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YSP Podcast Transcript: 441 - The 5 strata law reforms you didn't see coming (NSW)

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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 the podcast for this week. I'm your host, strata lawyer Amanda Farmer, and if you are in New South Wales, there's a whole lot going on in our space at the moment. The Strata Schemes Legislation Amendment Bill 2025 was passed by the New South Wales Parliament on the 18th of February.

This is the bill that implements 37 recommendations from a 2021 report. It also throws in a few other additional reforms that have been identified as being necessary since that 2021 report. You have heard me talk about this reform previously in podcast episode number 431. That was back towards the end of 2024. I shared the big ticket items from this amendment bill and that was shortly followed by a webinar that I hosted, the Strata Shake Up Webinar.

What the proposed new laws really mean for you. Many many of you attended that webinar. I broke down the key reforms that at that time I said were expected to take effect in New South Wales in 2025. That is the track that we are on. The recording of that webinar is still available to our members, members of the Your Strata Property online community. You can access that webinar in your video library.

Link to that one for our members in the show notes for this episode. Just to jog your memory, what were some of the key changes we were talking about towards the end of last year, and that remain part of this reform?

We're introducing the concept of accessibility infrastructure. What is accessibility infrastructure? That's all about installing anything on the common property that would facilitate a person with a disability having access to common property or their lot. And also lowering the voting threshold to approve that kind of installation or alteration to the common property. Just a majority vote is needed to install accessibility infrastructure, not a special resolution.

These new laws will also require strata committee members to undergo training. This is the one that I think has stood out to most of you. I've been asked lots of questions about this training. What is it? When is it? How is it? Who's delivering it? How good is it going to be? We still don't have a lot of those answers.

I'm going to say a little bit more about this upcoming requirement for our committee members to undergo training in just a bit. The law is now going to prescribe a form for the 10-year Capital Works Fund plan and initial maintenance schedule for our new buildings. We will now be prohibiting unfair contract terms in standard form agreements with owners corporations.

I've been talking about that one a lot the last few weeks, pointing out that our strata management contracts, in particular are standard form agreements that will be impacted when these new laws start.

No unfair terms permitted in those agreements and owners corporations will soon need to be issuing their levy notices, together with some additional information that the law is going to tell you needs to be included with your levy notices. The idea is to make it easier for owners to understand what it is they have to pay and where they can go if they are in financial hardship. Those are just some of the big-ticket items you will have heard me speak about previously.

What about timing? Well, most of the provisions in the bill are expected to be rolled out in mid-2025. That's what strata stakeholders are being told. This is a few months to allow time for everyone to get ready for the reforms, to start learning about what they are, how they're going to operate in practice and really time for the government to develop some supporting regulations, to draw up some forms and indeed to decide and let us know what form this committee member training is going to take.

So we're told that there's going to be more consultation, more information shared before these laws actually commence. The bill has passed through both Houses of Parliament, but the law has not yet commenced. We don't yet have a date for that

commencement, but this is the final version of the legislation. When it is made, it will be in the terms that have been passed by both Houses of Parliament.

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I've got a link to that final form bill for you in the show notes for this episode. This final version of the legislation is not exactly the same as what was originally put to the Lower House of Parliament in November 2024. The version we were talking about at the end of last year on the webinar. There have been a few amendments and that is what I particularly want to talk about today, as they may otherwise fly under the radar. And they're important, they are things that you need to be across, whether you're an owner, a strata manager, a committee member, a strata lawyer.

So if you remember your primary school lessons, maybe early high school, you will know that any new piece of legislation in our country needs to track through two Houses of Parliament, the Lower House, then the Upper House, also known as the House of Representatives, and the Senate. Quick government lesson there for you. This legislation went through the lower house in November 2024 and was debated in the upper house in the Senate just a couple of weeks ago in February 2025.

So when it was before the Senate there were a number of amendments pushed by MPs, some of those amendments adopted, others not. I'm going to talk about five amendments in particular that were adopted during the debate in the Senate and sent back to the House of Reps to confirm. And which now form part of this new law and will affect you when it commences. In summary, the five amendments are these:

New South Wales Fair Trading will, when this law commences, have the power to create its own form of strata management agreement. It's also going to have that power when it comes to building management agreements. I'll say more about that in a moment.

Another way the bill was changed, there is now power to make a regulation that requires the issue of reminder notices to committee members who have not completed their mandatory training.

The third change, if an owners corporation has a by-law that requires residents with assistance animals to provide evidence of their assistance animal's status as an assistance animal, that resident needs to provide only one form of evidence to prove that.

Fourth change, owners corporations must consider all requests to enter into payment plans where an owner is behind in their levies.

And fifth and final amendment to the bill that I'm going to talk about today: an owners corporation can only recover its expenses in practise. Those are legal costs that it incurs when it is trying to recover those unpaid levies. They can only recover those expenses if they have an order of the court or the Tribunal and if a payment plan was offered to the owner in arrears.
That's a fascinating one. Let's get into each of these in a bit more detail.

Returning to the first way that this bill has been amended since we were last talking about it. New South Wales Fair Trading may now prescribe the form of strata manager contracts and building manager contracts. This is an amendment that was moved by Alex Greenwich, an independent member for the seat of Sydney.

He often has a lot to say about strata living and I've had a read of the second reading speech in which he said this, “Most strata managers and building managers use industry-created contracts which favour managers, not owners. Contract negotiations can be difficult for owners to navigate. They might not understand the true impacts and effects of provisions and may not get good outcomes negotiating. They would benefit from starting with contracts that are fair and in their best interests.”

The amendments proposed by Alex Greenwich empower Fair Trading to issue what are essentially model contracts for strata managers and building managers with the idea that these would be the starting point for owners to negotiate their contracts and to get a fairer outcome.

I think this is a fantastic amendment. I'm pleased that it got up and I'm pleased that Fair Trading will now be empowered to develop these model contracts. This is something that I said to one of the government working groups talking about ways that we might improve fairness and transparency around strata manager fees and charging. I pointed out that we have standard model consumer-friendly contracts for building works produced by Fair Trading and made available for free.

We have standard model contracts for residential tenancy agreements also available to consumers for free. Why haven't we ever had standard model strata management contracts? I sincerely hope that having been bestowed or about to be bestowed with this power, New South Wales Fair Trading will lead the charge here, producing a contract that may very well be at the other end of the spectrum from these industry-led contracts that you will have heard me talking about over the last couple of weeks in the context of unfair contract terms.

A lot of criticism coming from my direction. I know about certain terms in standard-form strata management contracts. This sounds like a possible solution to that problem or at the very least a place that owners can start from when negotiating their contract terms with their strata manager.

A further amendment to the bill which is going to become law. This one again put by Alex Greenwich. He wanted to make sure that committee members who failed to complete the mandatory training were actually able to be reminded about this failure. And that there was power to make a regulation requiring these reminder notices to be set out.

Again, looking at that second reading speech, Alex Greenwich pointed out that apartments are run by committees who make important decisions that keep buildings operating and maintained. They make decisions about service providers, waste management, cleaning, repairs, and upgrades. They get quotes for services, they arrange tenders for building works, they deal in large sums of owners'[funds and their decisions affect the building's bottom line. Buildings function better when committees understand the laws that govern strata.

And, Alex Greenwich said he supports the establishment of training for committee members and notes that the regulations will need to deal with some time frames within which a member of a committee needs to undertake the training. The regulations should also deal with any fees that might be relevant to this training. His concern was that if committee members struggle to find the time to do training, it is important that they are not automatically kicked off their committees.

This proposed amendment to create a regulation-making power for the issuing of notices to committee members who have not completed their training, making sure they're given reasonable warnings before they cease to serve on the committee would prevent that automatic sacking of a committee member who does not do their training, which you can see in some circumstances would be a little unfair. Sensible amendment it was supported by the government and it has been made.

It is part of this new law and will take effect mid-2025. We're hearing the third item that got thrown into this bill as an amendment at the Senate level. If required under a by-law, an owner only needs to provide one form of evidence about an assistance animal. This amendment moved by Emma Hurst of the Animal Justice Party, currently in the New South Wales legislation, an owners corporation can make a by-law requiring a person who keeps an assistance animal to show, to prove that the animal is an assistance animal by providing certain forms of evidence to the owners corporation.

That might be evidence that the animal holds an accreditation under the Disability Discrimination Act. It might be a statutory declaration verifying that the animal has received the type of training referred to in the Disability Discrimination Act. Or it could be any other evidence that is prescribed by the regulations.

Now, in speaking to the Senate, Emma Hurst said that they were hearing examples of people who are required by their building to provide private medical records about a disability to justify their need for an assistance animal.

She was also hearing about people asked to provide professional training records for animals despite the fact that the Disability Discrimination Act does not require assistance animals to be professionally trained. So there was a real concern that many owners corporations were making uninformed judgments and inappropriate decisions, said Emma, about how animals qualify as an assistance animal.

So the amendment was to make very clear that despite this list of possible forms of evidence, the owner of an animal need only provide one form of evidence and that may be a form of their choosing from that list.

Basically, the Animal Justice Party wanted to make sure that people have the maximum amount of flexibility to choose what evidence they provide to their owners corporation. This is also going to apply to community associations to prove that their animal is indeed an assistance animal. And to make sure that they need only provide one form of evidence.

The fourth amendment that we should be aware of. In this legislation, owners corporations, and community associations must consider all requests to enter into a payment plan where there are unpaid levies.

There were lots of amendments proposed about payment plans. These amendments mainly proposed by the Greens, and only some of these amendments were adopted, including this one. When this new law starts, an owners corporation, community association must not by resolution refuse to enter into payment plans. I read that as meaning you can't pass a general, broad, all-encompassing motion that this community will not at any time consider payment plans.

You must leave yourselves open to that consideration. It is clear, however, in these amendments that even though you may consider a payment plan, you can still refuse to enter into that payment plan in a particular case if it's determined that the request is unreasonable, perhaps there is no financial hardship. Perhaps this is an owner that has always been behind in their levies and is not able to provide a good reason for that. Then even though you must consider the request for a payment plan, you don't have to enter into the payment plan.

And just a reminder that it is already in this bill. We talked about this last year. A request by an owner to enter into a payment plan may be reasonably refused by an owners corporation. The regulations are going to prescribe what constitutes reasonable refusal in relation to payment plans.

And the final amendment to the bill that I want to make sure you are aware of. I looked at this one for a long time because I wasn't quite sure if I was understanding what I was reading. This has been a long time coming. Owners corporations, this also applies to community associations, can only recover from a lot owner the expenses they incur in the debt recovery process if they have a court or Tribunal order and if a payment plan was offered to the owner.

When we're talking about expenses incurred in the debt recovery process, we are almost always talking about legal fees. It has always been the case that an owners corporation may recover interest on unpaid levies and the expenses that it incurs recovering those unpaid levies. What we've seen in practise is that that means if a lawyer sends a letter, there's a letter of demand, there's a statement of claim drawn up, there's some work done by a lawyer and there's a fee for that.

The strata manager is instructed to whack that fee onto the lot owner's levy account automatically, no questions asked, no negotiations entered into, no assessment of whether or not that fee is reasonable. There's been some litigation around this. Our local court has said that is not the way that owners corporation should be going about recovering their expenses.

Finally, our legislation seems to be catching up with that. When we're talking about owners corporation, Section 86 is going to have a new subsection inserted which provides that the owners corporation may only take action to recover the reasonable expenses of the owners corporation incurred in recovering unpaid contributions.

If it has offered the owner the option of entering into a payment plan. And if it has an order of the Tribunal or a court, no recovery of expenses without the offer of a payment plan and an order of the Tribunal or a court. Let's have a hard think about this. What does that mean? That means that If a lawyer sends a few letters about late payments, putting the owner on notice of the owners corporation's intention to commence proceedings if there's a fee for that, it's a few hundred dollars that's been charged to the owners corporation.

If the owner then pays up and those proceedings are never commenced, then it's very unlikely, I think, that those expenses will ever be recovered. The owners corporation is probably not going to commence proceedings just to recover those few hundred dollars. The old practice is incorrect. I've always said practice of simply putting those expenses onto the debtor owner's ledger is not going to fly anymore. Section 86 is going to be quite clear about that.

Where there are already court proceedings or Tribunal proceedings on foot for the recovery of unpaid levies, interest is being claimed, expenses, legal costs are being claimed. If those proceedings are settled, an amount is paid to clear the unpaid levies, then the owners corporation may need to be thinking hard about making sure it has an order to recover legal costs so that it can meet these new requirements that are going to be in Section 86.

And remember as well that overarching requirement that if you're going to recover your expenses, going to recover your legal costs, you need to make sure that you have offered the owner the option of entering into a payment plan. We can really see how in New South Wales these payment plans are front and centre. Not surprising when you think about the attention that the media has given to financial hardship in strata over the last couple of years, pointing out the proportion of bankruptcies that are before the federal court that relate to unpaid strata levies.

This is how the New South Wales government has responded to that. So gone are the days of adding legal expenses straight onto the lot owner's ledger. When you are in debt recovery proceedings, if you are a strata manager who is doing that, and so many of you are, I see these ledgers that should have stopped a long time ago. It absolutely needs to stop now.

Have a chat to the lawyer that is advising your owners corporations in these debt recovery proceedings. Get their take on how they suggest you manage these expenses with the looming commencement of these amendments to our legislation.

So those are five amendments to the 2024 Bill, now known as the 2025 Strata Scheme Legislation Amendment Bill. Five amendments that might otherwise fly under the radar. We haven't talked about those ones previously. They are all important. It's going to take a little bit of time to get across all of these changes and I've only talked about a few today.

This is the most significant reform in New South Wales since our 2015 legislation. There's a lot to get across. I'm going to keep talking about it here on the podcast. We're going to be deep-diving on these inside our online membership community. That's also the place where I'm available to answer your questions. Questions from strata managers, committee members, owners. They're already flying thick and fast there in our Members Q and A forum.

It's a great time to jump into the membership if you're not with us on the inside yet. Find out more and join us over at stratamembership.com. Thanks for tuning in. I look forward to catching up with you next time. Bye for now.

Outro: Thank you for listening to Your Strata Property, the podcast which consistently delivers to property owners reliable and accurate information about their strata property. You can access all the information below this episode via the show notes at **yourstrataproperty.com.au**