

**Publication Date: June 27, 2017**  
**YSP Podcast Transcript: Episode 067. The legal liability of strata committee members - with Anne-Maree Paull of CHU**

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**Intro:** Welcome to Your Strata Property. The podcast for property owners looking for reliable, accurate, and bite-sized information from an experienced and authoritative source. To access previous episodes and useful strata tips, go to [www.yourstrataproperty.com.au](http://www.yourstrataproperty.com.au).

**Amanda Farmer:** Hello and welcome. I'm Amanda Farmer this is Your Strata Property. Anne-Maree Paull is the New South Wales and ACT state manager for CHU underwriting agencies. She has a degree in economics from Sydney University majoring in accounting and law. As an insurance specialist, she sees the growing and ever changing strata industry as an exciting place to be particularly with the New South Wales law reform.

As a strata owner herself, she understands the underlying risks associated with unlimited personal liability. However, she's mindful that not all owners are in the same informed position and need to be educated about the risks and potential exposure to liability. To talk about just that, I am delighted to welcome Anne-Maree Paull of CHU. Welcome, Anne Marie.

**Anne-Maree Paull:** Thank you, Amanda. It's great to be having this opportunity to speak with you today. So I really appreciate it.

**Amanda Farmer:** Lovely to have you on the show, Anne Marie. And I am looking at you on a Skype video. And I am looking at this beautiful background, which is not wallpaper. It is real. You are sitting in front of the Sydney Harbor Bridge.

**Anne-Maree Paull:** I'm a very lucky girl where I work, very lucky.

**Amanda Farmer:** Just gorgeous. That has to be the best backdrop of all of my guests so far, I think. I'm very jealous.

**Anne-Maree Paull:** It's a good distraction for me. So that's good.

**Amanda Farmer:** Not at all. We don't want to be distracted. We are talking about some very important stuff here today. And I'm going to start by asking you, Anne Marie, can you tell us why it is so important for strata committee members to have an understanding of liability?

**Anne-Maree Paull:** I guess the most important thing is that liability is something you don't really think about when you're buying a property or going on a strata committee. I think a lot of people go on to a strata committee being voted in, thinking that's great, but don't realise the importance of the role, firstly. And don't always understand the liability that it can expose the owner's corporation to and also themselves personally. I remember buying into strata the first time myself back in the late '80s, thinking, what have I bought into? And there's all these terms, owner's corporation, strata committee or executive committee back in those days. And lots and airspace. And I'm thinking, "What have I actually bought here?"

And I had a very good solicitor who was doing the conveyancing who actually took the time to explain to my husband and I, what we'd bought, what we were buying into actually. We hadn't actually bought at that stage. And I think in those days it wasn't a lot of information, but luckily now with podcasts like this, with the OFT, the New South Wales Office of Fair Trading website, the SCA.

There's a wealth of information out there that people really have at their fingertips to understand what it means to be on a strata committee, what that role involves. And also the liabilities associated with it. So I think before anyone was to become a member of a strata committee, whether it's an office bearer such as the chairman, the treasurer, of the secretary or just one of the nine members. They should do their research. They should actually look at what their function for that owner's corporation is, what role they have to perform, because a decision that's made by the strata committee, is seen as a decision made by the owner's corporation. And so to me, that's the first and foremost.

What role am I playing? Am I an officer? Am I a member? But what functions are we performing? And when I'm performing that



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function, they need to be mindful of the act, the strata committee's management act says you have to make decisions for the benefit of the owner's corporation. It's not about you and your lot. It's actually for the whole of the owner's corporation. And also, you have to do it with due care and diligence. So that's a big deal.

**Amanda Farmer:** It is a big deal. And I like, Anne Marie how you talked about when you bought into strata and how you got some good advice. I think it's important for people who are doing just that to understand the situation that the building is in currently, particularly if you're going to go in and you're going to be one of those wonderful people who volunteers, puts their hand up and says, "Yes, I want to help. I want to be on the strata committee." Well, have a look at the books and records. Have a chat to others on the committee in the building and just see what the current state of play is, because yes, you are going to be putting yourself in a situation where you are then liable. So what is it that you're taking on? And are there things that need to be attended to, fixed up pretty promptly or at least put on the record that you are concerned about them.

For example, not enough funds, or unauthorised expenditure of funds, any litigation on foot that you need to be aware of, because you're jumping into the hot seat so to speak, as a committee member. And you are then going to, potentially, be at risk. And it's important to be aware of that, just so you can manage that risk, I think.

**Anne-Maree Paull:** Yes. I mean, yes. The building that we were buying into had a flat roof. And it had to be repaired some years prior. And the solicitor at the time saying, "Are you sure you want to buy into this because you could end up with a big special levy to do membrane on that roof again?" And so you do need to go in with your eyes open and understand what exposures there are. It might also be that there's been a lot of litigation within that owner's corporation. Again, understanding, as you say, do your homework on what's currently happening and what's happened in the past. It doesn't mean that it's going to happen in the future, but you still need to go in with your eyes open.

**Amanda Farmer:** Yes. Definitely, now moving to insurance, Anne Marie, your area of expertise, what kind of a policy do you recommend that strata committees or committee members have in place to manage this risk?

**Anne-Maree Paull:** I can't give personal advice. I'll start with that one.

**Amanda Farmer:** Yes, disclaimer.

Anne-Maree Paull: I'll start with saying, disclaimer, I can't give personal advice, but if it was me and when it is me, I always make sure that I have a look at the insurances. First step is what insurance is currently in place? And the type of insurance you have. If you're on a strata committee, it would be like if you were on the board of a company whether it's a not for profit and you're not getting paid or whether you're getting paid. If you're going on to a strata committee, in a board situation, as a director of a board, you have directors and officers cover to protect you against liability for a decision that may be made, something that you've done, an act. Or something you've not done, you've got that protection against you, personally.

You don't want to be handing over your bank account or having to sell your property because of a decision made. I don't want to be fearful, but the reality is, we're becoming more and more litigious. People will sue for the most trivial of things, the number of claims has increased on that front. So just as a director on a board would have, as a strata committee member, you would want to make sure that there is an office bearer's protection in the insurance of your owner's corporation. Strata schemes management act says you must insure the building for damage. You must insure for liability, which is now 20 million in New South Wales. So that's damage to someone else's property or death or bodily injury to someone. And you must have voluntary workers' protected or workers' comp if you've got employees working for the owner's corp.

The other insurances that the legislation talks about is office bearer's and also protection against fraudulent or misappropriation of funds like fidelity guarantee. So I think the first thing is what insurance is important as a specialised strata insurance? CHU 40 years ago developed the first policy aligned to the act. And there's other companies out there that do the same thing. So I'd say go for a specialised strata insurance policy and make sure that you have got adequate protection as an office bearer.



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**Amanda Farmer:** And what kind of things, in your experience, Anne Marie, is this office bearer's liability insurance called upon to cover? Can you share any stories? No names of course, but what do you see coming across your desk?

**Anne-Maree Paull:** There would be things like it's the owner's corp's responsibility to maintain and repair the property. Okay? And an example could be, a decision might be made not to repair something, or not to replace something. As long as there's no safety implications or no visual impact to the owner's corp or to the strata, then the decision can be made not to. But if I was an owner that bought into a building that had, for example, a gym or a pool, and maybe that gym was getting worn down, the equipment needed to be replaced. Not many people are using it, but I'd bought into a property that had a gym. And the decision is made by the strata committee to say, "Well, we don't want to replace it. We're going to shut the gym down."

If I then went to sell my property under the Act now under section 106.5 as a lot owner, if I felt that that decision was made and that's had an impact on the value of my property when I go to sell, then that could be an exposure that I might sue someone for. A lot owner now has a right to sue for damages under the section 106.5. it's a bit scary. But it's a long bow, but people do the most amazing things.

**Amanda Farmer:** I like that. That's your lawyerly brain coming out there, Anne Marie. I really like that argument that if I lose return when I go to sell, because I can't use the gym, I'm going to sue under 106.5. How exciting. I really like that idea.

**Anne-Maree Paull:** Well it could be. Compensation lawyers are on the run at the moment. They're looking for new turf. Who knows?

**Amanda Farmer:** Yes.

**Anne-Maree Paull:** I shouldn't be saying that. I'm an insurer. But I mean that's a long bow to draw, but it could be, for example, a railing on the stairs or carpet on the stairs that hadn't been replaced. And a decision was made, there's not enough funds. We haven't got enough funds to be able to do that. Then someone falls and injures themselves. Right? That is where, it's a scatter gun approach when a lot of litigation happens it's, "We're going to involve the strata committee members that made the decision. We're going to sue the owner's corporation, an unlimited legal liability entity. I'm going to bring in the strata manager. I'm going to bring in the insurance." It's a scatter gun approach and so everyone's in.

**Amanda Farmer:** And so it's important to make sure that you're covered. I had a query from a member inside my YSP online community. And she had a situation where the strata committee had agreed to engage a contractor to do some work on the common property. That contractor turned out to be unlicensed, uninsured, caused all sorts of damage, not only to the common property, but to this member's lot property as well. And she had raised the question, can I sue the committee members? And I wonder if they have office bearer's liability insurance.

And I've said, "Look, that's definitely the kind of situation that committee members should be covering themselves for and let's hope that they do have office bearer's liability. If you make those kinds of decisions and you're not exercising reasonable care there. Engaging a contractor who's unlicensed and uninsured, that raises real concerns for me. Are these committee members acting in the best interests of the owner's corporation?"

And I don't know whether when you then go to the insurer whether they may even fall outside the policy, because they've been so badly behaved. Do you have any thoughts on that, Anne Marie?

**Anne-Maree Paull:** It all comes down to whether someone's acting with due care and diligence and also whether they're acting in good faith.

**Amanda Farmer:** Yes.

**Anne-Maree Paull:** You think about it on a Torrance Title, individually owned property, you get a workman in to do something,



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don't actually say necessarily, "Show me your license." But in an owner's corp situation, you'd need to make sure that you are using an authorised, qualified repairer, particularly for certain things that could, electricians and plumbers, you know major things like that. It's not just fixing the garden or even then, you'd still want a gardener, because if they hit a pipe and then damage the pipes, the gas pipe or whatever. So it's a matter of actually whether someone's acted in good faith. And it's interesting, the legislation introduced section 260 to protect people on the strata committee. So section 260 under the new act says that provided that the strata committee member acted in good faith, any liability that's associated with the decision made that resulted in the damage or the loss or whatever. That liability will transfer to the owner's corporation.

So there is a protection, I guess for the strata committee members there. But the thing is, first and foremost you have to prove that you've acted in good faith. And that's where the office bearer's comes in. A lot of people say, "Oh, well I don't need office bearer's now. All of the liability transfers to the owner's corp." Well, it hasn't been tested yet. And the other thing is, why wouldn't you make sure you have protection just in case it gets tested and it doesn't work? Just to prove that someone acted in good faith is like 20k, \$20,000 of legal expenses.

**Amanda Farmer:** Oh, at a minimum, yes. Yes.

**Anne-Maree Paull:** So you don't want to be acting for free on a strata committee and then end up having to hit your own pocket for that. You would want the owner's corp to support you. And the way that they would do that is to have office bearer's cover in place.

Amanda Farmer: Good advice. Now, we're all about solving problems on this podcast, Anne Marie. What are some common problems that you've noticed people face when we're talking about insurance and liability. And what's worked best in terms of overcoming those problems?

**Anne-Maree Paull:** I think the biggest things that we see is that people need to be convinced that there's a need. It's lucky that the legislation says that you must insure the building and you must insure those mandatory things. That's all I can say.

**Amanda Farmer:** That's true. That's a bit scary.

**Anne-Maree Paull:** It's scary. But it's true. People will save money wherever they can. And it's understandable. It's all about the dollars. So the cheapest isn't always necessarily the best is one thing I'll say. Just like you were saying about needing to have a qualified repairer or certified repairer, same with the insurance. Make sure it's a reputable company. Don't skimp over a few dollars.

In reality, the difference between taking \$500,000 worth of office bearer's to a million dollars is like \$50. You divide that by the number of lots, really, in the scheme of things, what does that mean? If you want to go from one million to five million, it's a big scheme. It's double the price of a million dollars, but you're getting five times the cover. It's that stuff. So don't just focus on the dollars. Don't always think that the cheapest is the best. And scrimping and saving on something that's going to protect you from having to sell an asset or selling your home even worse. And the premium is divided across all the lots. It's not coming out of your pocket only. It's across everybody.

The other part of making sure you've got the building fully insured. Again, people don't want to get valuations done on buildings. And they say, "No. No. We don't need a valuation. The insurance company will tell us that." Well no, we won't. We're not qualified, valuers. I would say make sure that you have fully insured your building.

An example of that is, we had a commercial property there was a claim on a couple of years ago. And it was two buildings. One building burnt down and we nearly exhausted the whole sum insured on replacing the one building to the new building code. So if they had both burnt down, basically that owner's corp, okay, what do they do?

**Amanda Farmer:** Yes.

**Anne-Maree Paull:** Put in the extra two million dollars between them to replace the buildings in its entirety? Or do you just sell off the block of land? And no one thinks of total loss. Or that's not going to happen to us. But unfortunately, it happens.

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aware of what areas a lot owner has the exclusive use of and responsibility for. And whether as part of that responsibility, they are then responsible for insuring that area. Because if they're insuring it, then query does the owner's corporation also need to insure it? And if something happens, then which policy is called on, and who's responsible? And you might have to go back to the terms of an exclusive use by law. We now call them common property rights by laws. And just be very clear on that.

And again, you think, "It'll never happen. We'll never have a claim. Nothing will happen in that space." But if somebody falls over and hurts themselves inside an exclusive use area, is it the owner's corporation's public liability that should be called on? Is it the lot owner's? It's going to be important to be really clear on that?

**Anne-Maree Paull:** Yes. And understanding what's your responsibility. And again, there's fact sheets on what's an owner's corporation's responsibility versus yours. One of the biggest disputes we have is that there's a building claim. So there's water that's come in due to a storm. The water comes in. The resulting damage of the owner's corp within the lot, maybe it's the cupboards, the fixtures and fittings that are part of the owner's corp's responsibility would be covered. But when it came to the carpet and my new table or the curtains or whatever. Those internal fixtures and fittings aren't covered. And so, a lot of people don't have contents insurance. And contents insurance, or if it's a landlord situation, landlord's insurance, which obviously covers the contents and other items specific to a landlord.

It's actually making sure that you do cover yourself within the lot, because once the person steps inside your lot, if they injure themselves or whatever in the lot, then it's your responsibility, not the owner's corp. If it was on the stairwell, where it's common property area, that is an owner's corp insurance policy, but when you step inside your lot, as you say, you need to make sure you have your own contents or landlord's insurance in place. It's really important.

**Amanda Farmer:** Absolutely.

**Anne-Maree Paull:** That's the biggest issue of disputes, but my carpets. And we're like, "Well, it is your carpet, exactly." It's not the owner's corp. Unless it was the other extreme, that is again where there is a known defect that the owner's corp chose not to repair. Then again, an owner might decide that, "Well, I told you that this was an issue. And mould has been an issue for some time now. Water coming in, mould growing." And that does have ramifications sometimes for an owner's corp if it's a known defect. If it's something, if it's a storm, then that's an act of God. There's not much we can do about that. That's an event. But if it's something that hasn't been dealt with, again, this comes back to the responsibility of being on the committee. If there's something that is known that has a safety implication like mould has a safety implication. Then an owner's corp or a strata committee should be acting on that.

**Amanda Farmer:** Absolutely. Anne Marie, if our listeners have questions, a concern about insurance, they want to understand what they're covered for, what they're not, what they should be covered for. What's your recommendation for some quick steps they can take to start dealing with that issue today?

**Anne-Maree Paull:** Okay. I think firstly, check what insurance you have in place. Talk to the experts. Talk to people, because it's amazing. People have contacts, knowledge, etc. Go to the websites of New South Wales Office of Fair Trading. There is so much information there on strata living and different aspects. Listen to podcasts like this. The SCA, New South Wales Strata Community of Australia website has a bunch of information on strata living, responsibilities of office bearers and things like that. There's a wealth of information out there. Just seek it, and find out what you can.

**Amanda Farmer:** Yes. Great advice. Now Anne Marie, personal question. What books have had the greatest impact on you and why?

**Anne-Maree Paull:** I'm a bit of a murder mystery kind of girl. The suspense, thriller. I don't like it too gory. I'm not really into too much gore, but I like to be able to think what's going to happen next, trying to work out who did it, who didn't do it. But the biggest book, I think that I recall from young age was 1984. George Orwell.

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**Amanda Farmer:** Hey it's on the stage in Sydney now. Have you seen that?

**Anne-Maree Paull:** Oh is it?

**Amanda Farmer:** Yes. I think it's at the Sydney Theater.

**Anne-Maree Paull:** No. Oh, that would be awesome, because to me, back then, as a teenager I would have been probably. Thinking, "Oh, no. How could Big Brother really exist?" Even though there is the Big Brother show. But it is a bit voyeur like that. But I guess it was that whole concept of someone watching you constantly. And also, being able to change your mind, reprogram whatever. I found that quite fascinating. And here we are, some many years later, living in the world that, and I'm not a conspiracy theory girl, either. But living in a world where there is so much information and so much knowledge, intelligence, etc. about what we do, how we spend our money, where we're at. GPS on the phone, all of that. Who would ever have thought that we would be in that big brother world today? I find that fascinating.

**Amanda Farmer:** Yes. It's a great book to go back and read now.

**Anne-Maree Paull:** Yes. I think I'll re-read it. Yes.

**Amanda Farmer:** Oh thank you for that, Anne Marie. Before we wrap up, how do listeners find out more about you? And is there anything you'd like to add before we say goodbye?

**Anne-Maree Paull:** I'm on LinkedIn. You can also visit the CHU website, which is [chu.com.au](http://chu.com.au). And, I guess, talk to people, find out what you can. Be aware of what you're in, what you're living in and what you're part of. And if you are thinking of going on a strata committee, I think it's an awesome thing to do, because it's where you live. It's your home often. And you want your community in which you're living to be the best one possible. So don't be fearful of engaging because of litigation. I don't want that fear factor in people's heads, but just be aware that if you do, that you need to be looked after through the insurances that your owner's corporation has in place.

**Amanda Farmer:** And Anne Marie, you mentioned earlier in our conversation, a fact sheet. And I am very pleased to share with our listeners that they will have access to this fact sheet. It's not otherwise generally available to the public. It's something that I know CHU produces for strata managers, and for brokers. But Anne Marie has very kindly agreed to share that just with our listeners. And it is a fact sheet about the personal liability of strata committee members. And sets out relevant sections of the legislation here in New South Wales and covers the consequences of not maintaining office bearer's liability cover. If you would like to grab a copy of that fact sheet, head over to [www.yourstrataproperty.com.au/chu](http://www.yourstrataproperty.com.au/chu). And you will be able to request a copy of that fact sheet be emailed straight to your inbox.

Thank you so much, Anne Marie. And I'm seeing ferries go past you in the background. It is just picture perfect out there.

**Anne-Maree Paull:** The cruise ships usually come through later in the day.

**Amanda Farmer:** Oh, God.

**Anne-Maree Paull:** It's quite mesmerising when you see them sail past. It's very nice.

**Amanda Farmer:** Well, I know you're a busy lady. Thank you so much for giving us your time. And enjoy your day.

**Anne-Maree Paull:** Thank you.

**Outro:** Thank you for listening to Your Strata Property, the podcast, which consistently delivers to property owners reliable and accurate information about their strata property. You can access all the information below this episode via the show notes at



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