

User Guide For Owners Corporations

Contract of Appointment

User Guide for SCA (Vic) Contract of Appointment

SCA (Vic) has prepared this guide to provide Owners Corporation members a better understanding of the terms and conditions of the copyright **SCA (Vic) Contract of Appointment 2025 v8** ("Contract of Appointment", "Contract" or "CoA").

The Contract of Appointment is a formal agreement between the Owners Corporation ("OC") and the appointed management company or sole manager ("the Manager").

The Contract of Appointment sets out the terms and conditions under which the Manager is appointed to manage the affairs of the Owners Corporation and outlines the key aspects of the appointment, including the Manager's duties, remuneration, term of appointment, and other relevant conditions.

The Contract of Appointment is designed to ensure transparency and accountability in the management of the Owners Corporation. It provides a clear framework for the relationship between the Owners Corporation and the Manager, helping to avoid misunderstandings and disputes.

The guide is not intended as legal advice. It is essential that the Owners Corporation carefully reviews the Contract of Appointment and seeks independent legal advice, if necessary, before signing.

Key Features

The Contract of Appointment includes several key features to ensure effective management of the Owners Corporation:

- **Insurance and Disclosure of Commissions (Section 1):**

Requirements for the Manager to maintain appropriate Professional Indemnity insurance coverage and disclose the way in which they will receive remuneration from the placement of Owners Corporation insurance.

- **Management Fees and Services (Section 2):**

Specification of the Manager's agreed/included services and the fees and charges payable, as well as any additional services, fees and disbursements.

- **Obligations of the Manager (Section 5):**

Detailed description of the Manager's responsibilities, duties and obligations.

- **Indemnities (Section 7):**

Requirements for the Owners Corporation to indemnify the Manager against certain liabilities.

- **Term and Termination (Reference Schedule and Section 8):**

The duration of the appointment and the conditions under which the contract can be renewed or terminated.

- **Obligations of the Owners Corporation (Section 9):**

Detailed description of the Owners Corporation responsibilities, duties and obligations.

- **Dispute Process (Section 10):**

Procedures for resolving disputes between the Owners Corporation and the Manager.

Cover Page

The cover page includes the Reference Schedule, outlining key contract details such as OC identification information, OC representatives, the Manager's details, appointment term and the conditions for renewing or terminating the contract. The cover page also contains some important notes for consideration, as follows:

Compliance Requirements

This contract must be completed in accordance with the Owners Corporations Act 2006 (The Act), Owners Corporations Regulations 2018 (The Regs), the Owners Corporation Rules, and Australian Consumer Law and Fair Trading Act 2012.

This legislation may be viewed at: <https://www.legislation.vic.gov.au/>

Owners Corporation Rules: All OCs have rules for the control, management, administration, use and enjoyment of common property and lots, such as matters relating to security protocols, parking and noise. If your OC does not make its own rules, a set of Model Rules outlined in Schedule 2 of the *Owners Corporations Regulations 2018* applies. Download or view the Model rules for an owners corporation at:

<https://www.consumer.vic.gov.au/housing/owners-corporations/rules/model-rules>

Rules made under the *Owners Corporations Act 2006* and registered at Land Use Victoria apply to the OC, lot owners, sub-lessees, occupiers and/or tenants.

Contract Data Entry

The SCA (Vic) Contract of Appointment is an interactive document, designed for electronic completion by the Manager. The Manager will have pre-selected data from various options prior to presentation to the OC.

For transparency, this User Guide will outline all options that were initially available in the interactive document. Should the Owners Corporation prefer an alternative option to that which they have been offered, please discuss this with your manager prior to execution of the Contract of Appointment.

SCA Victoria Member-Exclusive Contract Usage

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The Owners Corporation should verify that the Manager is a current member of SCA (Vic) prior to executing the Contract of Appointment by accessing the SCA Member Directory.

The Contract of Appointment contains the information specified in the approved form from *Consumer Affairs Victoria*. More information is available at <https://www.consumer.vic.gov.au/housing/owners-corporations>

The Contract of Appointment content wording is not to be varied. Should the Owners Corporation note any discrepancies between this User Guide and the contract provided by their Manager, please check with the Manager and/or contact SCA (Vic).

If any specific details are required for the contract (and not already included), these should be listed under Clause 2.4 'Special Conditions'.

Reference Schedule

Identification of the parties and details to the SCA (Vic) Contract of Appointment

- Check all completed details are correct
- The OC Alternative Representative is ideally a current Committee member
- From 1 December 2021, contracts of appointment entered into with Owners Corporation managers have a maximum term of three years.

Note: Contracts that existed prior to 1 December 2021 that were for longer than three years can still run their full course.

Note: Refer Section 8 for full terms of contract renewal and termination.

1 Insurance

1.1 Manager's professional indemnity insurance details

Managers are required to hold Professional Indemnity Insurance to cover against any claims of negligence or breach of duty made by a client arising from their services or advice, and sufficient to meet claims up to \$2 million in any one year.

This is legislated in accordance with section 119(5) of the *Owners Corporations Act 2006* and section 10 of the *Owners Corporations Regulations 2018*.

1.2 Manager's Australian financial services licence and authorisations

The Owners Corporation must insure as a basic function, and attending to this service is one of the key functions that the Manager performs (unless under specific circumstances, the Owners Corporation chooses to manage all insurance matters).

Strata managers undertake or participate in multiple services in relation to strata insurance for their clients, including but not limited to: quotation, procurement, placement and renewal, claims management, record keeping, correspondence, negotiation and liaison, and advice based on insurance knowledge.

Note: It is the Owners Corporation, not the Manager, that decides where to place the insurance.

The provision of services related to insurance is considered a 'Financial Service' and any organisation providing a financial service is required to hold an Australian financial services license (AFSL). There is a special exemption in relation to certain services strata managers provide to owners corporations related to insurance.

A strata manager may offer limited services in this capacity, operating under the licence of another organisation that holds an AFSL (such as an insurance broker), providing that they are an 'Authorised Representative' (AR) of that organisation, and the services and advice they provide is limited to certain functions. For example, an Authorised Representative may only provide general and factual advice, and not specific or personal advice. The majority of strata managers operate under the AR model.

Other strata managers provide insurance services under the Distributor model whereby the broker provides more of the services and the advice that the manager may provide is more limited than under the AR model. For example, a Distributor may only provide factual information, and not personal or general advice.

Managers must provide to the Owners Corporation a copy of their Financial Services Guide (FSG). The FSG is an important document under the requirements of the AFSL. It is designed to help the Owners Corporation make informed decisions about matters such as the financial services that the Manager provides, the remuneration paid to them for providing those services, associations or relationships they may have, how any complaints are dealt with and arrangements they have in place to compensate clients for losses.

1.3 Insurance Fees and Commissions

One of the five following options has been pre-selected by the Manager for this contract:

1. **Commission**

Manager to receive a commission on the placing of insurance, payable by the insurer, based on a percentage of the base premium.

Manager includes selected insurance services in the annual management fee as set out in Schedule 2.1.

Manager to receive additional fees for additional insurance services as set out in Schedule 2.2.

2. Fixed Fee

Manager to receive a fixed fee on the placing of insurance.

Manager includes selected insurance services in the annual management fee as set out in Schedule 2.1.

Manager to receive additional fees for additional insurance services as set out in Schedule 2.2.

3. Fee for Service

Manager does not include any insurance services in the annual management fee as set out in Schedule 2.1.

Manager to receive fees for individual insurance services as set out in Schedule 2.2.

4. Included in Schedule 2.1

Manager includes all insurance services in the annual management fee as set out in Schedule 2.1.

5. Not Applicable (OC attend to all insurance matters)

No management fees or commissions are applicable as the Owners Corporation attend to all insurance matters.

Should your Contract of Appointment include 'Commission' or 'Fixed Fee' as the option under Clause 1.3, please consider the following information:

To increase transparency and consumer trust, SCA (Vic) considers it best practice to disclose to Owners Corporations the particulars as to how the Manager is to receive remuneration from the placement of the Owners Corporation insurance.

This best practice goes above and beyond current state and federal legislation and regulation, and its implementation distinguishes SCA members from non-members, where disclosure standards are erratic or absent.

You can find further information and resources at <https://www.strata.community/disclosure-guide>

These disclosures exist to:

- o Ensure strata committees understand their choices;
- o Improve relationships and outcomes for consumers of strata insurance;
- o Raise the bar of strata insurance transparency as well as professionalism, standards and ethics in the strata industry;
- o Provide clear and concise information in simple terms explaining the roles and responsibilities of the manager, broker and insurer in the strata insurance process;
- o Provide information about who is paid what, and why, in dollar values and included with invoices, quotes and at the AGM.

It has long been common practice for managers to utilise insurance fees or commissions to subsidise their management fees as a method of administrative cost-saving. Premiums for the Owners Corporation may remain similar, regardless of whether the insurance is arranged directly with the insurer or through the Manager, as brokers and underwriters may have established relationships that provide access to more competitive premiums than those typically available to individuals.

SCA (Vic) endorses the practice for managers to receive fees or commissions, however, has placed additional conditions in the Contract of Appointment for its members should the Manager select to receive fees or commissions on placement of the Owners Corporation insurance. These conditions are:

- o *Such fees and commissions are disclosed in accordance with section 122B Owners Corporations Act 2006 and Section 179 of the Crimes Act 1958 (Vic).*

- *Such fees and commissions do not exceed 20% of the base premium payable by the Owners Corporation.*
- *In all cases the best interest of the client is the paramount criterion when presenting quotations from particular insurance companies or placing insurance with any insurance company or broker that they are an authorised representative of.*

Note: Sub-clause 1.3.1(1) of the **'Commission'** and **'Fixed Fee'** options state:

The Total Annual Fees detailed in Section 2, Clauses 2.1, 2.2 and 2.3 inclusive, have been calculated on the basis of receipt by the Manager of the commission payable listed within the following Clause 1.3.1(2);

This clause reinforces to owners corporations that insurance commissions and fees are typically used to subsidise management fees. They are not separate, additional windfalls.

Note: Sub-clause 1.3.1(2) of the **'Commission'** and **'Fixed Fee'** options state:

The Manager will receive a commission or fee payable by the Owners Corporation on the placing of insurance or the insuring of risks by the Owners Corporation.

'Placement' of insurance means the initial purchase of an insurance product or the renewal of an existing product unless the insurer independently generates and processes the renewal without the agent's participation or involvement.

'Insuring of Risks' means losses that are caused by events beyond the control of the insured party.

Note: Sub-clause 1.3.1(5) of the **'Commission'** and **'Fixed Fee'** options state:

Should the commission/fee payable in Clause 1.3.1(2) above no longer be received by the Manager for whatever reason, the Owners Corporation consents to the inclusion of a fee under Clause 2.1 being increased by the equivalent amount of the commission payable in Clause 1.3.1(2);

This clause transparently addresses scenarios such as where the Owners Corporation opts to manage their own insurance matters partway through the contract term. The Manager has factored future commission/fees into the management fee calculations, therefore, any resulting revenue changes are to be compensated by the Owners Corporation for the remaining duration of the contract.

Note: Sub-clause 1.3.1(6) of the **'Commission'** option states:

If the Owners Corporation resolves to obtain insurance independently of the Manager's involvement during the course of this contract, and cover is placed with an entity that the Manager is not a representative of, the Owners Corporation acknowledges that the Manager is not permitted to assist in any insurance-related matters under the Financial Services Reform Act 2003.

This clause reinforces that if the Owners Corporation arranges its own insurance with a company that the Manager does not represent, the Manager cannot provide any insurance assistance by law.

2 Management Fees and Services

2.1 Annual Fee and Services:

The Manager's annual fee is specified.

How often the fee is paid is pre-selected by the Manager from the following options:

- Annually in advance
- Half yearly in advance
- Quarterly in advance
- Monthly in advance
- Other (and details)

Agreed / Included Services

A description of the Agreed Services (**Schedule 2.1**) which are to be provided by the Manager in respect of the annual fee payment are listed. All items under Schedule 2.1 are to be completed by the Manager within the specified fee (no additional charges).

Note: The Manager is to keep the records of the Owners Corporation as detailed in section 144 of the Act (including phone numbers and email addresses as detailed in section 11A of the Regs). Phone numbers and email addresses are considered Owners Corporation records and are required to be transferred on change of management.

Insurance Fees in accordance with Clause 1.3.1

As part of the SCA (Vic) CoA 2025, Managers will now re-confirm their choice of Insurance Fee and Commission Arrangements under Clause 2.1, providing further transparency to SCA (Vic) Member Owners Corporations.

Schedules 2.1 / 2.2 / 2.3 alphabetised

Line items under sub-clauses are now alphabetised for ease of reference.

2.2 Additional Services:

A description of the Additional Services (**Schedule 2.2**) which may be provided by the Manager in addition to the annual fee payment are listed. These are payable on presentation of invoice.

Note: In accordance with Section 4 of the Contract of Appointment, the Owners Corporation authorises the Manager to disburse Owners Corporation funds for the purpose of payment of Schedule 2.2 services. For transparency, and to minimise additional costs to the Owners Corporation, ask your Manager how to best keep informed of Additional Services expenses.

Note: An Owners Corporation is responsible for actions taken on its behalf by delegates, such as a manager or committee member. The Owners Corporation can pass on costs incurred by these actions to members. It is therefore imperative that an Owners Corporation seek professional help to manage financial responsibilities. Additional Financial Services which may be required to be carried out by the Manager are listed in Schedule 2.2. Check with your Manager regarding any queries.

2.3 Disbursement Fees:

A description of disbursement amounts that may be claimed for reimbursement by the Manager are listed.

The Manager has the option of providing a single fixed disbursement fee to cover utilities and postage or to itemise these separately.

The item 'Digital management tools and technology services' reflects the value and scope of services provided by Managers. This description allows for various inclusions and covers the actual costs incurred by the Manager for using digital systems and platforms necessary to deliver effective services to the Owners Corporation. This may include:

- Strata management platforms (e.g. levy management, financial reporting, maintenance tracking)
- Communication systems (e.g. SMS alerts, newsletters, bulk email distribution)
- Virtual meeting and electronic voting tools
- Secure document storage and access platforms
- Work order and contractor compliance systems
- Tools for legal and regulatory compliance (e.g. insurance and safety tracking)

Note: Fees for Owners Corporation Certificates, and copies of Register and Records have been removed from the SCA (Vic) CoA from 2025 as applicants pay the Manager directly and are not a party to the Contract of Appointment. It is noted simply in Clause 2.3.2 that these items will be charged in accordance with the Owners Corporation Regulations.

2.4 Special Conditions

As specified on the cover page of the contract, unauthorised reproduction or alteration of the CoA, in whole or in part is an infringement of copyright. It is therefore this clause which allows for entry of any special conditions specific to the Contract of Appointment, OC or Manager.

This clause sits alongside Management Fees as many Special Conditions relate to changes in Additional Fees. This location makes it practical for both Managers and OCs.

2.5 Review of Fees:

This clause provides for the Manager's fees (Schedule 2.1 and 2.2) to be reviewed and increased annually (at the AGM or 1st of preferred month) by the Manager's choice of the following:

- AWOTE
- CPI
- Percentage increase

If "Percentage increase" is selected, the Manager also selects the preferred percentage figure which will remain the same for each annual increase of the contract term.

SCA (Vic) recommend, as a guide, a maximum figure of 5%, however some Managers may justify selecting a higher figure, and explaining their reasoning to the Owners Corporation, due to varying business models or circumstances.

Definitions for AWOTE and CPI, for the purposes of this contract, may be found in Section 12 of the Contract of Appointment.

This clause also provides for the disbursement fees (Schedule 2.3) to be reviewed to reflect cost increases annually (at the AGM or 1st of preferred month).

3 Delegations to Manager

Section 11 of the Act allows that the Owners Corporation may delegate its powers and functions to the Committee (other than those requiring a unanimous or special resolution).

This section of the Contract of Appointment quotes the same section of the Act in which the Owners Corporation may delegate powers and functions of the Owners Corporation to the Manager (other than those requiring a unanimous or special resolution).

It provides that the Owners Corporation delegates to the Manager (or an employee of the Manager) all powers and functions of the Owners Corporation that are necessary to enable the Manager to perform the duties under the SCA (Vic) Contract of Appointment, including the power to sign on behalf of the Owners Corporation. This is essential for the Owners Corporation to function in a timely and effective manner.

4 Authority to Pay

Specifies that the Owners Corporation authorises the Manager to disburse Owners Corporation funds for the purpose of payment of Owners Corporation expenses.

Note: This authority covers payment of Additional Services (Schedule 2.2). For transparency and to minimise additional costs to the Owners Corporation, ask your Manager how to best keep informed of Additional Services expenses.

Note: Ask your Manager how to best keep informed of all Owners Corporation expenses being paid by the Manager.

5 Duties / Obligations of the Manager

The duties and obligations of the Manager are listed, with the majority aligning with those recommended by Consumer Affairs Victoria.

SCA (Vic) imposes some additional duties and obligations on its members within this clause including to perform the Agreed and Additional Services promptly when requested and in accordance with the fees, maintain professional registration and insurance requirements, adhere to the specified scope of duties, follow directions from the Owners Corporation for property-related tasks, and ensure that any use of records is strictly in line with the contract's obligations.

Note: There is an ethical obligation imposed on managers by their membership of SCA (Vic) to comply with the SCA (Vic) Code of Ethics. Refer: <https://www.strata.community/code-of-ethics>

6 Transfer / Assignment of this Contract of Appointment

This section provides for assignment of the SCA (Vic) Contract of Appointment to a new Manager.

The Owners Corporation must not unreasonably withhold consent to the appointment of the new Manager if the proposed new Manager is a registered Manager pursuant to the Act and is a current full member of SCA (Vic) or other professional body as approved by the Director.

'Director' means the person who is employed as Director of Consumer Affairs Victoria under the Public Administration Act 2004.

Further information may be found in sections 119A(1)(f) and 119A(3) of the Owners Corporations Act 2006.

7 Indemnities

In this section, the Owners Corporation agrees to indemnify and hold the Manager harmless from any actions, claims, losses, or expenses arising from the performance or non-performance of services under this contract, except where the Manager is at fault.

If the Owners Corporation contributes to a breach by the Manager, it must indemnify the Manager for any resulting liabilities.

Managers implement the decisions of the Owners Corporation. They do not make decisions but nonetheless are sometimes joined in proceedings when there is a dispute within the Owners Corporation. The Owners Corporation indemnifies the Manager for all reasonable costs reasonably incurred in connection with any matter relating to the Owners Corporation or its property or in consequence of the Manager being a party to any proceeding relating to the Owners Corporation.

The Owners Corporation is responsible for covering any overdrawn funds and reimbursing the Manager for reasonable costs related to Owners Corporation matters. Information regarding Clause 7.6 may be found in sections 23 and 24 of the Owners Corporations Act 2006 – in particular, S.23(1)(a)/(d) and S.24(1).

These indemnities remain in effect even after the contract is terminated.

Note: The Manager is an administrator providing secretarial type services and does not provide expert services such as ESM (fire safety), OH&S (health and safety), supervision of building works, legal or financial advice etc.

Note: Refer also to **Section 9: Obligations of the Owners Corporation** outlining that the Owners Corporation must notify the Manager of any property defects or hazards, is responsible for all property repairs and maintenance, is responsible for complying with the OHS Act, and must indemnify the Manager against claims related to OHS breaches.

8 Termination of Manager's Appointment

The Manager's appointment may be terminated in several ways. Both parties must provide notice: 89 days for tier one or two Owners Corporations and 27 days for tiers three to five. If no notice is given, the contract renews automatically and may then be terminated with one month's notice.

The contract can also be terminated immediately if either party breaches the contract and fails to fix the issue after notice.

Upon termination, the Owners Corporation must pay the Manager for services up to the termination date, including any additional services, disbursement fees, and costs for record transfers. The Manager must return all records and funds to the Owners Corporation within 28 days of termination.

If termination occurs before the contract's expiry, the Owners Corporation must pay an Early Termination Fee, representing the Manager's anticipated profit loss.

SCA (Vic) recommend, as a guide, a maximum percentage multiplier of 25%, however some Managers may justify selecting a higher figure, and explaining their reasoning to the Owners Corporation, due to varying business models or circumstances. If brought before the Victorian Civil and Administrative Tribunal (VCAT), the Manager would be required to provide financial evidence to justify their selected figure.

The Early Termination Fee may be calculated as follows:

If **E** = Early Termination Fee
 A = Annual Management Fee
 R = Remaining period of the contract (as a fraction of a year)
 P = Percentage multiplier (expressed as a decimal)

Then **E = A x R x P**

For example:

If	Annual Management Fee (A)	\$10,000
	Contract Term	3 Years
	Contract terminated early at	1 Year 3 Months
	Remaining period of the contract	1 Year 9 Months
	Expressed as a fraction of a year (R)	1.75
	Percentage multiplier	25%
	Expressed as a decimal (P)	0.25

Then **E = A x R x P**

E = \$10,000 x 1.75 x 0.25

E = \$4,375

In this example, had the contract and management continued, the total management fee for the same period would have been \$17,500. However, this has been reduced to \$4,375 to cover only the Manager's anticipated profit loss and an amount of time to replace the contract.

8.3.3 The Manager may terminate or renegotiate the Contract of Appointment if the Owners Corporation changes any of the terms of the contract.

This clause allows renegotiation or termination of the contract if the OC changes the agreed terms. An example might be if the OC resolves to obtain insurance independently of the Manager's involvement during the course of the contract, thus the Manager is no longer receiving the commission which had been calculated to subsidise overall management fees. This clause protects managers from being locked into loss-making contracts when revenue assumptions are altered without fair adjustment.

Definition: 28-day term

In accordance with section 44 of the Interpretation of Legislation Act 1984, and for the purpose of defining the 28-day term referenced in section 127 of the Owners Corporations Act 2006, SCA (Vic) wishes to clarify that the term is to be calculated from the date termination is affected, as opposed to the date notice of termination is provided.

For example:

On 30th June, a notice determining that termination is "affected immediately" is received. The 28-day handover period commences the following day, 1st July (assuming no weekends or public holidays), and records are to be provided no later than 28th July.

On 30th June, a notice determining that termination is "affected from 1st July" is received. The 28-day handover period commences the following day, 1st July (assuming no weekends or public holidays), and records are to be provided no later than 28th July.

On 30th June, a notice determining that termination is "affected from 30th June" is received. The 28-day handover period commences the following day, 1st July (assuming no weekends or public holidays), and records are to be provided no later than 28th July.

Where the Manager is writing a notice of termination, or correspondence to clarify the date that records must be returned to the Owners Corporation, SCA (Vic) considers it best practice to include the actual date by which handover must occur. This will remove any ambiguity as to which date the 28-day period commences on and/or ends.

9 Obligations of the Owners Corporation

Owners Corporation members are encouraged to thoroughly review and consider the content of this section of the Contract of Appointment.

Various obligations of the Owners Corporation are outlined including specifics in carrying out OC functions and powers, positions required and order of precedence for Manager liaison, notice of meetings and provision of minutes required, reporting of defects and hazards, responsibility for repairs and maintenance etc.

Primary obligations include that the Owners Corporation must act with honesty, good faith, and due diligence, ensuring funds are available for routine expenses.

Clauses 9.2.1 and 9.2.2 – What does "appropriate powers to act" mean?

9.2.1 Have at all times a chairperson or substitute representative to liaise with the Manager and must give that person appropriate powers to act by executing an instrument of delegation under s.11(2)(d) of the Act or by resolution at a general meeting;

9.2.2 Appoint a grievance committee and execute an instrument of delegation giving the grievance committee appropriate powers to act pursuant to s.11(2)(a) of the Act or by resolution at a general meeting;

When an Owners Corporation delegates authority under Section 11(2) of the Owners Corporations Act 2006, it must execute an official instrument of delegation. This document sets out the powers being transferred.

The phrase "*appropriate powers to act*" is not a defined legal term. Instead, it means that the powers given must be suitable for the role the delegate is expected to carry out. For example:

- A chairperson or substitute representative may need authority to communicate with the Manager, give instructions on day-to-day matters, or make procedural decisions on behalf of the committee.
- A grievance committee may need authority to receive complaints, investigate issues, and make recommendations to the Owners Corporation, but might not be given powers to spend money or enter contracts.

In short, "*appropriate powers to act*" means that the Owners Corporation should ensure the delegation is practical and sufficient for the tasks expected, without granting unnecessary powers that go beyond the role.

Further Information

The Owners Corporation is the entity in control of the Owners Corporation property (not the Manager).

The Owners Corporation has an obligation to ensure the safety of any person/s at the premises and on or using the Owners Corporation property.

The Manager is not required to inspect the Owners Corporation property or attend to any repairs, maintenance or other works on site.

The Manager is not liable for property defects unless informed and fails to act, or if instructed to arrange repairs with available funds but does not do so. The Owners Corporation must indemnify the Manager against claims resulting from breaches of its OHS obligations.

The 'principal contractor' as noted in Clause 9.5.4(c) refers to a company conducting work at the property (repairs and maintenance). The Owners Corporation has an obligation to provide a safe workplace for the principal contractor under the *Occupational Health and Safety Act 2004*. This principal contractor (company) is in turn responsible for its own employees / sub-contractors.

In the context of Clause 9.5.4(d), "Principal" refers to the entity (the Owners Corporation) that is legally responsible for the obligations and duties outlined in any contracts or agreements. When the Manager acts as an agent, they enter into contracts on behalf of the Owners Corporation, but the Owners Corporation, as the Principal, holds the ultimate responsibility and liability for those contracts. The Manager, therefore, is not liable for the contracts' terms or any actions related to those agreements.

10 Dispute / Complaints Process

The Manager and Owners Corporation are to follow this process to resolve any disputes:

The person or party with a complaint is required to submit it in writing to inform the other party. Everyone involved should meet within 28 days, either in person or by phone, to attempt to resolve the matter.

If required, the Grievance Committee may bring in an expert to help, and the costs are to be covered as agreed. If both parties agree, they can seek an expert to make a final decision, and that decision will be binding.

If the issue still isn't resolved, the necessary notices will be issued, and the parties will be informed of their options for further action.

11 Additional Conditions and Provisions

This section sets out additional conditions and provisions:

11.1 Entire Agreement

The Contract of Appointment represents the complete agreement between the parties, replacing any prior discussions or agreements. Any changes to the agreement must be made in writing and signed by both parties.

11.2 Severance

If any part of the Contract of Appointment is found to be invalid or unenforceable, it will be modified or removed as necessary, while the rest of the agreement will continue to be effective.

11.3 Beneficial Relationships

Managers must disclose any beneficial relationships with suppliers prior to entering contracts for goods or services on behalf of the Owners Corporation. Managers must ensure that procured goods or services are competitively priced and on fair terms, upholding their duty to act diligently and in good faith. This disclosure must be made in writing to the chairperson before the contract for goods or services is executed.

11.4 Commissions and Benefits

Managers must disclose any commissions, payments, or other benefits received from suppliers when arranging contracts for goods or services on behalf of the Owners Corporation. This disclosure must be made in writing to the chairperson before the contract for goods or services is executed.

Note SCA (Vic) considers it best practice that disclosure:

- Be full and frank; and
- Elicit the informed consent of the party to whom disclosure is made.

SCA (Vic) has been advised that for robust disclosure:

1. Written notice should be provided to the Committee (if not the full Owners Corporation) rather than just the Chairperson as the Act requires;
2. The written notice should include:
 - Full particulars about the commission, payment or other benefit;
 - The amount of the commission, payment or other benefit;
 - Its calculation;
 - Full particulars about the nature of the relationship between the person providing the commission, payment or other benefit and the Manager;
 - Details of why the approval is in the Owners Corporation's interest; and
 - A statement by the Manager that it believes that accepting the commission, payment or other benefit is in the Owners Corporation's interest.

If the Owners Corporation is unclear on any beneficial relationship or commission that the Manager has noted, please ensure to seek further information prior to execution of the contract.

12 Definitions and Interpretations

Sets out defined terms used in the SCA (Vic) Contract of Appointment.

13 GST

Provides an explanation that GST will be added to maximum fees and included in disbursements, with adjustments made if the GST rate changes.

14 Declarations and Signatures

Operates to appoint the Manager and provides for declarations and signatures of the Owners Corporation and Manager with various drop-down options.

One of the two following options has been pre-selected by the Manager for this contract:

- **EXECUTED by two Lot Owners**

An owners corporation can execute documents or perform actions in its name or on behalf of its members to fulfil its duties, with the same legal effect as if the members themselves had done so. It can also authorise at least two lot owners from separate lots to sign documents, including their names, addresses, and a statement confirming their ownership or directorship.

- **EXECUTED incl. the Common Seal**

Executed as per above option but including the Owners Corporation common seal. Its use must be witnessed by at least two lot owners or directors who must sign and record their details next to the seal.

One of the three following options has been pre-selected by the Manager for this contract:

- **EXECUTED by Sole Manager**

- **EXECUTED by Manager & Witness**

- **EXECUTED by Two Managers**

These options are in accordance with the Corporations Act 2001, Section 127 Execution of documents:

A company can execute documents without a common seal by having them signed by either two directors, a director and a company secretary, or the sole director if applicable. The section doesn't limit other methods a company might use to execute documents, including those outlined in its constitution. If a common seal is used, the sealing must be witnessed by the same parties. Execution can be done electronically.

Note: SCA (Vic) considers it best practice for the Owners Corporation to provide to the Manager a copy of the Owners Corporation or Committee resolutions approving:

- o The appointment of the Manager;
- o The agreement to execute this or future Contracts of Appointment;
- o The disclosures of any fees, commissions or other benefits.

In Conclusion

SCA (Vic) presents this User Guide to enhance the Owners Corporation members' understanding of the *SCA (Vic) Contract of Appointment*. This guide provides a comprehensive overview of the contract and assists in navigating the appointment process.

By clearly outlining the terms and conditions of the Manager's appointment, it helps ensure awareness of rights and obligations.

Please note that while this guide is intended to help Owners Corporations understand the *SCA (Vic) Contract of Appointment*, it does not serve as legal or expert advice. Consumers are encouraged to seek independent legal advice regarding any agreed Special Conditions to be made to the *SCA (Vic) Contract of Appointment* and prior to executing the document.

Should the Owners Corporation have any queries with the Contract of Appointment, the selected options, or this User Guide, please seek guidance from the Manager as the first point of call.

SCA (Vic) is a membership organisation, not a regulatory or legal body. Unfortunately, there is no provision for SCA (Vic) to assist or mediate in resolving Owners Corporation disputes. For further information, please contact *Consumer Affairs Victoria* (CAV) to understand the dispute resolution process:

Contact Consumer Affairs Victoria (CAV)

<https://www.consumer.vic.gov.au/contact-us>

General information for Owners Corporations

<https://www.consumer.vic.gov.au/housing/owners-corporations>

Dispute Resolution in Owners Corporations

<https://www.consumer.vic.gov.au/housing/owners-corporations/complaint-handling-and-resolving-disputes>



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Contract of Appointment
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