

Publication Date: July 18, 2017
**YSP Podcast Transcript: Episode 070. An exclusive peek inside the sold out Strata
in Conversation Sydney Lunch – Part 1**

Listen to this podcast episode here: <https://www.yourstrataproperty.com.au/070-an-exclusive-peek-inside-the-sold-out-strata-in-conversation-sydney-lunch-part-1/>

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.

Amanda Farmer: Hello, and welcome. I'm Amanda Farmer and this is Your Strata Property. I have a very special episode for you this week and next week. I am bringing to you the audio from the sold out Strata in Conversation lunch hosted by Kelly+Partners at Sydney's Aria restaurant, back in April 2017. This event is part of a series that Kelly+Partners very generously hosts in a number of Australian states each year, and on this particular day, it was a stunningly beautiful autumn day. We were looking out on Sydney Harbor from Aria restaurant and I was lucky enough to be one of three-panel guests taking the hot seat to answer questions about the new, New South Wales Strata Law.

Now my fellow panel guests, as you'll hear, were Chris Duggan, the current president of the SCA New South Wales. Chris has also been a guest on this podcast, check out episode 25 to hear more from Chris. And of course, Reena Van Aalst, known and loved by so many of you. We spent about an hour answering questions that were put to us by Brett Kelly and that is the audio that I'm bringing you. I'm going to bring it to you in two parts. This week you're going to be hearing questions one to four and next week you'll get the rest of the questions. I think we had about nine, so that will be five to nine, next week. Now, you'll notice that the quality of the audio is not my usual quality and do forgive us for that, but it was recorded in the restaurant and I think at the time most people in the room were enjoying dessert, but I think you'll agree the content is top quality and I didn't want you to miss out on this exclusive opportunity to get inside one of these lunches.

Now the ticket price for this event is not cheap and not everyone can get there. This particular event in Sydney was sold out, so I do extend my gratitude to Kelly+Partners for recording the event, for allowing me to record my audio also and for encouraging the publication of this audio on the podcast. And thank you to Chris Duggan and Reena Van Aalst for participating and for being more than willing for me to share this with all of you. Now you're going to hear first up from Joel Russell, of Kelly+Partners, who has very kindly recorded the intro to the panel session. This was originally delivered on the day by Brett Kelley, but Joel has recorded a more audible version for us, after the event. You'll remember Joel from episode 59 on the podcast where he filled us in on some of the financial reforms brought about by the new, New South Wales Law.

After the intro, you will hear Brett introducing the first question for the panel. Now remember you can get the transcript of this episode from www.yourstrataproperty.com.au/070, this is episode 70. So sit back, relax, enjoy this exclusive insight into a Kelly+Partners Strata in Conversation lunch overlooking beautiful Sydney Harbor.

Joel Russell: The mere mention of Strata Law reform, ever since the initial discussion paper, has spelt the kiss of death for many a fair trading and better innovation minister. 2017 has already left its indelible mark as a year of change, with the stepping down of Premier Mike Baird, and his development proposal at Wentworth Park, that has gone to the dogs. New unit construction outstripped new houses for the first time on record nationally, during the 2016 December quarter, primarily driven by historically high unit costs in New South Wales. In the past, new housing dominated supply, but it appears that right now, for apartments anyway, if you build them, they will come. Sydney itself is moving into the London, New York city scale of an 8 million people city and what must come with this, is a more cooperative way of living. For five months now, since 30th of November, when more than 90 changes to the Strata Laws came into force, New South Wales residents and strata managers have been the lab rats of a nationwide strata experiment, while the other states watched on with bated breath.

New disclosure and accountability requirements, for strata professionals, are now in place. Changes to strata management contracts, collective sale, changes to by-laws, and the dispute resolution process, as well as a raft of others. As industry professionals, we all have to confront the realities and practicalities of the new strata laws and with any luck incorporate these harmoniously within the communities that we manage and service.



Publication Date: July 18, 2017
**YSP Podcast Transcript: Episode 070. An exclusive peek inside the sold out Strata
in Conversation Sydney Lunch – Part 1**

Brett Kelly: Question one. I do think we had the first session here on this issue nearly four years ago. I think with Minister Roberts at that point. So it's been a long running topic of ours and as we've done these events around Australia, of real interest outside New South Wales interestingly. So question one. Along with absorbing many of the compliance costs associated with the new legislation, there've been a number of new burdens for New South Wales strata managers including contract limits. Strata managers can now only give pointers for the first year of new schemes and then for three years there after. There are also certain restrictions and additional disclosure requirements to be dealt with along with a necessity to maintain strata plan records for a further two years. What do you see, distinguished panel, and GWS supporter, what do you see is the significant added burden for strata managers with introductions of this new legislation, and is there any corresponding added value in return for consumers? Just a gentle warm up.

Reena Van Aalst: Actually I might start with that one because I actually made a whole list.

Amanda Farmer: Of the added burdens.

Reena Van Aalst: Of that added burdens, so I thought I might just touch on a few of them. The main one I believe is the agency agreement and the term of the appointment, the extension, the fact that we have to give three months notice before the end of the term. I think these are all added burdens that agents now have to bear because you've got to have a good record keeping system to ensure that you do comply in that respect. The other thing that has also caused a problem, in contrast, is that building managers don't have any limits, they still have a 10-year agreement, they don't have to give notice of termination, they don't have to have extensions. Yesterday I was at the Strata Information Seminar at Fair Trading and one of the people in the audience asked the representative why strata managers only have 3 years maximum and building managers have 10 years, and he said it's because they have to occupy a space in the office or in the building and they'd have to move every three years. So I was actually quite surprised as to how this is being perceived in the public arena.

The proxy limits is also an issue in terms of administration. So now when you're holding a meeting, let's say it's large scheme, and they're all coming in you're gotta make sure that as you receive them you ensure that only one person has a proxy if it's less than 20 lots, if it's more then it's only 5%. Sometimes I've had proxies come in from building managers all on the same day and I don't know who was first, in a sense having to communicate back to that owner that we can't use your proxy because the person you've given it to now has more than the actual limit.

Strata committee meetings. Now the members have to be financial, again that wasn't a requirement under the previous legislation, so now when I send out an agenda I say please make sure that your financial, pay your levies. So it's again, more administration, more time on managers. Tenancy meetings, to date they haven't been an issue, I don't believe, I'm not sure if any of you have experienced any issues with that, but as I had envisaged previously I didn't believe that property managers would actually send proper tenancy notices anyway, so as far as I've seen in meetings that I've held since November 30, there hasn't been any tenants at the meetings that I've conducted.

The other burden is the payment plans and monitoring outstanding contributions, that's another issue I think that has placed an additional burden. Some companies perhaps may charge for this but again, it's more time, more effort, more work. I don't really believe that as managers, we've had a lot more administration and tasks put onto us, and I'm not sure the remunerations side of it is really being dealt with as an industry. If managers are actually increasing their fees, for doing all this extra work.

Amanda Farmer: I might just jump in there Reena. I think it was Michael Tees at a conference I attended once, who said "When I have my strata manager hat on," because Michael is a lawyer as well as a strata manager, "When I have my strata manager hat on, and I'm charging \$60 an hour, nobody likes my suggestions, nobody listens to me, and nobody thinks I know what I'm talking about. When I have my lawyer hat on, and I'm charging \$600 an hour, everybody agrees and does what I say." And I found that really interesting, and his experience was interesting to see from both sides of the spectrum.

I agree completely with Reena, these added burdens, whether they're administrative, or procedural, the governance issues. If strata managers are not charging in commensurate with their responsibilities, and I agree there has been an increase in

Publication Date: July 18, 2017
**YSP Podcast Transcript: Episode 070. An exclusive peek inside the sold out Strata
in Conversation Sydney Lunch – Part 1**

responsibility for strata managers under this new law, then they are letting down the profession. And in letting down the profession,

and I call it a profession because it should be, they are letting down the clients, the customers, the owners. Because they're not going to be able to provide that level of service that they need to, A) to comply with the law, and B) to make sure we have good functional working communities.

Something that I picked up during some workshops around for strata managers was that you now have to have this, what I think used to be called before I was even in the sector, a minute of delegation. Every time you exercise a delegated function, you had to record and some strata managers who'd been around for a while will say "Amanda we've always done this, we had the carbon copy. We had a copy for us, a copy for the client and a copy for the file, and we would always record our exercise of delegated function." Well, that's now in the new act, saying that every time you exercise a function you must record it, keep that record, and if the building asks for it you have to produce it. Strata managers are saying to me "Amanda how can we do that? That's every phone call, that's everything we do, that's every email." I said "Welcome to life as a lawyer. That's what we do, we keep time sheets and we charge for them."

Chris Duggan: Just from a managers' perspective and to summarise a lot of the key issue that Reena's raised, compliance does equal complexity and complexity is obviously related to cost. We're in this new world environment, we're in the space of up-skilling an entire industry around new legislation. It's exciting, it's a challenge and it's daunting, and there has been corresponding cost to management business. We've all seen that play out. We've all seen it in our own businesses, but it's also been embraced very heavily, particularly by a lot of the businesses in this room around up-skilling, re-tooling and re-engineering processes. Now those things are ultimately going to be to the benefit of us and the consumer, and assist the professionalism.

So there are many things with the legislation that the management sector could have issue with. I mean we're the only ones who were targeted around contract compliance in terms of tenure. Limitations around first AGMs, connotations around connected persons. These are all things that we can obviously lament around the new legislation, but they're also new opportunities to say we can now take the next step towards professionalism, towards better billing, to more transparent services. As an industry, I think we've done that amazingly in the past 6 months. So yes there is an added cost, the consumer is paying more, and will pay more for compliance under new legislation. That's not necessarily a bad thing because we're dealing with very complicated schemes with massive amounts of trust funds, with huge amounts of professional services required. So the more we can move along that spectrum and embrace it, along with the pain that comes with it, the better the industry will be.

Brett Kelly: So guys, just what comes to mind from there is, how much communication has gone out about that to the client?

Chris Duggan: Fair trading, to their credit, has done an incredible job on communicating the changes to laws. And they've invested very heavily. But there is obviously going to be idiosyncrasies in the way every company communicates that. I think to the credit of the companies in the room and the sector more generally, the communication has been excellent. It's prompted and forced us to hold information sessions, to have a look at the way we do agendas, to re-skill managers around process. The one thing I can tell you is it's a great leveller, and very humbling, to be interpreting the act at the same time as the consumer. So it's meant that you have to be hungrier to learn and you have to go out there and be a bit cleverer because you can't rely simply on the fact that it's been that way for 20 years.

Brett Kelly: Excellent. So question 2, this is an interesting one. There's a community title of state in Sydney, made up of multiple high rise buildings that ban children under 13 playing on all common property without a resident adult over 21. This is interesting one. The common property includes parks, basketball and tennis courts. Residents were anticipated to be singles and couples but families now constitute the majority of the estate. The act now specifically prohibits passing by-laws that are harsh, unconscionable or oppressive. Would this be an example of a harsh, unconscionable or oppressive by-law? Feels very loaded. What are your thoughts in relation, to determine [crosstalk 00:13:54]

Chris Duggan: Sounds very legal.

Brett Kelly: The criteria that would meet such a test. We got any lawyers?

Publication Date: July 18, 2017
**YSP Podcast Transcript: Episode 070. An exclusive peek inside the sold out Strata
in Conversation Sydney Lunch – Part 1**

Speaker 1: Someone give me a mike!

Chris Duggan: This advice in general in nature only and cannot be relied upon.

Amanda Farmer: That's my disclaimer. I have heard about this by-law before, and I heard about it from Cathy Sherry, I'm not sure if that's where you might have got it from. Cathy Sherry being a University of New South Wales academic who probably many in the room know, and she's just published her book about by-laws, which is an excellent book and we had a fabulous chat on my podcast about by-laws giving private citizens the right to govern their neighbors. Which is just unheard of in property law, and that's why she finds it so interesting and I do too.

To answer the question, I absolutely think this would be a harsh, unconscionable or unreasonable by-law. Another really good example, and I'm a bit nervous when I say this because I'm drafting these by-laws a lot, is relevant to smoking, and whether you can ban smoking throughout an entire building. Not just smoking on the common property, smoking within lots. Because we all know how hard it is to contain smoke, especially in more modern buildings where the construction may not be as it should be, and it's very easy for things like smoke to permeate through walls.

I have a lot of building approaching me saying Amanda, great, we know you've got this smoking by-law and it says you can't smoke on common property, can't have smoke drift, but we want to stop people smoking inside their lots. And I said you know what, I'll draft it for you, and I will defend that by-law in the tribunal, and I will rely on evidence from the Cancer Council that says that even smokers want to smoke less, and would love to be restricted from smoking inside their own homes. I think that could well be challenged as a harsh, unjust or unconscionable, I forget the words, by-law. But I think there's good reasons for a by-law of that sort.

A by-law that bans children playing on the common property under 13 unless they're supervised by an adult over 21, kinda bizarre. And I'm not sure that there would be a good argument in favour of that by-law, unlike my smoking by-law.

Chris Duggan: Can I say, it all comes back to how managers, in most cases can pragmatically advise. Because ultimately, who's in the middle of that dispute and who will be forced to send the notice to the 17-year-old kid who's minding their brother, and it's the manager in the middle. Unless you're providing constructive advice and telling your committees upfront around the practical realities of strata and community living, in some cases if your voice is not being heard you need to live with the consequences. And whether it's harsh or unconscionable is a legal question, but people seem to miss the point of the practicalities of community living often. They think that because there is an entitlement to do so they can make rules and laws and the like, and I think we've got a long way to learn there. But I would just keep putting that manager back in the middle and thinking, you can make all of our lives easier by providing better advice upfront about what the consequence would be.

Reena Van Aalst: I also think that children at school who are 13 or under would normally have an adult looking after them. So again, you've got to actually think, in the playground there would be a teacher I would assume, I don't have any children so I can't speak, but I think that there would be a teacher in a playground. As Chris just mentioned, in terms of the manager and their role, that's also got to be taken into account. So we have to consider not just the people that have children, but the people that don't have children as well. I think that in a community living, it's trying to cater for all people and this is where I think it comes unstuck.

Amanda Farmer: I think the managers and lawyers play a big role in this too. When it comes to guiding committees about appropriate by-law terms, there's a big role to play there in stopping these kinds of by-laws from seeing the light of day. And there's a few questions to ask, and it's not just will it be successfully challenged at NCAT, it's is this reasonable, is this fair, is this something that promotes a sense of community amongst residents, is this the kind of feel that we want for our space. The kinds of questions that good managers I think are asking.

Brett Kelly: Excellent. So question 3, in relation to voting, an interested observer of strata by the name of Jimmy Thompson recently commented, it will be interesting to see how the proxy farmers and committee stackers try to get around the new regulations. It should be noted that anything clearly intended to circumvent or subvert the new laws should be challenged under

Publication Date: July 18, 2017
**YSP Podcast Transcript: Episode 070. An exclusive peek inside the sold out Strata
in Conversation Sydney Lunch – Part 1**

Section 2.32 of the Act, which allows the tribunal NCAT to rescind elections conducted improperly. Do you see any relief out there for drought stricken proxy farmers and what about those that have complained that the new laws in relation to voting actually disenfranchises the owners?

Chris Duggan: I've got a two part view of that. So coupled with that was obviously the loosening of the quorum requirements which in part has sped up the process. Yes if you miss your opportunity to attend that meeting you may miss your opportunity to vote, but that's life, people need to become accustomed to that. I've always been of the view that proxy is granted appropriately in good faith, regardless of how many you have, are really a duty of care on the person that is providing that. Now there is obviously many cases of those being received improperly, particularly with buildings that don't have English as a first language. However, people who want to influence will find a way to influence. It's like water. You could restrict proxies completely, you would still have ways of people influencing decision making. That is life, the society we live in.

I think it's a good step forward, coupled with the quorum requirements, to ensure you don't get the massive proxy holding and proxy harvesting issues that occur. But bear in mind, proxies still serve a very valuable purpose to pass on your vote in the event you can't make it. We can't lose sight of that because it disenfranchises people when you can't pass your vote on because you can't make a meeting.

Reena Van Aalst: Also now with the use of technology that permitted by owner's corporations, passing a resolution in the first instance, so even if you can't make it now physically and you can't give your proxy because there's a limit on the person that can receive them, then at least you can attend through Skype or online voting or email voting, so there are other means now that you can be heard. So there is more way of being able to attend if you can't physically make it.

Amanda Farmer: I think this limit is a good thing, I think it was necessary, it's a step in the right direction. We've seen it in Queensland for a while now, they've had a very similar rule and the issue that's come up in Queensland in a reported case last year was the use of powers of attorney to get around this limit on proxies. And the tribunal in Queensland are saying that somebody who'd turned with a bunch of powers of attorney could vote even though that breached the limit on proxies. I personally haven't seen that attempted in meetings in New South Wales yet, I don't know if there's lawyers out there saying that yes that's possible and that's one way where power of attorney farming rather than proxy farming.

But again I come back to, isn't this about being engaged in your community? Isn't this about setting a standard that says hey we want owners turning up to our meetings, we want to hear from you, and if you do want to have a say then you need to be engaged. And if you have that kind of a community, and I know a few that I work with they just don't have this problem, it's just not on their radar. Another issue administratively is how strata managers are dealing with this limit and having proxies come in, if it's a large scheme, 24 hours before the meeting and having the proxies directed to the strata manager or to the chairperson, and realising that they're over the limit.

So I know good strata managers are putting in place processes where they can monitor that if possible, and if they have enough time, get in touch with the people, the lot owners who have directed the proxies, and say hey, you need to nominate someone else, we're already over the limit. And of course, the statutory form now is different in that you can provide a substitute proxy as well which is really helpful.

Brett Kelly: Thank you. Question 4, what are some of the recurring issues observed over the past several months in relations to NCAT and the new debt recovery solution, and what are your thoughts in relation to NCAT's ability to determine conditions under the start management agreement as unfair?

Chris Duggan: I'll just touch on the second part because I haven't had the experience for the debt recovery part, so I'll defer to my colleagues there. But in terms of bringing agency agreement into more scrutiny, I don't think ultimately it's a bad thing, however, we're yet to see that play out through NCAT and what they determine unreasonableness is. Now as always, we have termination provisions within our agency agreements. They historically have rarely been triggered because they are rather narrow in terms of the scope of services, so I would imagine if you're breaching those very basic schedule A scope of services, then you probably

Publication Date: July 18, 2017
**YSP Podcast Transcript: Episode 070. An exclusive peek inside the sold out Strata
in Conversation Sydney Lunch – Part 1**

ought to have your contact scrutinised. Whether it gets to the point where tribunals are refunding or ordering wholesale refunds of monies, we have to review obviously the way we as an industry we approach that and react, but at this stage, more scrutiny I don't think is a bad thing, so long as it's handled in a measured way because again it will lead to more professionalism.

Reena Van Aalst: I think it's actually, in some case, there are many agents out there that actually undertake scrupulous activities when it comes to their appointment. I've seen recently quite a number of things that have actually horrified me, and I believe having this in place ensures that agency agreements are valid in the first instance and that if there is an issue, that there it is actually dealt with by NCAT, which is a body that is there to govern rather than a court of law. Other professions such as lawyers, they can have their cost agreements challenged if they over charge, they can be dealt with by the legal service commissioner in terms of what they're supposed to be doing, so I think for us to become recognized as a profession, we do need to have a bit more scrutiny on our agency agreements, how we were appointed, et cetera. So I think this is actually a good thing.

In terms of the NCAT, the earlier question Brett that you asked about debt recovery, I actually haven't had any experiences of that either. Everyone seems to be still using the local court and various other court jurisdictions which are of course allowed under the new legislation in any event. So I haven't had any experiences of that.

Amanda Farmer: There's a reason neither Chris nor Reena nor me have had any experience of the debt recovery process in the tribunal, and that's because lawyers will avoid the tribunal like the plague. And if we have the opportunity to go to a court instead of going to our beloved tribunal, we will choose the court every day. Reena says that she's seen some horrifying things in strata agency agreements, or that strata managers have done, I've seen some horrifying decisions made before the tribunal.

On a high level, I agree there is nothing wrong with more scrutiny and yes I believe that there should be a body like the tribunal that should oversee like we do as lawyers, the conduct of managers and their compliance with their agreements. I'm a little bit nervous that body is going to be the tribunal simply because we have some crazy stuff come out of that place. I know recently attending Hamilton Island, the Australian College of Lawyers, a community lawyer's conference and hearing from lawyers across the country, the tribunals in each state struggle with having good strong members who know what they're talking about when it comes to strata and community titles. So the tribunal has a lot of work to do there, but yes as Chris says, let's wait and see what comes out when we see a few cases go before and see if we think that's good for the sector or not. We're all watching and waiting.

And that was part 1 of this special series bringing you the audio from Kelly+Partners Strata in Conversation lunch, held in Sydney in April. I hope you've enjoyed it so far. Don't forget to tune in next week for part 2, where we get into questions about building defects, collective sale and renewal, short term letting and more. Don't forget to grab the transcript of this week's episode over at www.yourstrataproperty.com.au/070. Catch you next week.

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 www.YourStrataProperty.com.au. You can also ask questions in the comment section which Amanda will answer in her upcoming episodes. How can Amanda help you today?

