



## **NSW Government's Retirement Villages Regulation 2017 Submission from Cancer Council NSW 20 July 2017**

Cancer Council NSW is the leading cancer charity in NSW. Our vision is *Together we will beat cancer*. A priority in achieving this vision is preventing cancer by enabling people to lead healthy, cancer-smart lifestyles.

Secondhand tobacco smoke is a cause of cancer and any level of exposure is unsafe. Allowing more people to live smoke-free by reducing the community's exposure to secondhand smoke is a priority for Cancer Council NSW. Our interest in retirement village reform stems from our concern that residents of retirement villages are not protected from forced exposure to secondhand smoke, many of whom are concerned about exposure within their home.

Cancer Council NSW have reviewed the draft Retirement Villages Regulation 2017 and would like to comment on Part 3, 18 Village Rules.

### **Overview**

Laws restricting smoking in indoor and outdoor public areas have been widely adopted and accepted due to the known, serious health risks of secondhand smoke exposure.[1, 2] The Smoke-free Environment Act 2000 does not create or preserve the right of a person to smoke in a public place, rather it protects people from exposure to secondhand smoke.[2] Most NSW residents (93%) do not permit smoking within their homes,[3] yet residents of multi-unit housing, including retirement villages, remain exposed to secondhand smoke, even in common areas.[2]

Residents of multi-unit housing are particularly susceptible because smoke can easily move between smoking and non-smoking areas of a building. Cancer Council's NSW Community Survey on Cancer Prevention (2016) found one in five people reported secondhand exposure to smoke inside their homes with 62% experiencing it weekly. People living in multi-unit housing were twice as likely to be exposed as those living in houses (34% vs 17%).[4] Cancer Council NSW is frequently contacted by owners and residents seeking advice on what can be done to stop secondhand smoke from entering their home.

Internationally, the US leads the way in implementing complete bans on smoking in multi-unit housing. In November 2015 the US Department of Housing and Urban Development announced a rule making public housing smoke-free.[5] The Cancer Council NSW position presented in this submission supports the [National Cancer Council Position Statement on Addressing smoke infiltration in multiunit housing](#).

Some strata schemes in NSW are already adopting smoke-free by-laws including by-laws that ban smoking completely.

## Cancer Council NSW recommendations

Cancer Council NSW commends the Government for providing an option for creating laws around smoking. We acknowledge that if a retirement village is subject to a strata scheme it will be subject to the by-laws of the scheme and as such have an option to ban smoking on common areas and smoke-drift from individual lots (apartments) or provide for a designated smoking area on the premises. **See Appendix 1.** However, the current by-laws for strata schemes do not provide the option for a 100% smoke-free ban and Cancer Council NSW advocates strongly for this to be included in the Retirement Villages Regulation for the benefit of the entire community. All options for reducing exposure to secondhand smoke should be outlined in the regulations so those considering the issue of smoking understand the range of options available to them.

We note that currently the options do not make it clear that strata committees and retirement villages can – under the legislation – create completely smoke-free strata schemes. This leaves the impression that a smoke-free scheme is not an option – and limits the choices for those considering how to deal with the issue of smoking in their scheme. Providing limited options is out of step with community sentiment as several strata schemes in NSW have already implemented smoke-free by-laws and 80% of residents prefer to live in smoke-free environments.

Cancer Council NSW strongly urges the inclusion of all smoke-free by-laws available under strata schemes in to the Retirement Villages regulation and includes a possible by-law that specifies a complete ban on smoking on common property and within all lots.

### ***Suggested wording for 100% smoke-free village law***

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#### **100 % smoke-free village law suggested wording**

(1) An owner or occupier of a lot, and any invitee of the owner or occupier, must not smoke tobacco or any other substance on the lot or on common property.

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## Rationale

### **Cancer Council NSW recommends the inclusion of a complete ban for the following reasons.**

1. A complete ban is the only way to ensure that residents are not exposed to secondhand smoke.

The International Agency for Research on Cancer has classified secondhand smoke as a Group 1 carcinogen and has indicated there is no evidence of a safe level of exposure.[1, 6, 7] Smoke originating in one unit can penetrate nearby lots and common property.[4] Implementing 100% smoke-free polices is the most effective way to protect non-smoking residents from secondhand smoke.[4, 8] In a 2012 survey of residents in the US, partial bans – where smoking was permitted in

private lots only – were associated with greater exposure to secondhand smoke than when smoking was permitted in common areas.[9]

Ventilation measures are ineffective for limiting exposure to secondhand smoke[10] , however many people incorrectly believed that shutting doors and windows (47%) and installing better ventilation (28%) could prevent secondhand smoke penetration in the NSW Community survey on Cancer Prevention (2016).

Children and adults can also be exposed to secondhand smoke within their own lots. For example, it has been estimated that 6.1% of lung cancer cases in men and 6.7% of lung cancer cases in women were attributable to cohabitation with a smoking partner.[11] Children exposed to secondhand smoke are at an increased risk of sudden infant death syndrome, acute respiratory infections, ear problems and more severe asthma.[12-14]

2. Community support exists for banning smoking completely.

Of the 1,603 people surveyed in the NSW Community Survey on Cancer Prevention (2016) most (80%) preferred to live in apartments where smoking is restricted. This included the majority of smokers (59%). The most common preference was living in a building where smoking was not allowed anywhere on the premises (42%).

3. Confusion is common with residents erroneously thinking that smoking was prohibited in shared outdoor areas, private balconies and courtyards.

The 2016 NSW Community Survey on Cancer Prevention revealed that only half of respondents knew that rules could be adopted to ban smoking in their apartment complex. Half of all residents believed that smoking was already prohibited on private balconies and courtyards. One in five thought that shared outdoor areas and private living spaces were smoke-free zones.

Providing the option of a complete ban to retirement villages allows them to make an informed choice when they decide to implement a model by-law to address smoke penetration and helps educate the community about the options available to protect them from secondhand exposure in their apartments.

4. A portion of NSW strata schemes have already adopted complete bans on smoking in multi-unit housing

A small portion (5%) of strata schemes have already implemented smoke-free by-laws with 1% opting for 100% smoke-free by-laws. This is estimated to be just under 200 strata schemes across NSW, with no known challenges to these by-laws being introduced since 2011. People are increasingly making their homes smoke-free in Australia.[3, 15]

### **The exclusion of a complete ban model by-law will have the following negative outcomes for residents:**

1. Residents will not be aware that a by-law restricting smoking on common property and within all lots is possible and may therefore choose an option that does not meet their needs, simply because that option was not made available to them.
2. Residents seeking the implementation of a complete ban will be forced to seek legal advice, increasing the cost and inconvenience of implementing such a by-law.
3. Residents will need to raise the contentious issue of smoking with their neighbours and argue individually for a complete ban, leading to disputes between residents.

Qualitative interviews conducted by Cancer Council NSW with owners (n=16) and tenants (n=4) of strata schemes, as well as industry professionals (n=3) identified the lack of legislative guidance, costs of drafting by-laws and having to raise the issue with neighbours as barriers to adopting smoke-free by-laws.

### **Conclusion**

Reforms are designed to make life simpler and easier for people to implement village rules. Cancer Council NSW advocates strongly for an inclusion of a list of by-laws on smoking, including a complete ban model by-law to support residents in their efforts for clean, smoke-free air in retirement villages that are not currently covered under strata schemes.

## Appendix A

**Table 1 Strata Schemes Management Regulation 2016 Schedule 3**

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### **9 Smoke penetration**

**Note.** Select option A or B. If no option is selected, option A will apply.

#### Option A

- (1) An owner or occupier, and any invitee of the owner or occupier, must not smoke tobacco or any other substance on the common property.
- (2) An owner or occupier of a lot must ensure that smoke caused by the smoking of tobacco or any other substance by the owner or occupier, or any invitee of the owner or occupier, on the lot does not penetrate to the common property or any other lot.

#### Option B

- (1) An owner or occupier of a lot, and any invitee of the owner or occupier, must not smoke tobacco or any other substance on the common property, except:
    - (a) in an area designated as a smoking area by the owners corporation, or
    - (b) with the written approval of the owners corporation.
  - (2) A person who is permitted under this by-law to smoke tobacco or any other substance on common property must ensure that the smoke does not penetrate to any other lot.
  - (3) An owner or occupier of a lot must ensure that smoke caused by the smoking of tobacco or any other substance by the owner or occupier, or any invitee of the owner or occupier, on the lot does not penetrate to the common property or any other lot.
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