regulations ranging from the storage of pool chemicals to walkway hand rails.

"It's putting a lot more focus on it and that's a good thing," Haywood says. "Some of these older properties haven't been as well maintained as they should, but all of a sudden the owners are going to have to be more responsible."