

# VIDEO: Water Leaks, NCAT & Common Property

Adrian Mueller talks with [Nikki Jovicic](#), [LookUpStrata](#) about the owners corporation's responsibility to remedy water leaks and defects in NSW strata buildings.

Recent heavy rainfall across NSW has unfortunately led to a surge in water leaks and defects within strata buildings. These leaks can damage both common property and lot property, causing significant frustration and financial burden for apartment owners. As a result, disputes between owners and their owners corporation have become more frequent.

## Understanding the Owners Corporation's Responsibility

The *Strata Schemes Management Act 2015* (NSW) clearly outlines the owners corporation's duty to maintain and repair common property. This includes:

- **Maintaining common areas:** Roofs, external walls, plumbing systems, balconies, stairwells, and any other areas designated as common property in the strata scheme.
- **Keeping them in a good state of repair:** This means addressing any issues that could compromise the structural integrity, safety, or functionality of the common property.
- **Renewing or replacing common property fixtures and fittings:** Pipes, waterproofing membranes, sealant around windows, and other elements that naturally deteriorate over time.

# Strict Liability and the Duty to Repair

The Act imposes a strict liability on the owners corporation for repairs. This means the owners corporation is responsible for fixing defects in the common property, regardless of cause. Even if the leak originates from faulty original construction or unforeseen circumstances, the owners corporation must address the issue.

This strict liability eliminates the option for the owners corporation to simply deny responsibility for repairs. Delays in fixing leaks, passing resolutions to avoid repairs, or claiming lack of funds are not valid excuses.

## Remedies available to Lot Owners when an Owners Corporation Fails to Act

If your apartment suffers damage from water leaks or defects originating in the common property, and the owners corporation fails to take action, you have several options:

- **Apply to NCAT (New South Wales Civil and Administrative Tribunal):** You can file an application with NCAT seeking an order that compels the owners corporation to undertake the necessary repairs.
- **Claim Damages:** You can pursue compensation for losses incurred due to the water leak. This may include the cost of repairs to your unit, the replacement of damaged belongings, or lost rental income if you were unable to rent out your unit while repairs were ongoing.
- **Administrator Appointment:** In extreme cases, NCAT can appoint someone to manage the owners corporation and organise repairs. The compulsory strata manager will take control of the owners corporations affairs and arrange for the repairs to be completed.

# Making a Strong Claim for Water Leaks and Defects as a Lot Owner

To maximise your chances of a successful claim, it's crucial to have a well-documented case. You should:

- **Verify Ownership:** Ensure you are the current owner of the affected unit at the time of the claim.
- **Identify the Source:** Identify the specific defects in the common property causing the water leaks. This often involves obtaining a professional inspection report from a qualified specialist.
- **Scope of Works:** Outline the necessary repairs in a [scope of works](#) document. This document should be based on the expert's recommendations and clearly define the repairs needed to address the leak and prevent future occurrences.
- **Proof of Losses:** Gather evidence to substantiate your financial losses. Receipts for repairs to your unit, damaged furniture replacement costs, and rental agreements proving lost income are all valuable documents.
- **Timely Action:** Don't delay! File your claim with NCAT within two years of becoming aware of the water leaks, defects and the resulting damage.

The strict liability makes it difficult for owners corporations to argue they are not responsible for repairs.

Adrian Mueller's final thoughts for those owners corporations still avoiding their responsibility, at the end of the session: "that's the law, like it or not..... sometimes you just have to suck it up".



## **Adrian Mueller I BCOM LLB FACCAL I Partner**

Since 2002 Adrian has specialised almost exclusively in the area of strata law. His knowledge of, and experience in strata law is second to none. He is the youngest person to have been admitted as a Fellow of the ACSL, the peak body for strata lawyers in Australia. [Profile](#) I [Linked](#)

### **Contact Us**

For all strata law advice including by-laws, building defects and levy collections contact our specialist NSW and Sydney strata lawyers [here](#) or call 02 9562 1266, we're happy to assist.