

Publication Date: 26 April 2023
YSP Podcast Transcript: Episode 359. Are your by-laws under pressure?

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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 to this week's podcast episode. I'm your host strata lawyer, Amanda Farmer and it's my job here each week to help demystify the legal complexities of apartment living.

Now today I am inviting you to learn a little bit more about strata by-laws. Now that invitation is coming to you in three different ways. You know, I like to keep things interesting. Stay with me.

First up, I'm going to take you over to a past podcast episode recorded way back in the dark ages of 2020. Now I've decided to take you back to this particular episode because I've been thinking a lot about by-laws lately as I prepare to deliver a webinar later this week. More about that in a moment. And I remembered recording this episode almost three years ago now, and in it, predicting what I thought the next couple of years might hold when it comes to by-law interpretation, and legal challenges in our Tribunal.

If you're on top of your strata law, or you've just been a loyal listener to the podcast for a while, you might remember that 2020 was kind of a big year for strata law. And I'm not just talking about the intersection of strata and COVID. In New South Wales in particular, we had some important cases come out of our Supreme Court and out of our New South Wales Civil and Administrative Tribunal, NCAT.

Now you'll hear me talk about those cases in this short episode that I'm going to take you over to. The links to all of the cases mentioned are certainly in the show notes for this episode if you want to check out those cases. But I thought it's quite fascinating to listen to what 2020 Amanda was saying back then about by-laws, about the impact of the cases that we were seeing coming out of our tribunal and our courts. But I thought it was quite fascinating to listen to what 2020 Amanda was saying back then about by-laws, about the impact of the cases we saw come out of our tribunal and our court. And compare that to what is actually happening now. You'll hear me talk about the Cooper case. That was the case about the keeping of pets in strata that actually resulted in a change to our New South Wales legislation, not something that was on the cards necessarily in 2020.

Smoking and smoking by-laws was something that I predicted would take centre stage in the future and we've certainly seen that play out. I mentioned the importance of common property rights by-laws and how valuable they might be. Never more so than now as we see as we've seen a rapid increase in property values post-pandemic. But I'll let you have a listen to 2020 Amanda and see what you think.

So that's the first way that I am inviting you to learn more about by-laws this week. Have a listen to the short episode. I'm about to play out for you.

The second way that I'm inviting you to learn more this week is this. I'm asking you to put your by-laws to the test. You'll hear me invite you to take a test, more of a quiz really, that I have designed and that you can use to health check your by-laws. I call it the by-law pressure test and the place to get access to it is this link yourstrataproperty.com.au/test. That was the link in 2020. You're going to hear me say that in this past podcast episode coming up, the link is still available now. The test is still available now. You can still get free access to that test. It was a popular one back in 2020 and I'm sure it still will be now. Giving you the opportunity to have a think about areas for improvement, and opportunities to revise and revisit your by-laws with the aim of making them more accessible, more enforceable and more effective.

The third way that I'm encouraging you to learn more about by-laws this week is to join me for a free webinar. I'm delivering the Peaceful Communities webinar live this week, one of my most popular webinars, all about harnessing the power of by-laws to combat bad behaviour in strata buildings and restore peace to troubled communities.

Now I will be right back in about 10 minutes time to let you know the place to go to register for that webinar. Right now, 2023, Amanda, that's me, is taking you back to 2020 and my predictions then for what the future may hold for strata by-laws. Here we go.

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Today, I want to talk about by-law health. Whether you call them by-laws or rules maybe where you live, these are the legal instruments that govern our every day experience of community living. They can tell us anything from whether we can hang washing on our balcony, to how we get our renovation approved. And whether we're allowed to keep a pet in our home. Now, this year 2020, we have seen quite a lot of buildings, communities, get into a bit of trouble. Because of what I call, bad by-laws. By-laws gone wrong.

I want to talk a little bit about that today. And as I always like to do, let you know, how you can avoid being in or being one of these buildings that makes a very expensive error, simply because of bad by-laws. Getting by-laws wrong can be a huge source of conflict. Sometimes leading to litigation, which can lead to thousands, if not hundreds of thousands of dollars spent on those pesky lawyers.

Not to mention the fact that this conflict completely undermines any sense of community you may have, or may be trying to build, around your home or your investment. When we get by-laws right, they are the foundation for harmony and for smooth operations within our communities. It is within our by-laws that we hold the power to keep the peace, and even to ensure profitability.

When we're talking about this incredibly important investment, that is our property. I bear in mind here, that we can have some pretty valuable rights enshrined in common property rights by-laws, or exclusive use by-laws. Done correctly, those definitely have the power to increase the value of our properties. Now, at a time when more people than ever before are spending more time than ever before in their homes and using the common areas, putting pressure on services and facilities, it has never been more important to get our by-laws right. Within just the last 12 months, we have seen a number of communities involved in our Tribunals and our courts, plus in the media. Communities that seem to be in all sorts of trouble, simply because of a dispute about by-laws.

Now, I predict that because of this increased pressure on our communities at the moment, more people at home, more people concerned about maintaining the value of their investment, we are going to see more of these types of cases into 2021 and beyond. Now, what are these cases and disputes I'm talking about, if you're not already across them? Well, we've had the Cooper case on pets here in New South Wales. Telling us that a blanket ban on pets, is harsh, unconscionable or oppressive. And your ban on pets may well be invalid. This case also raises questions about by-laws that ban smoking for example. What about by-laws that ban hard flooring within lots? By-laws that regulate clothing? The types of things we can wear in our gyms and our swimming pools. By-laws that deal with behaviour on common property.

While that Cooper case was just about pets, it definitely sets some broad principles about by-laws that will impact these other areas. And I expect we're going to see this play out in 2021. We've also had from our New South Wales appeal panel, a decision about common property rights by-laws. This is the case of Strata Plan 63731 and B&G Trading. A case that I have been involved in on the periphery, as a consultant to one of the parties.

This case has identified the confusion that we have inherent in our New South Wales legislation. When we have by-laws that grant rights to use the common property, as well as rights to do things on the common property, to improve or enhance the common property. That is a very interesting case that had seen lawyers recommending to buildings, that they go back and review by-laws that fall into that category. To make sure that they are doing the job that everybody thinks they are doing.

We had a case this year called Byron Moon, which was about by-laws that make some lot owners responsible for particular expenses but not others. This is common in a setting where you might have commercial lots and residential lots. How do we use by-laws effectively to make the commercial owners responsible for particular expenses, and the residential owners free from those expenses?

What about by-laws that may not be drafted as clearly as they could have been, and we have interpretation issues? This has come up in the cases of Veney, as well as the case of Yoolee . When drafting is not clear, buildings and owners can find themselves involved in drawn-out litigation with associated exponential costs, that could have been avoided if a by-law was more clearly drafted and indeed actually said what the parties intended it to say.

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Now, the case of Veney was about a very valuable right to park on the common property. And Yoolee, was about a development application. So, these are good examples of where significant rights can lie within our by-laws. And owners will and should put particular effort and time into defending and retaining those rights.

Now, very recently in New South Wales, not a case, but some new legislation that's about to start here next month in December 2020. A code of conduct for short term letting. This has got a few buildings going back to their existing short term letting by-laws. Whether they prohibit short term letting altogether, or permit it with some conditions and making sure that those by-laws are in line with the provisions set out in the code of conduct.

It's so important to be aware and on top of these changes to our strata law, wherever you may be across the country. To make sure that your by-laws are reflective of those changes, incorporating them where appropriate. And really empowering you and your building to make your community a place you want to live in, invest in, and others want to live and invest in also.

Now, when you're hearing me talk about these issues in a very summary form, you may have some alarm bells ringing here. Does your building have by-laws that deal with pets one way or another? A ban? Permitted with approval? Particular conditions? Do you have a by-law about smoking on the common property? Smoking within lots? Do you want one? Do you deal with short term letting? Do you have common property rights by-laws? Often, these are the types of by-laws that are put in place by the developer when the strata plan is registered. Do you have by-laws dealing with renovation works? The recovery of expenses, perhaps? Has it crossed your mind to get some of these by-laws in place? What do they need to say, or even not say, to make sure that they're safe from challenge?

Now, to help you work out if your by-laws are healthy and if they would pass if put to the test, I've created just that test for you. It's called the *By-law Pressure Test*. The By-law Pressure Test contains a series of questions prepared by me. Which if you answer them honestly, will lead you to my diagnosis.

After taking the test, I'm going to give you one of three results. Either your by-laws are in the healthy zone for now, and your focus should be on keeping them there. Or your by-laws are under some pressure, and could use a health check. Or your by-laws are exposed to significant pressure, and may be about to crack.

You can take the test for free over at yourstrataproperty.com.au/test. I will put the link to the test in the show notes for this episode. I am really interested to hear your results from the test. I'd love for you to let me know what result you get. Feel free to post your result in a comment under this episode.

Now, I do need to give this important disclaimer. Your result from the test is not legal advice. You guys know that, right? This is general guidance that's going to help you I hope, make the decision to take action on your by-laws, after this very eventful year. The test is a downloadable PDF. You can take it on your computer screen, and it will auto-fill for you and add up your score. Or you can print it out, and do it manually.

Now, regardless of your test result, whether you're in the healthy zone and you need to maintain that good by-law health, or whether you're under significant pressure and need to take swift action, I am here to work with you on the next step. And I already have that step ready for you.

And taking over now from 2020 Amanda is 2023 Amanda also sharing with you the next step that I have ready for you today. The next step in April 2023, for those of you who want to learn more about by-laws is to register for my free Peaceful Communities Webinar. This webinar is happening live on the evening of Thursday, the 27th of April. If you are listening to this podcast episode before about 7:30 PM on Thursday, the 27th of April, that's Australian Eastern Standard Time. There's still time to register and join the webinar live.

The link is yourstrataproperty.com.au/webinar. If you've missed that date and time, you may still be able to catch the replay, follow that same link to get access to the replay. Unless you are a paying member of our online community, that replay is only

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available at that link for a limited time.

So if you're listening to this podcast episode, in the week of 24 April, the week of Anzac Day, if that helps, then you may still have time to catch it whether live or via the replay. After this week it will only be in the Member Library accessible to our Members only.

So yourstrataproperty.com.au/webinar is where you want to go to see if you can still access this webinar whether live or the replay or indeed that's also a good link to follow if you want to join us inside the membership when you can watch the webinar at any time.

On the Peaceful Communities webinar, I'm sharing my short list of proven powerful by-laws that you'll want to implement in your community immediately. I'm sharing how a few clever owners and strata committees are using by-laws to break free of strata overwhelm and annoying distractions focusing instead on a positive future for themselves and their buildings.

On the webinar, I'll share why unlocking peaceful and profitable apartment living doesn't have to involve expensive strata lawyers or high strata management fees. And a whole lot more. We'll dedicate 90 minutes to this important topic which includes plenty of time for Q&A. So do come out with your strata questions. The Peaceful Communities Webinar is free, but you do need to be registered to attend and get your unique access link to our Zoom webinar platform.

Do that over at yourstrataproperty.com.au/webinar. So that's been three ways this week for you to learn more about strata by-laws. You had listen to 2020 Amanda, what do you think her predictions? You've got the opportunity to take the By-law Pressure Test, over at yourstrataproperty.com.au/test to find out if to what extent your by-laws might be under pressure and about to crack.

And finally, catch the Peaceful Communities Webinar whether live or replay, you need to get to that one quick smart: yourstrataproperty.com.au/webinar. All links are in the show notes for you over on our website. I hope to have you all with me if not live on Thursday then catching the webinar replay before the week is out because I really do believe that understanding the power of by-laws are getting better by-laws in place in your communities is a key piece of the puzzle that is peaceful strata living. It's great to have you with me this week. I'll catch you all next time. Bye bye.

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. You can also ask questions in the comments section which Amanda will answer. How can Amanda help you today?