

Episode 135: Summary

Episode name: Strata Drama: Kicking Back the Curtain on NSW Disclosure Obligations

Guest(s): Allison Benson

What area(s) of law does this episode consider?

Disclosure obligations in strata management.

Why is this topic relevant?

Strata schemes form a vital part of Australia's property market, with millions of Australians currently calling strata title properties home. However, an aspect of strata management that has come under heavy scrutiny in recent years is the disclosure of commissions and benefits received by managing agents. These financial incentives, which often come from insurance providers or contractors, have raised concerns regarding conflicts of interest and the fiduciary duties owed to owners corporations.

The *Strata Schemes Management Act 2015* (NSW) seeks to address these concerns by mandating disclosure of commissions, gifts, and payments to strata managers. However, there is ongoing debate about whether strata managers should even be allowed to accept such commissions, with some arguing that these financial arrangements create an inherent conflict that is difficult to navigate within the bounds of strata management duties.

For strata lawyers and managing agents alike, understanding the regulatory framework and legal obligations around disclosure is essential. Without clear and open communication, owners corporations may struggle to make informed decisions about the management of their properties.

What legislation is considered in this episode?

[*Strata Schemes Management Act 2015 \(NSW\)*](#) ('*Strata Schemes Management Act*')

[*Property and Stock Agents Act 2002 \(NSW\)*](#) ('*Property and Stock Agents Act*')

[*Property and Stock Agents Regulation 2022 \(NSW\)*](#)

[*Work Health and Safety Act 2011 \(NSW\)*](#)

What cases are considered in this episode?

[*Community Association DP No. 270180 v Arrow Asset Management Pty Ltd & Ors \[2007\] NSWSC 527*](#)

- The case involved a dispute over a Site Management Agreement entered into by a community association controlled by the developer, Australand, and its management company, Arrow. The court determined whether Australand, acting as a fiduciary, failed to properly disclose a \$190,000 payment it received for procuring the agreement, as disclosure was not made to the purchasers or

an independent board. The court found that Australand breached its fiduciary duty by not fully disclosing the payment, and ruled that full disclosure must be made to all purchasers or future members, not just the developer-controlled board. McDougall emphasised the importance of considering the statutory scheme when evaluating the adequacy of disclosure, specifically highlighting the requirements of the relevant section and the need for full disclosure of all relevant information for informed consent.

[SafeWork NSW v Maluko Pty Ltd \[2023\] NSWDC 274](#); [SafeWork NSW v The Owners – Strata Plan No 93899 \[2024\] NSWDC 277](#); [SafeWork NSW v Chris Darby Strata Pty Ltd \[2024\] NSWDC 360](#)

- In this series of cases, an owners corporation, a strata manager, and a business were prosecuted under the *Work Health and Safety Act 2011* (NSW) following a fatal accident involving a damaged gate in a mixed-use strata complex. The issue revolved around whether the owners corporation and strata manager met their work health and safety obligations, as commercial and mixed-use schemes are considered workplaces under the Act. The court found that both parties failed to address the known safety risk, making them liable, while residential owners corporations are generally exempt unless they employ workers. Maluko was fined \$375,000, the Owners Corporation was fined \$225,000, and the strata manager was fined \$150,000, all reduced due to early guilty pleas.

[Hospital Products Ltd v United States Surgical Corporation \[1984\] HCA 64](#)

- Hospital Products Ltd (HPI) became the distributor of United States Surgical Corporation's (USSC) products in Australia but copied and sold them under its own name. The key issue was whether a fiduciary duty existed between the parties, considering the nature of their commercial relationship. The majority found that no fiduciary relationship existed, as the parties dealt at arm's length, on an equal footing, without an obligation for HPI to act solely in USSC's interests.
- An ongoing Four Corners series has provided reports on many issues and breaches relating to strata management across Australia. The latest episode focuses on a woman in Perth whose owners corporation was wrongly charged for gardening services despite not having any gardens.
- Charges reported by an owners corporation at an Annual General Meeting include services such as lawn mowing, power, insurance, strata management, legal fees and repairs. The complexity of the information provided during an

What are the main points?

Annual General Meeting often makes it difficult for individuals to fully understand all the costs listed nor investigate what those costs include.

- Strata managers are required by the *Strata Schemes Management Act* to disclose commissions received to the owners corporation. Despite this, some firms have not been properly disclosing insurance commissions or disclosing in an ambiguous way.
- A strata manager has a statutory fiduciary duty to the owners corporation under the *Property and Stock Agents Act*. This duty requires acting fairly, honestly, and transparently, prioritising the interests of the principal owners corporation over the strata manager's own interests.
- Management agreements also typically include provisions about fiduciary duties.
- Fulsome disclosure is necessary when a strata manager signs long-term contracts.
- Strata managers are required to disclose any commission, service, training, or benefit they have received, as well as any connection to the developer or pecuniary interest prior to their appointment.
- The *Strata Schemes Management Act* introduced a provision that prevents a strata manager from being appointed for 10 years after the registration of the strata scheme if they were connected with the developer.
- Disclosure should be clearly stated in the management agreement if commissions will be taken, along with the percentage, to ensure transparency. Full disclosure is necessary as even a small percentage difference can have a significant impact on insurance premiums, and disclosure is also required for other benefits received to gain approval from the owners corporation.
- The responsibility of disclosing information about payments made or received lies with the principal, not the strata committee or strata manager. Strata committees can request payment information from the strata manager through [a formal process outlined in the Act](#), and failure to respond is considered an offense.
- When explaining disclosure duties to strata managers who are not legally trained, lawyers can use the simplified example of whether it passes the "pub test".
- Joining a strata committee and attending strata meetings are good steps for young lawyers who want to begin understanding strata law.

What are the practical takeaways?

- Lawyers can seek out opportunities to network through organisations like the Australian College of Strata Lawyers.

Show notes

[Benson, A. \(2024\). *Thoughts from a strata lawyer*](#)

[City Futures Research Centre \(2022\), 'Australasian Strata Insights Report', University of New South Wales](#)

[Four Corners \(2024\), 'The Strata Trap', Australian Broadcasting Company](#)

[Australian College of Strata Lawyers](#)