



Second-hand Smoke in Retirement Villages

Frequently Asked Questions

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1. What are the benefits of going smoke-free?

There are numerous health, financial and legal benefits of going smoke-free, for both managers and residents of retirement villages.

Health benefits may include:

- Improved protection against adverse health conditions such as asthma, coronary heart disease, and lung and other cancers
- Improved wellbeing and quality of life for residents
- Reduced exposure to harmful toxins ('third-hand' smoke) that are released from surfaces (such as walls, curtains or carpets) that have been previously exposed to tobacco smoke

Financial benefits may include:

- Reduced cleaning costs
- Higher re-sale value
- Reduced fire risk
- Reduced cigarette related damage, such as burn marks on carpet, furniture, and walls

Legal benefits may include:

- Protecting village management from legal claims of residents exposed to second-hand smoke from other residents.

2. What is the most effective way to address smoke-drift?

The most effective way to address smoke-drift is for the retirement village to adopt a village rule to prohibit smoking on village property. If this is not possible, another option is to restrict smoking to areas where second-hand smoke will not impact others.

A village rule addressing smoking can be adopted via special resolution at a residents meeting. There are three ways a new rule can be proposed:

1. The Village Operator can choose to propose the adoption of a new rule;

2. The Village Operator must propose the adoption of new rule when requested to do so by the Residents Committee via a written letter, or
3. The Village Operator must propose the adoption of a new rule when requested to do so by at least five residents or 10% of residents (whichever is greater) via a written letter.

The Village Operator must hold a meeting of residents within 28 days of receiving the request.

Residents vote by special resolution, which means at least 75% of residents who participate in the ballot must vote in favour of adopting the smoke-free village rule.

The Village Operator must notify all residents of the outcome within seven days.

3. How can a smoke-free village rule be worded?

Cancer Council NSW recommends the following wording for a 100% smoke-free village rule:

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

A complete ban means no-one can smoke on the property. This is the most effective way to ensure that residents are not exposed to second-hand smoke.

If your village is unable to implement a 100% smoke-free village rule, the following wording can be used for a rule that limits smoking to a designated area in the Village:

“An owner or resident of a lot, or any invitee of the owner or resident, must not smoke tobacco or any other substance on the lot or common property. An owner, resident or visitor may only smoke in the designated smoking area to ensure smoke-drift does not impact others.”

Cancer Council recommends creating a designated smoking area that meets the following guidelines:

- Located outdoors away from residences to ensure no smoke will drift into nearby lots

- Located away from common areas
- Out of view of social areas to help those trying to quit smoking
- Ensure the designated smoking area is safe and functional but not a place to socialise

4. What laws are relevant to smoke drift in NSW retirement villages?

The main law that protects the rights of residents affected by second hand smoke-drift within their Retirement Village residence is [the NSW Retirement Villages Act 1999](#).

Under this law, smoke-drift is covered based on the **tort of nuisance**, in Section 83(2), where residents cannot act in such a way that interferes with another residents peace, comfort, privacy or enjoyment of their property.

The **tort of nuisance** states that:

“[A] resident:

- a) Must not interfere, or cause or permit any interference, with the reasonable peace, comfort or privacy of another resident, and
- b) Must not act in a manner that adversely affects the occupational health and safety of persons working in the village”

The [NSW Civil and Administrative Tribunal](#) has jurisdiction to hear such disputes.

5. How can smoke-drift be addressed through the NSW legal system?

The first step in addressing smoke-drift through the legal system is to lodge a complaint with [NSW Fair Trading](#). An officer at NSW Fair Trading will then review your complaint and either recommend mediation, provide dispute resolution assistance, or refer you to the [NSW Civil and Administrative Tribunal](#).

If mediation is recommended, this service is provided by [NSW Fair Trading](#). A neutral mediator will help identify the issues in the dispute and discuss options and strategies for addressing them. Attending mediation is often required before the dispute can be heard by the NSW Civil and Administrative Tribunal.

For more information on residents rights and obligations, please visit [NSW Fair Trading](#).

6. We have introduced a smoke-free village rule, what do we do next?

Once your village has agreed to implement a smoke-free village rule, it is important to communicate the new rule to all residents and visitors. Strategies include:

- Putting a notice in the Village newsletter, and sending a letter or email to residents
- Announcing the new rule at a regular residents meeting
- Placing 'no smoking' or 'smoke-free area' signs (available from the [NSW Ministry of Health](#)) in key locations
- Displaying posters advising that the building is now smoke-free. Create your own or check out our [example](#)!
- Advertising the new rule on the village website or social pages
- Communicating the new rule to future residents or those interested in residing in the village
- Promoting the benefits of the smoke-free village rule to staff, residents and visitors

It is also important for village management to be aware of the support services available to help residents quit smoking such as the NSW Quitline (13 78 48) and [ICanQuit website](#).

If you have any questions or would like assistance in developing or implementing a smoke-free village rule, please contact the Tobacco Control Unit at Cancer Council NSW at tacklingtobacco@nswcc.org.au.