

Publication Date: 13 September 2024

## YSP Podcast Transcript: 423. "We need to cut the head off the snake, not tread on its tail"

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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. I'm your host, strata lawyer, Amanda Farmer, and I'm here with you each week helping to demystify the legal complexities of apartment living and what a difference a week makes. A lot has happened in our space over the past week.

Certainly a lot has come to light about what's been happening in the strata space. Yes, I am referring to the Four Corners exposé, as we've been calling it, that aired on the ABC on Monday, the 9 September that segment titled the Strata Trap. I hosted a 90 minutes live chat over on our Facebook page last Friday, where we unpacked this story, including how those of us in strata have been responding to it since it aired.

If you joined me live. Thank you. The replay of the complete chat is there on the Your Strata Property Facebook page. You can also catch it via my own LinkedIn profile and our YouTube channel. What I have for you today in our podcast format is the summary version of that chat, edited down from the live session. You're going to hear my summary of the Four Corners reporting, including the particular strata management practices that the media has chosen to focus on.

I share the week's responses from strata's representative bodies, including the SCA, the Owners Corporation Network, the Australian College of Strata Lawyers, and I also share what I think simply because many of you asked me that very question last week, and in the interest of arming you with an action step to take, as I always like to do, you'll hear that I'm sharing a resource with you. My list of 20 questions you might want to think about asking your strata manager.

Or if you're a strata manager, you might want to think about answering these questions for your clients without being asked. Since we released this resource on Friday, hundreds of you have requested this list to be emailed to you. As you'll hear, the aim of these questions is to help owners to better understand the business practices of their strata managers, to the extent strata managers are willing to disclose those, and I'd like to think in the current climate, there's a lot of goodwill a strata manager can gain when you do choose to answer these questions and make these disclosures.

You can get your own copy of my 20 questions by visiting the link, [yourstrataproperty.com.au/questions](http://yourstrataproperty.com.au/questions). That link will be in the show notes for you. Credit for the title of this podcast episode today goes to Doctor Nicole Johnston, a name you'll be familiar with if you're a regular listener. Doctor Nicole had an early look at some of these questions for me, and she did express a concern that asking questions, getting answers usually only means more disclosure.

And disclosure is certainly not a cure for the ills that our industry is currently facing. Doctor Nicole said to me, Amanda, we need to cut the head off the snake, not tread on its tail. Disclosure is treading on the tail. With Doctor Nicole's permission, I have run with that excellent metaphor for this podcast episode. You'll hear me speak to it a little bit more in this upcoming chat before I take you over.

Depending on the day you are listening to this episode, you may still be able to access my trust from transparency webinar hosted live at midday on Thursday the 19 September. That's 2024. I'm sharing how you can get proper access to your strata records without the constant follow ups, especially if transparency is a challenge for your community, the place to go to register to attend the webinar, or if it's after midday on Thursday the 19th when you're tuning in.

This is also the link where you can catch the limited time replay [yourstradaproperty.com.au/webinar](http://yourstradaproperty.com.au/webinar). The replay of the webinar will be available via that link until midnight on Tuesday the 25 September when it gets tucked away inside our members only video library. So if you are a member of the your strata property online membership community, don't worry, you've still got access to that resource. If you are not a member, and if it is not yet midnight on Tuesday the 25 September, then right now is an excellent time to join us inside the membership.



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**Amanda Farmer:** As part of the trust from transparency webinar, I'm announcing thousands of dollars' worth of free bonuses to everyone who joins us inside the membership before midnight on Tuesday the 25 September, including template meeting motions and template bylaws to assist both strata owners and managers to achieve the laudable goal of more transparent strata communities. [Yourstrataproperty.com.au/webinar](http://Yourstrataproperty.com.au/webinar) is the link to follow both for the Trust from Transparency webinar and to find out more about our online membership community and snap up those limited time bonuses.

I'll take you over now to the summary of my Friday Live chat all about the strata trap.

**Amanda Farmer:** What are we covering today?

Well, yes, I am going to give a summary of this week's reporting. I'm going to have a look at what others what our industry stakeholders have been saying this week. I am going to let you know what I think because you asked me to. It is very tempting to read, to watch, to relay, to share, and not to get too involved.

But I acknowledge this privileged position of being behind the microphone, being behind or in front of the camera, the very large audience that gathers here regularly, not only to hear what I have to say as a strata lawyer, but to share with each other as you do. I do feel a responsibility to share what I think and I will do that. Thank you for asking. I also have a resource for you.

I have put together 20 questions that I'm suggesting you might want to think about asking your strata manager or a strata manager your building is thinking of engaging in the future. You will get free access to that resource. Just make sure that you stick around for this chat and I will be letting you know how you can get your hands on that. I'm also going to share the resource with you here on the screen, and I'm going to walk you through each of those 20 questions, sharing why I have included it in the list.

Until then, on the screen, it's going to be me talking. So if you prefer to listen rather than to watch, you are more than welcome to tune in via audio only. You won't be missing out on anything. So what's been going on? What's been going on for you guys this week? Unless you have been blissfully living under a rock since Monday night, you will know that ABC's Four Corners finally went to air with the strata story that many of us have known for some months now.

It has been working on. In a 45 minutes segment titled the Strata Trap, Linton Besser and his team of ABC reporters revealed some interesting facts about our strata industry. This video has been accompanied by numerous ABC articles throughout the week, some more detailed than others. We're not going to link to all of those. You can do a Google ABC strata is generally what I google to find the latest ABC news story.

What we do have is the link to the Four Corners video for you and we'll pop that into the comments here. If you haven't seen it, you can go and cheque it out. Four Corners started its investigation into the strata industry earlier this year, or more broadly, the ABC investigation into the strata industry, after revelations that one of our most high profile strata management companies, Net strata, had been charging what the ABC said is millions of dollars in opaque, often hidden insurance fees and taking kickbacks from contractors.

After that story, the ABC asked strata owners and managers to reach out to them to let them know just how widespread those practices were, and apparently the ABC received more than 2000 responses. Further findings from the ABC investigation were featured on Monday night's Four Corners and in other ABC News articles this week. In the reporting, the focus has been on strata managers allegedly overcharging or charging questionable fees, including when they're recovering or assisting their clients to recover unpaid or outstanding levies, and also when it comes to administering the New South Wales strata hub.

Strata management companies, including some of the country's largest firms, receiving referral fees or kickbacks from other strata service providers, including engineers, energy providers, trades cosy relationships that apparently existed between strata managers and developers making defects rectification difficult, if not impossible for owners in new buildings.

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**Amanda Farmer:** The ABC pointed us to unfair contracts that are apparently difficult or impossible to get out of and highlighted strata management companies and insurance brokerage firms that are majority owned or controlled by separate billion dollar companies, with those companies then circulating work and payments between them, often failing to disclose these arrangements to their clients, who are ultimately the ones left to foot the bill.

Now the ABC investigation alleged unethical conduct by Steadfast Group, which is the largest general insurance broker and the largest group of insurance underwriting agencies in Australasia. Steadfast CEO Robert Kelly has strongly rejected the allegations. The ABC's reporting revealed that Steadfast has a number of agreements with strata managers that apparently have the effect of channeling owner's funds back to the strata managers. The disclosure of those deals is patchy and sometimes non-existent, the ABC told us.

A community in Martha Cove in Victoria was highlighted as an example. The owners at Martha Cove were reassured that their insurance commissions were being rebated to them and not being kept by their strata manager, Brighton Duggan. But they were completely unaware that their strata manager was still receiving a share of what they spend on insurance through its de facto shareholding in their insurance broker, Brighton Duggan. CEO Chris Duggan admitted that the management contract provided to owners at Martha Cove was incomplete in that it failed to record some of the conflicts of interest and said that this was an isolated administrative error.

ACCC chair Gina Cascot Leeb is calling for a ban on strata insurance commissions, saying that those payments are driving up costs for owners. She has also condemned undisclosed arrangements as deceptive and misleading of consumers. That's what's been happening this week. That's my summary of what I watched, what I have been reading. We are going to get into how the industry has responded to these reports. So what are others saying publicly?

What have the statements been? What are the press releases been after that was dumped on the strata industry on Monday night. What has been the response from what I keep calling our industry stakeholders? And I do apologize to Kathy Sherry, who I know hates that word stakeholders. First of all, Strata Community Association, SCA as we know them in a statement released on Tuesday, CEO of SCA Australasia Alicia Fisher said that the SCA strongly condemns the behavior of rogue operators and poor practices within the strata sector.

The actions of a few, Alicia said, are not reflective of our broader industry. SCA is concerned about opaque and misleading practices presented in media reports, along with activities lacking transparency or not following their mandated best practice for members. SCA will continue to work with members and stakeholders across the country to implement positive change and to enhance the strata management profession. This includes the creation of their best practice disclosure guide, appointing a new independent chair of complaints and conduct, and the next step of their business practices review.

SCA welcomes the strengthening of measures and protections that further professionalize strata and deliver better outcomes for consumers, and it will continue to work collaboratively with its members, with government and with regulators. Now, importantly, the SEA is encouraging any person who has a complaint about the conduct of a strata manager to email the address complaints@strata.community to access their independent complaints management process. That's what we heard from SCA Australasia.

What about Steadfast? Steadfast Group released a response to the ABC's reporting on Tuesday, saying that it refutes the allegations made and is disappointed that important, important information was not disclosed and other information was selectively presented. Steadfast was upset that the reporting made no mention of the fact that Steadfast commissioned respected insurance expert John Trowbridge to conduct an independent review in late 2021. I am going to come back to that, John Trowbridge being a name that you will if you tune into the podcast you're here on Friday Live, you will be familiar with John's name, having heard from him directly here on these platforms within the last couple of years, Steadfast did ultimately agree that the media coverage raises concerns around strata industry transparency what are the insurance brokers saying?

In an article published by Insurance Business magazine, some brokers said that these strata issues have existed for a long time and they were relieved that the ABC had exposed them.

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**Amanda Farmer:** Some expressed respect for what industry veteran Robert Kelly has personally done for the wider insurance industry, but said his firm's business model of vertical integration is too open to manipulation. They've said that other firms in the strata sector have the same vertically integrated business model and are responsible for similar abuses.

It just happened to be steadfast that the ABC chose to single out for scrutiny the owners corporation network, the OCN. Karen Stiles says we are witnessing an alarming trend in strata management practices that are not only unethical but potentially unlawful, and it's time for the government to step in and ensure that there is a robust framework protecting consumers who are currently at a disadvantageous. The lack of transparency and accountability, says Karen in the current system has left many of us vulnerable.

We need a thorough inquiry that not only highlights these issues but also leads to substantial reforms. The Australian College of Strata Lawyers, the ACSL, has released a statement. The college agrees that all state and territory governments must take action to address the behavior of the bad actors. What is missing, says the college, crucially, is an independent, empowered and properly resourced enforcement agency in every state and territory. In essence, there is no strata cop on the beat in any Australian jurisdiction and there needs to be.

In the ACSL's view, it should not fall to strata owners to identify, to investigate and to ultimately prosecute breaches of strata law by their strata managers. The absence of an effective enforcement agency is one of the most significant reasons that the behaviors reported on by the ABC have become prevalent. Earlier this week I posted here on the page and drew attention to an article on LinkedIn posted by David Wellman of Wellman Strata and you'll see David is part of the Four Corners interview.

David's article is titled why I chose to speak out on four corners and I think if you hadn't been to read that article, it is one of the articles, one of the many that's out there that is well worth reading. I'll give you a few quotes from it, David said. I chose to speak out not against the industry I've dedicated 25 years to, but in support of it because I know that the vast majority of us out there are doing the right thing working with our clients.

Best interest in mind first and foremost in a job that is exceptionally complex, challenging and usually thankless to say, says David, that I'm disappointed with the final Four Corners story would be an understatement. My three to four hour interview was whittled down to just a few grabs, which of course I knew was a possibility. I also knew that I was part of a broader story over which I would have no visibility until it aired.

That said, says David, I did have faith that the story would focus on the current stronghold, steadfast has over our industry, and would bring to light the struggles that our sector has faced as a result. Ultimately, I feel the Four Corners story took a small number of players and used them to paint the whole industry as unethical and untrustworthy in a sensationalist manner. And I do consider it was a missed opportunity to explore some of the real issues at play, leaving us once again portrayed as the bad guys rather than explaining how we ended up in this position in the first place.

On this, says David, I want to take an opportunity to explain my position more thoroughly and some of what was discussed in that three and a half hour interview that did not make it to air. So further down here on our Facebook page, there is a link to David Wellman's full article on his LinkedIn profile. Well worth going and having a read of ten top consumer groups are now demanding a federal inquiry a coalition of ten leading consumer and strata advocacy associations has called for a national public inquiry into the strata management industry, claiming that systemic harmful practises within the industry are compromising consumer rights and community expectations.

Federal treasurer Jim Chalmers has been urged to initiate a government directed inquiry led by the Australian Competition and Consumer Commission or the Productivity Commission and I just saw today, I think it might have been in a LinkedIn post. Jimmy Thompson flat chat has interviewed ABC reporter Linton Besser on his podcast. Definitely go and cheque that one out. I haven't had a chance to listen to it yet. I've had my head in other things today, but it's sounding like that chat directly with Linton will be a good one to tune into access to that available through Jimmy Thompson's flat chat website.

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**Amanda Farmer:** Now please tell me if I am wrong, but as far as I am aware, we have not heard anything from state or territory governments. We haven't heard from the office of the New South Wales Strata Commissioner. We haven't heard from Victoria, New South Wales and Victoria being the home states of what ABC reported as the most troubled communities. Let me know if I've missed it. I find it a little bit odd.

Like some of you. Yes, I did think that the reporting had an element of of sensationalism. 30 seconds or so of stock footage of a Lamborghini racing through the streets did, in my view, take away from some of the harder hitting aspects of the investigation, as did referring to the strata industry as a whole partying on a superyacht. However, if a little bit of sizzle is what's necessary to bring attention to an incredibly important cause, then I am all for it.

Some of you may be unsurprised by that. The footage of the strata meetings that were shown, both the in person and the online meetings, was, sadly, all too familiar to me. I have attended meetings like that, as I know some of you have too. Behavior like that is rare. It is the exception, it is not the rule. But it does happen and it should not be happening. Yes, this investigation, this discussion is and should primarily be about conflicted remuneration and insurance arrangements, because that rot appears to run deep.

But Pandora's box has been opened and we all have to live with that. It is not a bad thing that these discussions lead into a broader examination of strata, which is, as we all know, as we say, as we subscribe to, strata is the fourth layer of government here in this country. It has to be up to scratch. I was very pleased to see Victorian owners and Victorian owners, corporations and communities get some attention in this reporting.

There are huge problems down there that nobody seems to be paying any attention to. Many of you tuning in, who tune in regularly, who are members of my online community. You are from Victoria. I know how badly you need help. I am regularly asked Amanda, who is you? Who's you down in Victoria? Who is the strata lawyer who is providing the kind of education that you provide down in Victoria?

I know that you need help. I hope that there will be a proper response from your state government. As you've heard some of these stakeholders say, the insurance brokers were saying it publicly. We know about this. We've all known about this for some time. We know about these practices. I hear that from my colleagues, from other strata lawyers, other strata managers as well. If we've all known about this for some time, what's changed now?

Why is this all coming out now? And I think it was. Michael posted a comment earlier, it was hitting the nail on the head. There is increasing sophistication. Yes, there's increasing sophistication of strata management companies and strata service providers, but strata owners as well. Strata owners are no longer second class citizens. We are spending multiple millions of dollars on our properties. We are lawyers, we are judges, we are doctors, accountants, actuaries.

Strata owners are highly skilled, trained professionals. They can read a financial statement that can perform an ASIC search. As owners are getting more savvy, strata management companies are also getting a bit more clever. They too are increasing their commercial now. They are getting advice from lawyers who understand how strata works. And on this point, I think David Wellman explained these complex. A few of you have said it today, Lynton Bess has said it.

Complex, confusing arrangements David explained it pretty well. In the small part of his interview that went to air, David said that he was made an offer whereby he would provide exclusivity over his insurance portfolio and in return he would receive a large cash injection into his business. And for a business like his, that large cash injection was anywhere between half a million dollars to about \$800,000. I have heard larger numbers have been offered to other businesses.

Part of the sales pitch, the ABC report went on to tell us, is the ability to hide the income, to allow you to bypass your disclosure obligations, to allow you to go to the client and say, I'm the good guy, I'm not taking insurance commissions. But as David said, in actual fact you are. It's hidden. This is not the first time I've heard a strata manager explain those arrangements in that way.

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**Amanda Farmer:** I read on LinkedIn this week Kelly Roberts from TCM strata. She said the words, the real money is being made behind closed doors. That is exactly what has been happening. Someone came up with that idea, and someone, or many someone's, gave the legal advice that said it's all okay. It is not okay. And the lawyers who said that it is should be taking a good, hard look at themselves.

There is a difference between something being legal and it's being ethical or moral. That is the line that true professionals walk every day and hope not to cross. The lawyers have a case to answer here as well. I am certainly hearing from strata managers that the bad behavior is not all one way. There are shock of all shocks. Badly behaved committees and committee members. More than one strata manager and owners too, by the way, have wanted to point that out to me this week and ask, when is that investigation going to happen?

An investigation into committee member conduct or misconduct. I hear you, I get it. I act for owners every day who are struggling with dysfunctional, non-compliant, appallingly behaved committees. In my experience, poor committee behavior or decision making is often, not always, but often a symptom of poor strata management. A strata manager who does not lay down the law because they don't know it, or improperly, they take sides and get too personally involved in community gripes can be a big problem.

But I also acknowledge the many very experienced, professional, skilled, very good, in my opinion, strata managers. You also experience poor committee behavior and struggle with that. And it is no fault of yours. It is because we are all human and we all have our issues. There are going to be difficult personalities and conflict will always be high when we are working together with people in and about their homes.

I do want to address the position of steadfast in all of this. And it's lamenting that four corners did nothing. Pay attention to the work that John Trowbridge was engaged to do since 2021. I think in insisting that we refer back to John Trowbridge's reporting and his recommendations, I think it misses the point. Steadfast misses the point and seems to still have its head in the sand. John Trowbridge was engaged because quite obviously, Steadfast could see the writing on the wall.

It was a protective step. Steadfast was trying to get ahead of the game, but it didn't work. It didn't change anything. It didn't change anything because the biggest recommendation coming out of John Trowbridge's work was disclosure. Disclosure will cure these problems, but disclosure alone never was and will not change anything. My colleague, Doctor Nicole Johnston said to me today, we need to cut the head off the snake, not tread on its tail.

Disclosure, says doctor Nicole, is treading on the tail. Who has the ability to cut the head off the snake? Our lawmakers do. A key problem that has been involved in most of these practices, or a key problem with most of these practices, is that they are not necessarily black and white illegal. That needs to change. And the legislation that was introduced to New South Wales parliament last month, supposedly to address these poor practices, does not change that.

All it does is call for more. Call for more what? Disclosure in relation to SCA directing people to their complaints process. I am aware of a lot owner who lodged a complaint about a member of SEA in about February 2024. That was pre ABC reporting. As of the end of August 2024, that complaint still has not been processed. The complainant got an email from SCA national advising that because of the transition of responsibilities from New South Wales to the National Professional Standards and membership Board Advisory Group, there'd been some delays in the process.

This owner, this complainant, has been told to continue to wait until the end of September for the review of their complaint application. The review of their complaint application, not the determination of their complaint. I say that that is not good enough to be directing owners to make complaints to SCA and then to be keeping them waiting for seven months or more. The Australian College of Strata Lawyers statement about there being no strata cop on the beat resonates with my own experience, and I know resonates with the experience of many of you who are tuning in.

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**Amanda Farmer:** Just last week, a member of our online community posted in our member forum about the experience of making a complaint about a strata manager's contract, their agency agreement that was apparently in place, but had never been approved at a general meeting. There was no general meeting resolution for this strata manager to have a three year contract in place. Instead, the contract was signed by the committee and apparently approved by the committee. Only the contract had been accepted by the strata manager as legal. Now, this owner lodged a complaint with the property services team at NSW Fair Trading. The owner did get a result. The team found that the complaint was made out. The contract was never legally entered into. Probably not hard to make that one out. The owner was told by fair trading property services team that appropriate compliance action has been taken in line with our policy and procedures.

That was in a letter that the owner received. What does that mean? Who knows? Fair trading goes on to tell the owner that our regulatory role does not impact on your next steps and is separate to your desired outcome. As an owner, you may wish to submit a motion to be included in the upcoming general meeting agenda for the owners corporation to consider whether it wishes to terminate the strata manager.

So fair trading left it to that owner to deal with what it had clearly found was an illegal contract, a non-existent contract, possibly in the eyes of the law. And what could that owner do but requisition a motion for her asking, begging for herdowner's corporation to do something about that? Her other option is to go and engage a strata lawyer and spend tens, possibly of thousands of dollars on legal advice.

That is not good enough. So what now? What does all of this mean? I do get asked for my recommendations, Amanda, what can we do? What steps can we take? I am going to get into that and I am going to share the resource that I have promised for you today. I am often asked, Amanda, who do you recommend as a good strata manager if we hear about these cowboys?

I am loath to make recommendation, those kinds of recommendations for good strata management companies. And those of you who have asked will know that generally I won't do it. I have limited direct experience of being the client of a strata management company. I think I've experienced maybe three different management companies in my career as a strata property owner. I don't know all of the internal workings of all strata management businesses, no more than you do.

I am not a strata manager. I don't have some secret insight into strata management companies. But that is why it is so important to ask questions, and that is what I do. And that is what I encourage you to do. Whether it is questions of your current manager, because you're concerned about what you've seen in this week's media and you're not sure where they stand, what they might be involved in, or questions of prospective managers.

You're interviewing to wonder whether or not you should give them the job to differentiate them from each other. While I can't give you recommendations for strata managers, what I can help you with, I believe, is the types of questions that you can be asking and to the extent you are a strata manager, the types of questions that you might want to get on the front foot with your clients and start answering without being asked to.

I think after sitting with this for a week, we can all get a feeling to understand know what it is that your clients might be worried about, what owners might be worried about, what kind of information they might want to know about your company. Entirely up to you, whether you give that information or not. That might help them feel more comfortable or might help them make a decision that they're not the ones for you and you're not the ones for them.

So that is what I have done for you today. I do have a resource for you to take action on a list of 20 questions that I suggest you can ask your strata manager right now. I am going to share this list on the screen. We will talk through every question. We are going to run a little bit later than our usual 05:00 p.m. wrap. I also have a link for you to get your own copy of these 20 questions.

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**Amanda Farmer:** That link is [yourstrataproperty.com.au](http://yourstrataproperty.com.au) questions. It is going into the comments here on Facebook. We will get it over to LinkedIn and to YouTube as well. When you follow that link, I only ask in return for your email address. If that is too much to give, then I am sharing these questions here on the screen. Very shortly I will read each of them out. You will have this recording available on the platform that you are currently watching.

You can listen back, you can play it back and you can pick up the questions.

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](http://yourstrataproperty.com.au).