

Publication Date: 22 April 2020

## YSP Podcast Transcript: Episode 210. Chris Duggan on the strata industry's COVID response

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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 to this week's episode of the podcast. I am your host Amanda Farmer and we are in our 6 week of COVID restrictions here in Sydney. Believe it or not, it was 6 weeks ago that large gatherings were cancelled and we were all urged to practice social distancing. We think as we go along quickly, slowly or any of you secretly enjoying this new way of working or interacting, socialising in a distance The introverts out there, are you in your elements?

Well, I do hope the podcast has been good company for you during this time and I know many of you have been enjoying our weekly Friday Happy Hours over on the Your Strata Property Facebook page. I started those Happy Hours about 6 weeks ago. There had been lots of fun, time to unwind, safely socialise and also a chance to cover off the week's strata COVID questions.

My Happy Hour guest last week was the always generous Chris Duggan, Managing Director of Bright & Duggan Property Group and the current SCA New South Wales President. We had a good laugh together particularly before we went live on Facebook with the tech failing us about 3 minutes before we were due to join you all on air. But we took that in our stride, we got it together, as we are all learning to do. Becoming very adept in this new way of communicating.

Today on the podcast, I am bringing you an edited version of my chat with Chris. You can still find the full unedited hour over on the Facebook page. During our chat, I asked Chris why our strata buildings haven't received any direct guidance from government about how best to handle COVID in our building. Have we been forgotten I asked him and he gave me his answer which you'll hear. We talked about the importance of continuing to manage building defects claim and be aware of those time frames which are running if you are in a new building in the midst of investigations relevant to building defects.

We answer a question about community associations and what they can do about meetings during this time. We talked about why we need to get comfortable making the least worst decision from a position of uncertainty and Chris shared what the good news for the business of strata. Chris has been a previous podcast guest. You can check out my chat with him wayback in Episode number 25 - How to manage complex schemes and in Episode 101, Chris shared a better way to handle building defects disputes. So have a listen to those episodes if you want to hear more from Chris Duggan.

An important announcement for New South Wales in particular this week is that our new Short Term Letting Law has commenced. Section 137A of our Strata Schemes Management Act started on the 10th of April and that's the section that allows our strata building to pass and register a by-law preventing people from short term letting where the lot is not their principal place of residence.

Now this has been some time coming and many of you have approached me asking if I will be making a template by-law that reflects these provisions available on the website for buildings to adopt. I know many of you want to tackle this issue promptly particularly while we are all packed into our strata buildings, we're all at home. Perhaps, some of us are suffering more than usual from the impacts of short term letting.

So I have put together something unique for you together with the by-law template. It is not something I have never done before but these are unusual times as we keep hearing.

So head over and check out [yourstrataproperty.com.au/bylawoffer](http://yourstrataproperty.com.au/bylawoffer) for more info on that. I will put the link in the show notes for this episode too. OR I will put the link to that page in the show notes to this episode.

That is the way you will be able to get access to the by-law template that will help you regulate the practice of short term letting in your New South Wales buildings.

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**Amanda Farmer:** When you do grab the copy of the template, let me know what you think and even better perhaps I will see you inside the membership.

With that, I am taking you over to my Happy Hour chat with Chris Duggan. Enjoy.

It must be that time to welcome in my special guest. He hardly needs any introduction. He is well-known to many of you, I am sure. Chris Duggan is the Managing Director of the Bright & Duggan Property Group. He is the current President of Strata Community Association, New South Wales. He has been one of our most popular podcast guests. You can check out previous interviews between myself and Chris over on the Your Strata Property podcast page.

His episode, I think back in Episode 025, is still listed in one of our top 10 most listened to podcast episodes. It is an absolute pleasure to be here welcoming Chris in today as our happy hour special guest. I am going to press some buttons here, and I am going to welcome Chris into the chat. I just have to make you the host here, Chris.

**Chris Duggan:** There you go. I'll bring myself into the chat. How does that work?

**Amanda Farmer:** There we go. We did it.

**Chris Duggan:** We got it. We got it.

**Amanda Farmer:** Awesome. So good to see you. You're going to pop up hopefully on my Facebook screen in a minute, so everybody else can see you as well. Great to have you here. How is life in isolation going for you?

**Chris Duggan:** Admittedly, I'm enjoying isolation, Amanda, and thank you for having me back on your show. I've never spent so much time with my children. I've never been a better husband, I think, but perhaps my wife has a different view of having me here in the house 24/7. Hello to all the listeners in strata land. I do appreciate obviously all of them tuning into your program this afternoon, and hearing from yourself. Then hopefully getting a few tidbits of information about what's happening in the general strata marketplace. There is a lot happening. We live in interesting times.

**Amanda Farmer:** Yes, absolutely. I can you've got a bit of a setup there, Chris. I can see a whiteboard or a sketch board there behind you. You've really moved the office to home, which is great. We're lucky that we have these spaces. I think you've got a few, have you got three kids?

**Chris Duggan:** Three children, three children all being homeschooled at the moment. Thank God for Easter holidays.

**Amanda Farmer:** It is full-on. We've got a lot of hellos here in the chat for you, Chris. Sean McNamara, who you may know, is saying, "Chris who?"

**Chris Duggan:** I do know Sean.

**Amanda Farmer:** "Chris who? Who is he?" I think he's getting an answer there from my team. Sean's saying, "It's okay. I know who he is."

**Chris Duggan:** That's good. That's fine.

**Amanda Farmer:** Very good, and nice to see Ronnie as well, who is complimenting you on your shirt.

**Chris Duggan:** Thank you. It was a happy Friday shirt. I thought I would casual it up, even though I am in my bedroom.

**Amanda Farmer:** Nice one, good to have a shirt on, number one. I've been talking about working from the waist up. You never

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know what's going on down below. We could be active wear, we could be shorts, we could be swimmers.

**Chris Duggan:** Yes. Don't ask.

**Amanda Farmer:** It could be pajama bottoms. That's fine. That is okay. We've got to take what we can get. The good with the bad here. Alrighty, well, we are going to get into some substantive issues here. We will stop talking about pajama bottoms and kids. We might go back there. Chris, I know that you, like me, have been very, very busy tuning in to what the specific issues are for our strata schemes.

Also having some important conversations with the people who are the decision makers, the people who have the power to change laws, the people who have the power to do active things that can help our owners at this point in time. I thought I might start with asking you to put your SCA hat on, if you can. Let us know, to the extent you're able, where those conversations have led.

What is the current status of our New South Wales government, or other representatives you've been talking to, when it comes to what they're able to do or are doing, have done, for our strata schemes? What's the inside on those conversations that SCA is having with the people who matter?

**Chris Duggan:** Excellent question. It's interesting. To chunk it down into almost days or at a minimum weeks, because those conversations have evolved. I know at the outset, you talked about starting this particular Friday happy hour, what, 2 or 3 weeks ago? That was just as we were in the fog. I use that word, because that's actually where we all were.

We were feeling blindly with a set of unknowns that, when you looked at some of now international comparisons and what we've done, particularly myself and SCA, is we've spent many hours on the phone with the UK, with the US, with parts of Europe to try and get ahead of where we think the strata sector and some of the learnings that we could take around the experiences they had to better manage it. Very fortunately, I can say that Australia has performed far better.

For a whole bunch of reasons, we're certainly not experiencing the types of issues that they're talking about. We're talking about levies and repairs, and meetings and compliance. They're talking more somberly around how to deal with dead bodies in apartment buildings. It really is sobering when you have those conversations. We're talking about issues that are trivial in context, but they mean a lot to the people obviously in our buildings.

To see how our paths have obviously wildly diverged from theirs, based on whether it began with the practice of social distancing or just the community getting together to flatten the curve. It actually makes me feel very good about where New South Wales and Australia is. Your question about what we're up to, we've been in dialogue with government, as you know from some of the discussions that we've had jointly with government ever since the cloud of COVID settled into Strata. To be frank, it's been very challenging.

The difficulty with any sort of government position at the moment is the fluidness of the advice means that they're reluctant to give any firm or authoritative position. What does that mean for everyone in strata land? It means that we haven't had the answers that we're accustomed to in the past. We haven't had a precedent to deal with. We haven't had any sort of document by way of legislation or short-term intervention regulation that we can point to.

I guess disappointingly, strata is probably one of the only areas where we haven't seen any wholesale awareness in terms of legislative relief in the short-term. Which has meant there's been an opportunity for organisations such as ourselves and others that I know that you work with, such as OCN and your own platform, to innovate and adapt. I think that's where, when they talk about our focus, I think this is one of the very clear cases where government doesn't necessarily have all the answers.

In fact, the community solutions that we've been able to collaborate have been more effective. Now, we're starting to go into longer more normalised periods of an isolated lockdown. We need more clarity, and we need that clarity quickly. The discussions we're having at the moment are up to the point where the government is going to put out a guide. They have chosen to be the

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authoritative body, which is their responsibility, their right, and I think obviously their obligation to the marketplace. I've seen a draft of some of those materials.

We were supposed to be meeting today. In fact, we pushed it to Monday to give us a little bit more time. I'll caveat that, Amanda, with the fact that, don't expect all the answers to come from the government. If you go back a few weeks, and you listen to the New Zealand prime minister, and even our prime minister, they don't pretend to have all the answers. We can't look to them to be the saviour here. We need to be principles-based at the moment in the way we're managing strata.

Which is very challenging, particularly for a lawyer like yourself, and for others who are looking for the part of legislation to point to around compliance. Principles-based management means, if the principle is that good faith and duty of care, then frankly there's not many ways that you can go wrong. Now that we're through that cloud and we're actually into a much more sustained period of isolation, then we need to get the answers. We're working on it.

**Amanda Farmer:** Yes. Thank you so much, Chris, for sharing that. We'll all be looking forward to receiving that guide. It is something that I've been calling for, for some time. I know SCA has as well. Just before I ask you a few questions around that, I did see that we were asked in the comments there, "What is Chris drinking?" I'm getting the inside here. Coopers.

**Chris Duggan:** Yes, Coopers, Australian made, Australia beer. I think we'll do our best.

**Amanda Farmer:** Indeed.

**Chris Duggan:** I'm not going to ask what champagne or sparkly wine you have there.

**Amanda Farmer:** It's not Australian, not today. Okay, well look. I agree with you Chris. When it comes to our communities making decisions that best suit their unique buildings, their specific circumstances, their residents, the type of residents that they have, the needs of those residents. I've been saying it for a few weeks now, these are hard decisions to make. It can be scary that we don't have someone like the government telling us what it is that we should be doing, or have to do rather, in our strata buildings.

We have to sit down as communities and take into account what are the specific unique circumstances of our building, and what decisions do we need to make that we can justify? That we can say, "These are reasonable decisions that are justified in the circumstances because of the situation that we're in." I agree with you 100%. We can often come up with better solutions when we are in one respect left to our own devices to be able to do that, with good leadership, with strong guidance.

Where you've got a good strata manager, where you've got access to resources exactly like this, and you're tuning into them. However, there are some areas where I think our buildings would be helped by some hard and fast guidance, and I accept completely that you're telling me this is made with my lawyer hat on, for sure. As lawyers, we are trying to think, "Okay, well where is this going to lead down the track?" One thing that keeps coming up, and I keep getting asked, is about meetings.

This very clear requirement in our legislation that we must hold in New South Wales our annual general group meetings at least once in each financial year. We have buildings who are not able to do that, because they don't feel safe with everybody getting together. It is just not a good idea to be getting together in person, and they haven't passed that resolution to hold meetings electronically.

It would seem to me that there could have been, or maybe still can be some legislative intervention there on a temporary basis that would allow buildings that haven't adopted the meeting other than in person process, or the electronic meeting process, to be able to adopt that. Or for that to be available to them without them having to meet in person to do that. This is particularly front-of-mind for me at the moment.

I was contacted by an owner in a community association just two days ago, who said, "Amanda, you're all talking about Strata schemes and the Strata schemes management act. What about us poor community associations? We don't even have the option

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to opt-in to electronic meetings. We have very complex structures where we have subsidiary schemes, and we have proxy votes. We don't have the opt-in option. Is anybody dealing with that?"

I went, "Whoa, okay. That's a whole nother issue as well." That is number one. Again, I'm not coming to you for the answers, but just highlighting what's coming to me as a problem that is still there after 5 or 6 weeks. Is this too hard for government? Is it too complex? Has it been pushed to the side because it's not understood?

**Chris Duggan:** Three excellent questions, and the questions that we've been asking. Three weeks ago, and I'll use that date as the awareness date of when COVID sort of settled in. We went to the government immediately and asked them for that intervention relief around the likelihood of what a long-term lockdown looked like. A number of issues we raised were around the compliance obligations of those parts of the act that required things to happen within a certain period. They did point to the statement of regulatory intent, which was released around the same time.

But all it really gave insight into and guidance on was the introduction of the property, stock and business agents' licensing requirement. It was of no great help to me. The second part of your question around the Community Land Management Act. The Community Land Management Act has been kicked down the road more times than a can on the side of the road. It's unbelievable just how neglected it's been. However, the opportunity we have now is to bring it into the modern era.

For an Act that was written in 1989, its relevance is so far out-of-date that we need to bring it forward. Now there are, as I'm advised by some very clever community managers, why is that the community management statements for each scheme to potentially implement changes and by-laws. Which they can someone would say pass correctly through the precincts and through the community, enable meetings to be held in other ways.

But they're clunky, and the current mechanisms and the timing particularly for larger community associations is incredibly difficult to navigate. Are they forgotten and are they difficult? Absolutely. Are they an easy fix? No. Do we have a solution? Yes. The Community Land Management Act needs to be fast tracked. It needs to replicate as best possible some of the introductions in the Strata Act for Reporting in 2016, so that we can modernise the way they operate.

They in effect should operate in tandem to the compliance obligations, the time obligations, and all that. One, to streamline it, and two, just to keep the clarity in it. The strata scheme, for example, with the community association were forever trying to navigate the complexity of that. When you talk about the meetings, it's interesting. Fair Trading will give you the advice over the phone that you don't have to have your meeting in the current climate, which I don't think is overly helpful.

Everything I said before about the fog of COVID, I think that is lifting. We now need some of that clear guidelines around how we deal with typical non-compliances. I'll later get into some very significant implications of timelines not being met around meetings and the like, because they have not gone away. I have grave concerns for buildings that may not meet their statutory obligations on the Home Building Act during this period. 3 things that I would say is, an AGM in the current climate may be challenging.

If you do not believe you can exercise your proper democratic right to have discussions, make decisions, or elect the right people, then there should be a very easy mechanism to continue levies, continue with the strata committee, and throw that out of Act's obligation. NCAT have rocks in their head if they tried to enforce some form of fine or penalty for someone who didn't comply with that part of the Act. However, like you we're looking for something more definitive than your and I's best guess and our opinions. They won't stand up in a Tribunal court.

**Amanda Farmer:** Yes. My concern about meetings is that the state of our law of the moment, and the case law bears this out, is that if there is a meeting that is challenged down the track for not being validly held, or there has been some non-compliance with the convening of the meeting or the passing of a resolution. If it's challenged by an owner, then NCAT almost has to invalidate the resolution unless it can find that there has been nobody's worth off, which is incredibly hard to prove. That's what our case law says.

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It is a problem from a legal perspective. I am concerned about seeing these cases. My biggest concern is I don't think NCAT will have the discretion that we might be assuming or hoping that it has at this stage. I agree with you. I hope that as this fog does lift, it is something that's going to be firmly back on the agenda. When it comes to community associations, for everyone watching here today, I just want to give some guidance from my point of view.

You mentioned there, Chris, community management statements. Absolutely number one, that is the first place to go if you're in a community association or you're managing a community association, and you want to know what your options are when it comes to meetings. The community management statement is the only place that sets out how an executive committee of the community association meets. You might find that there is an option there in your CMS to have paper meetings, as strata committees do have.

Have a look at that first. Indeed, there is the option to change your CMS, however, you've got to have a general meeting to be able to do that. If you don't have those options for either committee meetings or for general meetings. And you probably don't have them for general meetings because the legislation is a little bit clearer about that. Then you're falling back into that camp that a lot of our strata buildings are, and hoping for some legislative intervention. I'm happy to hear that it remains on the agenda.

I think that's the concern of some people who are contacting me. That we've moved on to other things. We've moved on to landlords and tenants, and nobody's talking about strata anymore. So I'm encouraged to hear from you that it is still an issue on the agenda. I am just flicking over to our chat here. I'm not sure if you can see it, Chris. If you can, feel free-

**Chris Duggan:** I can.

**Amanda Farmer:** ... to call out any questions that you want to get stuck into. There's a lot of comments here about your beard. There is some comments about your beer. Okay, Cathy's saying, "Are we likely to receive public health guidelines for strata if someone is diagnosed with Covid-19?" Cathy, a really good point, and it's a good place for us to say, or perhaps for me to say, and then Chris if you want to jump in. It is important to understand that the public health orders don't actually apply to our private spaces.

They don't apply inside your own home, and interestingly they don't apply in our strata common areas. They incorporate a definition of place of residence, which is a very broad definition, that includes your stairs and your pathways, and your ins and outs. That is not to say that we shouldn't be relying on or referring to these guidelines as good, reasonable guidelines when it comes to social distancing in our common spaces, and how we might protect our residents.

But I do, as I've said before, have some concern when I see buildings, whether it's the committee or a building manager, or even a strata manager saying, "The public health orders apply, and you will be fined if you don't do A, B or C in your strata building." Not the case in my view from a legal perspective. Cathy, as to whether we're going to see that level of guidance for strata schemes, let's go back a step. Do we need that? Do we want that? Should the government be regulating to that extent our private spaces? Chris, you're shaking your head.

**Chris Duggan:** Yes, I am shaking my head. I don't think, and this is the problem. If we ask the government for an answer to every problem, we would have a list as long as my arm of issues that we could come up with. That's where we get into the challenge, and you could see the current government already has it, where they give conflicting advice at the state and the federal level that just causes confusion. By providing less prescriptive orders and more common sense principles, I think the strata communities can better manage their buildings.

That leaves some buildings in a quandary, because they're looking for a definitive document. This is where in strata we've been conditioned to have by-laws. We've been conditioned to have legislation. We've been conditioned to have precedent. When we don't have that, we start to look elsewhere for answers. I can sense people's frustration. Particularly as strata practitioners, a lot of our expertise and advice comes from experience.

When you don't have that experience, you need to adapt, like we did at the start of this meeting, Amanda, when we were on a

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different platform and we had to move across. You have a look at the problem in front of you, you see what outcome you want. You adapt a solution which actually meets that. You did it very capably, and I'm sure everyone in the background didn't ever notice that we're on a different platform.

**Amanda Farmer:** There was a bit of swearing, Chris. You can tell them, there was.

**Chris Duggan:** You had muted that, so it was like that. I've seen some of the comments come through. There's some really intelligent people on your chat here who know what they're talking about. We don't have to tell them how to suck eggs. I would like to take it up a level. I agree with you, and I assume you posed the question because you're in some level of agreement that we don't necessarily want a chapter and verse on what parts of the common property do and don't apply for public health warnings.

If we're in a situation like some other parts of the world, where the critical health priority was so bad that you needed something that you could use as an enforcement mechanism, absolutely. I think Australia has dodged that bullet for the time being, and we now need to look at what sort of longer term sensible measures need to be put in place.

We had the BC, the before COVID, now the PC, the post-COVID world. What's our PC strategy for how we look at implementing, whether it be the next six to 12 months, and whether they then pass through into longer term models for how we view strata. I think this all needs to be done.

**Amanda Farmer:** Yes, and I want to get into those. What are some of the good, what are some of the opportunity that we're seeing in our strata management companies, our strata buildings get into. Before we flick over to that though, Chris, you mentioned that there was or is the potential for significant problems. I agree, it needs to be discussed, when it comes to building defects and timelines under the Home Building Act.

I think I might have mentioned that vaguely, a few weeks ago it entered my head. I haven't seen too many other lawyers talking about it. What's your take on that, and what do you suggest for our new buildings that they need to be keeping an eye on when it comes to building defects right now?

**Chris Duggan:** Yes. New buildings are doubly challenged. They're doubly challenged because there's issues around the first AGM, and timeframes particularly 2 years or to miss that initial period opportunity or to push the first AGM out is to lose time. Time is the most critical element for any owner out there navigating a building defect issue. We've raised this with the government, and I have some level of sympathy for them. But I also don't, because they're been the architect of the situation that we're in to an extent.

The building commissioner, I can tell you is convening his meetings with the same temper he was pre-COVID. To give you an insight, I'll probably jump off this into another one with the government around some of the implementations around his strategy around restoring confidence. He's not stopping which makes it very challenging, because we don't have the tools and we don't have the awareness. We don't necessarily have the perceptiveness for other parts of government to continue focusing on it, at least when they're trying to put out some of the other spot fires.

I do hold concerns. I had concerns with managers, owners and experts having their focus taken from defects, having their focus taken from cladding. When was the last time we heard cladding mentioned? To the best of my knowledge, most of those buildings with cladding have not been rectified. The UK has actually ramped up their support and their government funding around the rectification of cladding. The Victorian government is talking about putting more money in.

We still have buildings, and we haven't even touched on the really regrettable Mascot situation that came to light yesterday, around the way they are doing the fix. Yes, disappointingly, strata defects just add to the complexity of a strata manager and the strata community. I have a huge amount of sympathy for any building that's in the middle of a significant legal campaign, or is on the doorstep of some sort of time sensitive court case.

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**Amanda Farmer:** I did read in some media this week, Chris, you were quoted I believe, it might have been Sue Williams, in the Domain talking about how important it is to continue generally with rectification work and with renovation work. Not just to keep our industry going and to keep those who serve it so well going, but I can see here where you've got engineers coming in to inspect original building defects, prepare reports.

You've got lawyers engaged, or at least you should if you're in that process, telling you that there are strict time frames that apply. There is currently, as this goes to air, and as far as I'm aware, no law, no state law, no federal law that prevents those contractors from continuing to come to site and continuing to do that important work. If it is work investigating and reporting on original building defects pursuant to what is likely to be a 2-year time frame, then you really need to keep that going.

**Chris Duggan:** Absolutely. I'm a huge advocate for the economy of strata continuing as business as usual. 3 weeks ago, we had a much more conservative perspective, because there was an absolute health priority around making sure that we stopped the spread. That has eased to an extent. Many of the works that can be done, particularly external works and works on the common property, can be done with appropriate social distancing. There is no reason that building works should be deferred.

There needs to be obviously an awareness around balancing the cash flow requirements of the buildings, particularly if they are in more sensitive dispositions. What we're really concerned about is the deferral of works which are already exacerbated through potential years of neglect. Pushing these down the road is not going to help owners deal with longer term capital works, longer term upgrades, or even short-term essential works that are required.

Please be mindful that the business of strata, particularly repairs and maintenance, should continue. With a focus on health, but with a view to making sure that we maintain our buildings as well. We've seen the consequences before of manager buildings not being maintained, and we've seen some terrible stories, and allude to some Mascot. That is not those owners' fault, and that's not a maintenance issue. But they've become the proxy for what can go terribly wrong when buildings aren't maintained properly.

**Amanda Farmer:** Yes, really important guidance there. Please heed that, everybody who is here watching. I am hearing more and more about owners who are saying, "The rectification work's been called off. The remedial work's been canceled. The waterproof membrane is leaking. I thought it was going to be fixed, and not it's not." That is really, really concerning, and there is no reason for that to be happening. If we can keep sharing that message, as strata managers, as committee members, and on platforms like this, then that's really important.

The business of strata, Chris, you mentioned. What do you see as the future when it comes to the business of strata? Are there some good things that may be coming out of this difficult situation? What are we going to see for the innovation within strata management companies? What are we going to see when it comes to communities coming together? What are your predictions for happier times?

**Chris Duggan:** I hate to get excited by it, but I actually think the opportunities presented and the silver linings by this pandemic are immense for strata. One, strata has proven to be resilient. We all knew it was resilient, but it's proven to not just be essential but critical. Particularly all the strata practitioners out there, they know and they had a feel for their value. But I think they had actually sensed just how relied upon they've been, just how important they've been to navigate and to assist owners through this challenging time.

I think we've come through hopefully with a higher level of self-esteem, a higher level of awareness of value. And a more forthright understanding that we are critical to make sure the buildings and communities can thrive during adversity. That's why I think strata careers will benefit greatly from this. I'm hoping that people will see that it's an industry that adds value.

It's an industry that is resilient. I don't like to use a lot of the common recession-proof things, because this is not about revenue and these things. One thing I'm most proud about is the majority of the strata businesses out there have maintained a full workforce during a significant downturn in the community.

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**Amanda Farmer:** They're hiring, by the way. Yes.

**Chris Duggan:** Yes, and it's incredible. I know a lot of our strata suppliers are hurting in different ways, because work has been turned on its head. But strata has proven itself, and I'm so pleased with our colleagues and the way they have conducted themselves. We've collaborated more in the past 3 weeks than we have in the past three years. I always thought we were a very collegiate industry, but the level of sharing, the level of assistance and the level of collaboration has been exceptional.

We've been able to bury hatchets, collaborate in the best interests of clients, put aside squabbling, trying to focus on adding value across the board. I think it will materially and irreversibly change the way we interact with each other, the value hopefully and the relationship we have with our clients. To-date, I've heard very little of the poor behaviour stories. Of course, people are vulnerable and angry, and have natural reactions when they're particularly financially vulnerable.

But more generally, people have been supporting of the role strata managers have done. One thing I would say, particularly right out there in strata land, we've been looking for a way to change the way we conduct business. We've had legislation that's enabled that, yet we've never had a catalyst event. That catalyst event is here. No one predicted that it was going to be a black swan pandemic, but here we are, where nighttime meetings are now a thing of the past.

I would hope that we can shift and value ourselves, and create more creative ways to be able to interact with our customers permanently, and not revert back to a 6:00 p.m. onsite meeting following this. There's so many reasons why that model needs to change from a manager safety, a longevity perspective. Also, just a productivity perspective. Please use the opportunity to leverage what's occurred to make sure that we can deliver services a different way.

The last thing is, as a business owner we all were skeptical that working from home could be a highly productive long-term way that you could conduct business. I've been so pleased to see and to hear the stories of all the businesses, whether they be strata or a taylor, or a repair business. Or someone who capably, ably and comfortably adapted their business to work from home. I for one will be trying to hopefully work a day a week, for example, from home in the future. I think it's better for our families. I think it's better for our productivity. I think we've broken the back of that one as well.

**Amanda Farmer:** Yes. Look, it's something that I have always done, and members of my team have always done, is work 1 or 2 days a week from home. I have found in the past that it has been a place to come and focus, and do some deep work, and to find some more hours in the day. I have to confess, though, that yesterday I did need to duck into the office for something. I spent a few more hours there, because that was the peaceful place to do some deep work. There are extremes, and we are at one end of them at the moment.

As I hear my little one whinging in the background there. I think he's used a game that is not working at the moment. There will be a balance to be restored, perhaps. Indeed, some of our businesses who perhaps thought that it wasn't for them are learning that it is indeed a possibility, and are all set up for that. In terms of our communities, I live in strata. From my perspective, I can see my community finding new ways to communicate, engaging with each other, looking out for each other.

Understanding who is in the building and what their specific needs are, and understanding that sometimes there are different priorities in times of emergency. That there are ways to deal with that, and avenues for communicating with your strata committee, with your strata manager through technology that you mightn't have used before. I think all of that's going to put our buildings in good stead as well. Absolutely learning and becoming comfortable with these electronic meetings, online meetings.

We've all suddenly become Zoom experts, and are quite happy sitting in front of the camera and typing into the chat box. You can see from how many people are here today, and giving us all of their comments, which just keep coming, I can see them building up there, that we're all learning this new skill. That can only be a good thing, from my point of view.

**Chris Duggan:** Absolutely. I've been looking at the questions coming through.

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**Amanda Farmer:** Yes.

**Chris Duggan:** Half of your listeners actually answer each other's questions more capably than I could on the way through.

**Amanda Farmer:** I can see, yes.

**Chris Duggan:** The solutions are coming thick and fast. One of them was around the first AGM. There's some excellent questions there. We've had this discussion at a board level, and I think one of the solutions that's being proposed by Sean Birmingham is exactly right. That is, the inaugural meeting can be used to actually implement some additional motions which enable, for example, pre-meeting elections for strata communities and the like, so you don't run into some of those same issues. We do still have challenges.

I think your community clearly is getting together and doing exactly what I alluded to. That is, they're collaborating. They're sharing ideas. They're very happy to share by-laws, to share experiences, to give advice. That's the kind of solution that we're looking for. We've talked often about a community problem and a community solution. I've been so pleased by just how much.

That's why whilst we're disappointed that government hasn't been able to give high level definitive advice, at the same time do we need that? We've got a community that can capably provide probably more creative solutions with a wider breadth of application. I think sometimes we need to lean on our own solutions, as opposed to always looking to the government for solutions.

**Amanda Farmer:** Yes, I agree. There is a time and a place. When it comes to our communities, which do... As much as it's common property, it is private space. We do need to tread carefully when we're looking towards government intervention. I don't know where to start with these comments. We have about 15 minutes left. I think, Chris, if you're game, I am. We can jump in and try and answer as many as we can here. I am seeing some back and forth that may be happening between Sean and Chris.

I know both of you. I think you've actually both been past podcast guests. I think just from reading quickly that it relates to imposing the public health orders, or imposing social distancing, or even closing gyms and pools. My view on that has been, as I mentioned earlier, the public health orders don't apply in our private spaces. Your social distancing is not something that by law the federal government or the state government can be imposing inside our strata schemes.

However, it's probably a good idea to encourage those kinds of practices in our common spaces. I have previously, this might be what some Chris is mentioning, referring to when he talks about statutory duties on the part of owner's corporations. There is a duty to control, manage and administer the common property. That is an owners corporation's duty under Section 9 of the Strata Schemes Management Act. There is also a duty for the strata committee to act with due diligence, and for strata committee members to act in good faith.

For all of these reasons, if we incorporate those parts of our strata legislation when we're sitting down as a committee, and talking about the reasonable steps that we might take to act in the best interests of our owners, to ensure their health and safety in an extraordinary time, then we might be well placed to be making decisions like closing the gym and the pool. We're not doing it because the public health order tells us to.

We're doing it because we think, taking into account the specific circumstances of our building, and for reasons that have been discussed and minuted in a strata committee meeting at least, that this is the best decision to make. Or as I've been putting it, the least worst decision to be making. That's the position on public health orders, and strata committees acting reasonably, from my point of view.

**Chris Duggan:** I couldn't agree more. I think that tentative thought has been taken up by most if not all management companies in their advice that they're giving to strata committees. Clearly, if a strata committee is adamant and wants to keep their gym open, they do so at their own risk. They do so against what is the prevailing sort of health priority, and prevailing self-isolation laws.

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**Chris Duggan:** I think in most part, in fact I don't think I've heard of any circumstances where Strata committees have thwarted that obligation, and actually gone out there and said that they're going to keep those facilities open. I think common sense has prevailed. The challenge is, that common sense thinking was against a significant pandemic risk that existed a couple of weeks ago.

My question and my challenge is, how do we fast forward 3 months perhaps, when we look at a swimming pool or a common property area? How we impose then a social distancing obligation in the context of people getting a little bit lax, a little bit more relaxed, and maybe a little bit I guess less sensitive to the virus spread? That is the challenge that we have. That's where a community solution is going to be paramount.

**Amanda Farmer:** Yes, I agree. Jan is saying, in relation to community association or neighbourhood association meetings, which for anyone who's not aware, are not governed by our Strata Schemes Management Act. It's a different piece of legislation. "If the manager has been appointed and has all functions, could the meeting not be held with proxy forms?"

There is no limit on proxies when it comes to community association meetings. If there's no limit on proxies, Chris, can be giving our proxies in our community associations directly to our strata manager, achieving a quorum with the smallest amount of people there possible? Unless I'm missing something, I don't see why not.

**Chris Duggan:** No. I mean I agree with you. I think there's a workaround. You can probably go and have a look at how to document it properly. There's a workaround for every problem. I know that you and I have both commented on some of the more public commentary that's been in the marketplace around how to hold meetings, that one of the online platforms were putting out more recently. There is a way to achieve I think most if not all of owners corporation's or committee association's desires, if you look at crafting a workaround.

Now workarounds are not good permanent solutions, but we're in a situation where we need to adapt. I think that is a very capable way of telling the associations, as long as you have any of the preceding precinct timings escalated, whatever the proxies or motions that are required beforehand. CAs are cumbersome, particularly the timeframes that are required. But I think if you've got the patience to do it, a workaround is absolutely appropriate.

**Amanda Farmer:** Yes. Saying hi to Gary. Thanks for being here. Also Doug, who's coming in from Canberra. There is a question about liability. "Will our owners corporations or our strata committee members be held liable if there's an outbreak?" I can see a comment there from Sean saying, "We can't stop ingress and egress of people. We can enforce temperature checks." Yes, look, I've heard before the concerns about liability. I don't believe, and here's my prediction for the future.

I don't believe we're going to see in the future successful negligence claims or anything like that against our strata committee members. I think anybody who is touting that or saying beware is fear mongering. As I said earlier, our committees do have a duty, and our committee members have a duty to Act in good faith and in the best interests of the owner's corporation. They are protected under New South Wales (NSW) legislation from personal liability if they do act in good faith.

I think if you're taking all of these steps to be discussing the issues, to be meeting as a committee, to be recording the decisions that you're making about opening or closing common facilities. If you're not otherwise erroneously applying the law, for example to lock out contractors, or to lock out delivery people. I think you might be in trouble if you're doing things like that. Then you're going to be okay, really. I wouldn't be too concerned about if there is an outbreak, as long as we've acted sensibly, that there would be any exposure there.

**Chris Duggan:** Totally concur. I think you've hit it on the head there with the outs that existing legislation provide that limitation on liability for committee members. I think that extends likewise to strata managers and service suppliers who operate with a duty of care position. The principle of good faith towards whatever they're trying to do. I think we just need to be mindful of what that looks like as we continue through the COVID journey. 2 or 3 weeks ago, it was lockdown and mitigate risk.

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The next 3 months are about applying social isolation, and trying to resume a business as normal environment. The solutions that exist in 3 months may be very different from the ones now. I think everyone just needs to be receptive to the adaptability they're going to have to have to make sure that they are aware of where the law sits. Are aware of where the current government guidelines, particularly with a health focus, are. Then give the proper context to what they need to do.

There is no one-size-fits-all solution here. That's probably the challenge, but also the opportunity, that we've got everyone who is answering very capably on the chat line here. Every single question here might have a slightly nuanced application for a different building, based on the circumstances there. That's why I think the value of strata management, the value of good advice, the value of expertise is really being proven during this pandemic.

**Amanda Farmer:** Talking about the good, as we were, the good that can come out of this situation. What we're learning about ourselves as Strata managers, as suppliers to the sector, as owners, as committee members, we're learning that we can cope with gray. We're learning how to make these difficult decisions, how to make the least worst decision. How to balance the risk. It's something that often comes inherently to lawyers here, because we come out of the womb that way, or we're trained to think that way.

We're thinking, what decision here is going to take me not just to the path that I need to get to, but is going to be the least harmful way to do it? That is what our committees need to be doing right now. As you said, there is no one-size-fits-all. There is no black and white law necessarily that covers all situations, and there isn't necessarily going to be one. Nor should there be. We need to start learning that skill of digging into those shades of gray, and being able to find an outcome that we can live with as safely as possible.

**Chris Duggan:** Well, you mentioned the gray. I think the gray is where the value is, Amanda. You would experience this as a legal professional. Your answer would be determined potentially by what solution the particular person is looking for. The law says X, but if someone is looking to do X plus, then you'll try and craft a solution that fits within the gray of the law. But it's always through the context and the prism of what the person who's asking you wants to achieve.

That's often where people get very confused by Fair Trading, and they get confused by trying to look at precedent. They're viewing things from a singular context, when in fact there might be several answers to the same question. It just depends on how you ask that question, what outcome you want from that. I don't think we should be afraid of the gray. The gray is where we could add value. Those sorts of solutions I think really can be handy.

**Amanda Farmer:** Yes. All learning how to think perhaps with a bit of a legal lens, which I don't think would be a bad thing. I am seeing a question there from Elizabeth, who is asking about strata records inspections. Which is a question I've had a few times. She's received a message from her self-managed strata scheme, saying there will be no records inspections because of COVID.

She said, "Considering this disease has been transmitted through the internet, what is going on?" Chris, from a strata manager perspective, accepting that this building Elizabeth's talking about is self-managed, what's happening in your business, for example, with strata records inspections?

**Chris Duggan:** Look, it's an excellent question. Again, strata records inspections are critical for property transactions. Let's just view them as being a very essential part of the property transaction process. They're historically conducted upon site in person, at risk of breaching whether it be social isolation or just good practice around trying to keep people away from each other. In our business, we're continuing to conduct strata searches in a isolated fashion on a one-on-one basis.

They come in on their own. They're put into a room that's cleaned post their visit, and then prepared for the next strata searcher. We have limited them to property transaction searches only. We've taken a decision and acted to implement a process that protects our staff, and also facilitates that property economy continuing. If you want to go and check the minutes of a meeting or something like that, we'll email them to you. We won't allow you to come and do a search, at the moment.

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Again, this is in the context of the past three weeks where there was a health focus. What we will see is many buildings offering online searches, which are already available for 90% of the information you need. In terms of an adaptive solution for the future, if you don't really want to see 20 years of archive records, then you can have everything either emailed to you or accessed electronically. That should be the new norm.

**Chris Duggan:** We should take this opportunity to break the back of some of the old trench thinking and the old business practices, and move everything online. Now that is very easy for me to say, because we've got in most part the IT capability to do so. If you don't, even being able to email and package that up and send that across to someone may well be easier, and certainly less risky, than manning your office and having someone come in.

**Amanda Farmer:** Elizabeth I know has asked, "Have you got any tips for what I can say to these Luddites?" I think you've just said it there, Chris. It is time to get everything scanned, and get it online and accessible. I think if you are, as you said, Chris, if someone is asking for something in particular, then there's no reason why a strata manager or a secretary shouldn't be able to scan that and give that to them.

Indeed, for those property transactions, if you're buying a strata apartment and you're engaging a professional strata searcher to go and do the inspection for you, then that person can legally do their job. They can go to their place of work. It is a reasonable excuse under the public health orders. Go to their place of work, which is a strata manager's office, to go and inspect the records. They can legally make that inspection for you.

I understand the logic, Chris, behind your business allowing those kind of searches to continue. It's certainly within the law, as I read it. Just scrolling through, is there anything that you're looking at, Chris, that you want to make sure we address? We've got just a few minutes left, and lots of questions. I will be back over on this page, guys, having a scan through as I like to do on a Friday night.

Pick up anything that we've missed that I think really would benefit most from hearing the answers to. I also said at the beginning of this video that the information hub and the resource hub that I've put together is over at [covidandapartments.info](https://covidandapartments.info). That is where you'll find a lot of the SCA guides. You will find a really great guide that Brent Clark from Wattblock has put together about crisis management. That was the latest update today. Feel free to go and check that out. Have you picked up something you want to jump into there, Chris?

**Chris Duggan:** I've been scrolling through them all. There's a lot of banter going on there, but I think you've addressed most of them. Or at least your listeners have actually self-served a lot of that shared information.

**Amanda Farmer:** I love it. I think some of them are your employees too, Chris.

**Chris Duggan:** They are. Well, we take the best.

**Amanda Farmer:** Excellent.

**Chris Duggan:** They've been excellent. They've been excellent.

**Amanda Farmer:** Okay. I'm seeing a few comments that say, "See what the lawyer says." Okay, I'm not sure, Meghan, why you say that, but I'll go back and have a look. Sean is just raising there Section 153 in our Strata Schemes Management Act, which is about nuisance. That's an interesting section from a legal perspective, where people are talking about perhaps visitors coming to the building, probably in breach of the public health orders.

They're coming for a party, so they really shouldn't have left their place of residence to attend the party. Whether that is a threat to the health and safety of others, and may be a hazard or a nuisance under Section 153 of our legislation in New South Wales. I've been asked quite directly what provisions of our Strata Schemes Management Act can be relying on, in addition to our by-laws, if

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we want to be dealing with things like that. That is definitely one to look into.

As far as I'm aware, and my colleagues who are watching this will let me know, as they like to do, I don't know about any tribunal applications that might have been lodged under this section urgently to deal with the issue. I'd be very interested, and I know everybody here would be very interested to know if that was the case. Look, as I said in the webinar last week, this is a moment in time. This too shall pass.

I think getting upset or overly sensitive, not even overly sensitive just sensitive about noise issues, or rubbish issues. Or additional people being around perhaps because they are visiting a vulnerable person or they are caring for someone. Those are reasonable excuses under the public health orders. We need to just be aware that these are exceptional circumstances, and to be mindful of that I think.

**Chris Duggan:** I think the sympathetic understanding of the fact that we've got people living at home, working from home, in a load and a capacity the buildings haven't been designed for. I mean just basic waste and sanitation is not designed for 100% occupancy all the time. DAs are not based on that in terms of the waste capacity for bins or anything like that. We just need to be sympathetic to the fact that people are at home. People are trying to work. People are trying to get repairs done. People are trying to exercise in stairwells.

We've seen it all. We've heard it all. Mostly, we've seen people be considerate, understanding and receptive to that point in time. Occasionally people will flaunt it, but I think don't try and solve that through a public health or a nuisance type arrangement on the Act. If someone's having a party, the police should be involved. They will be involved, because they clearly go to the potential breaches of the legislation.

I think if you took this back 2 months ago, and you rang up about a party in a strata building, you wouldn't have got much receptivity from the police. If you do that now, there will be a SWAT team on the door, and they'll be in there in 20 seconds in hazmat suits. People I think are sensitive to the fact that we need to make sure that they're not outwardly flaunting the law, but we also need to be really sensitive.

We've got children, we've got families, we've got people living in communities that need to have the focus on mental and physical well-being. If someone wants to run up and down the courtyard, if people want to have their scooters out in the basement, if people want to do exercises and push ups on the front lawn, as long as they're not bothering you and they're keeping an appropriate social distance, then we need to live and let live.

I think what we need to do, though, is to work together. That's certainly our focus in the next couple of weeks, now that we're now in a normalised fashion of lockdown, to figure out how we can get some more concrete prescriptive advice from government.

**Amanda Farmer:** Sounds good, and we will be looking forward to hearing more from you on that, Chris. Thank you so much for being our special happy hour guest today. You are always so generous with your time. I know that everybody here today has been here to hear directly from you, Chris, SCA New South Wales' president, where we're at. They've definitely got that. Thank you. It is Friday afternoon. I know some of you are on the other side of the country, so you have a few hours left. As you can see, my sun gradually setting here. I'm still here. Enjoy your weekends, everybody. Quiet no doubt, but that's okay.

We will be doing a fabulous job. If you've enjoyed what Chris and I have chatted about here today, and it's something that you know that other strata residents, managers, owners need to know about, feel free to give us a thumbs up. If you wanted to share this into your own page, it gets all of those good Facebook juices flowing to send this out to the people who need to know this important information. Thank you all for being here. So far, I plan to be here again next week, 4:00 p.m. happy hour on a Friday, with another special guest. I'll look forward to seeing everyone then. Thank you again, Chris Duggan.

**Chris Duggan:** Thank you, Amanda. I think on behalf of myself as a fellow strata professional, and also all of your listeners out there, you're doing an excellent job informing people, keeping them connected. I think we've touched on before the fact that the

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airways are the way to communicate at the moment to make sure that people get that sense of connectivity, the sense of information at that time. You're doing an excellent job. Here to support everything you do. Thanks a lot. Keep it up.

**Amanda Farmer:** Thanks, Chris. See 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 comments section, which Amanda will answer in her upcoming episodes. How can Amanda help you today?