

Factsheet for Lot Owners  
Water Ingress affecting only Private Lot Property

## Do you have a water leak?

If you are a lot owner and you are experiencing water ingress into your private lot property, or are a lot owner who thinks water may be leaking from your apartment into another lot owner's property, here are some preliminary steps you should consider taking:

1. If water is leaking into your apartment, the first thing to do is notify the lot owner who owns the apartment from where the water is leaking.
2. If the lot owner refuses to do anything or it is your property that is causing the water ingress into another apartment, the next step is to call an expert and have them inspect where the leak is coming from, where the water is going, work out the solution to the problem and the extent of the damage.
3. The next step is to work out whether the leak is coming from **private lot property** or the **common property**, as this will determine who is liable for the cost to repair the leak and any consequential damage.
  - a. The Plan of Subdivision determines the legal boundaries between common property and private lot property for a particular property. The Owners Corporation is responsible for the repair and maintenance of the common property,<sup>1</sup> while individual lot owners are responsible to repair and maintain their private lot property.<sup>2</sup>
  - b. All Plan of Subdivisions are unique and the boundaries are different for every property. We recommend that you obtain expert legal advice on the interpretation of your Plan of Subdivision, to confirm the legal boundaries that affect your private lot. Please contact Phillip Leaman, Principal of our Owners Corporation Team if you would like assistance and if we are not already acting for your Owners Corporation.
  - c. If the water leak is coming from private lot property, it is not the responsibility of the Owners Corporation to arrange the required repairs (or to pay for them).
4. If it is determined your private lot is leaking, you are required to comply with two primary statutory duties:
  - a. Section 129 of the *Owners Corporations Act 2006* (Vic) which requires a lot owner to properly maintain in a state of good and serviceable repair any part of the lot that affects the outward appearance of the lot or the use or enjoyment of other lots or the common property. This also includes any service that serves that lot exclusively.

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<sup>1</sup> *Owners Corporations Act 2006* (Vic) s 46.

<sup>2</sup> *Owners Corporations Act 2006* (Vic) s 129.

5. Please note that if water ingress is caused by defective waterproofing in your balcony and you have an internal face boundary, the private lot owner will, in most cases, be responsible for repairing the damage as the screed, tiles and waterproof membrane is usually private lot property. A private lot owner is also likely to be responsible for water issues even if some boundaries are referred to as median or exterior face boundaries.
6. Section 16 of the *Water Act* is as follows:-
  - (1) If—
    - (a) there is a flow of water from the land of a person onto any other land; and
    - (b) that flow is not reasonable; and
    - (c) the water causes—
      - (i) injury to any other person; or
      - (ii) damage to the property (whether real or personal) of any other person; or
      - (iii) any other person to suffer economic loss—the person who caused the flow is liable to pay damages to that other person in respect of that injury, damage or loss.
  - (2) If—
    - (a) a person interferes with a reasonable flow of water onto any land or by negligent conduct interferes with a flow of water onto any land which is not reasonable; and
    - (b) as a result of that interference water causes—
      - (i) injury to any other person; or
      - (ii) damage to the property (whether real or personal) of any other person; or
      - (iii) any other person to suffer economic loss—the person who interfered with the flow is liable to pay damages to that other person in respect of that injury, damage or loss.
7. Pursuant to the *Water Act*, a 'flow' in relation to water, includes discharge, release, escape, percolation, seepage and passage, and includes both surface and underground flow.
8. The effect of section 16 of *Water Act* is that the private lot owner will be liable to compensate another lot owner for damage to the lot or for economic loss (such as loss of rent for the inability to occupy the apartment due to water issues), or for both, that results from an unreasonable flow of water from the private lot into another party's lot or into common property, if:
  - i. the lot owner has caused the flow, or
  - ii. the lot owner has failed to take any steps reasonably available to prevent the causing of the flow. Such steps could be to failing to keep the private lot in a good state of repair and maintenance.

9. Any party affected by water ingress issues may be entitled to make a claim under section 16 of the *Water Act 1989* (Vic), for the damage to the lot and the cost of repairs. Liability for resulting loss may be able to be reduced if the water ingress has resulted from original building defects caused by a previous owner of the lot. However, the obligation can only be reduced if the Lot owner takes all necessary steps to rectify the water ingress issue as soon as it is notified of the issue.

## Can I sue the original builder who caused the issue?

10. If the water ingress is caused by defective construction of your building by the original builder, a claim may be possible against the original builder if the construction finished less than 10 years ago. It is important that you obtain legal advice and take action (meaning issuing legal proceedings at VCAT) within the 10 year period, otherwise the claim will not be able to be pursued.

## What should I do next?

11. It is important to obtain legal advice early in the process, to better understand your rights as a lot owner.
12. If you require formal legal advice, please contact Phillip Leaman, Principal of our Owners Corporation Team for assistance or advice.

## Our Blog

Tisher Liner FC Law have extensive material on our website including a dedicated blog for those involved with Owners Corporations. To sign up to our blog, send an email to [ocenquiry@tlfc.com.au](mailto:ocenquiry@tlfc.com.au) with the subject "Sign me up to the blog".

To see our other resources for Owners Corporations check out [www.tlfc.com.au](http://www.tlfc.com.au).

**Disclaimer:** This document is not intended to nor should it be relied on as a substitute for legal or other professional advice. It is general commentary not to be relied upon without specific instructions to us and advice to you. Your needs and situation are unique, and each may yield different results.



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