

Embrace a safer building

Kim Lovegrove
Legal Matters

THE start of the financial year heralded a major new chapter in building regulations and the maintenance of essential services.

Property owners must be vigilant in ensuring the workplace is safe under the new regulations.

The regulations enshrine a new term — the essential service measure or ESM. The Building Commission defines an ESM as referring to all safety measures, essential services, safety fittings and equipment.

When an occupancy permit is issued, the building surveyor has to ensure the building's ESMs are, listed, along with the way they have to be maintained, to ensure the services operate optimally.

Most building owners could be caught out by the scale of the workplace definitions, such as offices, aged-care facilities, hospitals, laboratories, boarding houses and motels.

And the person responsible for ensuring services are up to scratch is the property owner.

The owner must ensure services are maintained and operational.

The owner also must ensure adequate records are kept and an annual ESM report is prepared.

The report is comprehensive and the owner must certify it is accurate.

Wide-ranging enforcement regulations apply.

The commissioner, municipal building surveyor or chief officer of the Metropolitan Fire Brigade will carry out inspections and can issue on-the-spot fines, if they consider the ESMs are not being maintained.

It is an offence, for instance, to not make a maintenance schedule available for inspection or to fail to complete an annual ESM report.

The new changes are far-reaching and will affect many businesses and people in the property industry.

Also, the rules will bring a demanding and potentially costly new rigor into property maintenance.

The changes spawn a more defined area of legal liability.

The new requirements and spelling out of offences make it clear who is to blame.

The prudent owner will pay for qualified professionals to carry out investigations and prepare reports.

Larger property owners will employ professionals to implement and oversee the regime.

If they don't do this they will pay fines and more ominously jeopardize their rights to claim indemnity under the public liability policies.

In the past, it was mainly building practitioners and agents who were sued for property defects, but owners might now find themselves more readily sued for property neglect.