



Achieving smoke-free apartment living

Information Sheet 5

Frequently Asked Questions

Should I speak directly with a neighbour about a problem with smoke drift?

Speaking politely with a smoking neighbour may resolve the problem. However, this should only be done if you feel comfortable about your safety in doing

so. If you decide to speak directly with your neighbour, it is suggested that prior to doing so you familiarise yourself with content of this resource.

Isn't a strata by-law prohibiting smoking throughout a multi-unit housing property a denial of a person's legal right to smoke in their own home?

No-one has a legal or civil right to do something if it infringes upon another person's right to health and safety. The act of smoking when it results in the involuntary exposure of others to the cigarette smoke will put at risk the health of those others.

The NSW *Residential Tenancies Act 2010* ensures a tenant the right to reasonable peace, comfort or privacy in using the residential premises. The NSW *Strata Schemes Management Act 1996* also requires owners and occupiers using a lot to not create a

nuisance. For example, you can't play music loudly in your apartment if it causes a nuisance to others.

Similarly, if your cigarette smoke drifts from your apartment to other parts of your strata building it can become a nuisance to others and as a result, be subject to legal redress. Two NSW legal cases were won by people affected by cigarette smoke-related nuisance in apartment buildings.^{1,2} Of course, cigarette smoke is more than a nuisance because it is harmful to health.

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Is there any proof that drifting cigarette smoke within apartment blocks is harmful at the low doses experienced by those in the apartments where no-one is actively smoking?

There is no known safe level of exposure to cigarette smoke. The US Surgeon General has stated that second-hand smoke can cause significant and rapid harm, even at low levels of exposure, and especially

when exposure is repeated and ongoing.³ The potential harm is greater for vulnerable people such as children, pregnant women, the elderly and people with heart/respiratory conditions.

Can't the problem of cigarette smoke drift in apartment blocks be resolved by shutting doors and windows or through the use of ventilation?

Smoke can drift into and throughout a building via open doors and windows, door and window jambs, wall-inset air vents, mechanical ventilation and air conditioning systems, elevator shafts, hallways, stairwells, cracks in walls, balconies, patios, plumbing systems and electrical systems.

No ventilation system can fully eliminate the problem of tobacco smoke drift. A Position Document published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers concluded that:

... the only means of effectively eliminating health risk associated with indoor exposure (to second-hand smoke) is to ban smoking activity.⁴

The science on this is very clear; tobacco smoke cannot be safely contained within one unit of a building.⁵⁻⁸



Air-conditioning systems and door jambs are among the means by which smoke can drift throughout a building



Don't smoke-free apartment blocks infringe civil liberties?

The longstanding policy of the NSW Council for Civil Liberties states:

Smoking should only be allowed where there is no possibility of passive smoking causing harm or discomfort to others. The onus should be on the smoker to prove no discomfort or irritation to non-smokers.⁹

As stated in Information Sheet 1 ('Why choose smoke-free apartments') in this kit, recent research comprising air quality testing shows that second-hand smoke can spread throughout multi-unit residential apartment complexes, infiltrating apartments where smoking does not occur, thus affecting non-smoking occupants.⁵⁻⁸

How do I go about having a smoke-free environment policy introduced to my apartment block?

Most smoke-free policies in apartment blocks are introduced through the establishment of a strata by-law that has the effect of prohibiting smoking throughout the entirety of the development (see Information Sheet 4 for examples of by-laws). Whether you are a property owner or a tenant within a multi-unit

development, you will need to gain the support of the owners' corporation for this purpose.

See Information Sheets 2 and 3 in this resource ('What you can do ...' and 'Case studies') for more information on this.



How can a smoke-free policy be enforced?

A large majority of the community do not smoke and an overwhelming majority of people choose to live in a smoke-free environment.¹⁰ Furthermore, most smokers want to quit,¹¹ and may appreciate the extra incentive that such a by-law will provide. Therefore, in many instances enforcement will not be required.

Nevertheless, if enforcement is required, Section 45 of the NSW *Strata Schemes Management Act 1996* provides the authority. This Section states:

An owners' corporation may serve a notice, in a form approved by the Director-General, on the owner or

occupier of a lot requiring the owner or occupier to comply with a specified by-law if the owners' corporation is satisfied that the owner or occupier has contravened that by-law.

It is important to note that Section 45 also states:

A notice cannot be issued under this section unless a resolution approving the issue of the notice, or the issue of notices for the type of contravention concerned, has first been passed by the owners' corporation or the executive committee of the owners' corporation.

What impact will the by-law have on my property's re-sale or rental income value?

Given the overwhelming community preferences for smoke-free living, it is reasonable to assert that the value of the property will increase as a result of a "smoke-free by-law".

As smoking rates continue to fall such a by-law would likely become a stronger selling point.¹²

Can 'air-sealing' in multi-unit housing prevent air-flow and smoke drift between apartments?

While it is possible to reduce air flows that facilitate smoke drift, for most this will not be a practical way to solve the problem. As a report of a study in the

United States stated:

... it is extremely difficult to eliminate these flows unless the buildings are vacated and extensively rebuilt.¹³

Where can residents smoke if they want to?

Smokers will need to smoke in a location where the smoke is unlikely to drift into indoor areas of multi-unit housing. It may be feasible to establish a designated outdoor smoking area. Again, this should be in a location

where others are unlikely to be affected by the smoke. At some apartment complexes it may be possible to establish a designated outdoor smoking area on the roof of the building/s.

Where can smokers find help to quit?

Many smokers find it very difficult to quit. This is mainly because nicotine is an addictive drug.¹⁴ Nevertheless, there are many ex-smokers in the community who have overcome nicotine addiction. And most of those who have quit successfully did so without professional assistance or the use of pharmaceutical aids, such as nicotine patches.¹⁵

However, for those who do have difficulty quitting, the NSW Quitline telephone information service can help. The service comprises a free, confidential and individually-tailored service to assist in the quitting process. It can be accessed from anywhere in Australia for the cost of a local call from a landline, with higher costs for mobile phones.

The Quitline number is: 13 7848 (13 QUIT)

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References

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