

Who Pays for Maintenance in a Body Corporate?

(Unit Titles Act; sections 138 and 80)

Both the body corporate's and the owner's responsibilities are outlined under Sections 138 and 80 respectively.

Sections 138(1) and (2) state a body corporate's duties of repair and maintenance:

1. The body corporate must manage, maintain, and keep in a good state of repair the common property.
2. The body corporate must maintain, repair, or renew all building elements and infrastructure that relate to or serve more than one unit.

Section 80 states that an owner "must repair and maintain the unit and keep it in good order to ensure that no damage or harm, whether physical, economic, or otherwise, is, or has the potential to be, caused to the common property, any building element, any infrastructure, or any other unit in the building".

Section 5(1) defines common property as:

- a) All the land and associated fixtures that are part of the unit title development but are not contained in a principal unit, accessory unit, or future development unit; and b) In the case of a subsidiary unit title development, means that part of the principal unit subdivided to create the subsidiary unit title development that is not contained in a principal unit, accessory unit, or future development unit.

The Unit Titles Act 2010 has introduced the new terms "building elements" and "infrastructure". "Building elements" include internal and external components of a building necessary to its structural integrity, aesthetics, or health and safety, and includes the roof, foundations, walls, decks, balconies, and cladding. "Infrastructure" includes pipes, wires, cables, gutters, and other matters necessary for shelter and services/utilities.

The obligations of both the body corporate and the owners are clearly established. What has not been established is who pays for what. Section 138(4) states: "Any costs incurred by the body corporate that relate to repairs to building elements and infrastructure contained in a principal unit are recoverable by the body corporate from the owner of that unit as a debt..." Therefore, the cost of repairing any building elements or infrastructure "situated

within a principal unit” is recoverable from that unit owner. So, if the leaking roof from the original question is within common property, then section 138(4) will not apply; meaning that the Body Corporate must repair it and the cost is shared among all members of the body corporate in proportion to their utility interest. Conversely, if the roof is “contained in a principal unit” then section 138(4) will apply with the costs recoverable the owner of that unit.

There is however another section of the Unit Titles Act 2010 to consider. Section 126 indicates that where the body corporate does any work substantially for the benefit of one or more units, but not all units, or which benefits some owners more than others, then the cost of that work is recoverable from those specific unit owners, and not all owners.

If the complex is a multi-storey development this provides some argument as to who should pay for the roof as it could be argued that while the roof is within one unit it is fundamental to the integrity of the whole building. Sections 138 and 126 seem to conflict here and there is no instruction as to which section to adopt given this scenario. This could lead to disagreement between owners which may ultimately need to be decided by either the Tenancy Tribunal or the Courts.