

**Publication Date: 3 November 2020**  
**YSP Podcast Transcript: Episode 238. Beware "paper" votes I accomodation costs covered I new code of conduct**

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**Amanda Farmer:** Hello and welcome. I'm Amanda Farmer and I have with me today Reena Van Aalst from Strata Central. Hi, Reena.

**Reena van Aalst:** Hi, Amanda, how are you?

**Amanda Farmer:** I'm doing great. I have been enjoying my weekend strata and it is wonderful to have you here with me as I like to do every couple of weeks, sharing our wins and our challenges. How's your week been?

**Reena Van Aalst:** Yes, it's been really busy, which is not unusual Amanda in strata and recently because of the storms and weather, it's also added to a few repairs and bits and pieces. So that always is a challenge when the weather is like this. So yes, busy.

**Amanda Farmer:** Yes, it is interesting, when we have bad weather in Sydney, I do lie in bed when it's happening in the middle of the night and think, *"Oh, the emails that the Strata Managers are going to have in the morning. The howling winds and the hammering rain."*

**Reena van Aalst:** Exactly.

**Amanda Farmer:** All right. Now, aside from weather, let's jump into your particular challenge for this week.

**Reena Van Aalst:** Well, this is a story that's very close to your heart, and I know you've had your recent Facebook live event regarding the court of appeal pet ruling. And this is now impacting on some of our schemes where they have a no pets by-law and they're coming to us and saying, "Well, what are we going to do? If someone asks us for a pet, what are we going to do? Does that mean our by-law's invalid?" Which is a very interesting question. And as we've discussed, I suppose the by-laws as they stand cannot be enforced and therefore will need to be amended in due course I would say at the various buildings where they do have this by-law. But I think many of our schemes that have them are going to perhaps allow people to have pets with reasonable conditions. And even though those conditions may not be yet in the form of a by-law, I think that that's probably just the best way forward, Amanda. What's your advice on this particular dilemma?

**Amanda Farmer:** Yes. Well indeed, there has been a lot of media about this recently and my podcast episode a couple of weeks ago with Jo Cooper and Sharon Levy, and many, many questions about whether or not pet bans across the board are now invalid. The way that the law works is that the pet bans that buildings may have are still in place. That by-law is still there. And if an owner is breaching that by-law or bringing a pet onto the property, the owners corporation can still take steps to enforce that by-law, issue a notice to comply, apply for mediation, ultimately commence Tribunal proceedings. But what's going to happen at the moment is the minute that issue comes before the Tribunal for consideration, the tribunal member is going to say, *"I am bound by the decision in the Cooper case, it is a decision of a superior court, the Court of Appeal, and I must declare this by-law invalid because that's what the court of appeal did with the same by-law in the Cooper case."*

Now of course, that assumes that the by-laws are identical and we have all different versions of pet by-laws in this state, some refer to different sizes of animals, different types of animals, different numbers, and what you're referring to there, Reena is a by-law that has an application process. And I've just read in the media this week as we're recording this episode that that is indeed what Jo Cooper's building, The Horizon is planning to do, put in place a new by-law with a detailed application process. And to answer your question, yes, that is what I recommend to buildings who have pet bans in place. While strictly they can continue to enforce that pet ban and they can attempt to defend challenges to that pet ban, they're not going to be successful because our Tribunal is bound by that Court of Appeal decision. So a revision of that bylaw, putting in place an application process that the committee is comfortable or least uncomfortable with is a good idea.

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**Reena Van Aalst:** I think the word is least uncomfortable, Amanda, I would say. Not comfortable, but least uncomfortable with it.

**Amanda Farmer:** And we do have at the moment proposed legislation going before New South Wales parliament, at least at the time that we're recording this, which is attempting to amend our Strata Schemes Management Act to say that any by-laws that attempt to ban animals are illegal. So we could still see that down the track. That's a very different position. The minute the legislation changes, then yes, those by-laws would be invalid, even without going through that Tribunal process. So it's something to keep our eyes on for sure. So very good question, thank you, Reena. One that's been on the minds of many since that Court of Appeal decision came down. So good to cover that one off.

It has come to my attention, Reena, through some member posts inside our Q&A forum in the membership that there is confusion among owners, committee, Strata Managers, when it comes to electronic voting or voting otherwise than in-person in New South Wales. You might be able to give me some insight on this, Reena, what's been happening on the ground. But I understand that some buildings, particularly during the last 6 months, when there has been this rapid shift away from face-to-face meetings, they are conducting what I'll call postal votes.

And when one looks closely at our legislation here in New South Wales, on my reading we don't actually have the ability to conduct meetings or accept votes by post, by which I mean mail, snail mail. We do have the ability to vote via electronic means, whether that is email, video, teleconference, but that list in our legislation does not include non-electronic means, for example paper votes or postal votes, unless of course you're filling in a proxy form and someone is attending a meeting, holding your proxy. And when I discussed this in the forum with some members who had queried it, they were quite surprised and said, "*Amanda, we've held 3 meetings in the last 6 months where we have invited owners to post in their vote, to fill in a voting form that we've put together and to send it into us by mail. Yes, some owners email that to us, but some owners post it in to the Strata Manager or to the Secretary.*" And I've had to say, "*Well, strictly that's not legal.*" Have you come across this, Reena?

**Reena Van Aalst:** Yes definitely, Amanda. And I think that obviously as you know, not everyone wants to accept service by email for agendas and minutes. So if you look at particular buildings with an older demographic for example, there's probably a big section of the lot owners that would be extinguished in terms of participating in the voting process. So our voting paper that's issued has only an email address that can be used to send it back. However, some people do post it back. So my understanding is that the, even though the word electronic is used in the actual Act, I'm not aware of when they were doing the... You know, when they read the bill and they talk about what, and it's being put forward to parliament in terms of what the intention is of the legislation.

So I haven't been privy to the second reading speech, but my understanding is that a lot of people would not be able to vote or participate in voting if they could not actually post their voting paper back.

So I know strictly what you're saying in terms of that it would be illegal. Most people do receive it by post and then end up just taking a photo and scanning it back to us that way. We don't get many returned by post as such. But I think that generally speaking, I think especially during COVID where people can't attend physically, and I know that's another topic of conversation that we need to talk about for meetings in general, but that many people would be disadvantaged and the vote would be not recorded.

And I think sometimes that could actually perhaps, especially where special resolutions are concerned. And that's probably where most meetings are being held by paper meeting in our case, because of the fact that there are by-laws that have to be passed and people can't wait until the next general meeting. And therefore we're convening meetings for particular owners to have those by-laws passed. Then I think with special resolution, if a whole number of people were not allowed to vote, then that could affect the outcome generally because only a small number particularly could then vote either for or against. So I have come across that, Amanda, and we have had one particular owner raise the subject, which then obviously made us think more about the wording of the legislation, which you have stated correctly and it only says electronic.

**Amanda Farmer:** And if anybody is interested in digging deeper on that, what I'm referring to here is Regulation 14 in the Strata Schemes Management Regulation of 2016. And Reena, I have taken the same view as you. I reminded the members in my community that some months ago I was using the mantra, what is the least worst option here? And if you're saying that owners

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simply are not able to attend, as you said, they're an elderly demographic, or they otherwise don't feel comfortable attending an in-person meeting and you're just not going to be able to convene one. And this method of voting, if you get one or two voting papers back by post, and you don't expect there to be a challenge perhaps. You don't actually have an owner who's jumping up and down saying, "This is illegal and I'm going to challenge it," then really your resolutions are probably pretty safe.

But I do believe that this is an oversight in the legislation and I think that it's something that should be corrected. The intention with this form of voting was to make these procedural matters easier for everybody. And it seems unusual that we wouldn't have this option, but I suppose on the other hand the intention is to protect the integrity of the vote and to ensure the right person is voting.

**Reena Van Aalst:** Yes I mean, it's all signed. This is the thing, Amanda, it's all being signed. It's actually probably more safer in terms of than an email, because an email can be sent by anybody.

**Amanda Farmer:** And of course here we're talking about general meetings, not committee meetings. We have always had the provision in New South Wales for committee members to vote in writing. And when I look at that provision in Schedule 2 of our Act, which is in Clause 9, it simply refers to the motion being approved in writing by a majority of members of the committee. So there's actually no requirement there for how that writing is supposed to be recorded. So theoretically you could as a committee member vote by post in a committee meeting, but you can't at a general meeting.

**Reena van Aalst:** Yes, we have had, Amanda, people like that have brought in voting papers to our office that say they have email or we've sent the voting paper to them. They've actually printed it up and then brought it back to our office. So therefore you're actually right, I think the intention was never to preclude people from being able to post back a vote, especially where you want more participation of owners voting, not less.

**Amanda Farmer:** Yes, I agree. Okay, over to your win for this week, Reena. Have you got a win for me?

**Reena Van Aalst:** Yes, this is actually quite a good one. And this is been a longstanding insurance claim since December 2018 when we have that sort of half an hour hail storm in Sydney and the work still haven't yet commenced because of the fact that this building is a large scheme and where the scaffolding is going to be erected and where the work is going to be undertaken. It's subject to high winds. And you know, there's a lot of sort of preparation that's had to be done by the broker who've had like number of experts involved. But the main thing that we've been able to achieve through our broker is the fact that even though the apartment isn't strictly uninhabitable while the works are going to be undertaken next year, because of the jackhammering and the noise, the Insurer has agreed to pay for those residents to leave their apartments during the day and rent another place.

One will be in a hotel nearby or a service department, and another one actually will be another apartment within the building. So it's a great outcome because it just means that the owners corporation not having to sort of reimburse that cost. And secondly, those owners are being afforded the ability to still sleep in their apartments and go there in the afternoons after the work has been completed, especially the noisy work in the morning. Yes, so they don't have to move out and therefore they can go back home that night and then still be within a very close vicinity to their normal accommodation where they live. So it's a great outcome.

**Amanda Farmer:** Yes. And I imagine that's unusual for an insurer to cover temporary accommodation costs, even though strictly speaking the apartment's not uninhabitable.

**Reena Van Aalst:** Yes, that's correct, Amanda. And so we were quite lucky I think that the number of experts that we've had, the Builder, the Project Manager, all the different consultants have come together and work together on trying to achieve that outcome. And it definitely, I mean, I haven't seen it before. So even in another building at the moment where they're doing waterproofing works in the bathroom, they can't use the shower, they can still obviously, there's a gym in the building that they can use the bathroom for. But I've actually, we've paid for a gym memberships. They can use a shower in a more comfortable location. So the management corporation has done that. But for it to actually have where you can still theoretically be in your apartment. I mean, you could go out for a few hours, but the insurer has agreed to actually cover that bill.

**Amanda Farmer:** Excellent outcome. And there you go. If you don't ask, you don't get, and there's maybe a lesson there, worth exploring these options?

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**Reena van Aalst:** Yes, or not as asking again, but pushing.

**Amanda Farmer:** Pushing, yes. That is one skill that you do have, Reena Van Aalst.

**Reena Van Aalst:** Thanks, Amanda. I appreciate. Thank you.

**Amanda Farmer:** Excellent. Good to hear that good news story. I am sharing a win this week from the legislative front. We do have a new Short-term Letting Code of Conduct that is finally going to commence here in New South Wales from the 18th of December 2020. We have been waiting on this code to be finalised and published and made ready for use for some time now, years in fact. And just this week as we're recording this, New South Wales Fair Trading has published the new code, which will be declared in regulations as of the 18th of December this year. And that means that owners who are hosting short-term letting, guests who are using short-term let properties, owners corporations, can start using, referring to, and enforcing this code.

So I am going to put a link to the Fair Trading summary, as well as the code itself in the show notes to this episode, which you can always catch over at [yourstrataproperty.com.au/podcasts](https://yourstrataproperty.com.au/podcasts). But in short, and some of you would have been hearing about this code for some time, the code imposes certain behaviour standards on guests, things about noise and unreasonable disruption, the kinds of things that you probably already have in your by-laws if you're in an apartment building where short-term letting is going on. Importantly, it requires hosts to hold insurance that covers their liability for third-party injuries and death. I'm not sure that that includes property damage, but that's worth looking into. It requires a contact for the host and the ability for neighbours to contact the host or a representative while their guest is using the property.

There is going to be a premises register. That won't start until 2021, where if you are hosting short-term letting you have to register yourself and your premises on the register. So it will be possible for buildings to know which apartments in the block are being used for short-term letting. And there is a complaint process. There is an exclusion register where hosts and guests who breach the code can be excluded from short-term renting or hosting for a period of up to 5 years. So worth having a good look into that, and perhaps thinking about whether, if you have a by-law that regulates short-term letting, you have incorporated reference to this code, or perhaps it's time to amend your by-law to ensure that it does incorporate reference to this code.

**Reena Van Aalst:** That's really interesting, Amanda, and I think it's long overdue having this code of conduct. So how would that apply to buildings where they have a prohibition on actual short-term letting, because some buildings have already passed by-laws, Amanda, as you're aware previously, where they prohibit that. So would that come under that sort of harsh, unconscionable?

**Amanda Farmer:** Yes, very good question. Since the 10th of April 2020 in New South Wales we have had a section of our Act Section 137 a that says that we can have a bylaw that prohibits short-term letting. However, that can only prohibit short-term letting for hosts where the premises is not their principal place of residence. So the shorthand that I use for that is to say, "Yes, you can ban investor owners from short-term letting. You can have a by-law that bans investor owners from short-term letting," but a by-law that is, buzzword blanket banning short-term letting, I believe is at risk of being invalidated for being harsh, unconscionable or oppressive because our legislation is very clear about what the boundaries of that by-law should be. So that is something very important for buildings to look into.

**Reena Van Aalst:** Yes, that's fantastic. That's great, Amanda, yes.

**Amanda Farmer:** So yes. If you have owners who live in their property and they are going away for a couple of months for example, and they want to put their place on Airbnb, that is something that is permitted under our New South Wales legislation, subject of course to any planning instruments that may have effect. It's important that you're aware of the provisions of this code should you need to rely on it, and probably a good idea that you incorporate it into your by-laws for that type of use.

**Reena Van Aalst:** Oh, that's great, Amanda. Yeah, the thing is, a few buildings that I know that would find that really helpful actually.

**Amanda Farmer:** The thing that we are waiting on still is the fire safety standard, that hasn't been published yet. And the draft that we had seen of that was quite encouraging for buildings who are struggling to deal with the impacts of short-term letting, because it

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did have some quite onerous requirements placed on hosts when it comes to smoke alarms and fire safety equipment.

**Reena Van Aalst:** Blankets. I think also it was more like the criteria, Amanda. It was more like a hotel.

**Amanda Farmer:** Yes. So that hasn't started yet. And I know there's some disappointment from certain groups about that. And we also don't yet have our planning legislation that imposes the cap on nights. So you might have heard about this where even if it is your principal place of residence, the planning legislation is going to be amended for most council areas to say that 180 nights is the maximum that you can short-term let your premises. That hasn't started yet either.

**Reena Van Aalst:** So, Amanda, the other question I have is, where someone actually has on the strata roll a PO box as their address for service of notices. And in this particular building we are aware that the owner lives sometimes in the apartment and sometimes in another property that they own down South Coast. So in that case, how would we know what the principal place of residence is? I mean, how would you find that information out? Normally you would for tax purposes, because it could be like claiming negative gearing on certain things. Obviously we're not privied to that information, but how would an owners corporation get that information?

**Amanda Farmer:** Very good question. And you've hit the nail on the head there where you've mentioned the residents for tax purposes. I draft by-laws for buildings who want to regulate this, and we actually have a template on our Your Strata Property site that's available for people who want to regulate short-term letting. And when the new legislation came in, this Section 137A, I amended the template to include what I thought was an appropriate definition of the term principal place of residence. Because the strata legislation does not define that term. And the definition that I incorporated relies on the Land Tax Management Act definition of principal place of residence. My recommendation is that if you have a bylaw that complies with Section 137A, you are banning people from short-term letting where the premises is not their principal place of residence. You must have a definition of that term.

And I think it is sensible to cross refer to or use the definition that is in the Land Tax Management Act. And of course, if you think then that someone is breaching the by-laws. Because this is not their principal place of residence and you have evidence that they're short-term letting, then requesting proof that they don't meet that definition that's in the land tax management act is a perfectly reasonable step for the strata committee to take.

**Reena Van Aalst:** Okay, that's good to know.

**Amanda Farmer:** And I'd say if that evidence is not provided, then that ould be persuasive to a tribunal who's considering whether or not there's been a breach of the bylaw.

**Reena Van Aalst:** That's great, Amanda, thank you for that.

**Amanda Farmer:** So I'll put a link to that template in the show notes for this episode too if anybody wants to check it out. If you're a member of our online community, then of course that template is free for you as part of your members library. Okay. Wow, I feel like we've covered a lot this week, Reena.

**Reena Van Aalst:** Yes, we have, Amanda. It's been quite extensive in terms of the subject matters. So yes, it's been really good.

**Amanda Farmer:** All 4 corners of the strata world we have traversed today.

**Reena Van Aalst:** Yes, exactly.

**Amanda Farmer:** I am looking forward to chatting to you again soon, Reena. Catch you next time.

**Reena Van Aalst:** Bye, Amanda.

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episode. How can Amanda help you today?