

**Publication Date: 24 September 2019**  
**YSP Podcast Transcript: Episode 180. It's strata QandA time: LIVE from Town Hall House**

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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 and this is Your Strata Property. Hi everyone, I have a treat for you this week. I am bringing you the live Q&A from my recent presentation for City of Sydney Council at Town Hall House in Sydney, we had over 150 people in the room, it was a booked out event. We were talking all about how to use by-laws to combat bad behaviour in your apartment buildings and restore peace to your communities. And as I like to do, I spent a fair bit of time answering questions from the floor about all kinds of things, including by-laws, but some other things as well. And I've recorded my answers to the questions that were asked and I'm sharing them with you today on this week's episode.

I've got about oh, 12 or 13 answers, I think, and what I'm going to do is introduce the question so that you know what I am talking about when I cut to the live audio from the evening.

So first up, I had a question about what we do when we have difficult committee members. How do we handle them? How do we get rid of them if we think that's the best option? Or how do we add more members to our committee to try to improve the situation? You'll hear my answer to that question straight up and then you're also going to hear me move into answering another question about key lockboxes being installed on the common property without approval. What do we do about these installations? Here we go.

I've got two really difficult committee members. They are making life hard for the building. What do we do about them? My short answer to that is you try to replace them or you add more. Okay. So I did a webinar about strata committees and that'll probably be my next conversion to a speaking presentation. Be aware that you can set the number of people who sit on your committee before you elect.

So, I say a good number is 3 to 5, you want to stick with the odd numbers, not the evens. 2 is never a good idea. You can go up to 9 in New South Wales, but stay away from too many. I think it's 3 to 5 is the sweet spot. We have three in my building, and you set that number before you fill the positions. So lots of buildings, have a little light bulb go off when I remind you of that, that's in the legislation. So you can have a think about that.

David asked about key safe lock boxes being installed on the common property. Really good question. That's been in our member forum before. A lock box that's just attached to letter boxes or a common property wall, what can we do about it? Remove it. David, just get rid of it. It's on the common property. And when I gave a suggestion to a member about this, I said, "Put a notice up first that says this will be removed in 48 hours," and take a photo of that so that you are giving somebody a chance to claim it, or to tell you you can't, or to remove it, but it's illegally on the common property. It's easy to remove, it's not like a bathroom renovation. Just take it off.

Next up, I had an excellent question about how we put by-law revisions to the general meeting. This is a question that I often get from clients. We've spent a lot of time preparing a new set of by-laws. What is the best way to put those new by-laws on the agenda of the general meeting so that we can specially resolve to accept those changes with the least amount of fuss? Here's my answer.

Really good question, I get asked this all the time by strata managers when I do their by-law reviews and produce a consolidated set of new by-laws. My advice, I gave this to someone yesterday, is this. You probably have a series of amendments to your existing by-laws, and they can be as small as changing the reference from executive committee to strata committee or changing the legislation from 1996 to 2015, so some of them are tiny, tiny. Some of them are taking out clauses, some of them are putting in clauses, that's, call it type A amendments.



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**Amanda Farmer:** Then you're going to have type B, which is brand new by-laws, so your pets by-law might be a brand new by-law, or you might have a by-law about occupancy limits, and you might have a bylaw about moving in and out. These are brand new by-laws so it's a type B amendment. And then you've just got repeals, where you're just getting rid of entire by-laws. I suggest you deal with them in that way. Type A, type B, type C.

The type A amendments, if you can, and it's hard to go back if you haven't started this way, have a marked up version of your original by-laws showing with crosses and underlines every change that has been made, and have a single motion that says to repeal and replace by-law 1 to 15 with the following new by-laws. So you've got the marked up version so people can see the amendments. Do that as one motion. Then do your brand new by-laws each as separate motions, because they are bound to be controversial because they're brand new.

You're rolling your eyes like maybe you have a lot of them, so I feel sorry for you but that is what I recommend. And then, do all your repeals as a single motion as well, that the following by-laws be repealed, because that's easy. So that's what I recommend. It often means that are 600 page agendas. It is better to arm people with the information that they don't need than not to give it at all. I go to a lot of meetings and it is the meetings where the 600 page agenda has gone out that there is silence and no one asks any questions, and they can't criticise you.

The strata manager, the strata committee, they can't say, "You didn't tell us. What have you been doing? What are you trying to hide in this pristine, clean copy of these brand new by-laws? What have you changed?" And it's so hard, I know, in a meeting to go, "Oh, why did we change that? Where's that? What was that?" You don't want to be that person. You want to have the documents in front of you, and if everyone's had the document, 9 times out of 10 they don't even ask a question. Again, this is this psychological effect.

Next up, I was asked from the floor whether the by-law regulating moving in and moving out, which I had recommended earlier in my presentation, was in fact a by-law designed to restrict short term letting. Here's what I had to say.

The answer is yes, the buildings are using these move in without induction procedures to deal with, creatively, short term letting.

Next up, this poor owner is in a 1970s building which apparently has no waterproof membranes, and she wanted to know what do we do when people are renovating their bathrooms. Here's my answer.

If they are doing a bathroom renovation, they must, to meet Australian standards- And [inaudible 00:07:32] standards, all the standards. Install a waterproof membrane.

**Audience:** Yes.

**Amanda Farmer:** The minute you're dealing with waterproofing, the legislation says, "You can't approve this by an ordinary resolution. This is not cosmetic work, this is major work that needs a special resolution and a by-law."

**Audience:** We have a strata manager who's told people to tile over their tiles.

**Amanda Farmer:** Okay, so time for a new strata manager. Where I was going with that is that they simply don't get approval for the work unless they consent to a by-law which requires them to install a waterproof membrane, to pay for it, and to be responsible forevermore for the waterproof membrane. Strata manager problems, other issue, look at the term of your contract. See when it's coming up.

Next up, I was asked by an owner in a brand new building to address a range of issues including the misuse of proxies and what to do about strata committee members having conflicts of interest. Now I do have a correction to make here. When I answer this question for the audience member, you'll actually hear me say the wrong thing. Can you believe it? I got it wrong! And it is only because I was contacted the next day by quite an astute strata manager.

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**Amanda Farmer:** Russell Young from Young Strata in Sydney was present on the night, and he picked up the fact that I misquoted the proxy limit rule, and you'll hear me say that in large schemes, over 100 lots, the proxy limit is to the effect that one person can hold the equivalent in proxies of 5% of the number of lots. That's not the law is it? No! The actual proxy limit rule, as we should all know, is that in schemes that have 20 lots or less, one person can hold one proxy and in schemes with more than 20 lots, one person can hold the number of proxies that is equal to 5% of the total number of lots. So thank you Russell for pointing that out and making sure that in this broadcast I might actually get it right.

Now, Russell is also a member inside the Your Strata Property online membership community. So it just goes to show the smarts that these members have. Now is actually a fabulous time to be getting yourself on the wait list for membership. Current wait-listers will tell you that there was a little super secret announcement recently about the opening of the membership doors. Only those on the wait list know about that. Head over to [yourstrataproperty.com.au/membership](http://yourstrataproperty.com.au/membership) if you'd like to join the wait list, and then join clever cookies like Russell inside the membership. So with that correction firmly in place, let's head over to my answer.

So a couple of issues there. There is a limit on how many proxies one person can hold in a large building over 100 lots. One person can hold the number of proxies that is equivalent to 5% of the number of lots. So depending on how big your building, and that could be a lot or it could be 5. If it's a small building, one person can hold one proxy. So, I'd be looking at that, number one. How is this person getting the proxies they're getting, and are they over the limit?

And I've lost the rest of your question, but when you've got a range of issues like that in a new building, it's often about educating the people who've just bought in and having a good strata manager to guide you through that education process, so you can understand when it comes to committee conflicts of interest as well. That's another area. There will be items that he cannot or should not be involved in if he has a conflict of interest when they're being discussed at the committee level, and it's for the committee to remove him from those discussions. So I don't know what the balance of power is like within your committee, but there could be a number of angles to approach that one.

Next, I was asked a great question about how to get certain initiatives approved by the strata committee, including for example, kicking off the process of reviewing some out-of-date by-laws. And here I get into the power of the secretary and what an interesting position that is.

Getting a group of supporters together is a good first step. Decisions on by-laws are made at a general meeting, not at strata committee level. So if it's your fellow strata committee members that you're butting heads with, take it past them to the level of the general meeting. And you're the secretary, so you have the power to convene a general meeting, which is a wonderful power to have if you're not familiar with that. So you can bypass the committee if they're not playing ball.

I've seen buildings deal with by-laws really effectively by establishing subcommittees, particularly in larger buildings, who then are charged with the task of surveying owners, having information evenings, getting people together in an informal context in the one room to say, "Hey, what don't you like? What do you like? What do you want added?" And narrowing it down in that way, and through that process you're also getting support outside of these people who might've been around for a while, don't necessarily agree that there should be change. Being open with other residents, welcoming them into the conversation and getting their ideas was always a good place to start. But if you've got to wield the the bat of secretary and convene a general meeting and put things forward at the general meeting, that can be quite effective.

Next, a question about replacing lifts. What is the most efficient way to do that and does the owners corporation have to pay for owners who may need to temporarily relocate while a lift is out of action? Here's my answer.

Lifts upgrade or lift replacement. How many lifts have you got?

**Audience:** We don't know.

**Amanda Farmer:** Okay, but that's good news because they don't all get-



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**Audience:** 18.

**Amanda Farmer:** They don't all get done together.

**Audience:** We've got a very large complex with [crosstalk 00:14:02]-

**Amanda Farmer:** Great. And I usually find that those very high... I live in 7 stories, we've got one lift. So once you get kind of higher than that, you're going to have two. As long as you've got more than one, you've always got a lift running. And I obviously don't know your layout, maybe it's 2 lifts for each tower or something like that. But I would be very careful to ensure, if you can, that you've always got a lift running so people can still get up.

If for some reason that's not going to happen, I would be communicating directly with those residents who you think they are wheelchair-bound, or have a disability and they must use the lift. I would be communicating with them about, "Okay, what is your schedule for the next 3 months or so? How do we work together?" "Oh, fancy that, I'm going to Europe. I won't be here. Do it during that time."

**Audience:** Yes.

**Amanda Farmer:** So yes, coming back to that human interaction, which we often forget, knocking on the door, having the conversation, "How can we do this more easily?" Because, to answer your legal question, I think the way that our legislation is, or our cases are being decided, we've got the Black case in Victoria, we've got our Hulina in New South Wales, which is some years old now, but it's our last discrimination case, that says the owners corporation does provide a service to people who live in the building, and they must ensure that their access to the building can be used by people who have wheelchairs, so we need to have ramps. That's what Hulina was about, and we need to have auto opening doors, which is what Black was about.

Really difficult conceptually to understand that an owners corporation is providing a service, but that's how it has been brought under the anti-discrimination legislation because people in your house, your private property, you don't have to worry about that, but the courts are saying that, yes, we do have to worry about that, and I think what your predicting may will be a reality. So I would work very hard to try and avoid exposing yourself to that by timing the project and talking to the people. And you can talk to them quietly one-on-one, so perhaps you're not alerting others that you're having those conversations.

I would find it unusual that you would have all lifts out of action and people wouldn't have access during a lift upgrade or a lift repair. I'm going to leave that one there because it's very unique to your situation and there's lots lining up.

Next question, how do we get by-laws through while a compulsory strata manager is in place? A strata manager with all the powers of the owners corporation.

So, I imagine that your compulsory strata manager, appointed by the tribunal to manage a dysfunctional scheme, very often 2 lot schemes I'm sorry to say, has all the powers of the owners corporation and the strata committee. Do you know if that's the order that was made by the tribunal? So they don't need to hold meetings to pass bylaws, we have case law on that, the strata manager can impose by-laws. So lot one can be taken out of the picture, and they don't have to hold meetings, they don't have to get your agreement. If they're not doing that, then they don't understand their role. And you can go to the tribunal to have a revocation of the appointment and find someone who does understand their role.

Next up, is it legal for the strata manager to try to recover the expenses incurred when chasing unpaid levies, especially if there's no by-law allowing them to recover those expenses? We also move into a question about a by-law for CCTV.

No, I think what the problem is, is that only certain things can go on the levy account. The levy register is what the legislation says, and unless you have a by-law empowering you to put other things like expenses, as opposed to levies on the levy register, then you have no power to do it.

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**Amanda Farmer:** A CCTV, I say is an upgrade, so upgrades to common property need a special resolution, as opposed to repairs which just need an ordinary resolution. The upgrades don't necessarily need a bylaw. If you're shifting responsibility to a lot owner to repair and maintain common property affected by renovation, then yes, you should have a bylaw to confirm that for the record. But an owners corporation upgrading the common property does not necessarily need a by-law. I, of course, as you heard, recommend one for CCTV to try and avoid exactly those issues that unfortunately are now faced with.

How does it work? Where is it? Who controls it? Where do we get access? A bylaw can deal with all of that so the the committee can just say, "Here, these are the rules. This is what was approved at the general meeting when the CCTV was approved." You can, as a lot owner, propose a by-law for your CCTV to go on the agenda of the general meeting. Have a think about that. That's just coming to me.

Next, what do we do when 2 out of the 4 committee members are entirely disengaged unless it comes to something that's happening within their own lots? Here's my answer.

Yes. Remember I said before about even numbers and you-

**Audience:** That's right.

**Amanda Farmer:** Yes. Okay. Can you think about when your AGM is coming up, and you need to do some Hillary style campaigning, more successful than Hillary hopefully, for some other people to join you on the committee. And you go and get your posse, people who will support what you want, which sounds like it's in the best interest of the building, and so you can then outvote them. If these other 2 get re-elected, then you need to make sure, "Oh by the way, yep. Jane wants to be on, and a Tonya wants to be on, and Jake wants to be on, excellent." And then you've got 5, and they've got 2. Voila!

**Audience:** There's nothing we **can do at any rate.**

**Amanda Farmer:** Well, if they're not repairing and maintaining the common property they're breaching the Act, and as an owner, you can go to the tribunal and seek an order that the owners corporation meet its legal duty to repair and maintain the common property. Yes.

Next, this poor audience member had her unit flooded because of a leak from the unit above, and she's trying to get someone to pay the repair costs. Can she do it? Here's what I think.

So not a failure of the common property. It was a flood in a kitchen because of a dishwasher-

**Audience:** The kitchen hose burst and we are not home when it happened-

**Amanda Farmer:** Okay, so no by-laws about this. And it's unusual that the owners corporation's building insurer wouldn't cover a burst hose, strata managers. So I wonder if the owners corporation's building insurer has been approached with this problem, and may step in?

**Audience:** They said no.

**Amanda Farmer:** They said no, okay.

**Audience:** They said no [crosstalk 00:20:27]-

**Amanda Farmer:** If there's no common property involved and it's not because of a lack of a waterproof membrane, which would be the case between bathrooms, leaks between kitchens, I've been involved in one of these before. Generally, no waterproofing in kitchens because they shouldn't be leaking. And it's because of 1 lot owner's fault and it's affecting another lot owner.

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Unfortunately, your action is private between you and the other lot owner and you would have to sue that person for your loss. And it doesn't involve the owners corporation and is not a matter of strata law as far as I can think of it. It's a very difficult situation. If it is a few hundred dollars I would make a commercial decision and move on. Fast legal advice there guys.

Now, this is our last question, and you will hear me wrap up after this. A question about the 10 Year Capital Works Fund Plan. The strata manager says, "Don't worry about complying with it. We don't need to." What do we do in that situation?

Now, when I finish answering this question and you hear me wrapping up, you'll hear me refer to a slide that's on the screen. And I appreciate you can't see this, but what it was was a photograph of a previous event that I had spoken at earlier in the year, and it was a photo of me standing talking to audience members who approached me after the event had concluded. And a line was developing of strata owners who just had one more question for me, so try to picture that when you're listening to the wrap up. But first of all, what are we doing about that strata manager who says we don't need to comply with the Capital Works Fund Plan?

You're right that the legislation about Capital Works Fund Plans says that you follow them so far as is practicable, so there is no mandatory requirement to follow these plans. I'm involved in a case at the moment for a lot owner client who says the common property is not being properly repaired and maintained. She's got some leaks and things happening. She's looked at the levies that were raised at the last general meeting and said, "No way do they match what the plan says that they should. We can hardly pay our strata manager in the next 12 months let alone do the repairs to the common property."

So what I said is, "Well, we're going off to the tribunal for an order that the owners corporation do A, B, and C, and the house specific repairs in the common property. And also, an order that the owners corporation raise levies sufficient to meet the needs of this building." And guess what? We've already got all the evidence we need because it's in the Capital Works Fund Plan. So we're relying on that plan instead of having to go and get our own forecasts and our own reports to say, "Here's the report. This is what needs to be done and this is the money that needs to be raised. We want you tribunal, to make orders in accordance with the report as an alternative that the owners corporation comply with the report."

I don't think the tribunal will do that because the legislation doesn't say it, but essentially, it's a claim for repair and maintenance and a claim for adequate levies, and there's a section in the Act, I can't remember off the top of my head, that says if an owners corporation hasn't raised adequate levies you can go to the tribunal and have the tribunal order it. So that's how you do that.

All right. I think that is probably it from me. I did have another slide for you, because this is why I'm about to disappear, because that happens. That was one of my last events and that line was, you don't see the whole thing but it was really long, and I'm a little bit hungry. So love you all. You know where to find me. Thank you very much for the evening.

**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](http://www.yourstrataproperty.com.au). You can also ask questions in the comments section, which Amanda will answer in her upcoming episodes. How can Amanda help you today?