

Smoke-free Apartments

A Guide to Smoke-free Living

Second-hand smoke (SHS) is a known cause of cancer and any level of exposure is unsafe. Allowing more people to live smoke-free by reducing their exposure to second-hand smoke is a priority for Cancer Council NSW.

Residents of apartment buildings are more at risk of second-hand smoke exposure because smoke can easily move between residences.

This toolkit is designed to help residents and owners corporations to make their apartment complex smoke-free.



What are the benefits of smoke-free living?

Making your apartment complex smoke-free can protect your health and prevent adverse health conditions such as asthma, coronary heart disease, and lung cancer. There are also financial and legal benefits of going smoke-free.

 Financial benefits	 Legal benefits
<ul style="list-style-type: none"> • Reduced cleaning costs • Higher resale value • Reduced fire risk • Reduced cigarette related damage, including burn marks on carpet, furniture, and walls 	<ul style="list-style-type: none"> • Protects landlords from legal claims from tenants exposed to second-hand smoke • Reduces risk of fines to landlords for not providing a healthy living environment for tenants

How can I address second-hand smoke in my apartment?



1.

Check your by-laws

By-laws are rules that all residents in strata properties must follow. There are model by-laws provided in the legislation that strata communities can choose to adopt or they can create their own. You can obtain a copy of the by-laws from your landlord or agent.

If your strata scheme has a smoke-free by-law and a resident is not complying, they can be issued with a 'notice to comply' letter from the strata manager or owners corporation.

If there is no by-law, you may need to introduce or strengthen an existing one (see step 4).

2.

Speak to the person smoking directly

Contact the person smoking directly, either in person or by writing a letter. Explain how second-hand smoke is affecting your health and wellbeing and discuss possible solutions.

This may be effective, and no further action is required.

3.

Report the issue to your real estate agent or strata manager

Contact your real estate agent (for tenants) or strata manager (for owner-occupiers) to report second-hand smoke in your apartment and its impact on you.

If a smoke-free by-law is in place, the strata manager may issue a notice to comply, or the real estate agent may issue a warning. Your owners corporation may also have its own internal dispute handling processes.

Keep a record of your communications and try to get everything in writing. Many disputes may be resolved quickly if discussed openly.

4.

Introduce a smoke-free by-law

A smoke-free by-law is the most effective way to address second-hand smoke. By-laws apply to all residents in an apartment complex and help manage the shared living environment. An owners corporation or strata scheme can create smoke-free by-laws or make changes to existing ones.

If you're an owner, you can raise a smoke-free by-law through a special resolution at an owners corporation meeting. The by-law is passed if 75% of owners agree.

If you are a tenant, your landlord can advocate and vote for a smoke-free by-law on your behalf or, if given proxy by the landlord, you may vote. Alternatively, if your strata scheme has a [tenant representative](#), they can act on your behalf.

Check out our useful advocacy skills on Page 6 to help you prepare for the meeting.

For a 100% smoke-free building, Cancer Council NSW recommends the following wording

“ An owner or resident of a lot, and any invitee of the owner or resident, must not smoke tobacco (in any form) or any other substance on the lot or on common property.”

If you can't achieve a 100% smoke-free by-law, you can consider two model by-laws concerning smoke-drift provided by the NSW Government in the [Strata Schemes Management Regulations 2016 \(NSW\) sch 3 reg 9](#).

These model by-laws were introduced in 2016 to regulate smoke-drift and recognise that smoking may cause a nuisance or hazard to another person. Note that these by-laws only apply to the strata schemes that adopt them.

NSW Government model by-laws

Option A	Option B
(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.	(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) 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.	(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.

5.

Raise the issue with Fair Trading

If you can't bring in a by-law, have issues with the strata manager/owners corporation, or continue to experience second-hand smoke, contact Fair Trading.

[Fair Trading](#) offers a [free mediation service](#), which may assist in resolving the matter. A neutral mediator will help you and the strata manager/owners identify the issues in the dispute and discuss options and strategies for addressing them.

Before attending a mediation, you should prepare all the relevant documents and seek any legal or other advice.

When an agreement is reached, the mediator can assist in drafting a written agreement which can be made enforceable if both parties consent. If there's no agreement, you can seek to address the issue through the legal system.

6.

Address smoke drift through the legal system

Tenants and owners can apply to the [NSW Civil and Administrative Tribunal](#) (NCAT) to order a resident to stop any nuisance behaviour, including smoking.

Nuisance smoking in apartment complexes is covered under two NSW laws:

- [Strata Schemes Management Act 2015 \(NSW\)](#) - residents cannot cause a nuisance or hazard that can interfere with another person enjoying their apartment or common property. If cigarette smoke penetrates your apartment from other parts of your strata building it can become a nuisance and, as a result, potentially be subject to legal redress.
- [Residential Tenancies Act 2010 \(NSW\)](#) - your landlord or landlord's agent must ensure that neighbouring tenants do not interfere with your reasonable peace, comfort or privacy.

The [NSW Civil and Administrative Tribunal](#) can hear and settle disputes relating to residential tenancies. If your neighbouring tenants have a different landlord to you, you will need to raise the complaint with their landlord. All tenants have terms in their lease agreements whereby they must not cause a nuisance or interfere with a neighbour's peace, comfort or privacy.

Going to NCAT should be a last resort. Speaking to your neighbour directly or participating in mediation is the quickest and cheapest resolution and minimises any hard feelings between you and your neighbours.



Check out our case studies showcasing tribunal cases where nuisance smoking was controlled.



Apartment complex passes smoke-free by law

Scan to find out more



Landlord ordered to compensate tenant because of smoking neighbour

Scan to find out more

- **Note:** Cancer Council NSW's Tobacco Control Team does not provide legal advice. Please seek independent legal advice if pursuing the above options.

Got a smoke-free by-law?



What's next?

Communicate the by-law to residents and visitors

- Inform residents of any decision to introduce a smoke-free by-law and indicate where it will apply. You can do this through letters, posters, notices in common areas etc.
- Include complying with the smoke-free by-law as a condition of lease in any new or renewed rental leases
- Include information about the smoke-free by-law in any 'for rent' or 'for sale' advertising
- Display a poster indicating that your building is now smoke-free. Create your own or check out our [example!](#)
- Place 'no smoking' or smoke-free area' signs (available from the [NSW Ministry of Health](#)) in high-foot traffic locations
- Be ready to explain the reasons for the smoke-free by-law to residents, potential residents and visitors. Consider referring them to this guide.

Enforce the by-law

Once a by-law is in place and communicated to all residents in the building, if there is a breach (i.e. a resident continues to smoke in smoke-free areas) a '[notice to comply](#)' can be issued by the owners corporation. If the smoking continues, the owners corporation can apply to the [NSW Civil and Administrative Tribunal](#) and the owner or resident who is smoking may be ordered to pay a penalty of up to \$1,100.

Enforcement option	Process	Remedies
Notice to comply	<ol style="list-style-type: none">1. A resolution to issue the notice has to be passed by the owners corporation at a general meeting or by the strata committee of the owners corporation.2. The notice must contain a copy of the specified by-law.3. The owners corporation must be satisfied that the owner/occupier has breached the by-law. <p>* Note if this function has been delegated to a strata managing agent, this process will not apply.</p>	<ol style="list-style-type: none">1. It is a formal warning to the individual.2. A notice to comply must be issued before proceedings to the NSW Civil and Administrative Tribunal can be made.3. If the individual breaches the same by-law again within 12 months of the notice, so long as the owners corporation has proof of the breach, then an application can be made with the NSW Civil and Administrative Tribunal for penalty orders.
Application to NSW Civil and Administrative Tribunal	<p>(A notice to comply (stated above) must have been already issued.)</p> <p>The Tribunal will review the application and may refer the matter to mediation or issue a penalty to the individual.</p>	<p>Fines of up to \$1,100 or up to \$2,200 (in 2022) if the individual has already been fined by the Tribunal for that same by-law breach within the last year.</p>

Useful skills for taking action

Create a log

Use a log to document when smoke enters your home, how it enters and how it affects your health and wellbeing. Include information on everything you do to address the problem like who you've spoken to and how you try to prevent smoke from entering your apartment.

Document your story

Use the information from your log to document your personal story on how second-hand smoke affects you. This is usually a few short paragraphs to explain the problem, the effects on you, your family and potentially other residents, and what you think the solution is.

Seek support

Ask your neighbours if they also experience second-hand smoke. You can even use our [poster](#) to help gain votes for a smoke-free by-law. The more residents that support your case, the more convincing your argument will be.

Select a by-law

Have your smoke-free by-law wording ready to go. You can choose the 100% smoke-free by-law wording recommended by Cancer Council NSW or choose from one of the example by-laws provided by the NSW Government in the [Strata Schemes Management Regulation 2016 \(NSW\) sch 3 reg 9](#).

Present your case

At the owners corporation meeting, you will need to make a convincing case to get a smoke-free by-law in place. Present your evidence, explain your situation, and mention the support you have from other residents. Clearly explain how the smoke-free by-law will solve the issue and contribute to clean, healthy air for all residents in the apartment complex. You can also explain that smoke-free by-laws are not intended to isolate people who smoke or prevent people who smoke from living in the building.

Resources

- Visit our [website](#) to download our smoke-free apartments resources

