

**Publication Date: 15 September 2021**  
**YSP Podcast Transcript: Episode 279. Secure your Compliance with Extraordinary**  
**New Public Health Orders (NSW)**

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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.

**Amanda Farmer:** Hello and welcome. I'm Amanda Farmer, strata lawyer and your podcast host. It's great to be with you for this solo episode this week. If you're in New South Wales at the moment, you'd be forgiven for feeling a little like you're on a rollercoaster, this past week in particular. At the time I am recording this, we remain in the grips of the pandemic, with the Delta variant still raging through our state with no sign of positive case numbers declining any time soon. We're told by our state government that our most challenging months are still ahead of us. On the other hand, in New South Wales, we've also been discussing our roadmap to freedom over the past week with the expectation that those of us who are fully vaccinated by around late October, hopefully, will have significantly more freedoms than we do now.

That's something I know many of us are looking forward to and feeling positive about, but there's also some anxiety. Very normal, very healthy, I think, anxiety around the idea of being back out in the world. Anxiety and apprehension, particularly, I've been hearing, among our apartment residents. We don't yet know how or even if the new laws that we're going to be subject to come to the end of October are going to take into account the unique position of our residential strata buildings, which are really more like commercial spaces than they are free-standing houses. We don't know what rules or recommendations, if any, will be in place for buildings where contractors are coming and going, visitors are in and out, delivery people are passing through.

These are precisely the people who, if they were entering private enterprises like shops, pubs, hotels, will apparently need to prove their full vaccination status to be permitted entry. What about our residential apartment buildings? Will there be the same requirement when these people enter the common property? And if so, whose responsibility will it be to enforce this requirement? What about our shared facilities, our gyms, our pools, our tennis courts, who can use those on what terms? Who's making and enforcing those rules?

Now is a little early to speculate usefully on what the new regime will be, what any new laws, new health orders will say. I will be watching their development very closely and bringing you updates, but it is certainly an interesting time for those of us living and working in strata. I've already heard from some Victorian residents, also in lockdown at the moment. I know you're watching New South Wales and the development of our roadmap to freedom very carefully in the full expectation that soon you too will be walking a very similar path.

Now within the past week or so, we have seen the first health order specific to apartment buildings made in New South Wales. It flew a little under the radar at first, but you may have seen some media about it by now. I want to talk you through that order today, how it impacts you as residents, strata managers, building managers, committee members. I've also got a resource for you, which will help you to comply with this new health order and ensure you're ready to take swift action in the event of a positive case in your building or a building that you serve. I'm going to tell you a little more about that resource and how you can access your copy very soon.

But first up, what is this new public health order that is specific to apartment buildings? It was made at 6:00 PM on Monday the 6th of September 2021. It is the Public Health (COVID-19 Self-Isolation) Order (3). There is a link to the order in the show notes under this podcast episode. It's a short one, a few pages, go and have a read. I said it is order number three, so it is a revised order, and it is the revisions that incorporate new provisions specifically to support apartment lockdowns. Apartment lockdowns, those are the words used on the New South Wales health website where this order is summarised. I've got a link to that webpage for you in the notes as well.

The order gives the New South Wales Minister for Health the power to declare a premises that has more than two dwellings a high COVID-19 risk premises and to force the residents into a hard lockdown. I've said more than two dwellings, that is our strata buildings, our community associations, our company title buildings. And hard lockdown, what's that? The order tells us that residents may be confined to their homes except in case of emergency or on the instructions of an authorised medical officer or the

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police. Access to the building will be limited to permitted persons only. There will be testing in place for residents, with those who refuse testing being required to stay in their residence until medically cleared.

Now, the order for a hard lockdown of an apartment building may come about if one resident tests positive for the virus, or is simply a close contact of someone else who has tested positive. Close contact, that is a pretty low threshold for being declared a high COVID-19 risk premises. These are extraordinary powers, and we have seen some of them in action even prior to this order being put in place with images in our media of police stationed outside Sydney apartment blocks and residents confined to their homes.

Now, there's a really important part of these new orders that I want to make sure you're aware of, particularly if you are managing strata or community titled premises, if you're a strata manager, if you're a committee secretary. Now, the order says if a premises is placed into hard lockdown, those responsible for managing the premises may be asked by police to provide information that will assist in identifying all residents. That is contact information. That information should be provided promptly to assist contact traces and stop the spread as much as possible. And under this order, the person who provides the contact information to police bears the responsibility for ensuring that the information is true and accurate. That's in clause 15 of the order, you can go and have a read of that one. But it's a heavy obligation and one that should be taken seriously. It's also one that you can prepare to meet.

The best way to make sure you're prepared to meet this obligation, to provide true and accurate information to police about residents if you're asked, is to ensure that your strata and community rolls are up to date. If you do that, you are doing your bit to avoid delays to contact tracing and, importantly, avoid a penalty for being in breach of a public health order. Now is the time to communicate with all owners, including the property managers on behalf of investor owners, and urge them to provide you with up-to-date contact information for residents so that you can update your rolls.

Now, to assist you with this important task, I have prepared a template letter and the necessary legal forms that you can distribute to owners and to property managers so you can get this information and this request out to owners quickly and in compliance with the relevant legislation. I'll be telling you more about that template pack and how you can get one in just a moment. But for now, I do believe this is a really great opportunity to stop and revise, or even learn if you're new to strata, the relevant legislation on the keeping of a strata roll, or a community roll if you're managing a community association.

What is it? Whose obligation is it to keep it up to date? How do you get resident information for the strata roll, and what can you do when that information is not forthcoming? Now, I discussed this legislation on our Friday live over on the Your Strata Property Facebook page last Friday. It was a really popular session, so I thought I'd bring it to the podcast as well. I'm going to take you through the relevant sections of the Strata Schemes Management Act 2015 New South Wales legislation, but I'll also let you know briefly where you can find the equivalent sections for community associations in the Community Land Management Act.

So we start with section 177 in the Strata Schemes Management Act. This is the requirement to keep a strata roll. Now, this section tells us that an owners corporation must prepare and maintain a strata roll. And I want to point out that it is an obligation of the owners corporation. Some strata managers may be delegated this task under their agency agreement, but ultimately, the buck stops with the owners corporation. If this is not done, if the strata roll is not prepared and not maintained, the owners corporation is exposed to a penalty. The section tells us that a maximum penalty of 5 penalty units is applicable. With a penalty unit equivalent to \$110 in New South Wales at the moment, that is a maximum penalty of \$550. If you are a strata manager and you can't get instructions from your strata committee to embark on the task of updating the strata roll to ensure you will be able to comply with the health order if the building is declared to be a high COVID-19 risk premises and you're asked by police to deliver up information, perhaps reminding the committee of this obligation under the Section 177 for the owners corporation to prepare and maintain a strata roll. And that failure to do so exposes the owners corporation to a penalty.

What's in a strata roll? Section 178 of the Strata Schemes Management Act tells us that. The strata roll contains information about lots and about the common property in the strata scheme. In respect of each lot, the roll should list the name of the registered proprietor and address for service of notices. If that address is not an email address, as so many of them are these days, then an Australian postal address must also be provided as the address for service. Interestingly, Australian postal address not required if an email address is nominated as the address for service.

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If there is a tenant, then information about the tenants and any agent managing the property must be included, and I'll be letting you know how you can get information about a tenant. Now, if all that's required to be on the strata roll, how does the owners corporation or the strata manager acting on their behalf, the committee secretary, get that information in the first place? Well, if an owner wants to vote at meetings of the owners corporation, they must notify the owners corporation of their right to cast a vote at a meeting. And this is set out in Section 22, "An owner wanting to vote must give the owners corporation a strata interest notice. And it is the information that is in the strata interest notice that then goes on the strata roll."

"A strata interest notice," Section 22 tells us, "must include the person's full name and an address for service of notices, their lot number, their interest in the lot. For example, are they the registered proprietor? They may be the mortgagee. Mortgagees have a right to vote on certain motions under New South Wales strata law, and sometimes they provide strata interest notices. Their details should go on the strata roll. The date that they acquired their interest in the lot. And if the lot is owned by a company, for example, their vote can only be exercised by a nominee, so we must have the company nominee's full name and their address for service of notices.

A person can be prevented from casting a vote at a meeting if they haven't provided a strata interest notice. And as a result, the owners corporation, hasn't been able to get their name on the strata roll as the registered proprietor, for example. Section 22 is a very powerful section to rely on if you are looking to update your strata roll. What about tenants? Well, when it comes to tenants, Section 258 of the Strata Schemes Management Act tells us that if a lot is leased, then the lessor, the owner of that lot, must give notice of the lease to the owners corporation not later than 14 days after the commencement of the lease. Failure to comply with that requirement exposes the owner to a penalty. Once again, 5 penalty units listed in Section 258. That's a maximum penalty of \$550.

The notice under Section 258, we call a tenancy notice, must be in writing and specify the name of the tenant and an address for service of the tenant, which can be an email address, the date of commencement of the lease, and the name of any agent acting for the owner in respect to the lease. This section also applies to subleases and assignments of leases. Now, I know it is a bugbear for so many strata managers. You tell me that you simply cannot get up-to-date, accurate details of tenants, particularly from property managers, pursuant to Section 258. You're constantly chasing agents for this information. When I'm helping managers and secretaries with that task, I do recommend that you let the agent know, or the owner if that's the person you're communicating with, that failure to comply with Section 258 exposes them, the owner, to financial penalty. And if you're dealing with an agent who wants to do a good job for their landlord-client, wants to get more work, wants to continue managing the property, putting their client in a position where they may have to spend an extra \$500 simply because the paperwork wasn't done on time is not a happy position for that agent to be in. So quoting the penalty provisions when you're requesting these notices, I find is often a good idea.

Now, I'm told the Owners Corporation Network, the OCN, has been advocating for some years now to make reporting new tenant details to the owners corporation a requirement of the Property Stock and Agents legislation so that it is brought to the attention and responsibility of property managers and we reduce the burden on our strata managers to be chasing up property managers and owners for details of tenants. Apparently, OCN tells me they've had zero response from government when they've pressed this issue. But I'm wondering if we can flip this negative to a positive and recognise this new public health order as a helpful platform from which to communicate with owners and their property managers, urging their quick attention to the vital need to ensure the owners corporation, or the community association if you are one, has up-to-date, accurate contact details for owners and for residents.

Now, I said I'd let you know the relevant sections of the Community Land Management Act for community associations wanting to update their community roles. Those are Sections 25, 46, and 47 of the Community Land Management Act. Links to all of these sections are in the notes under this episode. The Community Land Management Act sections are slightly different, but on the whole, they are equivalent to the Strata Schemes Management Act provisions.

Now, with that summary of the legal requirements, here is what I recommend. If you're a strata manager, communicate with your committees about this new health order. Explain to them the urgent need to ensure that strata roll details are up to date. Give them a copy of this podcast episode if that's easy, or download the transcript and send it on. Seek their instructions to communicate with

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all owners and their agents and their property managers inviting them to provide up-to-date contact details for the residents in their lot. If you're a committee member, a secretary, a chairperson, instruct your strata manager to carry out this task. Your strata manager may not be aware of this new health order, bring it to their attention, and make sure they understand. They may be the one required to provide information to police to assist in identifying residents should your building be declared a high COVID-19 risk premises.

Strata managers, get in touch with the property managers. Use whatever contact information you do have to check in, follow up, make sure you have up-to-date tenant details and impress upon them the importance of getting this right. Remember, under this new public health order, failure to provide true and accurate information to police on demand does mean that you are in breach of the order. And it's an offense to not comply with the public health order. Penalties can apply. They are not insignificant: a maximum penalty of imprisonment for six months or a penalty of up to \$11,000 for breach of a public health order.

Corporations like owners corporations, community associations, that fail to comply with a direction under an order are liable to a fine of \$55,000. And on-the-spot fines can be issued. For a breach of this self-isolation order in particular, a \$5,000 on-the-spot fine applies. Now, if some of this has left you feeling a little anxious and exposed, not to worry, I've got you covered. Last weekend, after the huge interest I saw in this topic during our Friday live session, I set about creating a template pack for you to send to all owners, including their property managers, explaining the health order, explaining how important it is that the strata manager, or you as the secretary if you're self-managed, has an up-to-date strata roll or community roll.

The templates I've prepared include a cover letter explaining this and asking the owner or their agent to complete and return the necessary legal forms. Those forms, of course, part of the template pack. This is how you ensure that you are providing true and accurate information to police should you be asked. It's also how you ensure you have that paper trail confirming that you have taken this step to meet your obligation to keep and maintain a proper strata roll. Even if you don't get responses, even if you don't get correct responses, you have acted with due care and diligence. And it is so important that your records reflect that.

Now, I've prepared a template pack relevant to strata schemes and a separate pack relevant to community associations. You can access one or both depending on your needs. Now, earlier I listed for you the type of information required to be entered on the strata roll for a particular lot, and you may have noticed that there is no requirement in our New South Wales legislation for a phone number of a resident to be held. I've already been asked that question, whether owners corporations would do well to be asking for phone numbers to be provided for entry onto the strata roll, particularly bearing in mind the more quickly people can be contacted, the more likely the transmission of the virus is going to be halted.

Now, I think that's a great idea, and that is why I have included in my templates the request for a contact phone number. The cover letter I've prepared for you explains that it's not a legal requirement to provide a phone number, but it is very helpful in the current emergency state that we're all faced with. Now, I usually charge around \$1,500 to prepare this kind of pack for clients of my legal practice. But right now, I'm able to share it with you for just \$97. Now, when you consider that failure to provide true and accurate information under the new public health order is an offense exposing you to a penalty in the thousands or tens of thousands of dollars, spending \$97 to get this right and, more importantly, to record your efforts to get this right is a worthy investment.

Here's how you get your template pack. The pack for strata schemes is over at [yourstrataproperty.com.au/strataroll](https://yourstrataproperty.com.au/strataroll). The pack for community associations is at [yourstrataproperty.com.au/communityroll](https://yourstrataproperty.com.au/communityroll). And that's roll, R-O-L-L, like a bread roll, not a role-play. Now, if you need both template packs, strata scheme, and community association, listen up, I have a coupon code for you to use to get a \$50 discount on the total price of the two packs. That coupon code is **IWANTBOTH**, one word, **IWANTBOTH**. Use that when you hit the checkout with both template packs in your cart, you'll then get both packs for the discounted price of \$144. If you're a member of the Your Strata Property online community, these packs are absolutely free to you. You have already heard from me about that. Check your inbox if you're not sure, or head over to the members-only resource library where you'll see the packs there for you to download.

Find out more and grab your template packs here now. Strata schemes, [yourstrataproperty.com.au/strataroll](https://yourstrataproperty.com.au/strataroll), community associations, [yourstrataproperty.com.au/communityroll](https://yourstrataproperty.com.au/communityroll), that's R-O-L-L. These links and a reminder about that coupon code are in



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the show notes for this podcast episode. With case numbers remaining high in New South Wales and expected to rise further over the next couple of weeks, I really believe that now is the time to ensure that your community and those you serve are ready to act when called upon. Don't leave yourself open and at risk of not just breaching public health orders, but not being able to protect your community in its time of need. However you can best do it, get your strata and community rolls up to date as soon as possible. That's it for me this week. I look forward to catching 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?