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# NCAT ORDERS OWNERS CORPORATION TO REPAINT CEILING AND REPAIR DAMAGE TO LOT PROPERTY

Adrian Mueller  
Partner | Senior Lawyer  
B.Com LLB FACCAL  
[Email](#) | [LinkedIn](#)

## NCAT ORDERS OWNERS CORPORATION TO REPAINT CEILING AND REPAIR DAMAGE TO LOT PROPERTY

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### **Introduction**

There is a common misconception that an owners corporation is not responsible for repainting a water damaged ceiling in a lot or repairing consequential water damage to the lot that is caused by a common property defect. In a recent case, NCAT held that an owners corporation is responsible for carrying out those repairs. NCAT also held that the common property memorandum does not exempt an owners corporation from having to perform those repairs.

### **Background**

Ms Mastellone owns a residential lot in a strata building in Sydney. Ms Mastellone claimed that water leaked into her lot through defects in the roof of the building which caused water staining to the paintwork on her ceiling. She applied to NCAT for an order to force the owners corporation of her building to repaint her ceiling. Initially, NCAT rejected Ms Mastellone's claim for that work. However, on 25 June 2021, an appeal by Ms Mastellone against that decision was allowed by the Appeal Panel of NCAT in *Mastellone v The Owners- Strata Plan No. 87110* [2021] NSWCATP 188.

### **Arguments of Owners Corporation**

In the case, it was common ground that the paintwork on the ceiling was lot property, not common property. The owners corporation argued that NCAT did not have power to order it to carry out repairs to lot property. The owners corporation also argued that it had adopted the common property memorandum and a special by-law both of which provided that a lot owner was responsible for carrying out repairs to paintwork on ceilings. The owners corporation said that this meant it had no responsibility for repainting Ms Mastellone's ceiling as a result of which NCAT could not order it to do so.

### **Reasoning of Appeal Panel**

The Appeal Panel rejected the owners corporation's arguments. The Appeal Panel was satisfied that the roof of the building was common property, that there were defects in the roof which allowed water to leak into and cause damage to Ms Mastellone's ceiling and that therefore the owners corporation was in breach of its duty to keep the common property in good repair in accordance with section 106 of the *Strata Schemes Management Act 2015*. The Appeal Panel concluded that the common property memorandum and special by-law did not exempt the owners corporation from its duty to keep the common property in good repair or deal with the liability of the owners corporation arising from a breach of its duty to repair the common property. Further, the Appeal Panel held that the power given to NCAT to make orders to settle strata disputes is broad enough to permit NCAT to order an owners corporation to repair damage to lot property caused by water leakage through a common property defect. For these reasons, the owners corporation was ordered to repaint Ms Mastellone's ceiling.

### **Conclusion**

The *Mastellone* case is an important decision. The case confirms that NCAT has the power to order an owners corporation to repair damage to lot property that is caused by water that leaks into a lot through common property defects. The case also confirms that the common property memorandum or a special by-law that make lot owners responsible for repairing lot property does not exempt the owners corporation from having to repair damage to lot property that is caused by a defect in the common property.

Adrian Mueller  
Partner | B.Com LLB FACCAL  
[adrianmueller@muellers.com.au](mailto:adrianmueller@muellers.com.au)

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### **About JS Mueller & Co Lawyers**

JS Mueller & Co Lawyers has been servicing the strata industry across metropolitan and regional NSW for over 40 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of all strata law inclusive of by-laws, building defects and levy collections.

02 9562 1266  
[enquiries@muellers.com.au](mailto:enquiries@muellers.com.au)  
[www.muellers.com.au](http://www.muellers.com.au)



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