

Publication Date: 27 November 2024
YSP Podcast Transcript: 431. Highlights from the NSW strata law reform

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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. Big news in New South Wales last week as the Strata Schemes Legislation Amendment Bill 2024 was introduced to parliament. This bill implements 37 recommendations from a 2021 statutory review of the strata legislation, as well as proposing some other reforms that have been raised by stakeholders since that review.

In his second reading speech before Parliament last week, the Minister for Better Regulation and Fair Trading said that this bill is evidence of the New South Wales Government's commitment to reforms that will protect owners corporations, improve the accountability of strata management services, ensure that owners corporations are maintaining their buildings. And overall make strata living easier for residents. The Minister acknowledged that to meet our housing targets we have to make strata living a key part of the discussion and that includes making sure that people want to live in strata. Because it's safe, it's affordable and it's reliable.

Now, during our Friday LIVE over on the Facebook page last week, I had a bit of a closer look at this bill and the reforms that are being proposed. Link to that chat in the show notes for this episode. Since I started talking about this late last week and during our Friday LIVE episode, I have heard from many of you strata owners and strata managers letting me know your initial thoughts on this proposed new legislation which we expect will take effect in 2025.

Owners popping into my inbox saying, "Wow, this is music to my ears. I'm finding it hard to control my excitement about the new powers that Fair Trading will have to enter the building and lots when it is reasonable to assume that an owners corporation is not properly maintaining its common property. I'm doing a happy dance," said this owner. Maybe you'll be feeling the same when I tell you a little bit more about what this proposed legislation holds.

That wasn't the only wow I had in my inbox. Another one came through. "Wow. I hadn't seen the ABC News article, Amanda that you shared." This owner said to me, "I think this is an absolute ripper. There are so many who are living in strata with dire circumstances. This is excellent." The article that that owner was referring to was published online by ABC on the morning of Friday 22nd November. A link to that one for you in the show notes for this episode.

That article particularly had a look at the proposed new powers for Fair Trading and its representatives to enter common property without consent. And to enter lot property with consent or with a search warrant if there is a reasonable belief that an owners corporation is not properly repairing and maintaining its common property.

As you may have read in that article, my views on those new powers are that these are necessary powers. They are extraordinary, they are unusual, but they are necessary. Too many owners have suffered for too long living in wet, mouldy, leaking homes.

And until now, when facing a stubborn or non-compliant recalcitrant head in the sand, owners corporation or often strata committee owners have had no choice. But to proceed to the Tribunal and seek orders to remedy their situation. Those applications usually costing tens of thousands of dollars in legal costs. I say that hasn't been good enough. Others have been saying the same and we have the New South Wales government responding to that with these proposed reforms.

A strata manager writing to me saying, "I totally agree with this measure. What people don't understand is that the principle behind many laws is to protect people from themselves. This will lead to the raising of necessary funds to fix defects and maintain sufficient money in trust proactively rather than reactively," said this strata manager over on the Facebook page.

We've racked up about 150 comments on last Friday's live chat, including this the proposed bag of changes is looking like

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Christmas. Just when I'd nearly lost faith over the debacle of disclosure for strata managers, said one owner, One of the reforms I'm going to share with you in just a minute is the requirement for strata committee members to undertake mandatory training. Lots of you had plenty to say about that on Friday.

Brilliant idea to educate the uneducated, somebody posted on the Facebook page. Somebody else said, "I agree with the training, especially if the strata manager does it with the committee. Maybe they could get double points." "Fantastic news," said somebody else. "Strata is a business and you need to be skilled to run a business." Fair enough. At the end of Friday's chat, I let everybody know about a more in-depth webinar that I'm going to be hosting, looking at all aspects of the proposed new legislation, particularly those that I predict will have a direct impact on you in 2025 when we expect this legislation to be made.

The webinar is happening live on Friday 29th November 2024. That's only a few days away as this episode is going to air. We'll kick off at 4pm Sydney time. That's our usual Friday chat time. But this week we will be hosting that chat on Zoom. So you want to be registered to make sure you can get in to attend. Register over at yourstradaproperty.com.au/webinar. You'll need that Zoom link to make sure you can access the live session on Friday and post your questions.

Engage with me in the chat I won't be in the chat over on Facebook, it will be on Zoom this Friday I'm going to be sharing a little more of what owners and managers have been sharing with me this week. And I'd love to continue to answer your questions about this reform, so do keep those coming. If you've read or listened to what's out there so far and you have some questions, feel free to post them me under this podcast episode over on the website.

Some of the key reforms in the bill, which we are definitely having a closer look at during our webinar on Friday are these some: more obligations for our strata managers? The list just keeps growing for you strata managers. The frequency with which you will need to provide key reports to owners corporations is increasing.

The bill also makes amendments to other legislation to ensure that the Australian Consumer Law applies to strata management contracts. And prohibits unfair contract terms. We'll have a chat about what kind of terms we might have in mind on Friday.

Schemes will be allowed to terminate a strata manager's contract, as well as a building management contract. Where the agent or manager is carrying on their business in a way that is contrary to law. Interesting terminology. Building managers certainly haven't gone unnoticed in these reforms. The bill imposes a duty on building managers to act in the best interests of the owners corporation in carrying out their duties.

For our committee members, this has been a hot topic of discussion the last few days. In his second reading speech, the Minister acknowledged that there are concerns out there that many committee members are falling short of expectations.

The bill introduces some additional duties and obligations on committee members, including the duty to act with honesty and fairness. And in a big change for most committees, probably every committee that I know of, there is going to be mandatory training. Rolled out to support committee members to meet their duties under the Act.

You've already heard some of the feedback, I've been receiving on that. A few questions around that one too. We'll dig into those on Friday. During the 2021 review of the strata legislation and since then Fair Trading and the Building Commissioner's office was apparently finding that too many schemes are failing to properly maintain and repair their common property. It's acknowledged that this is leading to rising insurance costs, and special levies being imposed.

These are costs that could be avoided or reduced if a building had been proactive about these problems. There is recognition that a failure to repair and maintain common property impacts lot owners who may face losses and damages, including loss of rent, temporary accommodation costs, the costs of damaged personal property. Those owners then have to go through the mediation process, go through the Tribunal process to help resolve their dispute.

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The government's being told that this process is not working. Owners corporations are ignoring or delaying compliance with their legal duties. And ultimately delaying compliance with Tribunal orders, which only results in more damage, more costs and more trauma. So it's proposed that Fair Trading will be able to enter into enforceable undertakings with owners corporations, issue compliance notices, take action. Direct action to remedy a breach of an owners corporation's duty to maintain and repair its common property.

It's proposed that Fair Trading will have powers to investigate a building's compliance with this duty, including the power to enter properties, issue search warrants, demand information, records and answers. A hot button issue as you will have seen in the media last week. A few different views on this one and the question does this power go too far? We'll dig into that on Friday's webinar.

The two year time limit within which owners can make their claims for damages is proposed to be extended to 6 years. A few owners getting very excited about that one when I mentioned it during last week's LIVE chat. These are just some of the headline items. That is not the limit of the reform that is proposed. Some of the questions, I've been receiving when will the government be able to enter my property? On whose say so? How do we trigger one of these inspections? What type of training will committee members be required to undertake?

Is it going to be quality training? Who's going to deliver it? How will it be monitored? What about community associations? Are they covered by this reform? And is all of this going to be retrospective, particularly this 2-year time limit? If you're out of time now to make your damages claim against your owners corporation because you're outside the 2-years when the legislation takes effect and that time limit is extended to 6 years, will you be able to make your claim? Great question.

To help answer these questions and make sure you are as prepared as possible for what strata is going to look like in 2025, I encourage you to attend this Friday's FREE webinar 4pm Sydney time, Friday 29th November. I will be online via Zoom sharing the new skills and knowledge that I say committee members are going to need in 2025. I'll explain this increase in a strata manager's responsibilities.

I'll address the question of how your privacy may be impacted if government representatives can enter your property, including the safeguards that might be in place. And I'll share what I think these changes mean for the way a building plans its finances. I'd love for you to join me. You do need to be registered to attend YourStrataproperty.com.au/webinar is the place to go do that before 4pm on Friday 29th November.

If you are listening to this episode after that date, there will be a limited time replay of the webinar available via that same link. But I said limited time and I mean it's if you're accessing that link at a time when the webinar is no longer available, you'll find it inside our members' resource library. If you're a member of our online community, do access the members resource library and you will find the recording of the webinar there for you to watch at your leisure.

If you're not a member, you've missed the live webinar and the limited-time replay, but you want access to this education, come on over and join us. The place to do that at stratamembership.com. We'd love to have you with us on the inside. I'm off to keep prepping for our webinar this Friday. I'm looking forward to having as many of you as possible with me then.

In the meantime, keep your questions coming through. This is not a conversation that will end this year. We will continue to talk about this significant shakeup of New South Wales strata laws for some time. It's going to be a big year, 2025. I look forward to enjoying it with you. That's it from me. Catch you next time.

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@yourstrataproperty.com.