

## Episode 63: Summary

**Episode name:** Nosy Neighbours and Chatty Schnauzers: Best Practice Strata Governance

**Guest(s):** Marcus Carbone and Robert Pietriche

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

Best practice strata governance including an update on pets in strata schemes.

**Why is this topic relevant?**

The close-to-home interests involved in a strata scheme and strata committee can produce some complicated interpersonal dynamics, and strata scheme politics can play a big role in the formation, continuation, and resolution of disputes. As a rapidly expanding and evolving area of law, it's important that lawyers stay on top of developments in the governance of strata schemes.

**What legislation is considered in this episode?**

*Strata Schemes Management Act 2015* (NSW) (**Strata Act**)

*Strata Schemes Management Regulation 2016* (NSW) (**Strata Regs**)

**What cases are considered in this episode?**

*Cooper v The Owners – Strata Plan No 58068* [2020] NSWCA 250

- The Coopers and Angus lived in an apartment building in Darlinghurst with a blanket ban on pets. They bought into the scheme thinking that Angus was allowed to accompany them as a lot of people in the building owned pets. The owners corporation tried to have Angus removed and sought an order from the NCAT to that effect. The Coopers cross-claimed against the owners corporation seeking an order that the bylaw was invalid arguing that the blanket pet ban was harsh, unconscionable, and oppressive. Ms. Cooper was successful on appeal.

*Vickery v The Owners – Strata Plan No 80412* [2020] NSWCA 284

- Mr Vickery claimed that the owners corporation breached its obligation under section 106 to maintain common property, resulting in his apartment leaking with water. Mr Vickery commenced proceedings in NCAT, claiming \$97,000 damages for lost rent as a result of the leak. In issue was whether section 232, which provided that NCAT may “*make an order to settle a complaint or dispute*” included the power to order payment of damages.

**What are the main points?**

- The owners corporation of a strata scheme is the body that represents all of the lot owners and is in charge with ensuring the scheme is compliant with the Strata Act. Under the Strata Act, the owners corporation has a duty to maintain common property.
- The strata committee, on the other hand, is elected by the owners corporation and are in charge of running the scheme. The numbers and composition of the strata committee is determined at the annual general meeting of the owners

corporation.

- The Strata Act provides for model bylaws, the implementation of which is a part of best practice governance as they are written in compliance with the requirements of the Act.
- The owners corporation's power to create bylaws for the management, administration, control, use or enjoyment of the lots or the common property of a strata scheme under section 136 is not unconstrained. Bylaws can only restrict an owner's use of their lot if there is a rational connection between their use and the enjoyment and use of common property or another lot owner's lot.
- To effectively run a strata scheme, lot owners need solid advice, good education and good communication. Often disputes arising from strata schemes are due to poor communication, such as the strata committee operating without keeping lot owners informed.
- Strata reports can inform parties of the history of the lot, including special bylaws, and any future proposed work or special levies.
- For strata-focused lawyers, the Australian College of Strata Lawyers shares new case law and keeps its members up to date on any changes to the law and any interesting issues in the space.

### What are the practical takeaways?

### How to:

#### How to resolve a strata dispute:

1. *Speak to the other party.* The first option should be to see if any issue can be resolved with the party to the dispute. As lawyers, understanding the complex network of relationships in a strata scheme is beneficial.
2. *Speak to the owners corporation.* If speaking to the other party did not work, contact the owners corporation. If the problem is with the owners corporation, attempt to get a motion added to the next meeting.
3. *Attempt mediation.* The next step in resolving a dispute is to attempt mediation. If a dispute is eligible NSW Fair Trading is a good place to start.
4. *Commence NSW Civil and Administrative Tribunal proceedings.* NCAT is a last resort, but it may be necessary to resolve a dispute. If an application is approved, a dispute will be heard and orders can be made.

### Show notes

[Strata Schemes Management Bill 2015 \(NSW\) second reading speech](#)

[NSW Land Registry Services list of approved information brokers](#)