



Occupational Health and Safety Practice Guideline

The Occupational Health & Safety Act 2004 (the OH&S Act) came into operation on 1 July 2005 to promote and improve standards for occupational health, safety and welfare. It made significant changes to OH&S Regulations and provides for substantial penalties to be applied when requirements under the OH&S Act are breached.

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Introduction & Purpose

It is imperative that the property of an owners corporation complies with the OH&S Act. To achieve this SCA (Vic) recommends that:

- » a workplace health and safety assessment, prepared by a safety advisor, be carried out for each owners corporation to identify hazards, assess risks and recommend actions to be taken by the owners corporation; and
- » only those contractors who have been accredited, in the area of OH&S compliance, be engaged.

Background

S2, S4, S20 - 34, S26

The Occupational Health & Safety Act 2004 (the OH&S Act) came into operation on 1 July 2005 to promote and improve standards for occupational health, safety and welfare. It made significant changes to OH&S Regulations and provides for substantial penalties to be applied when requirements under the OH&S Act are breached. The “*Objects*” of this Act are given in Section 2 of the Act; “*The principles of health and safety protection*” in Section 4, and Part 3 details “*General duties relating to health and safety*” (Sections 20-34). “*Duties of persons who manage or control workplaces*” are given in Section 26.

Roles / Responsibilities

Contractors to an owners corporation, an owners corporation’s safety advisor, and the officers of an owners corporation, such as its owners corporation manager and committee members, each have a role in the management and control of an owners corporation’s workplace.

Generally, each of these parties has duties under the OH&S Act to the extent that they manage and control the workplace

Owners Corporation:

OC Act S4

- » Section 4 of the Owners Corporations Act 2006 provides an owners corporation has, amongst its functions, “(a) to manage and administer the common property; (b) to repair and maintain— (i) the common property; (ii) the chattels, fixtures, fittings and services related to the common property or its enjoyment; (iii) equipment and services for which an easement or right exists for the benefit of the land affected by the owners corporation or which are otherwise for the benefit of all or some of the land affected by the owners corporation...”

OC Act S9

- » Section 9 of the Owners Corporations Act 2006 provides “an owners corporation may appoint or employ persons to assist the owners corporation in carrying out its functions.”
- » An owners corporation’s common property is a workplace when contractors are working.
- » An owners corporation is not an employer unless it has a direct contract of employment or contract of training with a person (for example, the employment of a building manager).

S26

- » As it is possible for an owners corporation to manage or control a workplace pursuant to Section 26 of the Act, an owners corporation must have a safety assessment carried out on common property and undertake the recommendations of the safety assessment to ensure that its workplace is safe.

S148A

- » The introduction of the Occupational Health and Safety and Other Legislation Amendment Bill 2021 prevents employers from evading liability for breaching workplace safety laws. This is done by means of prohibiting contracts that insure or indemnify a person against paying monetary penalties under workplace safety laws with any breach of this duty punishable by very substantial fines.
- » Section 148A of the Act provides that: “A term of a contract or other arrangement that purports to insure or indemnify a person for the person’s

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liability to pay a pecuniary penalty under this Act or the regulations is void to the extent that the term provides for that insurance or indemnity.”

S35(1)

- » A further development arising from the introduction of the Occupational Health and Safety and Other Legislation Amendment Bill 2021 is that contractors, who previously were not owed the same health and safety duties as the ‘host’ employer owed to their own staff, now benefit from Section 35(1) of Act which, in addition to imposing a duty on employers to consult with their employees, now provides that contractors are to be treated as if they were employees in obliging labour hire companies or agencies and owners corporations to consult and cooperate on their shared responsibility to ensure the safety of labour hire workers – with any breach of this duty punishable by very substantial fines; *“For the purposes of subsection (1)— (a) a reference to an employee of an employer includes a reference to an independent contractor engaged by the employer and any employees of the independent contractor; and (b) the duties of an employer under that subsection extend to an independent contractor engaged by the employer, and any employees of the independent contractor, in relation to matters over which the employer has control or would have control if not for any agreement purporting to limit or remove that control.”*

CoA

- » If using the SCA (Vic) Contract of Appointment, Item 9.5.4 details the owners corporation obligation and agreement to ensure compliance with their obligations under the OH&S Act.

Owners Corporation Manager:

CoA

- » An owners corporation manager should have a formal agreement, in writing, with each owners corporation that details the scope (and its limitations) of the service provided to the owners corporation by the manager, and confirms each party’s responsibilities in meeting the owners corporation’s duties under the Act. As appears within the SCA (Vic) Contract of Appointment, Item 9.5.4.

Safety Advisor:

- » A safety advisor is a risk management entity appointed by the owners corporation who is competent in the identification of safety issues and hazards, their assessment, and control.
- » A safety advisor may be a professional OH&S expert, building engineer or building inspector.

Contractor:

- » In this guideline, a “contractor” means a company, partnership or individual that provides services to an owners corporation, and includes professionals and trades persons.
- » Contractors must carry out their work safely and comply with all OH&S requirements.
- » If a contractor engaged by the owners corporation advises the owners corporation of an unacceptable risk associated with the work, discovered either before commencing work or during the work, the owners corporation should engage its safety advisor to manage the risk.

Recommended Practice

SCA (Vic) considers the practice by owners corporation managers in this matter involves adopting and implementing the following steps:

- » Present the need for a safety assessment of common property at a general meeting of the owners corporation or to the committee of the owners corporation.
- » Request the owners corporation’s approval to obtain a safety assessment.
- » Have the owners corporation appoint an appropriate safety advisor.
- » Obtain quotations, from an accredited contractor, for the owners corporation’s consideration, to carry out the recommendations given in the safety assessment, implement the decision(s) of the owners corporation, raise funds as required and have the work done.
- » Ensure that work orders and contracts include any outstanding issues raised in the safety assessment.
- » If new safety risks arise, obtain the owners corporation’s agreement to seek advice from

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the owners corporation's safety advisor and follow the safety advisor's recommendations.

When safety assessment recommendations have not been implemented.

- » Advise contractors of relevant outstanding issues.
- » Request contractors to advise the owners corporation if they cannot fulfil their safety obligations under the work order.

When an owners corporation refuses to have a safety assessment done.

- » Minute or record your explanation and recommendation(s).
- » Inform the owners corporation that, under the insurance policy, it has a duty to disclose the condition of the common property to its insurance company.
- » Minute or record the owners corporation's decision, having regard to what is reasonable for the owners corporation concerned, and ensure that committee promptly confirms the decision.
- » Request contractors advise the owners corporation if they cannot fulfil their safety obligations under the work order.

CoA

Consider resigning from the management of the owners corporation. If using the SCA (Vic) CoA refer Item 8.1.3.

Work Orders

- » A work order issued to a contractor becomes a contract when it is accepted by the contractor.
- » Work orders should only be given to accredited contractors.
- » Work orders should not be given to contractors who do not have an appropriate work safety system.

CAWOA

- » All work orders and contracts should include the document "Conditions applicable to work orders and agreements".

AWO

- » A basic work order form may be used for all projects up to \$5,000, and it should include the "Acknowledgement of Work Order" form to be signed by the contractor prior to commencement of works and returned.
- » An appropriate contract document should be used for all projects over \$5,000 and less than \$10,000. If contract documentation is not provided by the contractor, it is available from Standards Australia, industry associations (such as H.I.A.).
- » **NB:** Some exclusions apply for single trade works
- » Where the work falls under the Domestic Buildings Contracts Act 1995 and is above \$10,000, the owners corporation must enter into a major domestic building contract.
- » The builder must obtain 'domestic building insurance' (formerly known as 'builders warranty insurance') for their clients when the cost of the building works under the major domestic building contract exceeds \$16,000 - although no insurance is required if the building comprises 3 or more stories.

Accreditation of contractors

- » To ensure required standards are met, an owners corporation should only engage contractors accredited by a specialist certifier.
- » The certifier will maintain a current contractors' accreditation register.

CAWOA

Accredited contractors will:

- » meet the requirements given in "**Conditions applicable to work orders and agreements**";
- » advise the certifier of any changes in the appointment of the contractor's appointed safety officer;
- » hold trade or professional qualifications appropriate for the work the contractor does;
- » if required to be licensed by a relevant Authority

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(eg. Plumbing Industry Commission), hold a correct and current licence; and

- » comply with ABN and GST legislation or have appropriate exemption(s).

Resources

- » Sections 2, 4, 20-34 & 26 of the Occupational Health and Safety Act 2004
- » Sections 4 & 9 of the Owners Corporations Act 2006
- » SCA (Vic) Contract of Appointment (CoA)
- » SCA (Vic) Conditions Applicable to Work Orders and Agreements (CAWOA)
- » SCA (Vic) Acknowledgement of Work Order (AWO)
- » Domestic Building Contracts Act 1995
- » Domestic Building Contracts Regulations 2017

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Conditions applicable to work orders and agreements

Acceptance of this order by a contractor does not limit or otherwise affect that contractor's continuing obligations in relation to occupational health and safety as detailed in the order or by the law.

As a condition of accepting this order, the contractor must appoint a Safety Officer and advise the owners corporation in writing of the name and contact details of that person. The Safety Officer is responsible for ensuring that the following requirements are met by the contractor:

1. Specification as to the amount of professional indemnity insurance required The policy of insurance required must specify a limit of indemnity of either – (1) where the costs of the defence of claims (Defence Costs) are included in the limit of indemnity – not less than \$1.5 million for any one claim, and in the aggregate for all claims during any one period of insurance; or (2) where Defence Costs are not included in the limit of indemnity – (a) not less than \$1 million for any one claim, and in the aggregate for all claims during any one period of insurance, not including Defence Costs; and (b) not less than \$500,000 for any one claim, and in the aggregate for all claims during any one period of insurance, in respect of Defence Costs:
 - a. The contractor must hold a current public liability insurance policy of not less than \$5,000,000 (or \$10,000,000 if the work is over \$5,000); and, if the contractor engages sub-contractor(s) to act on his behalf, ensure each sub-contractor holds a public liability insurance policy of not less than \$5,000,000 (or \$10,000,000 if the work is over \$5,000).
 - b. The policy must be valid for the duration of the project work
2. Specification as to the amount of public liability insurance required The policy must – specify a limit of indemnity for any one claim during any one period of insurance of not less than:
 - a. \$5 million for building practitioners in classes 6.1 and 6.2 [Builder demolisher (low rise buildings) and Builder demolisher (medium rise buildings)];
 - b. \$10 million for building practitioners in class 6.3 [Builder demolisher (unlimited rise)];
 - c. \$5 million for building practitioners in classes 7.1 and 7.2 [erector or supervisor (temporary structures), class 1 & class 2];
 - d. include, in addition to the limit of indemnity, provision for payment of the costs and expenses incurred by the insured with the consent of the insurer in defending or settling any claim and, in respect of any one claim, the policy may limit this sum to 20% of the limit of indemnity.
 - e. The policy must be valid for the duration of the project work
3. Hold a current WorkCover insurance policy, and comply with WorkCover's requirements for the duration of the project work.
4. Comply with all the legal, OH&S and general safety requirements, including preparation and keeping of a Job Safety Analysis (JSA) and/or other documents as appropriate.
5. Comply with any and all requirements specific to an owners corporations rules.
6. Complete the work:
 - I. in a safe manner, including informing the owners corporation of any safety issues;
 - II. in a proper and workmanlike manner, using only appropriately skilled, licensed and trained workers, in accordance with all applicable regulations and standards; and
 - III. in a timely manner, and within the specified time (if stated).

The above also applies to any sub-contractors engaged during the works.
7. Remove all waste generated in doing the work and leave the site clean and tidy upon completion of the work.
8. Develop and document a JSA (Job Safety Analysis) / SWMS (safe Work Method Statement). If assistance or guidance is required to complete the applicable forms, refer to the WorkCover website www.workcover.vic.gov.au. It is expected that a copy of the JSA/SWMS will be kept on site

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until the job is safely completed. If a JSA/SWMS has been provided to the owners corporation or its safety advisor, prior to, during or post the execution of the works, any deviation by the contractor from that JSA/SWMS is to be disclosed to the owners corporation or its safety advisor.

9. Hold OH&S qualifications (eg. an OH&S “Construction Industry (CI) Card” formerly known as a ‘Red Card’), as applicable for the work to be done by the contractor; for the principal, employees and sub-contractors of the contractor.
10. Ensure that all services have been isolated and that the work area is rendered safe and, where appropriate, notify the owners corporation or its safety advisor. An “A Grade” electrician is required to sign-off all electrical isolations and de-isolations. False alarms resulting in the call- out of emergency services or security services shall be the responsibility of the contractor, and the contractor shall meet

any associated costs.

11. Advise any and all concerns during works, immediately to the owners corporation manager.

SCA (Vic) wishes to acknowledge Berrigan Doube Lawyers for their contribution to this Practice Guideline.

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ACKNOWLEDGEMENT OF WORK ORDER

Name & address of contractor: _____

Job order number: _____

Works to be completed: _____

Important Information:

1. This property has* / has not conducted an Asbestos Audit.
2. This property has* / does not have an Emergency Management Plan in place.
* **Please contact our office if you have not yet, seen or have access to, the relevant Asbestos Audit and/or Emergency Plan.**
3. The instructions included in this work order are issued in our capacity as the owners corporation manager of this property.
4. Invoices for work completed must be issued in the name of the owners corporation and sent care of our office as the appointed owners corporation manager.

I acknowledge that I have read the Conditions Applicable to Work Orders and Agreements and agree to comply with all the requirements stated.

Name of Safety Officer: _____

Contact details for Safety Officer: _____

Signed for and on behalf of the contractor by: _____

Name of authorised representative: _____

Signature of authorised representative: _____

Date: _____

Please return this form to:
Owners Corporation _ PS xyz
c/o OC Manager's name
and address

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Version 8.3 – February 2015

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March 2022