

Publication Date: 15 November 2016

YSP Podcast Transcript: Episode 036. New Strata Laws: Preparing For The Future -  
Part 2 What strata owners need to know about the new NSW strata law

Listen to this podcast episode [here](#).

**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 and this is Your Strata Property. Today I have for you part 2 of my presentation on the new New South Wales strata law delivered to a room of over 160 strata owners a few weeks ago here in Sydney. If you haven't already, I really recommend that you go back and listen to episode 035 which is part 1 of that presentation and if you've already listened to that then you are absolutely in the right place to hear more from me about how the new New South Wales strata law is going to impact strata owners in particular.

Now, I highly recommend that you pick up a copy of both the slides from the evening and my detailed written paper, which gives you a lot more information about what I'm talking about in the presentation and they're available from the website [www.yourstrataproperty.com.au/newlaw](http://www.yourstrataproperty.com.au/newlaw).

I do make reference to some of the slides in this part of the presentation, mainly just pictures that I've put up to make sure everyone was paying attention but if you want to be in on those, head over and grab yourself a copy of the material [www.yourstrataproperty.com.au/newlaw](http://www.yourstrataproperty.com.au/newlaw).

Now, in this part 2, I launch straight into talking about the new rules when it comes to parking and motor vehicles left on common property. I talk about overcrowding and occupancy limits by-laws, pets, smoking, how the new model by-laws work, some important changes when it comes to engaging lawyers and obtaining legal services, the increased involvement of tenants in strata buildings, and what's changing when it comes to your contract with your strata manager and commissions that are paid to your strata manager. So sit back and enjoy part 2 of my presentation to strata owners on the new New South Wales strata law.

Alright, let's talk about parking. One of Jimmy Thompson's 3 P's, I think. Pets, parties, and parking: the 3 P's of strata. What is happening with parking? Well, there are 2 things happening when it comes to parking; 2 options. I can see some of you are looking at that, some of you might like one option better than the other. Getting excited here? Don't get excited too soon.

Option 1: you can enter into an agreement with your local council. Written agreement, council has to be on board and by this agreement, you are essentially handing over your parking area to the local council for council's inspectors to come in, they put up signage, they mark out parking areas and people not complying with that signage or those parking areas, designated parking spaces, can be fined, just as you can on the street.

This kind of thing I think is going to work well obviously in those open air parking situations where general public have access, I know there's a few big communities in Sydney that are in that kind of situation. I actually did some work for one recently and we entered into one of these agreements.

No, the new law hasn't started yet but we still legally entered into this agreement so I say that you could always do this. We actually had a dispute with one of the lot owners and we ended up in NCAT with a lot owner saying it's not legal and NCAT decided in our favour.

You have always been able to do this. What the new law is now doing is confirming that and setting out a process. So if you are in that kind of a building that has open air parking and you've got members of the public coming in and doing whatever they like, then have a think about this option. The person to talk to is your strata manager and certainly your local council because they have to be on board in entering into this agreement with you.

What's the next option? What's the more exciting option? Well, a motor vehicle that is parked on common property so that it



Publication Date: 15 November 2016

## YSP Podcast Transcript: Episode 036. New Strata Laws: Preparing For The Future - Part 2 What strata owners need to know about the new NSW strata law

obstructs the use of common property or blocks an entrance or exit. If you've got a motor vehicle like that, you can put a removal notice on it. There are very strict requirements as to what a removal notice must say.

A removal notice must be at least A4, I'll start with that, it must at least A4, so it's a relatively big notice. It must be protected from the weather, so I guess we're laminating our notices unless we're in basement parking, which is probably where you have some significant issues; it must set out the date and time that it was placed on the vehicle; it must identify the vehicle, so putting the rego on there; and it must state that if this vehicle is not moved within a certain period of time, it will be moved by the owners corporation.

What's that period of time? I'll give you 2 options: is it 2 days or is it 5 days? 5? 5? 10 – trick question? It was 2 days on the draft legislation but the final legislation it is 5 days so that notice has to sit on that vehicle for 5 days and assuming it complies with all those requirements and that vehicle is not moved within those 5 days, and I say at least 5 days... so I did hear a 10, you could leave it on there for 10 but the legislation says at least 5 days – I would be going with 5 if I've got a vehicle blocking my entrance or exit – and if it's not moved then the owners corporation can move it and for that purpose the owners corporation is taken to be the owner of the vehicle so you are moving it legally.

What are you doing? You are calling the towie, the towie's coming and moving that vehicle to the nearest lawful place. "Amanda, we've got 2 parking on our street can we go and put it out on the street?" I say no and I don't think your towie would do it, they're not going to then park it illegally in a 2-hour space when they know it could possibly be there all day, they're going to move it to the nearest lawful place. Someone asked me what if the nearest lawful place is the wreckers? Yes, that's where it's going.

Alright, the version of the legislation that we are now getting has also added in that owners corporations can apply to the tribunal to recover the cost of having to move this vehicle, that's really helpful, it's really helpful if you know who the owner of the vehicle is. So if you have recalcitrant owners or tenants and you find yourself having to move their vehicles then certainly go and lodge that application to the tribunal and recover your costs of having to pay the tow truck driver to move that vehicle.

Alright, what is next? Overcrowding, a serious case of overcrowding, what's the new law doing about that? The new law says you can have a by-law and it's called an occupancy limits by-law and it is what it sounds like by this by-law you limit the occupancy of a lot. You limit it by reference to the number of bedrooms in the lot and you can limit it to no fewer than 2 adults per bedroom.

Okay so: 2 bedroom lot, 4 adults; 3 bedrooms lot, 6 adults. Alright, there are some exemptions where this count doesn't apply. It certainly doesn't apply to children, so children are not included in that count, strictly we're limiting adults only, and it doesn't apply where everyone in the lot is related to each other.

Okay, so we can have families of 15 in our 2 bedroom lots. Alright, so a bit of an attempt I think to deal with some issues some buildings are having maybe with students, student accommodation – it's a step in the right direction. I recommend if you are having this problem that you do go ahead and implement one of these by-laws. Why? Because the penalties are much higher for breach of this by-law than any other by-law, which is interesting, it's a bit of a message being sent there that we're taking seriously. Breach of this by-law on the first occasion is going to see the owner smacked with up to a \$5,000 fine.

Breach of this by-law on a second occasion is going to see the owner with potentially up to an \$11,000 fine. Alright, so these penalties are designed to hit pockets of the generally investor owners who are engaging in this kind of overcrowding. So it's called an occupancy limits by-law and see if you can get your hands on one of those, it's certainly something that I'm drafting.

Alright, let's talk about pets. A bit of a cultural shift when it comes to pets these days, I think. Pets are more and more becoming part of the family and pets are now Bruce and Betty instead of Rover and Fido, which is cool, and I think our policy makers are recognising that and just because we live in strata shouldn't mean that we have to forego our pets.

What's happening with pets? Well, the new model by-laws – I said that I'd get to model by-laws – are doing something interesting. There is no longer a reference to banning pets in the model by-laws. Now, I'll quickly say something about the model by-laws –

**Publication Date: 15 November 2016**

**YSP Podcast Transcript: Episode 036. New Strata Laws: Preparing For The Future -  
Part 2 What strata owners need to know about the new NSW strata law**

these are the by-laws that brand new buildings get when the strata plan is registered and the developer hasn't really been bothered to go off and get their own set specifically drafted, they just say "aah, I'll take the model by-laws that are in the Act". So the new model by-laws that are in the Act do something interesting with pets. They give 2 options:

Option A: pets are permitted just let the owner corporation know that you've got one.

Option B: pets are permitted if the owners corporation has consented.

Okay, 2 options. In the current law, the default option was pets are banned, no pets, this is a no pet building. That option is no longer there at all in the new law, you've only got those 2 options. So this is where you might be thinking about if you are in a building that says we're no pets, you might be looking at these model by-laws and say "hey, maybe it's appropriate now for us to look at a situation where we will allow pets but through an application process" and the proper way to do that is to have a by-law that sets out that application process quite clearly: "if you want to have a pet, these are the steps that you take, you apply to the committee, you provide all this information, your request will not be unreasonably refused, we can place conditions and these are all the things that you should be complying with as a pet owner while you are keeping that pet" – and I have that by-law as part of the YSP membership as a template by-law which is yours to have if you are a member of YSP -, so that's pets.

What else is happening with the model by-laws? We are dealing with smoking in the model by-laws, so again something new in those model by-laws, we've never had this kind of a by-law in our legislation before. That's not to say that we haven't had smoking by-laws because I do a lot of them but now we have legislation saying to the developer "if you register this brand new building with the model by-laws you're going to get a by-law about smoking".

And I think there are 2 options for smoking as well. I think it's something like the owners corporation has a designated smoking area, so you can only go there to smoke, or you must not smoke on common property and you must ensure there's no smoke drift from your lot onto common property.

So that's another template by-law that's actually in the YSP membership, there's a smoking by-law and it's one that I do a lot of, it's very popular. So smoking is a problem, it is certainly legal to have a by-law that deals with it, no question about that, there have been cases on that and it's part of the new law. The policy makers are recognising that this is becoming an important issue for those living in strata.

Alright, let's talk about lawyers. The famous lawyer some of you may recognise [referring to slide]. Hopefully, none of your strata lawyers are in that bracket. What's happening with lawyers? Okay well, as is the case now, you must have a general meeting to approve the engagement of a lawyer and approve money on legal services.

The difference is: currently if those legal services are going to cost less than \$12,500 you don't have to have a general meeting, your committee can approve it. I say \$12,500 is for those larger buildings, the threshold is a bit smaller when you've got 6 or 7 lots but any more than that and the threshold is \$12,500, the committee can appoint a lawyer.

The change under the new law: you don't need a general meeting to appoint a lawyer unless the matter is urgent – this is new, no urgency requirement in the current legislation – unless the matter is urgent, and it is going to cost less than \$15,000. If it is urgent and it is going to cost less than \$15,000 then the committee can appoint a lawyer, otherwise, it has to go to a general meeting.

One other exception that's important: if it's less than \$3,000, whether it's urgent or not, the committee can do it. Okay so less than \$3,000, that's your by-law drafting, that's your straightforward advice work, maybe some license agreements. It's not really your NCAT applications, might be a mediation if you want to send a lawyer but the other side now has to consent if you want to have a lawyer at mediation. Anything that's going to be a NCAT application is generally going to be above that \$3,000 threshold and it's going to need general meeting approval. I suspect that we will see a lot of NCAT applications suddenly become urgent. So that's a change that you as committee members and a few strata managers that are in the room really need to be aware of because that's quite a shift.

**Publication Date: 15 November 2016**

**YSP Podcast Transcript: Episode 036. New Strata Laws: Preparing For The Future -  
Part 2 What strata owners need to know about the new NSW strata law**

Okay, let's talk about tenants and I think we can talk openly because I don't think there's any in the room. No, I'm not going to say anything bad about tenants. We are increasing the involvement of tenants in our strata schemes. How are we doing that? Well, we need to give them notices of our meetings, our agendas. We have to make sure they receive copies of our agendas, they either get those directly in the mail or if you have a notice board that you're required to maintain under the by-laws, the agenda goes on the notice board so that's sufficient service.

Your tenants can then attend the general meeting, that's about it, they can just attend, they can't vote unless they are holding a proxy which is the case now, they can't vote, they can't move a motion, they can't speak to a motion and they actually have to leave if certain things are being discussed and those things are specified in the legislation, generally about financial matters such as the collective sale of the building, tenants are not allowed to be involved in those discussions.

How do we know who the tenants are? Well, landlords are required to notify the secretary – so your strata manager generally – of a lease, within 14 days of that lease commencing. They have to give the name of the tenant and an address for service, the start date of the lease and your strata manager puts that in the strata roll.

So a tenant is only a recognised tenant if there's a record of them on the roll. Now, what was originally a bit of a panic around the sector, "oh we're going to have to be sending twice as many notices, this is terrible and it's a lot more work". Strata managers are now going back to look at their rolls and saying "jeez, I know there are 50 tenants in that building but I've only got 2 of them on my roll".

You rely on the roll, and it becomes the landlord's problem and I suppose the tenants' problem if they're not correctly recorded on the roll, then they're not going to get notices and they're not going to be able to turn up at meetings. This is important because of this requirement that if at least 50% of the lots are tenanted, a tenant representative can be elected to sit on the strata committee.

Once again, a tenant representative who is sitting on a strata committee has no voting rights, no opportunity to raise motions, they're sitting there taking in the information, they're probably better off sitting there as a nominee of an owner but any way they can be elected as a tenant representative, that happens through a meeting of the tenants and that meeting occurs before your AGMs.

Alright so I'm getting the question quite regularly now from strata managers: how do I work out this 50%? Do I have 50 or do I not?" You're looking at your roll, it's whether 50% have been notified to you or not. If they haven't been notified to you then, unfortunately, for the purpose of this legislation, they don't exist. Alright, so that is a little bit about tenants.

Let's talk about strata managers. Does anybody's strata manager look like that? I know a few strata managers who look like that, I don't think their desks are that tidy, though. What's happening with strata managers that you need to know about? You need to know about contract terms. So there are some changes here, strata management contracts or agency agreements, agreements that you as a building have with your strata manager can only have a maximum 3-year term.

I know that there are agreements that have been going around the sector that are 5-year terms, so they are immediately going to be pared back to 3-year terms, and that is retrospective and will apply to an agreement on the 30th of November, if you have a 5-year agreement that is automatically going to become a 3-year agreement on the 30th of November.

There are also no more rollovers. Okay? Rollovers are really common in the industry at the moment, when your term expires, the agreement automatically rolls over for a further term. A lot of you are probably sitting on rolled over agreements but that is no longer permitted, when the agreement expires, it expires.

The executive committee can by resolution extend it by 3 months, and extend in 3-month increments until the next AGM. That's designed to give you time to find another tender for strata management services, talk with your strata manager about the new contract, but it cannot extend past the next AGM once your agreement has expired.



Publication Date: 15 November 2016

## YSP Podcast Transcript: Episode 036. New Strata Laws: Preparing For The Future - Part 2 What strata owners need to know about the new NSW strata law

If you're currently in a rolled over agreement, the legislation says that you have 6 months, from the time that the legislation comes in, you've got 6 months to sort yourselves out, to tender for new services, to have a chat with your strata manager about a new agreement. Okay? So, that's strata management contracts.

Let's talk a little bit more about strata managers. Interestingly, NCAT is now going to have the power to make orders about strata management agreements. If your strata manager has failed to perform under an agreement; if your strata manager has unfair contract terms or unfair payment terms you can apply to NCAT for orders about that; they can order your strata manager to do what they are supposed to be doing; they can order some compensation to you. The same applies to building managers and caretakers with building managing and caretaking agreements NCAT also has the power to deal with.

Commissions – another dirty word that goes around -, how is the new legislation dealing with commissions? Well, we are now under the legislation requiring our strata managers to disclose at each AGM the commissions that they have received and it's most often insurance commissions in the past 12 months and what they expect to receive in the next 12 months.

Okay, there must be a motion on the agenda to – consider is the word – consider the insurance commissions that your strata manager has received and expects to receive. I'm not quite sure what's supposed to happen after we have considered it but I say it probably gives you as an owners corporation opportunity to have a chat with your strata manager and say "hey, we're not into insurance commissions, we don't really want you to take them but we appreciate that you have to be paid for your services and if we were to move to a no commission arrangement and a purely fee-based system where we pay you a bit more, how much more would that be?".

So I think the change is designed to encourage that conversation so that you have the opportunity. The legislation certainly doesn't say, on my reading of it, that you can approve or not approve the taking of any commissions, it's simply that you consider the commissions that your strata manager has received.

Alright, so that is pretty much what I wanted to cover in this first part of the session. As I said, there is no way I could cover everything and I know that many of you would have questions either about what I spoken about or other topics all together, and we can raise those ones in the Q and A. I'm looking forward to getting to some different stuff hopefully, so you should feel free to raise them if I haven't.

If we can in the Q and A stick to questions about the new law that will be great. I know that you always have many questions for me and I'm happy to answer those. A really great place to be raising those is in the Q and A forum of the YSP membership, so I'd love for you to head over there and you will have access to me and my team to be able to ask me those questions and get some good accurate guidance and please keep educating yourselves.

I'm going to these workshops, I'm going to these seminars, I am reading everything I can get my hands on, that is how I can stand up here tonight and talk to you about this stuff. Every workshop I go to I learn something new because the presenter picks out different bits of the legislation that they think is important to you.

So please continue to educate yourself, get involve with OCN, become a member of OCN, get involve with other organisations, your council I know is putting on information nights and Fair Trading, and make sure that you stay educated and informed so that you can help your communities. 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 by the show notes at [www.yourstrataproperty.com.au](http://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?

