



Guide for Smoke Free Strata Housing in Western Australia

Why take action?

Australian Council on Smoking and Health
334 Rokeby Road Subiaco WA 6008
acosh@acosh.org
(08) 6365 5436
www.acosh.org

ACOSH would like to
acknowledge the support of:



2. Why take action?

What are the advantages of smoke free strata housing?

There are compelling reasons to implement smoke-free housing from a health perspective. It also has financial benefits, reduces the risk of fire, avoids potential legal liability for health problems resulting from smoke drift, and is supported by the community, including many smokers.

Health benefits

The scientific evidence leaves no doubt, smoke-free building policies are the most effective way to protect residents from the devastating effects of secondhand tobacco smoke exposure.¹⁶

Smoke-free housing results in a safer, healthier living environment for everyone. Additionally, the adoption of smoke-free policies at home appears to promote anti-smoking attitudes among young people, and reduces the progression to smoking experimentation among young people who live with non-smokers.¹⁷ These policies also appear to reduce consumption of tobacco products^{18,19} as well as increase the success of quitting among adult smokers and reduce relapse.²⁰

Financial benefits

There are numerous financial benefits of smoke-free homes for both tenants and owners. These include lower cleaning costs, better re-sale value and a reduced risk of fire.²¹

Smoke-free apartments have been shown to have lower cleaning costs for owners of units who are selling or leasing their properties as tobacco smoking leaves smoke residue on walls and curtains. Smoke can cling to surfaces long after an active smoker has left and this lingering smoke can continue to cause health hazards by releasing chemicals in to the air. This is known as third-hand smoke.

Smoke-free homes carry a reduced risk of fire and other cigarette-related damage such as burn marks on carpets, furniture and counters thereby reducing repair or replacement costs. Fires attributed to smoking still contribute substantially to the social costs of tobacco smoking.

Legal benefits

Providing smoke-free housing means that landlords may be protected from legal claims by tenants who are exposed to secondhand smoke. In a case heard by the Civil and Administrative Tribunal in New South Wales,²² a landlord was ordered to pay compensation because he had failed to prevent the tenant from experiencing severe smoke-penetration from a neighbouring apartment. The smoke had caused the tenant and her young daughter to feel unwell. The tribunal found that the landlord had breached the tenancy agreement by failing to provide premises fit for habitation. The landlord could have asked the owners' corporation to introduce a by-law to ban smoking, apply for an order that the smoker stop smoking or undertake repairs to prevent smoke from passing between the neighbouring units.²³

Though informative of the types of cases that can occur and being potentially of persuasive authority, it is noted that the Civil and Administrative Tribunal in New South Wales based its decision under legislation different to that which applies in Western Australia and with regard to the terms of the lease that applied in that case. The same or similar result may not necessarily occur in Western Australia.

¹⁶ King, B.A., et al, Prevalence and predictors of smoke-free policy implementation and support among owners and managers of multiunit housing. *Nicotine Tob Res*, 2010. 12(2): p. 159-63.

¹⁷ Albers AB, Biener L, Siegel M, Cheng DM and Rigotti N. Household smoking bans and adolescent antismoking attitudes and smoking initiation: findings from a longitudinal study of a Massachusetts youth cohort. *American Journal of Public Health* 2008;98(10):1886-93. Available from: <http://ajph.aphapublications.org/cgi/content/full/98/10/1886?view=long&pmid=18703438>

¹⁸ Pierce J, White M and Messer K. Changing age-specific patterns of cigarette consumption in the United States, 1992-2002: association with smoke-free homes and state-level tobacco control activity. *Nicotine and Tobacco Research* 2009;11(2):171-7. Available from: <http://ntr.oxfordjournals.org/content/11/2/171.long>

¹⁹ Mills A, Messer K, Gilpin E and Pierce J. The effect of smoke-free homes on adult smoking behavior: a review. *Nicotine and Tobacco Research* 2009;11(10):1131-41. Available from: <http://ntr.oxfordjournals.org/content/11/10/1131.full>

²⁰ Hyland A, Higbee C, Travers MJ, Van Deusen A, Bansal-Travers M, King B, et al. Smoke-free homes and smoking cessation and relapse in a longitudinal population of adults. *Nicotine and Tobacco Research* 2009;11(6):614-8. Available from: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC272236/>

²¹ Collins, D.J. and Lapsley, H.M. (2007). The costs of tobacco, alcohol and illicit drug abuse to Australian society in 2004/05, National Drug Strategy Monograph Series No. 64. Available from: <http://www.nationaldrugstrategy.gov.au/publications-monographs>.

²² *Bhandari v Laming* [2015] NSWCATAP 224. Available at: <https://www.caselaw.nsw.gov.au/decision/56208edae4b01392a2cd1ca0>

²³ Cancer Council New South Wales, Fact Sheet 3: How Owners Can Take Action. Available at: https://www.cancercouncil.com.au/wp-content/uploads/2016/11/16083_CC_CAN1035_

How can current disputes about smoke drift be resolved?

Exposure to secondhand smoke in strata housing can cause considerable distress and tension between neighbours. In the first instance, the owner or tenant may be able to discuss the issue with the neighbour, but only if they feel safe and comfortable approaching them. The neighbour may not have been aware that their smoking was affecting others and may be able to take action to prevent further exposure.

In some cases, however, the exposure will continue even though the smoker is aware that their cigarette smoke is penetrating other lots or drifting onto common property. In this situation, it would be advisable to contact the Council of Owners or the Strata Manager, if one has been appointed to manage the property. They may wish to see a log book recording the frequency and extent of the exposure to secondhand smoke. If satisfied that the smoker is causing a nuisance, the Council of Owners or the Strata Manager (on behalf of the Council) can send a letter to the resident alleging a breach of the by-laws and seeking compliance.

If the nuisance continues, a formal notice of breach letter can be sent. If the dispute remains unresolved, the person affected by the smoking can make an application to the State Administrative Tribunal, which hears strata title matters. This is relatively informal and inexpensive. Parties are usually required to attend mediation and disputes are often resolved through this process. If, however, the matter progresses through to a hearing, and the applicant is successful in proving a nuisance, the Tribunal is able to make a range of orders to resolve the dispute. For example, the smoker could be ordered not to smoke on their balcony, on common property or within a certain distance of other lots.

Case Study 1: Large strata building in Victoria Park

Several occupiers at Centre Park complained to the Strata Manager about constant exposure to second-hand smoke, concerned about the health effects the exposure was causing.

The Strata Manager was familiar with the smoke free by-law process and contacted ACOSH.

The best option for Centre Park was a smoke free schedule two by-law. The schedule two by-law prohibits the use of all tobacco products on common property and states that owners and occupiers shall ensure that the use of any tobacco products on their lot does not interfere with the peaceful enjoyment of others.

The Owners were notified of the proposed by-law through the Annual General Meeting agenda, 21 days prior to the meeting. To pass, the by-law needed to be approved by at least 50% of the voters and opposed by no more than 25%. All present at the AGM passed the motion and a 28-day waiting period was required for any who were unable to attend. No owner opposed the by-law during the following 28 days.

Minutes included a letter noting the new by-law and an email was sent to all owners, property managers and tenants after the AGM. Smoke free signage was installed within 6 weeks of approval.

The by-law was enforced through Council of Owners monitoring and subsequent contact via email or phone to anyone found offending against the by-law. Information about the by-law is provided to property managers and to anyone who buys a unit in the complex.

The aim of the smoke free by-law was to create clean and healthy air in a shared environment. It is not intended to isolate people who smoke. The Strata Manager and the Council of Owners acted on behalf of the 90 occupiers at Centre Park and the numerous daily visitors.