

**Publication Date: 06 June 2024**  
**YSP Podcast Transcript: 411. Will you wait to be forced? Dr Nicole Johnston on repairing our buildings**

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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 Dr. Nicole Johnston.

Nicole is the founder and director of Strata Knowledge, an independent research and consulting firm specialising in strata and community title, law and governance. As a socio-legal researcher, Nicole is focused on translating applied research into practice by collaborating with industry to ensure impactful and beneficial outcomes.

Nicole started her professional life as a commercial lawyer, but for the last 15 years, she has worked as an academic at Australian universities. Nicole has led a number of research projects on topics including building defects, strata insurance, strata law reform, fire safety, conflicts of interest, and developer governance responsibilities. She is a regular presenter at industry conferences, consults with governments, and has chaired numerous international forums.

In addition to holding degrees in psychology, criminology, law and a PhD in strata and community title law and governance, Dr Nicole is an experienced body corporate committee member, having chaired a large scheme for the last 13 years.

No stranger to our podcast. If you like what you hear from Dr. Nicole, you can head back and check out episode number 243. Nicole was sharing with us the Strata Insurance Game Changer. And more recently in episode 367, Nicole joined me to share her research into passive fire systems in our residential Strata buildings, including explaining how thousands of fire safety defects go unnoticed.

Giving us an early look at her most recent research, yet to be published. I'll take you over now to my chat with Dr Nicole Johnston.

**Amanda Farmer:** Dr Nicole Johnson, welcome to the show.

**Dr Nicole Johnston:** Thank you so much for once again having me on the podcast, Amanda.

**Amanda Farmer:** Oh one of our favourite guests. That's for sure. You're often back here, Dr. Nicole, because you're doing so much, lots to report. You've been doing plenty of research in our space. You've got an awesome conference coming up in a few months time that we are definitely going to remind our listeners about. But the reason I wanted to chat to you here today is to have a chat about some very, very fresh research that you are about to publish. So we're getting a bit of a scoop here.

You have been talking a little bit about this. You were recently at the Strata Community Insurance Autumn Forum presenting some of your findings and getting some early feedback. This research, as I understand it, is about caring for our aging strata properties. So let's start here. Based on your research, do our owners corporations, our body corporates effectively attend to common property repairs and maintenance, Dr Nicole?

**Dr Nicole Johnston:** Well, unfortunately, I'm going to have to say no, we don't.

**Amanda Farmer:** Oh my gosh, I'm shocked!

**Dr Nicole Johnston:** I know you've spoken about this on live and on the podcast before about our concerns around maintenance repairs as buildings age. And what we're really seeing from the research is that we are a bit neglectful when it comes to dealing proactively, particularly with our repairs and maintenance as our buildings age.

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And so there's a number of issues that relate to that and a lot of outcomes that we found in relation to this particular research project. But in a nutshell, no, we don't deal with our repairs and maintenance well.

**Amanda Farmer:** So what did you uncover as let's say the key reasons why this is not happening in our buildings? What's going wrong?

**Dr Nicole Johnston:** Yes, so I think we're very reactive when it comes to repairs and maintenance. So there's a lack of preventative maintenance or there's a lack of proactivity when it comes to turning our attention towards repairs and maintenance. What we often see is a very sort of patchworking approach to anything that comes to the fore. So often we'll see water ingress, for example, it might come into a couple of units. We'll just patchwork those without really paying much attention to the root cause. So doing more of that investigative type of work to uncover really what's sitting behind some of these issues.

So we have this tendency just to react as things come up. And as I said, very rarely are we being very proactive on the front foot dealing with the repairs and maintenance, understanding how our buildings work, really putting that at the forefront of what we do in terms of being on an owners corporation or being on a committee. And even this comes from our managers, a lot of other sort of governance compliance issues sort of get prioritized and our building care does not.

So that's one of the things, this sort of lack of proactivity in terms of dealing with maintenance and repairs. Cost is a massive issue. Everyone is looking for the cheapest alternative. And so we turn our mind again to those cheap, quick fixes. And so there's this sort of real reticence to pay for good quality work, investigate what's going on in these buildings and attend to these maintenance and repairs in a more timely manner. So it's both about a cost issue, I think, and this sort of very much reactive type of way that we deal with maintenance and repairs.

**Amanda Farmer:** And it's not a lack of legislation or legal imperative, let me say, at least in New South Wales, being the jurisdiction I'm most familiar with, it is quite clear that the legal obligation to repair and maintain does extend to being proactive. We have Supreme Court authority to that effect. It is a very broad duty that our owners corporations have under our legislation. And that means that preventative maintenance is part of your repair and maintenance duty. You don't just wait for something to start leaking.

So I'm not sure if you're looking at that in your research, what the legislative regime is around the country, Nicole, I assume it's similar across our states. One thing that might be different in New South Wales in terms of cost and the need to be in terms of cost and the quality of the work is possibly the design and building practitioners act that we have here. What were your thoughts on that? If you looked at that in your research.

**Dr Nicole Johnston:** Yes, so first on related to the statutory obligations, yes, every jurisdiction in, so every state and territory in Australia has a provision relating to repairs and maintenance. It's slightly different phrasing and therefore slightly different ways to interpret these particular requirements. Some are much broader, much sort of more all-encompassing. Some seem to be a little bit narrow as far as I'm concerned. But we do sort of globally, I suppose, have this requirement to repair and maintain.

I think that we sort of have this idea that people will just comply with the law. And as we know, often it doesn't, especially when it comes to money, when you're asking people to put in tens of thousands of dollars to deal with something, compliance sort of goes out the window. And unless we see people really proactively taking legal action, against their perhaps their committee or the or the owners corporation itself for its failure to undertake that statutory obligation. Then people do just ignore it collectively, people come together and decide we don't want to do this work. We don't want to comply with our legal obligations. So across the board, it's a very similar thing. No jurisdiction is doing this better, I think, than any other.

In relation to New South Wales, I did look at and have listened to what's going on there in relation to the Building Design Practitioners Act. And of course, that's sort of relevant, I think, when works are required and you start that process. It doesn't do anything in terms of mandating or requiring people to be more proactive. It's when there is an issue, then the legislation comes into force, right? When they go through the process.

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But it's not compelling people. There's no anyone standing over them with a big stick saying you must repair and maintain the common property and this is how you must do it. You know, that sort of comes when you start doing the action, I think. Yes, it's certainly the only jurisdiction that's moving forward in that way that I have seen.

But yes, across the board there is that obligation to repair and maintain, but it is generally ignored.

**Amanda Farmer:** Yes. I know you had a look at what's happening in this area overseas as well as part of your research. What can you share with us in that respect?

**Dr Nicole Johnston:** Yes, so a separate research project that I did and that work has been published. It's available for anyone to download. I put it on LinkedIn if they're interested. And so one of the main things that are happening in international jurisdiction, especially out of America and some of the Southeast Asian countries like Hong Kong and Singapore, is they're now mandating building inspections as buildings age.

So of course, a lot of this as coming off what happened in Florida in 2021 with the partial building collapse that killed 98 people. And so we're starting to see a lot of reform in the states in relation to these mandatory requirements for building inspection. So what that means effectively is that a building authority or a building commissioner notifies a building owner, in our case, the owners corporation, requiring them to undertake a particular type of inspection. Now these are either facade inspections, or they're broader than that, they're more comprehensive looking at all the structural elements of the building.

Then a report is provided from an engineer or competent person. Every legislation says something differently in relation to who these people are that do these inspections. But that report goes back to the authority or the commission. And then the owners corporation has to act on whatever that report says in terms of rectification. So it's really a government interventionist approach, Amanda. It's really the government saying, we believe that you can't take care of these properties yourself. So we are now stepping in, forcing you to take action. You are required at a particular anniversary, a particular age of the building to undertake these inspections. We will be notified. We know what's going on in your building. You will be required to rectify these and there will be preliminary follow-up inspections to make sure that these works have been undertaken.

And there are very harsh penalties for non-compliance. So it's not something that people can just ignore unless they want to be faced with a financial penalty, they must do it. So we're seeing this more in the States. We're seeing this in Hong Kong. We're seeing this in Singapore that have these same problems with building neglect. And so I think, you know, this is certainly a conversation that if we aren't having now, we certainly will be having very shortly in this country, just because of the building neglect that is quite evident here.

**Amanda Farmer:** Let's hope we don't have to see the collapse of a building and the loss of life in order to start having that conversation. I'm interested to hear that Hong Kong and Singapore have gone down this path as well. I was aware having been in the US earlier this year that these changes were afoot. I wasn't aware that this was happening in other countries. Do you know of any tragedies that have happened in Singapore or Hong Kong that would have caused them to take this same step? Has that been the trigger or are they a little similar to us and just have apathetic owners?

**Dr Nicole Johnston:** No, so certainly there's been some real issues. Hong Kong, there was a report that was done. They've been going through a reform process for a very long time in Hong Kong. I think their reform process went on for nine years before they enacted this legislation. It's very detailed legislation. But prior to that, they had a task force that investigated injuries and deaths relating to issues in relation to building neglect.

And if memory serves me correct, I think there was something like 101 deaths in a 10 year period from issues relating to problems with buildings, so things with building facade issues and those sorts of things. The Florida incident is not isolated. There are other real concerns around building neglect in Hong Kong and certainly in Singapore. There's been issues with materials coming off buildings, injuring people, killing people.

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So yes, it's not unique in any way. It's certainly something that they've, because of what's happened there, they've turned their mind to it and implemented legislation and gone through a very thorough and rigorous reform process to get to where they have now.

**Amanda Farmer:** In terms of the findings and I assume perhaps the recommendations that you might make in your report, what else do you think we should be doing here in Australia or that we can expect on the horizon to help solve this problem?

**Dr Nicole Johnston:** Yes, I think we all need to be proactive before government intervenes in this area. I think we start to need to have conversations more with owners corporations much more regularly. I think this should be on the agenda at every single committee meeting. We need to be talking about what's going on with the building. We need to be pulling out those capital works plans and having a real good look at what are the building components here? How are they ageing?

But it is only one tool. I think one of the big problems is we're using these maintenance plans as the only tool when we're talking about repair and maintenance. They're a helpful guide. They help in terms of funding, which I think is what most people are using them for as a funding or a budgetary tool more than they are about assessing what's going on with the building. So we need to have this on the agenda, I think, Amanda, at every single committee meeting. Let's pull it out.

Where are we in the life of these buildings? We need to be having a conversation about getting an engineer or a qualified builder in to do a full inspection of these buildings because these maintenance plans don't do that. There's limitations to how they work, right? So we need to use them as a tool, not the tool. We need to get engineers or qualified builders in to do a more holistic assessment or audit of the buildings to find out where it is in its life, and what's going on.

Because there might be environmental conditions, for example, if you're closer to the ocean, those environmental impacts might be having a bigger impact on the building than what is outlined in your maintenance plan. You might have underlining building defects that haven't been resolved. You don't know whether the building has been built compliantly or there are other workmanship issues that are in that building.

The quantity surveyor that's going out to do those maintenance plans aren't looking at, that's not their job, that's not their role to look at that. You need someone else to do that. And then you need to combine all these things together so that you can more effectively remedy what's going on in these buildings. So we just need to think differently. We need to have the full, I think one really interesting thing that came out of the research for me was in Australia, we look at all the other compliance areas as a higher priority in these meetings than we do around building maintenance.

You know in Singapore the Act is the Building Maintenance and Strata Act, Strata Management Act, right? So at the forefront is the building, building maintenance you know the provisions relating to that are up the front of the legislation very clear that you know and and rightly so I think because the risks to human life is so great so it should be a priority.

I think in Australia we've been really lax and we haven't prioritised this. Managers don't have the requisite skills to properly help their owners corporation clients navigate some of the complexities to deal with the building. So I think we need to have some up-skilling in that particular area so we know more about how these buildings work so we can assist with OC clients. So I think there's a range of things that we need to be doing, but having it up the front of the agenda, you know, talking about it more in committee meetings, pulling out that maintenance plan at every single meeting to see where we're at, I think is really vital.

**Amanda Farmer:** On the agenda at every committee meeting, I know that there will be owners listening to this who say, "Well, it'd be great to be having committee meetings." because there are certainly many communities out there that can't even get that done. So I hate to say it, but I really can't see all of these very good steps, which I agree absolutely should be priorities for our communities. I can't see them being taken unless owners are forced to take these steps and that would be through legislation and the risk of a fine if you don't do it.

**Dr Nicole Johnston:** And I think that is the reality of it, Amanda. It's not what I would like to see, but I think buildings under 40 lots in particular seem to be more problematic than bigger schemes. I think this is what sort of came out of my research that those

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schemes or those mid-sized schemes do have problems with holding committee meetings, getting people involved, participating in their OC and those sorts of things. So I know it's a really difficult thing.

But unless we try, I think unless we put some concerted effort into having these meetings and trying to have this conversation, inevitably what will follow is that the government will intervene and it will be more costly. It will be more, probably difficult to deal with some of these things. You know, I don't see any good outcome except that the buildings will be repaired and maintained.

**Amanda Farmer:** Yes.

**Dr Nicole Johnston:** It's the ultimate goal, obviously. I would like to see it without government intervention, but I do fear, given what I've seen and the number of schemes that are really struggling to deal with these repair and maintenance issues more effectively. And I think they're going to get worse because of the building defects crisis. I think it's time to have a real in-depth conversation and consider these sorts of mandatory inspection reforms.

**Amanda Farmer:** Yes. I think you're right about those smaller buildings, less than 40 lots. I have recently been involved with a building that's about 20 lots and they've just signed off on the commencement of a \$5 million project, most of which is remedial works. Some of it they're throwing in some upgrades to their credit and that building is 20 lots. So do the maths on that. It's a couple of hundred thousand each.

**Dr Nicole Johnston:** Yes, it's big. Yes.

**Amanda Farmer:** So it's scary for these smaller buildings to be looking at getting reports, getting scopes, getting quotes, and taking their heads out of the sand because those are the kind of bills that they know they'll be facing.

**Dr Nicole Johnston:** Yes, and it's really complex, right? This is not easy, you know? It's really difficult to understand the complexity of some of this work, to go through the process, you know, to rely on others. We had some, I saw some real issues around contracts. There was not one scheme in my sample that had gone to a lawyer to get remedial works contracts reviewed.

It was really surprising. I kept looking where's the contract being reviewed by a lawyer? Where's the motion passed to engage a lawyer to review this to protect the rights of the owners corporation? It just wasn't there. So without a doubt, there's real complexity here. It's not an easy task by any means. These are complex buildings. It's a complex infrastructure. So, you know, I think this is, you know, this is where we're at presently. And as you said, let's hope that there isn't a catastrophic event for us to move forward and start the conversation or at least evaluating what these laws may look like.

**Amanda Farmer:** Yes. It's, it's a good reminder for our communities, for our committee members in particular, that this is your chance to take control here, take this into your own hands and be proactive at risk of being forced to act down the track.

Dr Nicole, while I've got you here, I can't let you go without asking about the Strata Impact Conference. That's all happening on the Gold Coast in August. I'm going to be there. I know many friends and colleagues are going to be there. Tell us all about it.

**Dr Nicole Johnston:** Yeah, so this is really exciting. I really from sort of lots of feedback that I had over the last couple of years about having a place where people can be more informed by, you know, researchers, more qualified people, but also in a learning environment. So this is really about research and education, bringing the whole sector together.

So it's not just about one industry, it's about anyone that really in their work touches on the strata sector, might be an accountant or a service provider, a lawyer, anyone that's sort of in-between managers, anyone that sort of in the broader sector that really wants to be part of a conversation around what we're seeing from a research perspective and also how we can learn, how we can take some of that, those sort of research outcomes, those recommendations back either into our business practice or back in, you know, to assist our communities do better. This is what this conference is all about. This is what it's geared to be.

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So my sort of byline, I suppose, for my company is translating research into practice. So, you know, sometimes researchers can get very academic and, you know, it's all very interesting, but it's really, there's no practical outcomes, right, for people in professions. So this is really geared towards that. This is about taking what we're seeing from researchers. And we've got some of the best researchers in the world that will be speaking at the conference. It's a stellar lineup of speakers. But it really is about, you know, the audience taking away those sorts of little nuggets that they can either put into their business or they can help their strata communities to improve. So that's really the vision of the conference. Yes, it's going to be at the Gold Coast at the Langham Hotel on the first and second of August.

Early Bird's still on, you can go onto the website, which if you just Google Strata Impact Conference, you'll be able to find it, all the information's there. But it'd be great to sort of come together as a group, have these discussions. We may not all agree, coming from different backgrounds and that sort of thing, but it's the time to have the conversation like we've had today around this particular issue, Amanda.

It's about listening to each other and seeing how we can sort of progress the sector, I think. So, yeah, so I'm really excited about it. I'm hoping that it can be something that we can hold on an annual basis. I've had so much support and interest. It's just been really overwhelming, to be quite frank. People are looking for that type of conference. There's a real sort of group of people, I think, that just have a bit tired of going to conferences where they hear the same people or they're not getting anything back. This is different. This is certainly geared differently so that you can really walk away knowing that there's sort of real value for money, I think. So I'm really excited. I can't wait.

**Amanda Farmer:** Well, thank you for putting this all together for us. So if you're a strata manager, somebody who's serving the strata space and owner, everybody's welcome.

**Dr Nicole Johnston:** Everyone's welcome. Anyone that wants to really participate in this conversation and want to learn, that's really at the heart of this. This is about education. And I think the overwhelming majority of presenters are educators. They're academically trained educators. And they just happen to also be researchers. So you're getting the best of the best coming together. So there's nothing like it that I've seen for many years so I think it's going to be a great event and I'm really excited about it.

**Amanda Farmer:** Yes. At a gorgeous venue in a beautiful part of the world. At the time this podcast episode is going out, there will only be a week or so, I believe until the early bird pricing finishes up and I don't expect these tickets to last. So we will definitely make sure there is a link to check out all you need to know about the conference and to book in in the show notes for this episode.

Do you know Nicole when your research paper is due for publication for the building care topic?

**Dr Nicole Johnston:** It will be in the next month. I've drafted it. I just want to go back and sort of finesse it a little bit. A few other things have come up when I've gone around speaking to people. So I just want to make sure that I capture everything well. So, yes, so hopefully in the next month it'll be available. It'll either be on my website, Strata Knowledge, or it will be on the Multi -Own Research Hub, which is a repository of papers and articles that anyone, any person in the public, you don't have to log in, you can just go straight onto the website. I'm sure you'll put up the link Amanda, and you get all research papers that we write are available there as well. So you'll be able to find it somewhere.

**Amanda Farmer:** Excellent. We will make sure all of those resources are available, including your paper when it comes time for publication. Thank you once again, Dr Nicole Johnston for joining us to share your update on the incredibly valuable research that you are doing on our behalf. Thank you. And I'll look forward to catching up with you in a couple of months. Can't wait.

**Dr Nicole Johnston:** Lovely, thanks for having me 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 by the show notes at [yourstrataproperty.com.au](https://yourstrataproperty.com.au).