

Publication Date: 14 September 2023
YSP Podcast Transcript: 378. Psychosocial Hazards in Strata Explained
– by Wal Dobrow

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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 my guest this week is Wal Dobrow.

Wal is a valuer with over 35 years of experience, as well as a specialist in risk, safety and negligence. He's an expert in compulsory acquisition matters and strata terminations. He has construction and environmental law experience and military engineering qualifications. He is a past accredited practitioner in fire safety and has all four asbestos qualifications, a certificate for in-training and assessment and a certificate for in-workplace health and safety.

Wal has recently been appointed to the Fire Protection Association of Australia's Accreditation Reference Group to review its accreditation system. Wal is a fellow of the Royal Institute of Chartered Surveyors, a fellow of the Australian Property Institute, and a fellow of the Real Estate Institute of New South Wales, among others.

Wal wrote the Common Property Memorandum, intended to provide clarity and solve many issues in strata schemes, dealing with the repair, maintenance and renewal of lots and common property.

He is the architect of the basis of compensation for strata termination in New South Wales. He wrote the majority of the guidance notes for valuers in determining unit entitlements for new strata plans and strata plans of subdivisions as well as the guidance notes for the reallocation of unit entitlements in the New South Wales Tribunal.

Having served our strata space for many years, his name will be familiar to many of you, I know, and I could have brought Wal onto the show to talk about a variety of subjects with that illustrious CV, but today we're talking about psychosocial hazards in the workplace. Wal will give you the definition and the details around that.

Two parts of this conversation that stood out to me, Wal reminds us that the standard you walk past is the standard you set.

And introduced me to the HALT, acronym H-A-L-T.

To find out what that's all about. I'll take you over now to my chat with Wal Dobrow.

Amanda Farmer: Wal Dobrow, welcome to the show.

Wal Dobrow: Thanks Amanda, a pleasure to be here.

Amanda Farmer: Well, for those very few listeners who may not yet have crossed paths with you, can you share a little bit about you, your background in strata and how you're currently serving our strata space?

Wal Dobrow: Sure, I've been a property valuer for about 40-odd years in relation to the strata space and recent work assisting the strata profession rather than industry. I think that's the path that we're on and I think we're over that line already. For example, last year I gave a joint talk with the General Manager of WorkSafe in WA. They were one of the last or second last states to adopt the Harmonised Work Health and Safety Legislation and that's assisting strata managers.

I've reviewed the units of competencies for the Cert IV course and the diploma course. I've come up with a system called the Yellow Card for abusive emails and the like and I can talk to you a little bit about that and that ties in with our psychosocial hazards we're going to be talking about today.

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In relation to the latest run of review of the strata schemes legislation, I've looked at adjustments there for our compensation for strata termination. The basis of compensation in Strata Termination New South Wales is my idea, utilising the land acquisition just terms compensation legislation. At the last meeting, I had with the National Board of Strata Community Association, Chris Duggan, our National President, asked me to provide some assistance for our members dealing with psychosocial hazards. Now, I'm not a psychologist, I'm not a lawyer, but I am a specialist in risk, safety and negligence.

So, I have completed my research. I have given one presentation to our senior leaders in South Australia and Northern Territory last month. And that document, it's fairly comprehensive and helpful, but more particular, and this is what I like people to take out of the talks that we give, and that is, it's not a matter of just listening and learning a little bit, it's actually a practical application. So going away from here, I'm sure we'll get to a stage where I say these are the things that you'll have to do as a principal rather than sit on your hands, these are the things you should be doing as a strata manager, and here are some tools dealing with those awkward circumstances that you may or may not otherwise be familiar with.

So, there is just a very small snapshot I might add also, I gave a working copy of the strata Hub or the strata Portal to the NSW Government in 2020, primarily to ensure that collecting certain information will be helpful for all of us. I think there was a little bit of a mismatch in communications for people providing information such as emails. I never intended personal emails, it's a bit like your local football club, it's President where it is, not John Smith and his personal email. So, some people have gone off a little bit of a tangent with that but that was the basis there to capture things like title documentation, DA documentation, workers executed plans, warranties, certifications and other documents. So, there's at least a repository there that lot owners could draw upon but also contribute to.

Amanda Farmer: Wal, you are a man of broad skills and experience, Wal, and there are many directions that we could go for today's chat. But indeed, we are going to focus on psychosocial hazards. I saw an article that was penned by you on this topic, and I thought, "Oh, not sure that I'd heard that term before. Let's bring Wal on the show and have a chat about it."

So, what are psychosocial hazards in the workplace?

Wal Dobrow: Psychosocial hazards are anything that increases the risk of stress in the workplace. So that's the number of it. So it could be anything, but there are things on a technical side, high and low job demands. There's low job control, people feeling that they can't control when and where or the type of work they're doing. Low role clarity, poor support, poor organisational change management, low reward and recognition.

Poor organisational justice seems to be a large one. People pull the pin, go away and get stressed over. Remote or isolated work. Poor environmental conditions. Violence and aggression, bullying, and harassment, including sexual harassment. So that's the relation to stress. But why is that important for us is, I suppose operators as workers, as PCBUs or persons conducting business or undertakings and principles and like, it's important from a global perspective for work health and safety that we lose around 4.6% of our gross domestic product dealing with work health and safety injuries and the like.

Now psychosocial hazards are no different to physical hazards. Those hazards have to be identified, analysed and prioritised or evaluated. Carrying out a risk assessment and everyone has a duty and I think it's going to come up a little bit later in relation to lot owners also have a duty on the work health and safety legislation and there's other legislation which they captured on.

Just another point in a separate industry which is construction, there's a group called Mates in Construction reports that 190 Australian construction workers take their lives every year. It's one every second day. So twice as many as any other young workers in a different field of work. Six times more likely than simply being injured at work. Significant numbers. So mental health is very important. The psychosocial hazards. And you'll notice when you go to safe work or work safe, depending on which state you're in, they each have very, very good and current guidance documentation for psychosocial hazards. Now, no longer is that something you push to the side. Those things you have to have a look through, put your Safe Work Method statements in place, talk to your staff, and find out ways to minimise that exposure to a hazard.

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Amanda Farmer: So we're talking about workplaces. We are therefore talking about our strata managers. Indeed you've mentioned the role that owners and committee members have to play. Can you give us some examples of strata managers dealing with psychosocial hazards in their workplace?

Wal Dobrow: I'll give a very simple, easy example, abusive emails. And again, I think a lot of this stems from ignorance from lot owners, thinking that somehow they have a right to go and pester whoever they think is acting for them personally. The strata legislation, nationally, throughout, is designed to allow the collective mind of that strata scheme to be heard. And that's through the strata Committee.

It is not up for individual lot owners to say, "Well, hang on, I want to paint my gate pink." and everyone wants it green. It's the collective mind that wins and that's the way the legislation's structured. And the example I give is, "I'd like to drive down the street on my go-kart 80 kilometres now and no helmet, no blinkers. I reckon that'd be a great thing to do. However, the collective mind of our state community says I can't do that. But if I'm a lot owner, I'm sure I can do whatever I feel like." So there's parameters and there's guidance in that regard.

So I might just talk briefly, I gave an expansion on a very good document that Strata Community Association, WA, came up with and that was communicating with the strata manager. And they sent it to me and said, look, can you just have a review on this? We think we're mostly there, so the little things that I've added are the Fair Work Act, I added in civil liability, suit for defamation and the like, obviously work off of safety legislation, but I put together, better in a way, flowchart. And the flowchart primarily starts off.

Is this a matter for your strata manager? Yes, no. Have you spoken to the committee? Yes, no. Well, if you haven't, then go and speak to them. Do they agree with you? No, they don't. Well, have you spoken to other owners? Do other owners agree with you? No, well, your only path now is to go to the tribunal. If they do agree with you, the other owners, then you go back to the committee and it cycles around back to the committee and ultimately it's the committee that engages with the strata manager. It is not up to the individual lot owner unless there's a significant emergency of some sort and the police ambulance and the like cannot assist. So this sort of showed that up.

Amanda Farmer: Yes, so Walter is just showing me on our video chat here, that flow chart. Is this a document that has been published by SCAWA yet, Wal, or are we looking forward to that one?

Wal Dobrow: Yes, it is.

Amanda Farmer: Oh, Great.

Wal Dobrow: If you go to Inside Strata and type in Dobrow, you'll get the articles I've written on this topic and other topics. So that'll be helpful for a lot of people.

Amanda Farmer: Great, we'll include whatever links we can below this episode in the show notes.

Wal Dobrow: Yes, so the example you asked for before on psychosocial hazards in the workplace, consistent bullying, timing, volume, content. I've had one strata man read a particular email, a lot of FC and S words in there, very harsh, but they're something that some people deal with on a day-to-day basis.

One of the solutions I thought was very simply just issue a yellow card, a simple graphic, and that would provide assistance to all strata managers. Sorry, I'll just show what the yellow card looks like.

Amanda Farmer: So it's a yellow piece of paper with text on it. Can you give us a summary of what that text is there?

Wal Dobrow: It's primarily, it'll be a graphic, you get a data email from someone being abusive or demeaning and the like and the

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card simply says you don't have to respond to the email other than pasting that card on and it simply says this yellow card has been issued to you because your email has made the reader feel uncomfortable as it is considered to contain words that are either abusive, demeaning, aggressive and otherwise unacceptable a professional standard required by our organisation and has not been read in full.

More than happy to help you once you've rewritten the email at an appropriate and acceptable level. As you may be aware, there are multiple remedies against unacceptable behaviour, including the Fair Work Act, which allows a worker to reasonably believe that they're being bullied to apply for a Fair Work Order Commission. And that's at Mrs. A case I gave an example for. Publication of the person against whom the order is made is available to the public. And my sense of humour says, well maybe that could be you.

Might get some people sort of rewinding their emails back if they think they're going to be put out in the public arena. And we've seen many examples on social media, people making comments and then losing their jobs. The Work Health and Safety Act provides that other persons have a duty to ensure their acts and omissions do not adversely affect the health and safety of any person. That includes psychosocial hazards. That's bullying, that's putting people under stress and the like. Penalties for individuals range from in this particular other state, 55,000, five million and 20 years imprisonment.

I might add in workplace manslaughter laws, the highest level we now have is in the Northern Territory, lifetime imprisonment. We don't have that measure in place, certainly not on the work of the safety legislation, they have to go to the Crimes Act and a few other things in that regard. So anyway, it then steers them towards the article they've written in communicating with your strata manager. And I think that way for some strata managers, say that gets the pressure off. I just sent that across, it's unacceptable behaviour and that's all. And we all learn playing football or rugby, you get a yellow card, you might get your red card.

Amanda Farmer: Wal's got a red card there as well guys. Look out for that.

Wal Dobrow: I had one client in Queensland say, "I used your red card the other day and since I issued it, not a peep out of this person, he has to write to us, registered post otherwise we're not going to accept and deal with what he's doing."

And we all know that the standard you walk past is the standard you set. So all I'm doing is providing some tools to assist but it's a little bit greater than just assisting the strata manager, it's just the principle. In his duties of ensuring the workplace is safe for his workers and putting a measure in place.

Amanda Farmer: Tell me if you can, Wal, about the Mrs. A case. You referred to it earlier and you had drawn my attention to it in our pre-recording emails. Can you share a bit about that case with our listeners?

Wal Dobrow: In Queensland, yes, they have body corporate managers and they have building managers. So typically when you go on holidays there, there's someone who lives on the property who managed the property. There were abusive emails, a volume of emails that went across from the chairman of the body corporate to the director of the management company. And significant to the extent that Miss A put an application to the Fair Work Commission.

Fair Work Commission obviously heard the case and issued directions on the volume, the content, what time things can be sent and whole parameters around communication between the two parties. And it was primarily under the 789 FC section where a worker reasonably believes that they're being bullied, can make an application for an order.

And I think that case that I'd found and brought to the forefront is very helpful. And even though I was jokingly saying that in the yellow card, you know, hopefully, it'll be you, we're looking for a good case in that circumstance and Mr. or Mrs. Lotton, and maybe it could be you, but that's the danger that some people take.

Amanda Farmer: So this Queensland case really draws attention to the fact that we're not just talking about strata managers in their place of work, we're also talking about building managers and those who may be on-site performing work for an owners corporation.

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Wal Dobrow: 100%. Exactly right. I mentioned before Section 29 of the Work Health and Safety legislation. There are broadly three levels as we know there are officers who can control the business or the undertaking. We have workers and thirdly we have other people. But other persons have the same duty. And I mentioned before their acts or omissions do not adversely affect the health and safety of any person. So for example, if I'm walking down the street and the guys are digging a trench. I can't as another person go and hop over their fence or do something that interferes with their particular workplace if it affects their health and safety. So the same obligations in that regard.

Just because someone's having a meeting in the scheme car park or sending emails doesn't mean that you're not operating within that strata manager's workplace. As soon as that workplace is in a way created, it's a place where anyone works or is likely to work, that becomes a workplace, duties are then bound to various parties.

Amanda Farmer: All right, so if we identify these hazards, you've mentioned there the use of your yellow card, red card system, which seems to be effective for some managers who are already putting that in place, which is great. What else can we be doing? Whether we are strata managers leading a team or we are committee members working with a building manager on site. How do we address these psychosocial hazards or minimize their impact?

Wal Dobrow: I'll start with Australian managers first. And I think primarily training and awareness of your rights and obviously the remedies which I've just mentioned before. But I think what's important is if you categorise it face to face, meetings and emails, face to face, there are things there that when we were doing window locks a few years ago that people were being abusive to some of my staff saying, oh, it's only a money grab and you know, obviously, the point there is we're assisting your scheme being compliant and that's what the strata manager has through your committee, the instructors to assist with.

So I've got a fellow called Pete Agnew, he's the current president of the Surf Life Saving Association and he's very good in this area. I said, "Can you come and talk to my staff and give them assistance in that regard?" And he's very simply, tell them how you feel. The way you're talking to me makes me feel uncomfortable, which is some of the words in that yellow card.

You can't use a threat, you can't say, if you continue like this, I'm gonna do X. It has to be a little bit softer. It's not what I expect in terms of communication, where they're just there to assist you on the like. And I think part of that is, and it's very important that people learn patters. So the way you are speaking to me makes me feel uncomfortable is a good one. Your actions are not what is expected by other lot owners, of a committee member, or a fellow lot owner in our meeting. And you get that patter to just come up automatically. I'm happy to address your concerns, please send me an email.

So those sorts of things are de-escalating. So partly do we have to be in a de-escalation and typically what some law enforcement people go through training. I don't believe that has to be that high level, but some simple patters to assist people.

Amanda Farmer: What is that word that you're saying? Patter?

Wal Dobrow: Patter, sorry I just use that as an automatic response. So for example, I learned the patter there for section 29. Your act omissions must not adversely affect the health and safety of any person. So I'll read that, but I'll repeat it multiple times. So as I talk it through, it just becomes a patter. That's all.

Amanda Farmer: Nice, how do you spell that word? I've never heard it.

Wal Dobrow: P-A-T-T-E-R, I believe.

Amanda Farmer: P-A-T-T-E-R, awesome, I'm gonna look it up.

Wal Dobrow: Okay, let me talk briefly then, I've done strata managers, I've talked about principles, and there are some tools to minimise impact psychosocial hazards, and those are simple things like two half days off a week, or a four-day-a-week, or access

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to gym and recreation staff, considering two people to go to ATMs to minimise bullying and the like. Or even as a bare minimum, make sure you call your boss before you go to the meeting. So if there is an issue, you just press the read all button rather than, where are their number and fumble around that way.

Corporate mental health card used by staff when needed. We have one client who has a corporate card. Anytime you wanna use a corporate card, you wanna go off for a, do your nails, get your hair done, go to the gym, go for a swim, take the corporate card, no questions asked, spend whatever you like. That's a good way to achieve that. Forced lunch breaks. Learn the words yes and rather than yes but, which is a negative term, little things like that.

Yellow card system, review your management contract. This is the most important one, so that owners understand what are expected from them. Some people think that's a risk transfer exercise. It is not a risk transfer exercise. Lot of owners have unlimited liability, as we all know. They can minimise some of that risk by gaining insurance or engaging someone to assist, but not so much a full risk transfer exercise. So it's expectations, what's acceptable, what's not acceptable in relation to communications. And I'd suggest that you might do a role play with staff as part of your discussion.

Now, there's a very, very good system which I like, a fellow, Chris Miller, Vantage Strata, ACT, he's given me permission to talk on that stuff, but what he does is wellbeing, dieting, general counselling online and medical available to staff. They utilise CU Health and the staff have access to it. Anytime they wanna have a talk to someone, get on the phone corporate cost. Those sorts of things are very important. Are they futuristic? Where we'll be in a few year's time? Yes, I believe so. And I think those sorts of measures put in place to suit your particular staff. So I've got staff members here who work four days a week. I've got one staff member who turns up whenever she feels like, leaves whenever she feels like. And of course, the quality of life is good and matches well with the kids and the like.

So that side, in relation to lot owners, they have to understand that they have duties under the Work Health and Safety Legislation, they also have a risk there. The defamation, there are two cases still standing, 20,000 and 50,000 in WA when I did my research and I thought that was relevant. You heard of the one in Manly, \$120,000 then shut down on appeal but still, it's a lot of expense for someone being so clever on an email behind a keyboard. That's it. There are strata managers that I know that when they have these sort of people against them, they'll ask them out for a cup of coffee, and have a chat. They end up being their next best mate sort of thing. So there's other measures there that people can put in place.

Amanda Farmer: It is fascinating how people's behaviour changes, their communication style changes when they're speaking to you face to face or even on a phone call. It just seems that email is this permissive mode of communication where people think they can write whatever they want, however they want and they are completely different in a different mode.

Wal Dobrow: 100%. There was something I wrote in one of my articles and I borrowed it from somebody else is the term HALT, H-A-L-T, do not write when you're hungry, angry, lonely or tired. And someone came back and said, where's the D, D for drinking? I said, I don't think it's in there somewhere but there you go. It's a good reminder and obviously type it, come back later and have a look through.

But I think it gets down to a misunderstanding on individual lot owners thinking they have a hierarchy or just cut straight across and blame the strata manager. The strata manager can only do what the owners corporation or the body corporate have instructed them to do. It's not up for individual lot owners in a way. So if a lot of that can be sought out on the scheme side, less pressure on the strata manager. The strata manager can get on with their job.

Also, the communication guide is very important getting back to you quickly is two days, expect a five-day because they're going through hundreds of emails a day.

Amanda Farmer: What do you think about by-laws that set all of this out, Wal? In my online membership community, I give members access to a communications by-law template and it sounds like it's covering a lot of the things you're talking about, setting that standard of communication, giving permission to the strata manager not to communicate if there is a breach of that by

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law. I'm not sure if you've had a look at that one, but do you think there's a role for by-laws to play in helping to regulate these issues?

Wal Dobrow: Absolutely. You know, I believe that in your management contract, I reviewed the contract of appointment in Victoria and there's a couple of points there. One was managers put in the cloakroom responsibility for other people on their shoulders, where some of the words said, oh, not to get a safety report unless the manager so decides. Well, hang on a minute, well, take that out. I don't think that's right. You don't want to have that responsibility. Lot owners just have unlimited liability. But what I had put in there is that as part of the contract was that you're not to communicate with anyone other than the representative of that owners corporation unless this box is ticked and it will charge our time rate through here because you get your consistent email type person and once they run a bit of a build-up for the owners corporation then within that owners corporation they might attempt them back but a lot of people won't sign that tick away and say no you only do with our rep, please.

Okay, so I get things from the outside they can choose I'll please go back to your committee. They collectively decide what's best for the scheme. And then obviously you as a lot owner, collectively lot owners can vote the committee out, replace them, whatever. And I think that mechanism is good. And I think by doing what you're doing Amanda, by having a by-law in place for communications, it adds further to here is the steps. And yes, it's helpful to say, I'll be polite and nice and all those things, but I think you've got to go beyond that and say, here is the structure. The communication line goes through your committee.

And if they don't agree with you and other people don't agree with you, well, you drop out to the tribunal. Rather than get frustrated about things, you've got to scope in the tribunal and that'll ramp up. Okay, we want to put some cost and time in it. Follow the proper process. Stamping your feet and jumping up and down is not going to do it.

Amanda Farmer: It's likely to be a controversial suggestion, Wal, that some lot owners may not have access to their strata manager, and may not be able to communicate directly, or if they do, shouldn't expect to receive a response. I know many owners that I work with get frustrated by that. However, I do agree with you. When I'm acting for a group of clients, and in some situations, I might be acting for a group of 15 different owners in the one community because they all have a similar interest and they may wish to bring proceedings against their owners corporation.

The first thing I'm doing is I'm saying to those 15 owners Please nominate two people maybe three people who are authorized and directed to instruct me because I can't communicate with all of you, and if I was to the costs would be astronomical. So it is in your best interest that you nominate these two or three people. I take my instructions through them and they then pass on my advice and gather your instructions to pass on to me and that's the only way it works in my professional outfit. And if a strata manager wants to run a professional outfit, I agree with you. That's the model to be suggesting.

Wal Dobrow: Yes, it's their issues to resolve, simplify the instruction process, but also in that contract have that out. So I'm being ignored. Why am I being ignored? Because that's the contract I have. The contract says, they've got to come and wash my car on Sunday at 7 o'clock in the morning. Well, that's the terms or condition of that particular contract. So I think that's pretty important. The other aspect which I find a lot of in doing some of these reports, particularly the Capital Works Fund plans, is that some people expect other people to make decisions for them or somehow miraculously be able to read their minds.

We want to put something new or something else. Well, okay, write in, say, you've done your research out there, here's five different people that are gonna provide that service for us. It's 20 grand, could you plug in 20 grand around year two or three? Sure, easy. But I had a funny circumstance and I said, oh, this amount you've suggested is too low. Okay, so I added \$1. Came back, I said, it's still too low. So I added \$5. I'm waiting for it to get the point that it's up for them to, if they want to go in a particular area for a level of security, they want it.

Okay, great. Well, you can be from one end to the other end. Have you got quotes from specialists? And if so, have you chosen the scope of works and have you then in turn got the likely costs? Quite heavy to plug it into the system for you, but it's not up for me to decide it or to guess what amount that might otherwise be. There are a lot of things we can provide within reasonable parameters. And I think that dealing with strata managers, the expectation of lot owners of how that process works is helped by by-laws in the

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communication side.

Amanda Farmer: Excellent. Well thank you very much, Wal, for that flying visit around the concept of psychosocial hazards and what our managers and committees and owners can and should be doing to address those. There's a lot more there and I will make sure that I link to those resources that you have contributed to. I'm sure we've got many listeners who are wanting to take a look at the text that's on those yellow and red cards and perhaps start using those where appropriate. Let our listeners know how they can connect with you, Wal if they'd like to find out more and even work with you with one of your many hats on.

Wal Dobrow: Always happy to assist our profession. Simply it's big reports through your strata manager, through our directive if need be. Happy to help out, lovely speaking with you Amanda, thank you for the opportunity. I trust I've assisted in some way.

Amanda Farmer: Thank you, Wal. And just to be clear, that's BIV Reports, B-I-V Reports. We'll make sure that there's a link there to Wal's website in the show notes. Thanks so much again, Wal. Have a great day.

Wal Dobrow: Pleasure. You too. Thanks, Amanda.

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 yourstrataproperty.com.au.