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**YSP Podcast Transcript: Episode 250. Are vaccine by-laws around the corner?**

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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 podcast Episode Number 250. I am your host, Amanda Farmer. And if we are up to episode number 250, at about one episode per week, we've been doing this for 5 years. Yes, it is almost our 5th birthday. I started the podcast back in March 2016 and, boy, have we come a long way from recording those first 3 episodes with great excitement and a little bit of trepidation, seeing how it went, seeing if I felt like recording anymore, and did I ever. 250 episodes on, here we still are. Special thank you on the occasion of our almost 5th birthday to Ash Roy at Productive Insights who got me started in this podcast game back in 2016. Since then, I know Ash has worked with quite a few of you in the strata and the real estate space, getting you set up with your own podcasts, sorting out your tech, increasing your productivity.

I'll put a link to Ash's website in the show notes for this episode, [productiveinsights.com](http://productiveinsights.com). Shout out too, to our podcast editor, Pete from Audio Concierge in Melbourne. Podcast Pete, helping us sound as smooth and professional as possible. I do every now and then hear from listeners who say that they enjoy the style of this podcast, and I get a few compliments on the clarity of my expression. I think Podcast Pete has a little bit to do with that. We do do a little bit of editing there and he does a great job and has for a number of years for us. Also in the background, we have Richelle and Pia. Richelle's been part of the team also since 2016, 5 years this year. Congrats, Richelle. And Pia who joined us last year, already part of the Your Strata Property family. How time flies when you're having fun.

So, let's get into this week's episode. I have 2 topics that I want to cover with you today. First of all, I'm going to head back to last week's Episode Number 249. My chat with Reena Van Aalst about our wins and challenges from our week in strata. It's not often that I can go back and acknowledge some of the questions and the comments that we have received so soon after the publication of an episode, but it just so happens that I'm recording this one quite close to publication. And boy, did we get some attention after Episode Number 249. I'm going to share with you a few of the comments that were posted under that episode, including some excellent advice and some clarifications about fire doors and asbestos in fire doors in particular. That's the topic that Reena and I were discussing at the beginning of that episode.

And then I'm going to share with you some of the highlights from my attendance at the online conference for United States Community Association Lawyers. I attended the Community Association Institute's Annual Law Seminar last week, tuning in online from 3:00 AM to 7:00 AM Sydney time. And as promised, I'm bringing you some of my key takeaways, some interesting learnings, and laughs from my week with our US counterparts online. Some things over there, a little different, as you can imagine. And some things, very much the same, as what we experience here in our communities. Now, Episode Number 249, last week's published podcast episode, if you haven't listened yet, go back and have a listen to the chat between Reena and myself. We started out with Reena sharing a current challenge that she has in one of her buildings. The fire doors need to be tested for asbestos. And if there is asbestos, they are, I believe, going to be replaced with new doors.

One resident is understandably concerned about a sample being taken from the door in the vicinity of their home and has objected to that sampling taking place. Reena's question for me, what rights does the owners corporation have to carry out this sampling against the wishes of the occupier. I shared my thoughts and gave some guidance to Reena, which included acknowledging that the front fire door, the front door to a unit is almost always common property and that the owners corporation had a duty to repair and maintain that common property, and the occupier of a lot must not stand in the way of an owners corporation meeting that duty. Now, I want to share with you a couple of the comments that have been posted by listeners under Episode Number 249. I will put a link directly to the episode. You can go and have a read for yourself and a listen if you haven't already.

Peta shared her thoughts when she said that the solution proposed does not sound workable in her opinion and perhaps not compliant. Now, the solution she's talking about is my suggestion that the owners corporation simply remove the door from its hinges, being a common property item, and take it to a safe place, whether that's outside or somewhere else on the property to

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take their sampling, and they are then not taking samples of what is potentially asbestos in the vicinity of the lot. Peta thought this may not be workable. Fire doors, she says, especially asbestos ones are heavy and she believes lifting the door, once open, off its hinges and tilting it to clear the frame would be difficult without stepping inside the lot. And, of course, if permission has not been granted to enter the lot, then the owners corporation's contractors cannot enter the lot.

So, very good practical point. My idea had been that the owners corporation's contractors could do all this from outside the lot on the common property. Great point that that may not be possible. Peta says that the hinge pins will only be visible from inside the lot when the door is closed, and when the door is opened, including by a locksmith, then the hinges will be accessible. But in older doors, the hinge is frequently welded onto the frame and the screws should not be removed from the door side of the hinge. Why not? Because it would expose and release the friable asbestos. Peta's also warned Reena perhaps in this building that Reena's talking about that to do this work, removing and sampling the door, the contractor who's doing the work should be a licensed friable asbestos hygienist. And Peta's experience is that many times fire door installers or certifiers do this kind of sampling themselves in a non-compliant way.

Peta agrees that the residents should be concerned about the potential for mishandling this material. So, that's part of Peta's comment. Head over to our podcast page, [yourstrataproperty.com.au/podcasts](http://yourstrataproperty.com.au/podcasts) to read the full comment there, including a link to a paper from SafeWork New South Wales regarding the sampling of fire doors, as I understand it, which may potentially contain asbestos. Thank you so much, Peta, for sharing those comments.

Also, a comment from Colin who says that he agrees with the points that Peta's raised. He questions what about the asbestos register for the building? Very good point. If there is asbestos in the building, there should be a register which records where it is and how it is to be handled. Colin also points out that the cost to get the door removed and the hygienist there means the cost of a new door is sometimes the more practical solution. Colin's asking, "Is there a stamp on the door? Often a great hint as to whether it's asbestos or not." And he also says that the new Annual Fire Safety Statement requirements to use accredited fire safety practitioners means that this type of work should now be carried out competently and that it is about time that we've seen that kind of regulation. Yes, indeed, I have chatted to Rob Broadhead of 2020 Fire on the podcast about precisely that accreditation system. That was back in Episode Number 208 if you want to go and check that out. Thank you, Colin, for sharing your thoughts there. I know you are an experienced Sydney-based chairperson.

Another topic that Reena and I dived into last week was discrimination and the question of whether anti-discrimination laws apply to our strata schemes. I mentioned the Araya case that has come out of the Administrative and Equal Opportunity Division of the New South Wales Tribunal, a case decided just last month in which it was confirmed that strata schemes are indeed covered by discrimination legislation. In that case, the issue was relevant to a visitor parking space marked disabled.

Now, you will have heard some back and forth between Reena and I about the types of obligations that may now be arising for our owners corporations in light of the applicability of this legislation, including whether buildings must now provide ramp access if they have a resident in a wheelchair, keyless access perhaps, installing a lift, and maybe even permitting hard flooring in certain lots where otherwise there might be a ban on hard flooring. Now, since that discussion, my attention has been drawn to a recent case from the Queensland Tribunal, QCAT, published in December 2020. The case of Knox, and that's K-N-O-X, and Body Corporate for 19th Avenue. I'll put a link to the reasons for decision in the show notes, but it was great timing that this case came to my attention, and I wanted to mention it specifically in this episode because it addresses a lot of those questions that Reena and I were debating.

In this case, the resident, who was in a wheelchair, had asked their body corporate to do a number of things to assist her access to the building, to and from her lot, and also her access to the swimming pool. Now, by the time the matter came to a final hearing, a lot of these issues had been resolved. The owners had resolved in general meeting to make a number of improvements to the common property to meet the requests of the resident. But one outstanding issue was the installation of a hoist to enable this particular resident to enter the swimming pool. Now, the Queensland Tribunal very clearly stated that a body corporate is covered by anti-discrimination legislation because they are providing a service.

What kind of service? Well, in the case of the swimming pool, the provision of access to and from the pool constitutes a service

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that the body corporate is providing to its residents. And in providing that service, the body corporate must not discriminate on the grounds of disability. Now, the case does record that, ultimately, an alternative and less expensive solution was preferable to the lot owners when it came to this resident's access into the swimming pool. A pool hoist was not ordered, but what was ordered was \$5,000 in compensation on account of this resident's inconvenience and loss of amenity, her inability to use the swimming pool over a particular period. A larger sum was claimed, \$50,000 in fact, was claimed. But the Tribunal determined to order the reduced sum of \$5,000, in addition to requiring the body corporate to make a private apology to the resident.

Now, it was relevant, in this case, that proposals for the installation of a pool hoist had been put to the lot owners in general meeting to determine whether or not they would approve that installation. And a resolution had been passed, approving the installation of the pool hoist, but the installation had not taken place. That was a key factor in the Tribunal awarding compensation and making the order for the apology.

Have a read of the case. It does dig a little deeper on some of those issues that Reena and I were tossing around last week, particularly in relation to the process for getting these kinds of additions, upgrades, improvements to the common property approved. Do they still have to go to a meeting and have the owners approve them? Well, the findings by QCAT tell us that, yes, they do. And body corporates, owners corporations, be very careful about refusing these requests. You don't want to find yourselves in a position where you are having to be subject to orders of the Tribunal, certainly not orders for the payment of compensation, not to mention the legal costs that you may be incurring being involved in these types of proceedings. Though decided in Queensland, the case definitely refers to other cases from around the country, including the Hulena case from the New South Wales Tribunal that I referred to in my chat with Reena last week also.

Okay. Now, flying across from our lucky country to the United States. The Community Association Institute's Law Seminar 2021, the first time they have run this seminar virtually. Everybody was online. It wasn't just me. It was a virtual conference. We had intended to get together in California, missed out on that this year, but it was important, particularly in the US at the moment, to be keeping everybody safe. This seminar was of particular interest to me because our own Australian College of Strata Lawyers is running their 2021 conference online this year, the first time for us also. So, looking at how the Americans ran their week-long online show was very interesting to me. Almost everything went off without a hitch. As you can probably guess, a large, very experienced team there in the Community Association Institute, putting the program together and making sure everything ran like clockwork.

Some of you may have joined in my live chat over on Facebook last Friday afternoon on the Your Strata Property Facebook page. I gave you more of a detailed rundown on what I learned at the conference, some of the insights. If you want to check out that more detailed discussion, head over to [facebook.com/yourstrataproperty](https://www.facebook.com/yourstrataproperty). You'll find our Facebook page there, and you can check out that live chat. Now, there was a big focus during the conference, as you can probably guess, on the pandemic, the fallout, how the community association sector, homeowner associations as the Americans call them, have been impacted. Very interesting to me was discussion about the upcoming vaccination program in the US. Apparently, in some states, community clubhouses, common property, is being used to conduct vaccinations, particularly in communities of over 55s residents, very large communities, much larger than we're used to here. A vaccination clinic has been set up in the community clubhouse and residents can attend there and receive their COVID vaccination.

Now, this is raising a number of concerns from the lawyers over there, particularly in relation to liability. What if something goes wrong in that process? What if somebody gets sick or is adversely affected by the vaccination? What liability does the community have, bearing in mind the vaccination took place on their property? There are also concerns about third parties, non-residents attending the site to receive their vaccinations. Is the community covered? Does their insurance policy cover them should there be a slip and fall, for example, by that third party who's entering the site for that sole purpose of getting their vaccination? Also on the subject of the COVID vaccine, real questions about whether communities will be able to make by-laws, pass rules that restrict unvaccinated people from using common facilities, for example, the gym, the pool. Can a community pass a by-law that says if you have not been vaccinated against COVID, you cannot use this facility? Now, the lawyers were expressing generally support for that kind of rulemaking power.

And the Americans do historically have a much higher tolerance for that kind of independent lawmaking, a little different to the

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culture that we have here in Australia. But overarching questions there about whether discrimination laws, there's that topic again, would operate to prevent associations from making, or more importantly, enforcing those kinds of rules. And I understand that there is some proposed legislation in some of the US states to ensure that communities are exempt from those kinds of discrimination laws so that they can indeed enforce their by-laws, restricting unvaccinated residents from using certain facilities. Real questions there as to whether we will see that kind of by-law making here in Australia in our own communities. I know a number of you have been thinking about, if not making by-laws, that empower you as owners corporations, body corporates, strata committees to do and not do certain things during the pandemic, particularly when it comes to the use of common facilities.

Are we about to see the kinds of by-laws that the US lawyers are looking at? And indeed, some of whom are recommending to their communities to ensure they can control the spread of the virus as best they can in a really difficult situation. The US lawyers were particularly concerned about their communities' inability to collect levies or assessments as they call them over there during the pandemic. Apparently, some emergency legislation was passed in various states that prevented community associations from collecting outstanding debts, unpaid levies. We didn't see that here, at least not as blatantly as the legislation in the US appears or appeared to be. And quite fascinating to me was the attitude of the US lawyers that they didn't like this legislation. They felt that their communities, if they wished, should be able to recover outstanding assessments if they so chose.

And I do think that some of these moratoriums did impact parts of some of the lawyers' practices. You can imagine some large firms having teams that were devoted to this kind of litigious work, recovering outstanding debts. My memory of the early stages of the pandemic here last year was that a number of the lawyers, strata managers indeed, our industry associations, representative bodies were urging committees, owners corporations to be compassionate, to recognise the difficult circumstances of many residents, and to make sure that they were acting with due consideration of each person's particular circumstances when it came to their financial situation. And I think our concerns were more related to the waiving of interest and whether there was an option not to recover outstanding levies for a period of time.

So, a slightly different attitude over in the US on that particular issue. Certainly, the American communities have the same concerns that we do about everyday issues, such as the keeping of pets, smoking in communities, the bad behaviour of residents, how to handle residents who may be suffering from a mental illness, and whether that may be relevant to the approach to be taken in addressing bad behaviour.

On the subject of smoking, our attention was drawn to the fact that smoking complaints were increasing in some states due to the legalisation of marijuana. So, that was a particular practical issue that community association lawyers were working through. My overarching assessment, if you like, if I can make one, of the conference and the topics discussed was that there seems to be a particular concern that I don't think we have to the same extent here in Australia, about liability, about the exposure of communities, of board members, as they call them, owners, residents, should something go wrong. Are we going to be liable if somebody falls over in the common areas, heads off to hospital, and then contracts COVID in hospital? Are we, the community, liable for their additional loss arising from their contracting of the virus? Real concerns there about whether that kind of loss would be insured.

There was certainly a lot of input from insurance specialists. I don't think we see the same amount of litigation, certainly, in our country and concern about the exposure to liability, perhaps because we have caps in our states on damages awards. There is only so that our courts will award by way of civil liability payouts, very different to the US where you do hear of multimillion-dollar payouts when something goes wrong. So, understandably, a high level of concern there from lawyers to be protecting their community association clients from the same kinds of claims and, indeed, if those claims are made, to ensure that they are properly indemnified by their insurers. As you can imagine, with 50 states, lots and lots of legislation for US attorneys to wade through. They certainly have dedicated community association or homeowner association legislation in each of their states, and then many other pieces of legislation, whether state or federal, that interact with their communities that they have to be aware of, including, as we have had here, temporary legislation during the pandemic that enables our communities to continue operating.

And that was a particular concern when it came to electronic meetings. Only a few states had legislation that gave their communities the ability to hold meetings electronically or to vote electronically prior to the pandemic. Now, with emergency legislation allowing that, I believe in almost if not all states, there's a real push from the lawyers to have that legislation continue on

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post-pandemic, and for that option to meet electronically, to vote electronically to be enshrined into their legislation that governs their communities ongoing day to day.

Interesting point of difference there that in a number of our states, we have had for some time, Queensland probably the longest, the ability to vote electronically, to meet other than in-person, and the pandemic simply triggered a rapid increase in our take-up of the technology already available to us. So, that is a wrap on Episode Number 250. I am thrilled to have been bringing you this podcast for the past 5 years. A special thank you to those of you who have been with me from the very beginning, Episode Number 1, including some of my very first guests. You know who you are. I have no intention of giving up this gig anytime soon so stay tuned. There's always more for us, all of us, to learn. Catch you next time.

**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?