

**Publication Date: 29 February 2024**  
**YSP Podcast Transcript: 398. Open Books: Unpacking the Privacy Myth in Strata**

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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 Amanda Farmer, strata lawyer, and I have a treat for you today. Some of you may know, last week I hosted our first ever Your Strata Property, One-Day CPD event for strata managers. Some of you may even have been at the event.

Now, CPD stands for Continuing Professional Development and our New South Wales Strata Managers are required to do a certain number of hours of education in specific topics to comply with their license conditions. For many months now, we have been planning this event, which was finally hosted in my hometown of Mudgee, Central West New South Wales.

We had 40 strata professionals, including my Sydney YSP team in the room learning about topics like privacy and cybersecurity, the Design and Building Practitioners Act. That session was delivered by strata lawyer Helen Cowell. We looked at recent changes to our strata and property legislation that impact our strata managers, including electronic meetings and electronic voting.

Strata manager Reena Van Aalst joined me to share how her team is adapting to those changes. We looked at why strata managers need to be prepared to pivot and how data is the most underutilized asset in strata management. That session delivered by Dr. Nicole Johnston and Michael Teys joined us to deliver a session all about the duty to repair and maintain our strata buildings, including how the New South Wales government is intervening in the decision-making of owners corporations that are in crisis.

After our day's learning, we gathered together at a beautiful local winery where we enjoyed a gorgeous sunset, a glass of wine or two over a gourmet meal. There are some short videos of the day posted on our Instagram and our Facebook pages at Your Strata Property. If you wanna check them out, get a bit of an insight into what we all got up to.

I'm still buzzing in case you can't tell. The event exceeded even my expectations, which I have to tell you as is my style, were pretty high. Everyone who has responded to our evaluation survey has said the same and they're all looking forward to coming back next year. Yes, we will be running the event again in 2025. I know there are lots of strata managers out there who couldn't make it this year or missed out on a spot. You've been in touch. I know you wanna come to Mudgee in 2025. We'll get this date in your diary.

I have the 2025 date for you already. It is Friday the 28th of March, 2025. That is when the next Your Strata Property, One-Day CPD event will be hosted in Mudgee, New South Wales. Strata managers can tick off all of their compulsory CPD hours at the 2025 event.

Here's the thing, if you haven't yet heard, the end of the CPD year is moving. This has just been announced by New South Wales Fair Trading. The CPD year for 2024-2025 will run from the 1st of July to the 30th of June. So our event on the 28th of March 25 is within the next CPD year. I would love to have you with me in Mudgee. You'll hear from me soon about how you can book that 2025 ticket capacity for that event will still be restricted.

That restriction is imposed by Fair Trading, not by me. I can only teach to a small room when we're talking about CPD education. That does, however, make for a nice opportunity to generate discussion, to share experiences. A lot of that was happening in the room last week, but it also means that spots are limited and with the number of managers who told me last Friday that they wanna come back in 2025, you're gonna have to move quickly on those 2025 tickets.

So I suggest make sure you're on our email list to be the first to find out and get access to those 2025 tickets. You can sign up to that list on the homepage of our website, [yourstrataproperty.com.au](https://yourstrataproperty.com.au). There is a section at the bottom of that homepage where you can opt-in to stay updated.

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Also, make sure you're following us on Facebook, Instagram connect with me on LinkedIn. They're always good places to keep up to date on what's happening in the Your Strata Property world.

And strata owners, I haven't forgotten about you. I've heard you. You too want a live event. You wanna soak up all the goodness of this education in an environment where you can ask questions, you can share your experiences.

"The seed has been planted" is what I can say for now. Don't be surprised if there is a YSP live event available for owners in the very near future too. I'd love to see you all in person as well. But for now, two-hour treat. I did say I had a treat for you, a little taste of what the attendees last Friday experienced.

I was able to record some of my own presentations, the opening presentation for the day. I covered off some important information about privacy in the context of strata and strata management. Now this is just as relevant to our owners as it is to our strata managers. What you're going to hear now is a short section of my privacy presentation given last Friday. The session itself lasted about 90 minutes.

You're only getting 20 minutes or so of it. We have cut out some of the discussion. We've protected the names of those who were contributing from the floor. After delivering this session, I was approached by a few people in the room who said, Amanda, this privacy stuff, it's a minefield. We are absolutely needing to be, going to be on our toes about this. So it's really great that that message cut through.

With that, I'm gonna take you right on over to this short session on strata and privacy. Enjoy.

So looking at this topic, we're gonna start with privacy and I think that's the really juicy one. It's the one that I really like teaching. As strata managers, this is a really important topic for you. You are dealing with owners private personal information all the time. Shout them out for me. What kinds of things are you doing day to day when you know you are dealing with personal information? Go for it. The strata roll. Yes. Property managers. Yes. So when agents are being appointed, say owners are notifying you with a tenancy notice that they've got a tenant and an agent. Collecting levies. Yes. You know how much money people owe. Applications for permission to do things. Yes. Bank account details. Yes. Absolutely. Yes.

You cannot carry out your roles as a strata manager without collecting personal information. I think we've heard this one. Collecting notice of new owners and tenants at section 22 and section 258 of our Strata Schemes Management Act. We're updating contact details. We're communicating with owners and residents about their day-to-day activities on their properties. Are they doing something that is a breach of a by-law? Do they wanna keep a pet? Are they having a noisy party?

We have this level of minute detail about people's lives that I think is isn't seen in very many other places. We're dealing with third-party inquiries from real estate agents, from lawyers. We're meeting trust account requirements, working with lawyers, accountants, valuers, financial institutions, trades and contractors. Owners and their agents and their lawyers who are communicating with strata managers are expecting, and you will know this better than I do, are expecting their managers to be thinking about their privacy and to be protecting their personal information.

It's out there, the risks are out there, the disasters are out there. I have an example, a strata example to remind you of if you don't remember it, that was in the media a little while ago, and owners are aware, they're asking you questions, who's got access to this file? How come I can open this link from somebody else's email address? They understand what their rights are. They're telling you about the Australian privacy principles and the breaches and they're asking you questions about "How are you protecting my personal information?" So I'm really glad this is a CPD topic that we can be on top of.

The privacy legislation in Australia is the Privacy Act 1988. I've written it up there with the letters CTH at the end to a lawyer that means commonwealth, it means it's a federal piece of legislation. So it covers all of Australia. When you see the Strata Schemes Management Act written down, you might see NSW in bracket. That means it's a New South Wales piece of legislation.

So wherever you see that CTH Commonwealth, you know, federal piece of legislation covers all of Australia. The regulator for privacy legislation is the Office of the Australian Information Commissioner or the OAIC. Different to Fair Trading. Your regulator as strata managers. Your licensing body complaints go to is the Office of Fair Trading. When we're talking about privacy, the privacy legislation and complaints under the Privacy Act, they go to the office of the Australian Information Commissioner.

Wondering if this is a big question for you. If you've done some of this education previously, it might not be, but does the privacy legislation even apply to you? You might have heard that it only applies to certain medium to large businesses. What does the legislation say? It applies to all businesses and body corporates.

I put that in there because we are talking owners corporations, community associations, those legal entities with an annual turnover of more than \$3 million and annual turnover of more than \$3 million. So some of you'll be saying, yes, that's definitely us. It definitely applies to us. Some of you managing large schemes will be saying, "Yes, it definitely applies to our clients".

I know Reena manages a few big ones that might have annual revenues over that amount. When we're thinking about if some of us might be borderline, if we're thinking about what's included in this annual turnover, I went and had a look in the definitions of the act and it does include your management fees obviously, and also any commission income. So it specifically includes any insurance commission income that you might be getting.

The Privacy Act also applies to all businesses who are trading in personal information. Doesn't matter how big or small they are, and this is really important. I did a little bit of research on this about, that's interesting. Trading in personal information is that what our strata managers are doing. The Real Estate Institute is very clear that it thinks property managers and real estate agents do trade in personal information.

They have rent rolls that have information that they may on sell to another business. You as strata managers, if I extend that definition out, I think you do trade in personal information. You have to provide services that allow people to access personal information and you are paid for providing that service. My suggestion to you is that you assume you are covered by the privacy legislation no matter how big or small your business is.

That is also the recommendation of the Office of the Australian Information Commissioner. That office says that the Australian Privacy Principles, which I'm going to show you, provide best practice guidance for all businesses managing personal information that belongs to clients. So I suggest you assume no matter how big or small you are, that this applies and I think legally it probably does because I do think that you are trading in personal information providing services that in turn permit people to access personal information.

If you're a real estate agent, I know some of you have dual licenses, REI says, yes, you're definitely covered by this legislation. In your resources, in your learner guide, you'll see lots of links to helpful information on the office of the Information Commissioner website. It's a really cool website, lots of easy-to-understand stuff in there, including a little quiz you can do to find out whether or not you're covered and I'll refer back to some of the other resources that are there as we continue on today.

So what is personal information? What's covered by the Privacy Act? The Privacy Act protects personal information that is collected for inclusion in a record or a publication. Absolutely you are collecting personal information. It is included in books and records of your buildings. Your buildings are collecting personal information. You as agent that duty, that task, it extends over to you. You're collecting personal information, you're including it in a record or a publication and the Privacy Act is there to protect that.

Personal information is broad. It doesn't really have a definition in the act when you look it up, it just assumes that it has its own meaning. It's personal information. I've given you a few examples coming up, but importantly it can include an opinion about someone that might be a bit confusing.

I've circled a few that I think are most important to be aware of. This is Australian privacy principle one, the open and transparent management of personal information. In short, you need to ensure you've got a privacy policy. I went snooping on your websites. Some of you might have them and thought they didn't quite make the website. They need to be on the website. So that is a requirement. Some of them are better than others. Most of them look exactly the same. And I think there's an SCA template for the privacy policy. So we're gonna have a look at privacy policy, but that's Australian privacy principle one that's requiring you to have that. Anonymity and pseudonymity this privacy principle two requires privacy entities to give individuals the option of not identifying themselves of using a pseudonym.

Limited exceptions apply. That is you. You have to be communicating with people you know who they are. You can't have your owners, your clients using pseudonyms using false names. When you read into this privacy principle further, you will see that where you are required by law to keep this information, to have a database of real names and email addresses and phone numbers, then you can do that. You're not in breach of this principle. Number two, direct marketing. It's a bit of a marketer. This one caught my attention. An organization may only use or disclose personal information for direct marketing purposes if certain conditions are met. If you are wanting to send that regular newsletter to your clients, you should be getting their permission to do that. That is different to getting their permission to send their levy notices to them. You might have their information as a client to provide management services.

You don't necessarily have their email for the purpose of sending them marketing information, sending them newsletters. So as a marketer we say that's an opt-in. They need to opt in to be getting that ticker box on your welcome letters saying we have a really helpful weekly newsletter or we have events that you might be interested in. Would you like to hear about these? Tick this box. Yes. People are gonna tick that box. Then you've got that consent and you've complied to use their personal information, their email address for that purpose.

Privacy principle 10, the quality of personal information. I've circled this because you're going to hear more about this in a case that I will summarize for you shortly. The entity has to take reasonable steps to ensure the personal information it collects is accurate, up-to-date and complete. It's a little bit scary for you guys and this is where one management company came a cropper. You'll see in having the wrong information on their strata roll and clever little owner didn't go off to the tribunal, went off to the privacy commissioner, said, you've got something wrong on the strata roll and I want you to fix it. I want you to apologize and I want some compensation for the incorrect keeping of my personal information. I'll tell you how that one worked out.

Privacy principle 11. The entity must take reasonable steps to protect personal information it holds from misuse, interference and loss and from unauthorized access, modification or disclosure. An entity has obligations to destroy or de-identify personal information in certain circumstances. Now that's interesting where you actually have an obligation to keep records and to keep information for certain periods of time. Under the Strata Schemes Management Act, section 180, you have to keep records for a set period at least seven years is what's in section 180.

This is another one of those limited exceptions. So if you get an email and we'll have a look at example, I think on the next slide that says some nasty things and has some sensitive information, it is not open to you to say, I need to destroy that. I need to de-identify that I need to get rid of it because the privacy principle says that I shouldn't be holding that. No, number one, you comply with the Strata Schemes Management Act. You keep books and records. So you'll get access to that if you want to review that in the links in your learner guide and the more detailed information about the privacy principles on the OAIC website as well.

Okay, time for a bit of discussion, and I think I'll give you a couple of minutes to have a chat about this. I can see you're in some good groups there among yourselves, but I'll talk you through it. This is a little scenario that I dreamed up.

You are a strata manager who has just received an email from a committee member. Just another one in the email. The committee member reports that the resident of unit four, Tom is keeping a dog. Tom does not have approval to keep an animal on the lot. The committee member writes in the email to you, I know that Tom's almost blind, but he doesn't live alone. He lives with his husband Jerry. Surely Tom doesn't need a dog to help him find his way around. It's odd, but you know, you get odd emails.

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Put this on the agenda of the next committee meeting for discussion. Has the strata manager received personal information? Is this sensitive information can, should the strata manager store this information? And even I haven't asked the question, but we can talk about should it go on the agenda? So you're looking pretty confident there.

Now I wanna just touch on strata managers being compelled by law to disclose and how the tribunal has dealt with that. I mentioned that earlier. It's a really important question in the context of the Strata Schemes Management Act, because we know that owners we've just said, and those who are authorized by owners, that could be anyone, it's have to be a lawyer or real estate agent and owner or any person authorized by an owner could be their neighbour. Someone else in the building could be their mom, could be their sister, an owner or anyone authorized by an owner can access all the records under the custody or control of the owners corporation.

And they're doing that through you as the strata manager. I think we all know that. This case Legge, anyone who knows, I think it was Ms. Legge, let me know. And Network Strata Services. I've talked about this case at length. I like it. It's a strata roll case. It is an application to inspect the role.

The strata manager said, I can't give you that. It's got people's personal information on it and I'm bound by the Australian Privacy Principles actually came up in the case. It's from 2013 older case, what used to be the C Triple Now NCAT and the adjudicator, it was considering the case at that time, ordered the strata manager to provide the complete strata roll to the lot owner, including the names and addresses for service of other owners and their agents.

The adjudicator actually says in the decision, you've got a link to it in your material. An address for service of notices is information about an individual within the definition of personal information. Disclosure of the information on the strata roll is required by the strata legislation, which means that the disclosure falls within one of the exceptions in the Privacy Act. Very clear example of what we've just learned.

The other case a little bit more recent, I think it's a 2020 or 2021 appeal panel case that's gone to the higher level of the tribunal Walker and the owners of Strata Plan 1992. Mr. Walker wanted the owner's corporation to provide him with a copy of the levy register, A levy register, I dunno if you guys call it that. That's what the legislation calls it. It's your statements, your owner's statements for each lot. Something that I really like to get my hands on as a lawyer when I'm trying to prove that someone was unfinancial at a meeting. Mr. Walker wanted these for all lots over the last two financial years. It showed the payments made by owners. It showed everybody's balance.

The tribunal at first agreed with the owner's call corporation and said, No, I can't provide that. That's well, it's private information. He's only entitled to his own lot information. Not everybody's. Mr. Walker must have not had much else to do. Someone might know, might be able to tell me. Went to the appeal panel and the appeal panel rejected the owners corporation's argument and said, Mr. Walker was entitled to access to this private information. Yes, it's private information, information about a owner's financial situation.

The appeal panel said, if the Act gives an owner a right to access the information, then the owner is entitled to inspect that. The legislation permits the inspection of the Levy Register. And therefore, parliament New South Wales Parliament has indicated that information contained in that register is not protected by considerations of privacy. And the appeal panel said, "hand over the levy register", strata manager.

Reena and I had chat about this on the podcast a few weeks ago related to strata rolls and this compulsion to provide access and then what owners do with the strata roll. And Reena started challenging me as she does digging deeper into my black-and-white legal view and saying, well, Amanda, I hear you. Yes, owners can access all of this information. Tribunal says they can, but should they, is it the case that the strata legislation is not in tune with these considerations of privacy. And it needs to be. Do we need reform to make sure that angry owners don't get the email addresses or cannot easily get the email addresses of everybody and start spamming them? What do you guys think?

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Demystifying the legal complexities of apartment living.