

Publication Date: 6 September 2018
FB Live Transcript: New short-term letting laws for NSW - Amanda explains

You can access Amanda's FB live video [here](#).

Amanda Farmer: Hello, everyone. Now, we are live. I had so much fun on that webinar yesterday. And so all of you there are asking such great questions, I thought I'd give this live thing another go. And one of the questions, or a few questions, actually, that were coming through in that chat were about short-term letting and the new short-term letting laws for New South Wales, and I have been asked to let you all know a little bit more about those. So I thought I'd jump on. Let me know if you want me to address anything in particular. I do have a couple of questions already that I have been asked to answer. Just pop into the comments box there what you'd like to know, and I shall cover it off, and we'll just keep going for as long as we need to, for as long as we are enjoying this Friday afternoon.

So, the short term letting laws really start with an amendment to our Strata Schemes Management Act. So this law has been passed, it hasn't yet commenced. And it introduces a new section to the Strata Schemes Management Act, Section 137(a) of the Strata Schemes Management Act, which is providing that an honest corporation can pass a by-law which bans short-term rentals if the owner is not using that property as their principal place of residence, so no short-term rentals for owners that are not using their property as their principal place of residence. So investor owners can be banned from a short-term renting.

The by-law cannot prevent a lot being used for short-term rentals if the lot is the principal place of residence for the person who is doing the short-term renting, so the host. If the host lives there, it's their principal place of residence, then we can't have a by-law that bans them from short-term renting. Hi, Tim, how are you? Lovely to see you. Thank you for joining us this afternoon. Okay. So we need to have a by-law, so we need a special resolution if we are going to prevent that short-term renting for investor owners. You may have heard that the law is also going to deal with resident owners and limiting the amount of time that they can short term let their properties, and that's actually not by way of amendment to the Strata Act, but that is going to be in our planning laws, so that's an amendment to the Environmental Planning and Assessment Act. And as we go to the air, as far as I'm aware, we have yet to see those amendments. They have not been tabled yet.

So what is apparently proposed is that where the host, if you like, is present in the home at the time they're doing their short-term letting, then they're allowed to do that year round. So there's going to be no restriction on renting out a room for example, in your unit. And for where the host is not present, but it is their principal place of residence, then they will be allowed to short term rent for up to 180 days a year in the greatest Sydney area, so that's four buildings in the greatest Sydney area and elsewhere in New South Wales, they'll be able to do that year round.

Okay, so that's proposed as it changes to our planning laws. And the planning laws are going to be able to override a by-law that prevents Airbnb in places that are otherwise, buildings that are otherwise approved for Airbnb. So I should be saying short-term letting, not Airbnb, but I've slipped up. They're going to be able to ... The planning laws will override those by-laws if the by-laws try to ban short-term letting in an area where it's otherwise permitted by the Council, for example, tourist or visitor accommodation, approved users, service departments, a commercial building, non-residential zoning. So we can't get clever with by-laws and say, "Well, we're in a service department building and we're going to pass a by-law that says you can't short term let." So the planning law is going to override those by-laws.

Hi, Nikki. Lovely to see you. And I've got Ash as well. Hi, Ash. If anybody who's watching this is really enjoying this or thinks that they got a colleague or a friend who would enjoy this information, please feel free to invite them on over. I think there's an option there somewhere to invite your friends. And also follow the page, like the page, and you'll be notified next time I am live. Okay. So I have a question which Catherine sent through earlier about whether it is possible or a good idea to get a by-law in place now to prohibit short-term letting, or do we need to wait until the new legislation is actually in? Excellent question. I'm just going to go back a step because a lot of buildings currently have by-laws in place that ban, prohibits, restrict short-term letting. And a question there is whether those by-laws are still valid or will still be valid when the new law comes in, or do we need to propose new by-laws?

Okay. So, if you've already got a short-term letting by-law in place, is that still valid? Well, as long as the by-law doesn't prevent resident owners from short-term letting, or doesn't restrict them from short-term letting, then it probably is going to be valid under

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these new laws. And I say probably because the law hasn't commenced. We're still waiting on the planning laws that will go hand in hand with this law, and we're still waiting on some regulations to the Fair Trading Act, and those are regulations that will deal with the nitty gritty like codes of conduct and things like that. That's in the Fair Trading Act Amendments, not the Strata Law Amendments.

So what you need to be careful about with current by-laws is whether they just provide a blanket restriction regardless of whether you are an investor-owner or a resident owner, because the by-law will not be valid if it has a blanket restriction, including resident owners. And I think most of your by-laws or short term letting by-laws probably do have that blanket restriction.

Thank you, Nikki. She has just shared the video to the Look Up Strata Facebook page. You're awesome. I know we have lots of fans over there, at Look Up Strata, and I would love for them to be able to access this content as well. Thank you.

Okay. So your current by-laws, yes, probably not going to be compliant with this new law. So the best advice is probably that you do need to put a new by-law to your general meeting which complies with this new legislation. And to answer Catherine's question, I think it's a good idea to wait until that legislation commences, or we have a commencement date. The amendment to the Strata Act is in final form, so we do know what that is, and it's just three paragraphs. It's an insertion of new Section 137(a). But we don't have the regulations to the Fair Trading amendments which are going to detail those things about codes of conduct. And I think you can beef up your by-law by having reference to the contents of that code and things that are in there. So probably wait till they come out, until the planning laws come out as well, to make sure your by-law just works hand in hand with all of those other instruments.

Okay. If anybody has any questions, please do pop them into the chat box. What's interesting, you might have heard me mention new amendments to the Fair Trading Act. Where does all that fit in? That's relevant because we are finally getting a definition of a short-term rental, and the terminology that's going to be inserted into the Fair Trading Act, New South Wales relates to short-term ... Sorry, the wording is, short-term rental accommodation arrangement. Okay, so they're calling it a short-term rental accommodation arrangement, a bit wordy. They say that is a commercial arrangement for giving a person the right to occupy residential premises for a period of not more than three months at any one time.

So we have never had a proper definition for short-term renting, but there it is, a commercial arrangement, residential premises not more than three months. That is a short-term rental accommodation arrangement. And the key there is commercial. So a lot of questions that I get asked is, Amanda, I'm doing home swapping. I have friends who are staying, I have family members. Well, that's not a commercial arrangement. So these laws will not apply to domestic arrangements like that where we've got no money changing hands and only applies to residential premises, so not hotels/motels, service departments, hostels, other tourist accommodation.

Okay. So I'm just having a look through some notes that I've made here to make sure that I have ... Oh, I had a really great question in the webinar yesterday. I think it was from Michelle, and I have seen her post something similar on LinkedIn today about tenants. What do we do when the apartment is rented and it is the tenant who is subletting on a short-term basis? I had originally thought you could simply deal with this by saying, well, the owner, the investor owner is not permitted to short-term let their property, and we've got this new law which says they can't do it. But if you look at the new law closely, these are the words that are being used, "A by-law has no force or effect to the extent to which it purports to prevent a lot being used for the purposes of a short-term rental accommodation arrangement if the lot is the principal place of residence of the person who is giving another person the right to occupy."

So what it's saying is, if it's the principal place of residence for the host, the person who is hosting the Airbnb, for example, your by-law can't prevent that. So if it is the tenant, it's their principal place of residence, right? That's where they live. And if they are then doing the short-term letting, our by-law can't stop them because it would be a breach of this Section 137(a). That's a bit concerning because it means we can't really be as creative as I had hoped with our by-laws and find a way to prevent tenants from subletting. So I hope that that helps to answer Michelle's questions, probably not the answer that she was looking for because it doesn't really give us the solution to that problem, which I understand is a difficult one in buildings.

Okay. So, any questions? Oh, goodness. Now I'm learning how to use the comment box. I can now see a few questions. Yes, Maria, I think you have just asked the question that I have answered. If the residential tenancy agreement does not permit the

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tenant to sublet by means of short-term letting ... Yes, yes. So no, there would still be ... Does the residential tenancy agreement, is it overridden by the legislation? There would still be a breach of your residential tenancy agreement if your tenant was subletting. That's a matter between the landlord and the tenant. So that would have to be pursued between the landlord and the tenant. And as I said, I don't think if this legislation starts and stops with what we see here. I don't think the Owners Corporation will be able to regulate that by way of a by-law because the by-law specifically says if it's your principal place of residence, you can do it. If you can't do it under your residential tenancy agreement, then you can't do it because of that, not because of any by-law or any rules of the Owners Corporation.

Hi, Michelle. I see you there now. I hope that answer helps to answer your question. Please let me know if you need any more, and thank you, Maria, for digging into that issue with residential tenancy agreements.

Okay. I'll just remember to keep scrolling down my comments box so I can see any other comments here. If you are liking this, if you have others whom you know will enjoy this content, as I said, please feel free to invite them over, like the page, share the page, and then follow the page, whatever the Facebook terminology is.

We had a great webinar yesterday where I spoke about the power of by-laws to deal with difficult behaviour in apartment buildings and had some wonderful feedback from that. I know a few of you who are here today were on that webinar. I just got a comment here from Tim, "I think strata managers will find that, like many other issues, enforcement on tenants really needs to come from the landlord via the lease agreement." Yes, I agree with you there, Tim, and this also came up on the webinar yesterday, there was a question about strata managers not having up to date details for tenants. So what happens when the tenancy notice is not sent through to the strata manager? And I am just going to look at the provisions. I'll do my best. If this gets kind of boring, I'll stop. But the provisions in the act that require a tenancy notice to be given, it's Section 258 of our Strata Schemes Management Act, and it says if a lot is leased, the lessor, so that's the owner of the lot, must give notice of the lease in accordance with this section to the Owners Corporation not later than 14 days after the commencement of the lease.

So there's a penalty, I did say that on the webinar yesterday, there's a penalty, a fine that's applicable if that doesn't happen, and at five penalty units. What's that? \$500. I think a penalty unit is still \$100, \$500 fine if you don't do that. Hmm, well. Or you can be doing, what I suggest, strata managers, is that you're contacting your lessors, the real estate agents, and you're telling them that they have this obligation under Section 258 of the Act to notify you of who the lessee is and provide their details and otherwise they expose themselves to a fine. And I think, Michelle, thanks for the comment there, the main issue is that the landlord doesn't report to the strata manager in relation to the short-term letting, yes. I don't learn of the tenancy until an issue arises. So where do we go in stressing this? So Michelle, is that the owner of the lot is not telling you that they are short-term letting, or that their tenant is subletting? Just let me know the answer to that. Oh, sorry, just let me know further to that and I can help you with that one.

Yes, Tim, an owner can be fined for failing to give a tenancy notice and often, we don't tend to pursue this. Yes, I think if Owners Corporations started to collectively pursue this, we would see a change in the real estate industry, because, at the moment, a lot of them just don't have the internal procedures in place to issue tenancy notices. Yep, love it. I think you're right. I think that's all about increasing professionalism, isn't it? And I know the real estate industry as a whole has a big push towards that at the moment. It might be extra work for you, strata managers, but maybe it means you have to charge, you have to charge a little bit more. I've been saying that for a while. Reno and I both say that. The obligations that are now placed on the strata managers are ever increasing and it just means that you have to, I think, increase your fees and charge for the valuable service that you're providing. Maria, sorry, I skipped your comment. I'm coming back to that. "What is the potential impact upon a Section 258 notice about a lease?" Yes, Maria, you're a strata secretary and you do follow up all 258 notices from real estate agents. Good on you. Awesome. Everybody should be doing that. I'm just scrolling down. Ah, interesting, Michelle, about the landlords being your clients, so we cut our throats if we dug them into Fair Trading. And that goes to your point, Maria, about them having to pay a fine, so that's done through Fair Trading. Yes, I suppose, sorry, well, can't have it all, hey. Can't have it all. If they're breaching the Act, breaching the law, if they're causing a pain for you and other residents in the building, then I think you've got to take that step, don't you? And again, I think it goes to strata managers upholding that idea of professionalism. I think if you are a professional of integrity, providing good service, sure, a building may leave because you're holding them to account and holding them to the responsibility to comply with the law, but you can have another building, a better building who's going to take their spot because they want to work with you, because they know that you are a good manager and a manager of integrity.

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Yes. So, Michelle, further to your earlier comment you're saying the owner doesn't let you know about the sublet, so it's only until people are complaining that there're new people coming and going, there are parties happening that you find out about it. Yes, that is difficult. All you can do in that circumstance is take your usual enforcement procedures, which we discussed on the webinar yesterday in dealing with the outcomes of that sublet, so noise, and garbage overflowing, damage to common property, whatever it is, disturbance of peaceful enjoyment, you can certainly be issuing notices to both the landlord and the tenant, the tenant at least who's on the lease, and that's going to come to their attention that these things are going on and it's not something that they probably, I imagine, want to continue to deal with.

Okay. This is fun. Any more questions, let me know. We can get on to other topics if you like. If this chat box slows down, then I will slowly start to wrap things up. If you're enjoying this, if you like this kind of information, it's just something that I really love to do. Those of you who know me, they're working with me, or getting my content for a long time, will understand that this is how I operate, and I am just now delving into the world of webinars and Facebook Lives, and I'll be doing lots more of it. I do have an online membership community and some of you who are here today are part of that, hello to our members. And I do want to tell you that there is an important date coming up. It is less than three days away. It is the date that I am closing the doors on the membership. If you want to be a member of the Your Strata Property online community, now is the time to join up.

So members have access to a Q&A forum where I am answering questions for them. You can put to me your specific issue, your specific strata question, and I'm in there answering the question for you online, and generally, within a quite a short time frame. You have access to templates like by-laws, so getting back to that short-term letting by-law, I do have a current short-term letting by-law inside the membership and that will be revised in line with the new legislation, and that is available free to members. So I'm just going to put in if you want to find out more about the membership, and I can see we've got some more questions, and I will get to those, I'm going to put a link in the comments box. I hope all my text is correct and I haven't made any [inaudible 00:21:57], so you can go and check that out.

If you are interested in joining on up, here is the link. Yes, I think I've got that membership link right. Awesome. And do that before Sunday, okay? Because I'm closing those doors so that I can focus on the members who are inside the community and continue to provide great educational resources and content to them. I do not know if I will open the membership again. If I do, it will not be at the price that it is today, which is \$29. You can get in for \$29, have access to all of the members-only content, have access to all of the templates, jump in the Q&A forum, and it's then continuing \$29 per month, and you can cancel at any time. So go check that out.

I am going back to these comments that are coming through. Michelle, I'm glad that you love that point about integrity. Yes, you talk about the high ground and that's frustrating, but I hope that you've had good schemes come through once you have set your standards. It's how I've always operated. I have particular standards as a lawyer, as a business owner. I have stuck to those standards. And I can tell you after 15 years in this sector, they have put me in very good stead.

Sarah, hello. "Is there a definition of short-term letting?" Yes, I raised that one earlier, you probably weren't here. So we have an amendment to the Fair Trading Act, which is, for the first time, introducing a definition of short-term letting. They're actually defining this term, short-term rental accommodation arrangement, and they are saying it is a commercial arrangement for giving a person the right to occupy residential premises for a period of not more than three months at any one time. So we have that finally, that definition of what a short-term rental is. You're going to find it in new Sections 52(a) to 54(e) of the Fair Trading Act in New South Wales. So won't be in the Strata Act, don't go looking for it there. It's going to be in the Fair Trading Act. So that legislation is passed, again, not yet commenced.

Okay. Thank you, [Savia 00:24:13], I hope I'm saying your name right, that, "This is very useful and very informative. And thanks for the great webinars." No problem. Thanks for the feedback. Tim is asking me, "Have you heard anything about Fair Trading's actual powers to monitor the strikes that are going to be issued? Yes, I'm starting to see private companies starting up to monitor short-term lettings, BnB God." Ooh, cool. Yes. I have some notes on that, I thought I did, about the what the code of conduct was going to contain. Can I come back to you on that one, Tim, if I don't otherwise find it? I think they're still working on a draft and talking to stakeholders as they like to do about what that code of conduct will contain. Just a sec and I think I can put my hands on that. Ah, no, no, I won't waste your time. Oh, okay. Now I will. It's going to be in the Fair Trading Act again. Oh, yes,

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that's right. I did mention that. It's going to be in the regulations to the Fair Trading Act.

So proposed Section 54(b) authorises the regulations, so regulations to Fair Trading Act, the Strata Act, to declare a code of conduct to apply to short-term rental accommodation industry participants. Industry participants are defined as online booking service providers letting agents, owners of residential premises who enter into short term rental accommodation arrangements. So they're basically, they are hosts. So the code of conduct will apply to those participants. The matters to be dealt with by the code include the rights and obligations of short-term rental accommodation participants and the setting up of the exclusion register. That's right. I think you've mentioned there. Yeah, the strikes, you said, Tim.

The Act makes it an offence for a short-term rental participant to contravene a provision of the code. So there'll be offence provisions and authorises a court to order a participant to pay a monetary penalty for contravening a provision of the code, which is a civil penalty provision. So, sorry, that's a little bit dry. That is what is in the Fair Trading amendment and will come through in the regulations. So, Tim, you'll be kept up to date to that on the members' side.

Sarah is saying thank you. Yes. Hi, Rochelle. Lovely to see you. Tim's got plenty of time. Look, I was going to do this a little bit later and we can do cocktail hour, okay? You know, why not? Friday, or tomorrow, Saturday, anyone around? Maria, "Who gets to keep and monitor the number of days ledger to know if occupancy has been less than or more than 180 days?" Very good point. The 180-day issue, remember, is a planning issue. So that is something that is going to be in the new planning laws that we still haven't seen. So just going back to that, that's the Environmental Planning and Assessment Act, and those amendments are yet to be tabled. So that's where we'll see information about this 180 days, how that's monitored, how that's counted. Because if you think about it, 180 days could be every weekend and we may not want to be dealing with short-term rentals, the partying every weekend. So how the 180 days is going to pan out will be interesting, and we should say that Maria, to answer your question, in that planning legislation.

Okay. Now, I know you have all afternoon, Tim, I'm not sure if everybody else does. Thank you so much, everyone, for being here. If anyone wants to throw in any more questions, doesn't have to be about short-term letting, doesn't have to be about by-laws, probably does have to be about strata, can we maybe stick to strata? That would be cool. Thanks, Ash, for the thumbs up. I'm just going to pop in there that link again to check out the membership. It is closing midnight on Sunday. I will be up, I will be answering questions and getting all those members settled in. At midnight Sunday, the doors on the membership are closing. And if you want to get in, if you like this stuff, if you like the way I do things, this is it. I'm Amanda Farmer. What you see is what you get, it's what I'm known for, and I'm passionate about this strategy stuff.

I live in strata, as I said on the webinar yesterday, love living in strata and want to make sure that as many people as possible can live peacefully, stress-free, understand strata. Some parts that kind of complicated, other parts aren't, and it shouldn't be because this is your life. This is important stuff. This is what you're coming home to every day. And if I can make that a little bit easier for you, then absolutely, that's my passion, that's what fills me up. I've had clients before who say, "Amanda, what you can tell me in five minutes means that I can sleep at night." And when I hear that, it just makes me really happy. So that's why I keep doing this. A lot of you say to me, "where does the energy come, The podcast every week, jumping in the Q&A forums, helping us out?" I love it, and I couldn't keep doing it if I didn't love it. And this part of the law is really interesting, challenging for a lawyer, constantly changing. I could just see, Ash's comment, "he wants to ask a question about a freestanding property." Give it a go Ash, but, nah, I don't think it's going to be me.

Thank you, everyone. I'm getting thumbs ups and I'm getting that you love my passion as well. Thank you for being here. I haven't done a Facebook Live before, but this is awesome, and I think we should definitely do it again. You can tell that I'm having a good time because I don't want to stop. I will let you all go. Please don't hesitate to reach out to me. You've got the links there to check out more about the membership. I promise it is closing on Sunday. Any dads out there, you are going to be out to lunch, out to dinner. It's Father's Day, just to remind you. Any children out there as well, it's Father's Day on Sunday, remember, please. Go and sign up now if you're thinking about the membership because you're going to forget on Sunday and be busy.

Let me know on the Your Strata Property page if you want me to address any other topic in particular. I might be around a little bit more this weekend. Let me know if you have particular questions. And please, remember to share the page, like the page, follow



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the page, whatever all that Facebook terminology is, and I shall be very grateful for that, and I shall catch you next time. I was looking at your comments, Ash, thank you. Thank you, Nikki. See you later. Love you all. That's what I'm supposed to say on Facebook. Have a good weekend. Bye.

