

Home Isolation in Apartments

A Discussion Paper

The Issue

- 1 The issue is “home isolation in apartments”. This is remarkably different from home isolation in a standalone home. The government is moving under the Public Health Response Act 2020 to require people to isolate at home. The COVID 19 website states that from the 14th of November 2021 people will be required to isolate at home for 3 days after 7 days in managed isolation and then remain in isolation at home until they get a negative test.
- 2 The people who will go into this might be any of the following: -
 - 2.1 People who are mildly ill with COVID and do not require hospitalisation; or
 - 2.2 Those in isolation due to contact with an infected person e.g. a family member; or
 - 2.3 Those returning from overseas under the new policy outlined above; or
 - 2.4 Business travellers who are part of the business travel pilot project allow business travellers to travel overseas with limited isolation on return.
- 3 The question is – *“Is the isolation of such people in an apartment building appropriate?”* The answer is – that it depends.
- 4 This is not intended as a legal paper. It is written to try to identify some of the issues for body corporate committees members of BCCG.

Statutory Overlay

- 5 There is a minefield of statutes concerning this issue as members will appreciate. These include statutes such as:-
 - The Privacy Act 2020 (PA);
 - The Health and Safety at Work Act 2015 (HSW);
 - The Public Health Response Act 2020 (PHR);
 - The Human Rights Act 1993 (HR); and
 - The Unit Titles Act 2010 (UTA).
- 6 A body corporate committee has an overlapping sense of duties and obligations to various people under the various statutes. Those people are the owners and the occupiers of the building, invitees to the building, employers and contractors. The committee will need to decide, depending on a variety of different facts, where its obligations are relative to each of these groups of people. It is very fact dependent.

Is Your Development Fit for Purpose?

- 7 By fit for purpose, we mean is it an apartment building where people can isolate themselves in safety for both themselves and others in the development's community. The Government indicated in its business travel project that those returning from overseas could isolate at home in a standalone property thereby implying that they did not believe that apartment buildings were necessarily appropriate to provide the level of safe isolation for the individual or the community. Yet, already there have been examples of random people being placed in apartment buildings or multiple flats and two deaths.
- 8 Accordingly, body corporate committees must determine whether their apartment building is fit for isolation. Whilst the list below is not exhaustive and is only illustrative, the criteria that the committee may well wish to consider are the following: -
- Can the isolating person enter a building and cross over the common property with safety?
 - Does the unit in the apartment building have its airflow system or is it part of the common airflow system throughout the building?
 - Is the door of the apartment opposite another apartment in a closed corridor?
 - Is there a balcony on the apartment adjacent to others?
 - Is there someone to "service" the isolated person in safety – e.g. a building manager?
 - Is there a mask mandate throughout the building?
 - Are there multiple lifts or stairwells so that those accessing the apartment where the isolated person is living can do so safely?
 - Are there other immune suppressed people living in the apartment building?
 - Are there common recreational areas such as gardens, courtyards, gyms, pools, saunas, etc., which the isolating person should not access?
- 9 Members of BCCG may wish to consider this suggested checklist and add to that.
- 10 Once the committee has carried out its assessment and determined whether its building is or is not a safe environment for a person to isolate, it should immediately give written notice to the public health section of the local district health board. This will put the health board on notice that their building is or is not appropriate for persons to self-isolate.

Access and Security

- 11 Having people self-isolating in apartment buildings is very much a high trust model. They must not leave the apartment for any reason whatsoever. They must not go on to the balcony if it is adjacent to others. They may not even open their front door if it might be adjacent to another front door in a corridor where COVID could be spread given that the Delta variant is very highly contagious and spreads very readily.

- 12 All those self-isolating have needs such as food, medication, testing and rubbish removal. Some may likely be in their apartment for many days. It is unlikely that they will be able to survive over that period without some sort of assistance.
- 13 The question then must be asked how they can be serviced and accessed and by whom. Your building manager is either employee or a contractor. He or she may refuse to help based on health and safety. The body corporate is a PCBU. It must comply with the HSW and ensure the safety of its employees and contractors at all times. Therefore, the committee could not insist that the building manager assists in servicing the isolating person.
- 14 Then there is the question of how various health workers will get in to test the isolating person, provide medication or health needs. Can those persons access the apartment in safety and are they required to wear PPE on entering and exiting the apartment? Then there is the question about who gives them access. Such procedures need to be considered and discussed with the local public health team of the DHB. The body corporate committee needs to be alert to all these issues.

Communications

- 15 The isolating person has rights. They have rights under the PA to their privacy and therefore do not have to disclose that they have COVID or are isolating. Therefore, it is potentially possible for a person to be self-isolating in their unit without other owners in the development knowing. However, the committee has the right under the PA to ask a person whether they are in fact self-isolating but that person would be within his or her rights to refuse to disclose. This creates an impasse.
- 16 The committee might suggest to all owners and tenants within the apartment building that for the benefit of the community if an owner or occupier is isolating they inform the body corporate and the community is notified. However, the community must not demonise, discriminate or ostracise the person who is isolating or they might be in breach of the HRA.
- 17 The best outcome for the body corporate is that nobody self-isolates in their apartment as their home if the building is not an appropriate place for self-isolation as per the earlier criteria.
- 18 The next best outcome for both the isolating person and the community is that the isolating person informs the committee that they are isolating, that information can be shared with the community, the public health team have arrangements as to access for medication and testing, the person isolating discloses his or her vaccination status and the date on which their isolation will end.
- 19 As stated by various epidemiologists all isolating persons should be treated as high risk and as if COVID was present whilst all the same the person should be treated with respect and empathy. If this approach is taken it is more likely that the community will rally around to assist the isolating person rather than the opposite.

What Next?

- 20 The Government well may provide some statutory guidance for self-isolating in apartments. The BCCG is already engaged with the local Labour MP, Helen White who has written to the Minister for COVID Response about the concerns of BCCG and the Central City Residents' Group.

- 21 A committee needs to assess their building and make a decision as to whether the apartment building is appropriate for self-isolation or not. Many will not be. Then the public health team of the local DHB should be informed.
- 22 It is suggested that the body corporate call an informal meeting of all owners/occupiers and tenants to outline its views of self-isolation as there are no rules about who might be required to self-isolate at home and when. Particularly in the Auckland region as the number of infected people increases significantly, the numbers of people who will be made to self-isolate at home will increase.

BCCG Inc.

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