

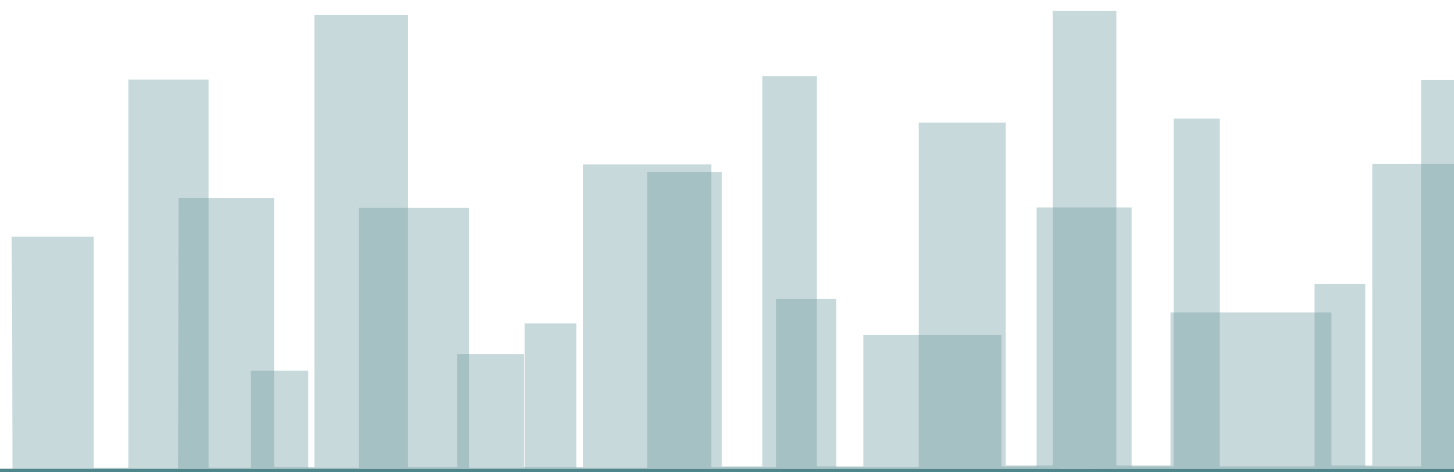
SMOKE FREE MULTI-UNIT HOUSING

**A GUIDE FOR OWNERS, TENANTS, AGENTS,
AUTHORITIES AND GOVERNMENTS**

The logo for Action on Smoking and Health (ASH) features the letters 'ASH' in a white, serif font, with a stylized flame or smoke element above the 'H'. The logo is set against a black background within a white-bordered box.

ASH

Action on Smoking and Health



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Contents

1. Purpose of this Guide	3
Acknowledgments	4
2. Context	5
Facts about tobacco and health	5
Secondhand smoke (SHS): health evidence	5
SHS in multi-unit housing	7
Legal and civil liberties issues	9
3. Advantages of smokefree housing	10
Health protection	10
Community support	10
Financial benefits	10
Supportive legal environment	11
4. Achieving smokefree housing	14
Landlords/owners/agents	14
Tenants	15
Retirement villages	16
Public and community housing	18
Custodial housing	18
Case studies	18
Examples of smokefree strata by-laws	21
5. A personal story	23
6. Frequently Asked Questions	25
7. International developments	29
8. Checklist for action	31
9. Resources	32
About ASH Australia	36
References	37

1. Purpose of this Guide

This guide is a tool to help people resolve complaints and concerns about involuntary exposure to secondhand smoke in their own homes.

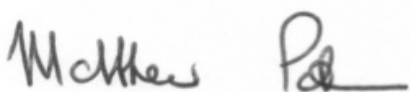
Although homes are regarded as private spaces, we receive many pleas for help from non-smokers who are exposed to smoke drift in their own homes - often from chain-smoking neighbours in multi-unit housing. Many complaints are from parents with babies or from people who feel trapped because they have to keep doors and windows closed to stop tobacco smoke from infiltrating into their bedrooms and living rooms.

As high density living in apartments and community housing is increasing, complaints about neighbours' tobacco smoke drifting into other people's units through poor ventilation or open windows can be addressed. There are solutions - for example, multi-unit housing regulations usually have provisions for dealing with nuisances. Just as loud music or barking dogs are dealt with through a complaints process, smoke drift can also be addressed with positive outcomes.

While the legal position on smokefree flats, apartments and community housing can vary between Australian states and territories, we now have some successful case law studies and a growing trend of owners solving the problem by adopting smokefree policies.

THE AIMS OF THIS GUIDE ARE TO:

- **Raise awareness of the health, legal and financial benefits of 100% smokefree multi-unit housing;**
- **Empower owners, agents and tenants to address the problem of secondhand smoke in flats, apartment blocks, townhouses, condominiums, villas, retirement villages and other multi-unit housing;**
- **Better inform housing bodies and governments about tobacco smoke contamination issues and how they might be addressed in policy and practice; and**
- **Improve smokefree policy and practice and contribute to the increased availability of smokefree housing options.**



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- ASH volunteer and University of Sydney Postgraduate Dr Krupa Toprani; and
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2. Context

Facts about tobacco and health

Tobacco kills more than five million people a year worldwide¹ including 15,000 in Australia. Tobacco smoking is the biggest single preventable cause of both cancer and heart disease – our two leading causes of early death; it is linked with all seven diseases causing most deaths.²

THE IMPACT IN AUSTRALIA IS CATASTROPHIC – INCLUDING EACH YEAR³ :

- **Around 15,000 premature deaths, including 36 deaths a year of children under 15 years of age.**
- **Total costs to the nation of more than \$31 billion, including over \$600 million in hospital costs for treating tobacco-related diseases.**

While nearly 84% of Australians are non-smokers, around 16% of people over 14 years of age (about 3 million) are at least weekly smokers.⁴

Secondhand smoke (“SHS”): the health evidence

There’s indisputable scientific evidence that secondhand smoke (SHS) exposure causes health harm - including serious disease in both adults and children.⁵

Worldwide, SHS is estimated to cause over 600,000 deaths a year – up to 2,000 in Australia.

Secondhand smoke is a combination of sidestream smoke emitted from the burning end of cigarettes and tobacco smoke exhaled by the smoker. “Passive smoking” is when the non-smoker breathes the smoke - which contains an estimated 4,000 chemical compounds including over 250 toxins and over 60 carcinogens (cancer causing substances), 43 known to cause cancer in humans.⁶ SHS is a toxic, carcinogenic contaminant to which there’s no safe level of exposure.

The United Nations’ International Agency for Research on cancer has found that

¹ WHO Report on the Global Tobacco Epidemic (2009). www.who.int/tobacco/mpower/2009/a2_gtcr_report_summary.pdf

² Australian Bureau of Statistics (2008), Causes of Death, Australia 2008 op.cit; Collins and Lapsley, National Drug Strategy (2008) Counting the Costs... at www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/mono64

³ ASH Australia website at www.ashaust.org.au/lv4/PolliisGuide.htm with links to sources

⁴ Australian Institute of Health and Welfare (2010), 2010 National Drug Strategy Household Survey at www.aihw.gov.au/publication-detail/?id=32212254712&libID=32212254712

⁵ California Environmental Protection Agency Air Resources Board (2005), Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant. www.arb.ca.gov/toxics/ets/finalreport/finalreport.htm

UN International Agency for Research on Cancer (IARC) and World Health Organization (2004), IARC Monographs on the Evaluation of Carcinogenic Risks to Humans - Volume 83. Tobacco Smoke and Involuntary Smoking – Summary of Data Reported and Evaluation.

National Health and Medical Research Council (Australia) (1997), The health effects of passive smoking : a scientific information paper. Canberra: Commonwealth of Australia.

Tobacco Advisory Group of the Royal College of Physicians (2010), Report on passive smoking and children. London: Royal College of Physicians.

U.S.Department of Health and Human Services (2006), The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General. Atlanta, GA. www.surgeongeneral.gov/library/secondhandsmoke/report/index.html

⁶ U.S.Department of Health and Human Services (2010) How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General. Atlanta, G.A.: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. www.surgeongeneral.gov/library/tobaccosmoke/report/index.html



Children may be at risk from secondhand smoke drifting from nearby balconies

“second-hand smoke kills” and “causes cancer in non-smokers”.⁷

Even low doses of tobacco smoke can cause “rapid and sharp” increases in health harm.⁸

CHILDREN EXPOSED TO TOBACCO SMOKE ARE AT INCREASED RISK OF:

- various cancers;
- sudden infant death syndrome (SIDS, once called “cot death”);
- asthma attacks, acute respiratory infections and reduced lung function;
- blocking of arteries; and
- ear problems.⁹

RESEARCH HAS ALSO SHOWN A STRONG ASSOCIATION BETWEEN THE INCREASING NUMBER OF **SMOKEFREE HOMES AND **DECREASING RATES OF SIDS**.**¹⁰

ADULTS EXPOSED TO SHS ARE AT INCREASED RISK OF:

- various cancers;
- immediate adverse effects on the cardiovascular system;
- coronary heart diseases; and
- asthma attacks.¹¹

⁷ United Nations, International Agency for Research on Cancer (2008), World Cancer Report 2008 at www.iarc.fr/en/publications/pdfs-online/wcr/2008/wcr_2008_2.pdf

⁸ US Surgeon-General's report (2010), op.cit.

⁹ Cancer Council NSW (2011), website at www.cancercouncil.com.au/editorial.asp?pageid=375

¹⁰ Behm I et al (2011), Increasing prevalence of smoke-free homes and decreasing rates of sudden infant death syndrome in the United States: an ecological association study. Tobacco Control doi:10.1136/tc.2010.041376

¹¹ US Surgeon-General's report 2006, op. cit.

SHS in multi-unit housing

There's a small but growing body of research suggesting potential health harm from the infiltration of tobacco smoke into the homes of non-smokers. These findings come from air quality testing showing SHS can spread throughout multi-unit residential blocks, contaminating apartments where there's no active smoking.¹²

For example, a recent study found that most children not living with smokers inside their own home still showed evidence of SHS exposure. Children living in these apartments showed greater exposure than those living in detached houses.¹³

As smoking rates in the community have declined and evidence of health harm from SHS exposure has grown, the public has become more aware of the benefits of smokefree environments – homes, workplaces, public places. While smokefree policies and regulations at workplaces and public areas are widespread, there are few restrictions on smoking in apartment buildings and other multi-unit residences.

Scientific studies have measured significant levels of tobacco smoke contaminants in the apartments of non-smoking residents where people smoke in other parts of their building.¹⁴ Depending upon the condition of the building, tobacco smoke tends to drift throughout a



Air-conditioning systems cannot deal safely with tobacco smoke contamination within buildings as smoke particles are so small and gaseous that they cannot be removed by mechanical means.

building via balconies, patios, door and window jambs, wall-inset air vents, mechanical ventilation and air conditioning systems, elevator shafts, hallways, stairwells, cracks in walls, and via plumbing and electrical systems.

In a study of 11 multi-unit housing blocks, it was found that significant secondhand smoke drifted from smoke-permitted units into smokefree units within the same building via numerous pathways. The researchers suggested that implementing a smokefree building policy would be the most effective way to ensure that residents of units are not exposed to tobacco smoke.¹⁵

¹²King BA et al (2010), Secondhand smoke transfer in Multiunit Housing. *Nicotine & Tobacco Research* 12(11): 1133-1141.

Kraev TA et al (2009), Indoor concentrations of nicotine in low-income, multi-unit housing: associations with smoking behaviours and housing characteristics. *Tobacco Control* 2009;18:438-44

Morrison SL (2011), Air quality testing in a residential building in New Hampshire, USA (Personal communication with Cancer Council NSW staff and others).

Wilson KM et al (2011), Tobacco-smoke exposure in children who live in multiunit housing. *Pediatrics* 2011;127:85-92

¹³Wilson (2011), op.cit.

¹⁴King (2010), op. cit.; Kraev (2009), op. cit.; Wilson (2011), op. cit.; Morrison (2011), op. cit.

¹⁵King (2010), op. cit.

The evidence is such that the National Preventative Health Taskforce has recommended to the Australian Government that action be taken to protect residents of multi-unit developments from exposure to smoke drift.¹⁶

A recent study of SHS infiltration in multi-family dwellings presented to a conference in Baltimore, Maryland US in October 2011¹⁷ reached the conclusions shown below.

The study also demonstrated that “outdoor smoking at substantial distances from an open

window may infiltrate into neighbouring apartments.”¹⁸

Most people want to live in a smokefree environment - as confirmed by a recent NSW survey that found over 90% of people have made their own residences smokefree.¹⁹ With more than 15% of people being daily smokers,²⁰ this suggests that even smokers prefer to live in a smokefree environment - many of them choosing to go outside to smoke.

CONCLUSIONS OF THE SECONDHAND SMOKE INFILTRATION STUDY RELATING 1-MONTH AVGE. NICOTINE TO PM_{2.5} & HEALTH EFFECTS

- **19 apartment dwellers had monthly avge. Nicotine levels from 10 to 200 ng/m³. Estimated 6-hr avge. PM_{2.5} levels were 4 to 80 µg/m³.**
- **Median SHS PM_{2.5} irritation levels for healthy persons for brief exposure are about 4 µg/m³**
- **48% of these nonsmoking residents reported seeking medical care, 17% reported being hospitalized.**
- **45% of 23 occupants (including 3 commercial venues) complained of respiratory symptoms; 31% complained of eye, sensory irritation; 18% had central nervous system symptoms, 5% had tachycardia. 6 clients filed lawsuits against building owners or smokers.**
- **Conclusion: Smokefree policies and legislation are needed to protect apartment dwellers from secondhand smoke infiltration.**

¹⁶National Preventative Health Taskforce (2009). Australia: The Healthiest Country by 2020 - National Preventative Health Strategy - the roadmap for action. Commonwealth of Australia. Tobacco chapter at [www.preventativehealth.org.au/internet/preventativehealth/publishing.nsf/Content/nphs-roadmap/\\$File/nphs-roadmap-4.pdf](http://www.preventativehealth.org.au/internet/preventativehealth/publishing.nsf/Content/nphs-roadmap/$File/nphs-roadmap-4.pdf)

¹⁷ Repace JL (2011), Secondhand smoke infiltration in multi-family dwellings, presented to Annual Conference of International Society of Exposure Science, October 23-27 2011, Baltimore, Maryland US.

¹⁸ Repace (2011), *ibid*.

¹⁹ NSW Department of Health Centre for Epidemiology and Research. (2009), New South Wales Population Health Survey 2009 (HOIST)

²⁰ AIHW (2010), 2010 National Drug Strategy Household Survey, *op. cit.*, Table 3.1 at p.23

Legal and civil liberties issues

- Smoke drifting into another resident's home can be harmful, and is an infringement of that resident's rights - leaving open possible common law actions under trespass, nuisance or strict liability.
- Any "right" to smoke does not extend to harming or irritating others. Civil Liberties Councils agree that smoking should only be permitted where there is no likelihood of harm or discomfort to other people.²¹
- There are many other legal activities that are regulated to reduce the risk of harm to others. For example, driving a car or operating dangerous machinery are "legal" activities but are regulated in the interests of public safety as to how and where the activity can take place lawfully.
- SHS exposure in multi-unit housing can be an infringement of Disability Discrimination law, in that it effectively bars sufferers of heart, lung and other conditions from safe access. Australia's Human Rights Commission has pointed out that "asking someone to tolerate exclusion, whether because of a step or something that they cannot breathe without risk of injury, is equally unacceptable and abhorrent."²²
- There is no legal "right" to smoke and no legal requirement that any owner of premises provide areas for smoking.
- Other highly toxic airborne contaminants are banned outright from areas close to other people.

²¹NSW Council for Civil Liberties policy as amended October 2011 says:

It is a person's right to use any legal substance, but the context of use should be dependent on the health and comfort of others. Smoking should only be allowed where there is no likelihood of passive smoking causing harm to others.

²²Human Rights and Equal Opportunity Commission (1997), decision in Meeuwissen vs Hilton Hotels case at www.hreoc.gov.au/disability_rights/decisions/comdec/1997/DD000110.htm

3. Advantages of smokefree housing

Health protection

Smokefree housing is popular, safer and healthier. Secondhand smoke is a known toxic contaminant and children and people with health conditions are particularly at risk.

Community support

For years surveys have increasingly shown that most Australians support smokefree workplaces and public places. Preferences for smokefree domestic environments are increasing, as smoking rates fall. Since 2010, fewer than 17% of people in Australia are regular smokers, and over 77% of non-smokers live in homes where no-one smokes regularly.²³

It's reasonable to predict that most people would prefer to live in smokefree multi-unit housing rather than in a home where they may be exposed to secondhand smoke from neighbours.

Financial benefits

Benefits for both owners/landlords and tenants of smokefree apartments can include:

- Reduced risk of fire and other cigarette-related damage such as burn marks on carpets, furniture and counters, which would reduce repair or replacement costs. In 2006/2007 there were 254 building fires in NSW alone as a result of “heat from smokers’ materials”.²⁴



- Lower cleaning costs for unit owners selling or leasing their properties - as tobacco smoking leaves smoke residue stains on walls and curtains. A US report found “apartment turnover costs can be two to seven times greater when smoking is allowed compared to the cost of maintaining and turning over a smoke-free unit”.²⁵ Another study found owners in California would save USD\$18m a year in cleaning costs alone.²⁶
- Reduced cleaning needs may result in quicker sale or lease.²⁷
- Eliminating the risk of legal action.²⁸
- A greater likelihood of full rental bond refund for tenants terminating a lease.
- The possibility of higher property re-sale price or rental income.²⁹

²³ AIHW (2010), 2010 National Drug Strategy Household Survey, op. cit., Table 3.1 at p.23; Table 3.15 at p.43

²⁴ NSW Fire Brigades (6/11/07), personal communication with Cancer Council NSW staff.

²⁵ Cushing G. (2011), Apartment Owners Realize Benefits from Smoke-free Multi-unit Housing Trend. Apartment Management. April/May 2011. Cupertino, California: Naylor, LLC

²⁶ Ong MK et al (2011), Estimates of smoking-related property costs on California multiunit housing, in American J Public Health, August 2011 at <http://ajph.aphapublications.org/cgi/content/abstract/AJPH.2011.300170v1?maxtoshow=&hits=10&RESULTFORMAT=1&author1=Ong%2C+M&andorexacttitle=&andorexacttitleabs=&andorexactfulltext=&andsearchid=1&FIRSTINDEX=0&sortspec=relevance&fdate=8/1/2011&tdate=8/31/2011&resourctype=HWCIT>

²⁷ Martin A. (2011), On Tobacco Road, It's a Tougher Sell. New York Times, 8 Feb 2011.

²⁸ See below: Supportive legal environment

²⁹ Martin A (2011), On a Tobacco Road... op. cit. See also comments of Ashfield (Sydney) smoke-free block strata owners – below under 4. Achieving smoke-free housing: case studies

Supportive legal environment

There are several laws that can or have been used to protect people from harm caused by tobacco smoke.

NSW: STATUTORY LAW

Smoke Free Environment Act 2000

The statutory laws that apply to residential places apply to common areas only.

Smoking in enclosed common areas to which the public has access is prohibited under this Act. Such areas may include main entrances and stairwells. They do not include secured areas within security buildings that are only accessible through invitation by an owner or occupier.

For more details see the NSW Health Department and the Cancer Council NSW fact sheet on the Smoke Free Environment Act as it relates to strata and community schemes.³⁰

Strata Schemes Management Act 1996

While not including a specific reference to smoking, Section 117 of this Act requires owners and occupiers using a lot not to create a nuisance. It was this requirement that comprised the basis to a 2006 Consumer, Trader and Tenancy Tribunal decision - cited and summarised under the heading 'The case law' below – in which lot occupiers were ordered to cease causing:

... a nuisance to occupiers of other lots by taking necessary action to prevent smoke odour from their cigarettes entering other lots and the common property.”³¹

The NSW Residential Tenancies Act 2010

This Act addresses the Tenant's right to quiet

enjoyment. Part 3 of Section 50 (Tenant's right to quiet enjoyment) states:

3. A landlord or landlord's agent must take all reasonable steps to ensure that the landlord's other neighbouring tenants do not interfere with the reasonable peace, comfort or privacy of the tenant in using the residential premises.

Part 1 (b) and (c) of Section 51 (Use of premises by tenant) states that a tenant must not do any of the following:

(b) cause or permit a nuisance,
(c) interfere, or cause or permit any interference, with the reasonable peace, comfort or privacy of any neighbour of the tenant.

NSW CASE LAW

While there are no statutory laws that specifically regulate smoking in the private areas of residential places, the two NSW legal cases below indicate that it is within the power of owners' corporations to act to control smoking by both occupants and visitors throughout a multi-unit housing complex.

Consumer, Trader and Tenancy Tribunal (Strata & Community Schemes Division) Applications SCS 06/44767 and SCS 06/44783³²

On 6 November 2006 G. J. Durie, Strata Schemes Adjudicator at the Consumer, Trader and Tenancy Tribunal ordered particular tenants in a Strata Scheme to take action to prevent smoke odour from their cigarettes entering other lots and common property. In addition, the owner of the lot in which the tenants lived was ordered to take action to prevent smoke odour from the tenants' cigarettes entering other lots and common property. The orders had been sought

³⁰ NSW Health and Cancer Council NSW (2011), "Smoke-free NSW: What does to mean for strata schemes and community schemes?" at www.health.nsw.gov.au/resources/publichealth/healthpromotion/tobacco/pdf/070213_strata_schemes.pdf

³¹ Durie GJ, Consumer, Trader and Tenancy Tribunal Strata and Community Schemes Division. Supreme Court of NSW. Decision 6/11/06 at www.ashaust.org.au/lv4/StrataHighgateDecisionNSW06.doc (The "Highgate" case)

³² Durie GJ, Consumer, Trader and Tenancy Tribunal (2006), *ibid.*



by the owners' corporation on behalf of tenants who had been affected by smoke drift within the apartment complex.

Salerno v Proprietors of Strata Plan No. 42724³³

This case was decided in the Supreme Court on 8 April 1997. The judgement demonstrated that it is within the power of the owners' corporation to ban smoking by both occupants and visitors, even on individual lots. The judgement may also allow for the prohibition of smoking on unenclosed land that comes under the jurisdiction of owners' corporations e.g. balconies or gardens. So those affected by smoke drift in

residential developments can raise the matter with their owners' corporation.

COMMON LAW

While private legal actions can be expensive and stressful, there are a number of possible remedies under the common law. Cancer Council's publication *When Smoke Gets in Your Eyes..... (nose throat, lungs and bloodstream) - A guide to passive smoking and the law in NSW*³⁴ outlines possible remedies to the problem of smoke drift in multi-unit housing. The following extract talks about rights before common law. Note that these remedies are yet to be tested in common law actions in Australia.

³³Salerno v Proprietors of Strata Plan No. 42724; (1997) 8 BPR 15,457; BC9701114.

³⁴Francy N and Soulos G. (2001). When smoke gets in your eyes ... eyes, nose, throat, lungs and bloodstream:

A guide to passive smoking and the law in NSW. Cancer Council NSW. www.cancercouncil.com.au/editorial.asp?pageid=713

The **torts of trespass, nuisance and strict liability** for allowing dangerous things to escape may all be invoked to prevent exposure to environmental tobacco smoke [second-hand smoke], or to obtain compensation where damage has occurred.

Trespass involves intentional interference with the person, invasion of land or interference with chattels [property other than land].

Nuisance may be public or private.

Public nuisance includes things like causing pollution, emitting noxious smoke and fouling the environment. A private claimant would have to show some particular or special loss beyond the ordinary inconvenience or annoyance suffered by the public at large; for example, that as a particularly sensitive person such as an asthmatic they were affected by environmental tobacco smoke.

Private nuisance is confined to invasions of a person's use or enjoyment of land; for example, by smoke infiltrating into a private space (such as an apartment in a multiple occupancy building) from an adjoining common area.

Strict liability involves liability for damage caused by the escape of something inherently dangerous, such as an explosive gas.

Given what is now known about the harmful effects of environmental tobacco smoke, all three of these remedies may be available to obtain damages or prevent harm occurring in the case of persistent breach.

Individuals may also have the benefit of rights which may be enforced privately (private rights), either under statute or by virtue of some agreement such as a lease or covenant of quiet enjoyment of property. The rights which apply in any particular case will depend on the precise nature of the relationship between the person affected and those against whom rights may be enforced; and there may be limits to the extent to which action may be taken against a landlord or body corporate as opposed to the person who is the immediate cause of the problem.

Again, with what is now known about the dangers of environmental tobacco smoke, the scope for enforcing private rights of action should be explored.

4. Achieving smokefree housing

There are several options available to both tenants and landlords/owners/agents to address the problem of smoke drift in multi-unit housing. An initial approach to resolve the problem might be to discuss possible solutions directly with the smoker. However, you should only speak directly with the smoker if you feel comfortable about your safety in doing so. If this doesn't resolve the problem, you might try the approaches below.



Landlords, owners and estate agents

Landlords, owners and agents can take the following actions:

- If a property owner in a multi-unit development doesn't own the entire development, this

owner should seek the support of the owners' corporation to establish a strata by-law³⁵ that prohibits smoking at least throughout all indoor areas of the premises.

- In advocating to the owners' corporation, the owner should provide members of the corporation with information on the health, legal, and financial benefits of adopting a smokefree by-law.
- If a by-law is adopted, provide notice to tenants of any decision to introduce the smokefree building policy and which areas it covers.
- Include adherence to the smokefree policy as a condition of lease in any new or renewed rental leases.
- Include information about the smokefree policy in any "for rent" or "for sale" advertising.
- Place "no smoking" or "smokefree area" signs at entrances and other strategic locations.
- Be ready to explain the reasons for the smokefree policy to tenants and would-be tenants. Consider referring tenants to this Guide.
- If your property insurer doesn't already provide discounted fees for insuring smokefree properties, suggest to the insurer that they do so. Point out that smokefree properties represent a lower financial risk to property insurers.³⁶

³⁵See below, Sample smokefree strata by-laws

³⁶See below, Financial benefits

Tenants

As a tenant you have a legal right to participate in owners' corporation meetings if you have written permission from your landlord. Unless you are also an owner, you normally don't have a right to vote at the meeting. But once permission is gained, you may be able to advocate to those who can vote for the adoption of a by-law that would establish a 100% smokefree policy in the building or complex. In advocating to your body corporate you might like to make the following points:

1. Secondhand smoke is a cause of illness including serious disease.³⁷
2. Research evidence suggests potential health impacts of secondhand smoke exposure resulting from the infiltration of tobacco smoke into the homes of non-smokers.
3. The vast majority of people are non-smokers with even greater numbers choosing to make their homes smokefree.³⁸
4. There may be significant financial savings to be gained from 100% smokefree policies applying to apartment complexes.
5. Tenants and owners do have legal rights to protect themselves from secondhand smoke invading their own homes under legislation including the NSW Residential Tenancies Act 2010:

Your landlord or landlord's agent must take all reasonable steps to ensure that other neighbouring tenants do not interfere with your reasonable peace, comfort or privacy in using your residential premises.

The Consumer, Trader and Tenancy Tribunal is

empowered to hear and settle disputes relating to residential tenancies. Tenants have the right to apply for a hearing by the Tribunal. It was the Tribunal that ordered particular tenants in an apartment complex to take action to prevent smoke odour from their cigarettes entering other lots and common property after a landlord brought a case on behalf of tenants who had been exposed to secondhand smoke.³⁹

It's a good idea to document the smoke exposure you're suffering. We suggest you keep a log - and include this information when taking possible actions including:

- Writing a letter of complaint to the landlord – perhaps including a letter from a physician or other medical expert;
- Sending a petition to the landlord calling for the buildings to be designated smokefree.

Good sample letters, petitions and physicians' letters can be found at the Smokefree Housing BC website.⁴⁰

A log of events could be used to document when smoke enters your home from a neighbouring unit, and everything you do or say to address the problem – including raising it with the smoking neighbour or with your landlord. This information will be useful when approaching your strata owner or landlord, or making a complaint to a tenancy tribunal, or taking any legal action.

You should be sure to include dates, times and nature of any relevant communications; and to keep copies of any written correspondence.

³⁷ See above, Context - second-hand smoke: the health evidence

³⁸ NSW Department of Health Centre for Epidemiology and Research (2009), New South Wales Population Health Survey 2009 (HOIST).

³⁹ Durie GJ, Consumer, Trader and Tenancy Tribunal (2006), op. cit.

⁴⁰ www.smokefreehousingbc.ca/tenants/tools.html

⁴¹ See previous two footnotes for sample letter and petition that could be adapted to a retirement village.

SECONDHAND SMOKE EXPOSURE IN UNIT

Name.....

Address.....

Date	Time	Event
2/3/12	10.05am	<i>Smoke entering my bedroom window from neighbour smoking on balcony of unit no. 16. My eyes started watering. My daughter aged 5 who is asthmatic started coughing and had to use inhaler. We had to close all windows but could still smell the smoke.</i>
2/3/12	10.25am	<i>I knocked on door of unit 16 and politely informed neighbour (Mr Bob Neighbour) of the problem. I asked if he'd please not smoke on the balcony as it was drifting into our unit. He said he would consider this but asserted that it was his right to smoke in his own flat.</i>
4/3/12	9:15pm	<i>Smoke entering our flat through living room and bedroom windows. Mr Neighbour was again smoking on his balcony. Again my eyes were watering and closed daughter's window (she was asleep).</i>
5/3/12	10.30am	<i>I put my complaint in writing to Mr Neighbour in his letterbox (see copy attached dated 5/3/123 complaint to Mr Neighbour).</i>

A log of events could look something like the above.

The log should answer these questions:

- The smoke: where is it coming from and how is it entering? Include dates and times.
- How is the smoke affecting your health or that of your family or other residents of your unit? In what other ways is it affecting the use or enjoyment of your home?
- What steps did you take to protect yourself or your family from the smoke – by closing windows or doors, going out of the building etc?
- What steps did you take to raise the problem and with whom?

Retirement villages

There are health and legal reasons why retirement villages should be 100% smokefree – at least in all indoor and shared areas. Smokefree legislation or regulations should protect all people in community housing - rather than leaving policy decisions to be made by individual retirement villages.

Residents in retirement villages are older people, many of whom suffer heart, respiratory or other conditions making them especially susceptible to health harm from even low-level exposure to secondhand smoke. Repeated contamination of people's homes by smoking drifting from other units or balconies should not be permitted.

Residents could consider distributing the fact sheet below and writing a letter or sending a petition to the retirement village owner.⁴¹

WHY RETIREMENT VILLAGES SHOULD BE 100% SMOKEFREE

Secondhand (“passive”) tobacco smoke

- A toxic, carcinogenic airborne contaminant - including more than 250 poisons and 43 human carcinogens, including some in the highest (most carcinogenic) category.
- Experts agree there is no safe level of exposure.
- Secondhand smoke kills. It can cause significant, rapid harm even at low doses.
- Tobacco smoke can cause cancers, heart and vascular disease, respiratory diseases – asthma, bronchitis/emphysema; also mental harm.
- Especially vulnerable groups include elderly people, sufferers of heart and respiratory disease, and people repeatedly exposed, even at low levels.
- Evidence shows secondhand smoke cannot be safely controlled by ventilation or air cleaning – it can contaminate wherever the air can move. The only safe solution to this problem is to make buildings and shared areas 100% smokefree.

Legal and civil liberties issues

- Smoke drifting into another resident’s home is harmful, and an infringement of that resident’s rights - leaving open possible common law actions under trespass, nuisance or strict liability.
- Any “right” to smoke does not extend to harming or irritating others. Civil Liberties Councils agree that smoking should only be permitted where it cannot risk harm to others.

- There are many other legal activities that are regulated to reduce the risk of harm to others – for example, driving a car or operating dangerous machinery are legal but tightly regulated as to where they can and cannot be done.
- SHS exposure in multi-unit housing can be an infringement of Disability Discrimination law, in that it effectively bars sufferers of heart, lung and other conditions from safe access.
- There is no legal “right” to smoke and no legal requirement that any owner of premises provide areas for smoking.
- Other toxic contaminants are banned outright from areas close to other people.

Advantages of a smokefree establishment

- It can save all unit owners money by reducing cleaning and maintenance costs, reducing resident turn-over with periods of vacancy, reducing fire risk, reducing risk of legal actions for health harm from preventable smoke exposure.
- Non-smoking units will become more attractive with increasing consumer awareness of health harm evidence and demand for smokefree accommodation.

Retirement villages can legally, and should, adopt 100% smokefree policies.

With possible inclusion of Designated Outdoor Smoking Areas, this should be well signposted and well away from shared areas and thoroughfares.



More information on smokefree housing at www.ashaust.org.au/lv4/housing.htm

Health evidence at www.ashaust.org.au/SF%2703/health.htm

Action on Smoking and Health (ASH) Australia ph. (02) 9334-1823 staffords@ashaust.org.au

Public and community housing

Governments manage a range of community housing for low-income or disadvantaged members of the community under various laws and regulations. We recommend that governments implement best practice smokefree regulations and policies to reduce risks and complaints. In 2005 Australia's largest landlord, the NSW Department of Housing, implemented a smokefree policy⁴² after consultation with ASH Australia and peak tenant groups following ongoing complaints about smoke drift. The policy included permanent "smokefree" signs in each unit block; no-smoking in all common areas; and guidelines for mediation to help resolve complaints.

Custodial housing

Custodial housing covers a range of facilities that often include both workplaces and places where people, including young people, are living for periods of time. All people working and living in these housing facilities have the right to be protected from secondhand smoke, and to be helped to quit. We recommend that governments ensure that these facilities have comprehensive smokefree policies and that consideration be given to outdoor designated smoking areas depending on circumstances and outcomes of policy reviews.⁴³

Achieving smokefree housing: case studies

A number of strata buildings in Sydney have adopted smokefree by-laws. The case studies presented here examine how the occupiers of two strata blocks achieved a smokefree policy.



1. Ashfield, NSW

The chairman of an owners' corporation for a residential apartment building in the western Sydney suburb of Ashfield was approached by other residents concerned about tobacco smoke invading their apartments. They were also dismayed at having to continually remove tobacco-related litter from footpaths and garden beds at the block.

Residents complained of being exposed to the smoke day and night with little respite. The smoke was originating from two units in the block of eight. In one of the two units the smoke would reportedly drift from the living room through a balcony door and then through balcony doors and windows of units. Residents believed the smoke was also travelling through vents in the walls of units and via the building roof cavity. In the other of the two units, the tenant reportedly used the balcony for smoking with the resultant smoke drifting directly into windows and other balcony doors.

⁴² NSW Human Services (Housing) (2010), factsheet updated 2010 at www.housing.nsw.gov.au/NR/rdonlyres/27F3C3CF-84F4-46D1-9EFD-026DDDDC5F0D/0/SmokeFreeAreasInPublicHousingFactSheetEnglish.pdf

⁴³ See ASH webpage on smokefree prisons, custodial and mental health settings at <http://www.ashaust.org.au/lv4/prisonscustodial.htm>



Ashfield residents happy with their smoke-free block.

The chairman sought advice from the block's strata manager about the legality of a strata by-law that would allow a 100% smokefree policy to be implemented at the block. Based on a 2006 decision by the Consumer, Trader and Tenancy Tribunal in NSW⁴⁴, the strata manager confirmed the legality of such a by-law. Consequently, at the request of the owners' corporation, the strata manager developed a by-law, which was supported by more than the required 75% of those attending the special meeting organised to decide the matter.

All current residents of the building were then notified of the new by-law, and from that point on, new tenants were informed of the by-law prior to signing their lease. Signage was also posted at strategic points on the property to inform visitors - including tradespeople - that the entire property is a smokefree area.

Shortly after the by-law was adopted, one tenant from whose unit tobacco smoke had been escaping moved out. The tenant in the other unit from which smoke had been escaping reportedly initially refused to comply with the requirement of the by-law and continued to

smoke on the unit balcony. The response of the executive committee was to advise the tenant that if this non-compliance continued the tenant would be issued with a "Notice to Comply with a By-Law" and that a fine of up to \$550 could be imposed by the Consumer, Trader and Tenancy Tribunal. In response, the tenant agreed to walk the short distance to the footpath at the front of the building and smoke there, thus resolving the matter.

This was the first time such a by-law had received wide media coverage, though it was not in fact the first such by-law passed - others in Sydney as early as 2007 have implemented similar by-laws.

The chairman of the Ashfield owners' corporation has informed the Cancer Council NSW that since the by-law was passed:

...we have received nothing but praise from all the residents of the building, new tenants and owners in the building, and the managing agents of the units. It is definitely a healthier place to live without any unsightly cigarette butts on the ground or foul second-hand smoking wafting throughout the building and common areas. I believe we have increased the rental/resale value of each unit in the building. After all, approximately 83% of the population do not smoke and would preferably live in an apartment block that is free of cigarette smoke as a result of how close we all live to our neighbours, and a non-smoking tenant would definitely want to rent out a unit that has not had a smoker in it previously. However, this is difficult to quantify, but is the opinion of myself and the other seven owners, along with the managing agent of the building.

⁴⁴ Durie GJ (2006, Highgate case), op. cit.



The use of clear signage will encourage compliance with smoke-free policies

1. Eastern Sydney

After a year of secondhand smoke exposure, residents in a six-lot art deco apartment complex in Sydney's eastern suburbs decided it was time to take action to resolve the problem. Tobacco smoke managed to find its way from a top floor apartment through air vents in that unit's walls, travelling between the double brick walls and into the vents of units adjacent and on the floors below. The impact upon non-smoking residents ranged from annoyance to a diagnosed respiratory condition that a medical practitioner attributed to secondhand smoke exposure.

Personal approaches and letters to the occupants of the apartment from which the smoke was coming had failed to resolve the matter. It was then that one of the residents approached the Cancer Council NSW seeking copies of NSW legal judgements that had affirmed the right of strata owners' corporations to establish by-laws allowing 100% smokefree policies.⁴⁵ The resident then contacted the Land Titles office of the NSW Government's Land and Property Management Authority to obtain a copy of the by-law that was the subject of one of these cases. Having obtained this, the resident drew upon the by-law to draft one for the resident's own strata corporation. The draft was then reviewed and then supported by the corporation's strata management agent.

The by-law was passed at an extraordinary general meeting of the owners' corporation with unanimous support. Signage stating that the building was subject to a 100% smokefree environment policy was placed in all common areas.



WHY GO SMOKEFREE?

Smokefree housing communities not only promote a healthy resident population, but also a healthy bottom line for owners and investors

⁴⁵ Durie GJ (2006, Highgate case) and Salerno case (1997), op. cit.

Examples of smokefree strata by-laws

Individual circumstances will determine the amount of detail contained in a strata by-law prohibiting smoking. However it is important that the by-law clearly indicates the areas in which smoking is prohibited. The first two examples below are actual by-laws that have been provided to ASH and partners by representatives of owners' corporations. The third example has been developed by ASH as a possible template.

Note: The word "lot" in these examples refers to a unit within a building.

From an apartment complex in Sydney's inner west

By-law prohibiting smoking on the premises:

- (i)** *The owner or occupier of the lot must not smoke nor allow smoking within a lot or within the common property.*
- (ii)** *Without limiting paragraph (i), the owner or occupier of a lot must not allow any invitee to his lot to smoke within the lot or upon the common property.*

From an apartment complex in Sydney's east Specially resolved that the following special by-law be created:

Special By-law – Smoking In accordance with Strata Schemes Management Act 1996, Sections 47, 117, 45:

- 1.** *The proprietor or occupier of a lot must not smoke nor allow smoking within a lot or within the common property.*
- 2.** *Without limiting paragraph 1, the proprietor or occupier of a lot must not allow any invitee to smoke within his/her lot or upon common property.*
- 3.** *The Owners' Corporation delegates to the strata managing agent responsibility for:*

- (a)** *The service of 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 if satisfied that the owner or occupier has contravened this by-law and*
- (b)** *Commencing legal proceedings seeking Orders, requiring a person who fails to comply with a notice served in (a), to pay the statutory pecuniary penalty and any costs of the Owners' Corporation in the proceedings.*

Example developed by ASH Australia

This more detailed example below was developed by us based on legal advice.

*THE OWNERS – STRATA PLAN No. (X) (address)
DRAFT MOTION*

That the (name) Owners' Corporation specially resolve pursuant to (Section and relevant Act, e.g. in NSW: Section 47 of the Strata Schemes Management Act 1996) to make an additional by-law in the following terms:

SPECIAL BY-LAW: SMOKING ON THE PREMISES

- 1.** *For the purposes of this by-law:*
 - a)** *"smoke" means smoke, hold or otherwise have control over ignited tobacco or any other product that is intended to be smoked and is ignited;*
 - b)** *"the property" means all lots and the common property of the strata scheme;*
 - c)** *an owner of a lot, and a director or shareholder of a corporate owner shall be an occupier of that lot if he or she resides in the lot.*
- 2.** *An owner or occupier of a lot must not*



smoke, or allow any one else to smoke, within a lot or the common property.

- 3.** *If a person, not being an owner or occupier of a lot, smokes in the lot the occupier of the lot breaches this by-law unless:*
- a)** *the occupier did not know, or could not reasonably be expected to have known, that the person was smoking in the lot; or*
 - b)** *upon becoming aware that the person was smoking in the lot, the owner or occupier asked the person smoking to cease smoking immediately or to leave the property immediately, and the person did so.*
- 4.** *If a person, not being the owner or*

occupier of a lot, smokes in the common property, the person, being an owner or occupier of a lot, who invited that person into the common property or with whose permission the person remains on the common property breaches the by-law unless:

- a)** *he or she did not know, or could not reasonably be expected to have known, that the person was smoking in the common property; or*
- b)** *upon becoming aware that the person was smoking in the common property the owner or occupier asked the person smoking to leave the property immediately, and the person did so.*

OPTIONAL ADDITIONAL CLAUSES:

- 5.** This by-law does not prohibit smoking within the property by a person who, on the basis that the person smoked regularly before this by-law was made, has obtained the consent of the owners' corporation in writing to smoking, provided:
- a)** the person resides in the property;
 - b)** the person does not smoke within the building or at a location visible from a public street;
 - c)** the smoke generated by the person's smoking is not discernable in a lot, and does not enter any air conditioning serving the building;
 - d)** the person does not smoke in or near an area in which clothes dry or children play;
 - e)** the person complies with any other conditions that the Owners' Corporation may place upon its consent.
- 6.** The owners' corporation may place conditions upon a consent given by it pursuant to paragraph 5. The recipient of the owners' corporation's consent must comply with such conditions.



5. A personal story

Peter Lavac

Peter Lavac is a practising criminal barrister, a world-class athlete and a life-long non-smoker. In 2008 he was diagnosed with lung cancer after monitoring repeated exposure to secondhand smoke.

He had first complained of this exposure in 2005, and under expert medical advice from thoracic physician and ASH Chairman Dr Matthew Peters, monitored his lung function during this exposure.

In March 2008 Peter was defending in a criminal case and training for surf competition, when he became ill. An X-ray and biopsy revealed lung cancer on the upper right lobe.

He underwent an operation in April 2008 to remove the top third of his right lung.

“How could this possibly happen to me?” asks Peter. “I was at the peak of my physical strength and power. I’d never smoked, I never drank alcohol, I never did drugs, I was an athlete training for a world class, elite sporting event – the Molokai Surfski World Championships.”

In 1990 Peter had set a world record by leading a six-member surfski team more than 900 kilometres across the South China Sea from Hong Kong to the Philippines, completing the epic voyage in just four and a half days – braving heat exhaustion, seasickness, jellyfish stings, shark sightings and collisions with flying fish. In 2002 he went on to win gold and bronze medals at the World Lifesaving Championships at Daytona Beach, Florida, US.

Given such a healthy, non-smoking lifestyle, his dismay at his cancer diagnosis was

understandable – and he felt cigarette smoke was the most likely culprit. This view was supported by Dr Peters and by lung specialist Dr David Joffe who first detected the lesion on Peter’s lung. After careful consideration of all the data and relevant factors of the case, Dr Peters concluded that smoke exposure was a probable factor in the development of Peter Lavac’s lung cancer.

After being continually tested clear of cancer for more than three and a half years after the operation, Peter returned to his surf-ski and physical training. “I knew I was fully recovered when I could bench-press 300 pounds again.” He now wants to encourage cancer sufferers to fight the disease. “A diagnosis is not an automatic death sentence - I plan to be around for a long time,” he says.

Peter also wants to warn people of the danger posed by SHS.

“I want to do whatever it takes to ensure no-one has to go through what I’ve been through. It’s important that everyone recognises that tobacco smoke is no mere irritant or bother, it’s a life-threatening hazard and they must do whatever they can to avoid it.”

“I want to help educate the public in general and politicians in particular, that secondhand



cigarette smoke is not only dangerous, it’s deadly.” Worldwide health authorities agree.⁴⁶

As a lawyer, Peter also believes “It’s inevitable people suffering health harm from secondhand smoke drifting into their homes will start to take legal actions against smoking neighbours or against building owners, owners’ corporations and property managers who could have prevented such exposure.”

“I want to help **educate the public** in general and politicians in particular, that secondhand cigarette smoke is not only dangerous, it’s deadly.”

⁴⁶ UN International Agency for Research on Cancer (2008), op. cit.

6. Frequently Asked Questions



*The problem*⁴⁷

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

Speaking politely with a smoking neighbour may resolve the problem – but this should only be done if you feel comfortable about your safety in doing so. If there's any indication that the neighbour is becoming angry or abusive, you should end the conversation and not attempt to resume it.

If you decide to speak directly with the neighbour,

we suggest that you first read this Guide. It's wise to make notes of any such conversations – to make a log including dates, times, who was present and what was said, and keeping copies of any written communications including emails.⁴⁸

Q: 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?

Our homes are regarded as private places but

⁴⁷ From Repace JL (2001), op. cit.

⁴⁸ See our sample log above under Achieving smokefree housing: Tenants - or Canadian sample at www.smokefreehousingbc.ca/pdf/Sample%20Tenant%20Log%2011.pdf

we don't have the right to cause harm to another person including a neighbour.

Current policy of the NSW Council for Civil Liberties states:

*Smoking should only be allowed where there is no likelihood of passive smoking causing harm to others.*⁴⁹

There are state and territory laws protecting tenants' rights to reasonable peace, comfort or privacy in using the residential premises; and preventing owners and occupiers from creating a nuisance to others. Many other "legal" activities are quite rightly restricted to where they don't risk harming or annoying others. For example, you can't play music loudly in your apartment - including on your balcony - if it causes a nuisance to others. Similarly, if your cigarette smoke drifts from your apartment to other parts of your building it can be a nuisance to others and open you to legal action. Two NSW legal cases were won by people affected by cigarette smoke-related nuisance in apartment buildings.⁵⁰ Of course, cigarette smoke is more than a nuisance - it's harmful to health.

No law in any jurisdiction obliges anyone to create an area for the purpose of smoking.

Q: 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's no safe level of exposure to cigarette smoke. The US Surgeon General, after reviewing worldwide evidence, has found that secondhand

smoke can cause significant and rapid harm, even at low levels of exposure, and especially when the exposure is repeated or continuous.⁵¹ The potential harm is greater for vulnerable people such as children, pregnant women, the elderly and people with heart, respiratory or certain other conditions.



Air-conditioning systems and door jambs are among many ways smoke can drift throughout a building

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

No. Wherever the air can move, so can the smoke. It doesn't need to be visible to be a health risk. 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 and plumbing and electrical systems.

⁴⁹ NSW Council for Civil Liberties (amended October 2011): Policy Decision – Smoking.

⁵⁰ Durie GL (2006, Highgate case) and Salerno case (1997), op. cit.

⁵¹ US Surgeon General's report (2010), op. cit.

No ventilation system can safely deal with the problem. A report 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 secondhand smoke] is to ban smoking activity.⁵²

The science on this is clear: tobacco smoke cannot be safely contained within one unit of a building.⁵³

Don't smokefree buildings infringe civil liberties or discriminate against smokers?

No. The policy of the NSW Council for Civil Liberties states:

Smoking should only be allowed where there is no likelihood of passive smoking causing harm to others.⁵⁴

Recent research involving air quality testing confirms that secondhand smoke can spread throughout multi-unit buildings, affecting non-smoking occupants.⁵⁵

It's not "discrimination" against car drivers to prohibit them from driving along footpaths. In the same way, requiring someone to move away from others before smoking is not discriminating against them. No-one is saying smokers should not be allowed in the building, just that if they wish to smoke they should do that where they don't risk harming others.



The presence of smoke in a building does, however, discriminate against many people with smoke-affected disabilities such as asthma or heart conditions – as the Human Rights Commission has ruled.⁵⁶

Q: How do I get a smokefree environment introduced to my block?

Most smokefree policies in apartment blocks are introduced through the adoption of a strata by-law⁵⁷ that prohibits smoking throughout the premises or all indoor areas of it. Whether you're a property owner or a tenant, you'd need to gain the support of the owners' corporation for such a by-law.

⁵² American Society of Heating Refrigeration and Air-Conditioning Engineers. (2008); ASHRAE Position Document on Environmental Tobacco Smoke. Atlanta, Georgia.

⁵³ King BA et al (2010); Kraev TA et al (2009); Morrison SL. (2011); Wilson KM et al (2011), all op. cit.

⁵⁴ NSW Council for Civil Liberties (amended October 2011); Policy Decision – Smoking.

⁵⁵ King BA et al (2010); Kraev TA et al (2009); Morrison SL. (2011); Wilson KM et al (2011), all op. cit.

⁵⁶ Human Rights and Equal Opportunity Commission (1997), Meeuwissen case, op. cit.

⁵⁷ See above, Achieving smoke-free housing: sample smoke-free strata by-laws

Where the block is owned by a single landlord, we recommend sending the landlord a letter of complaint about the smoke, or a petition of residents asking for action.⁵⁸

Q: How can a policy be enforced?

A large majority of the community don't smoke and most prefer to live in a smokefree environment.⁵⁹ Most smokers want to quit,⁶⁰ and many will see such a by-law as an extra incentive. Many other smokers see it as reasonable to restrict smoking to where it doesn't endanger others' health. So in most cases, enforcement won't be needed – the policy is usually so popular that it becomes “self-enforcing”.

If enforcement is required, some state/territory laws provide authority. For example, Section 45 of the NSW Strata Schemes Management Act 1996 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.

But note that the Section 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.

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

Given the strong community preference for smokefree environments, it's likely that the value of properties would increase as a result of a smokefree by-law. As smoking rates continue to fall, being smokefree would likely become a stronger selling point.⁶¹

Q: 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 in consultation with the occupiers of the building. This should be in a location where others are unlikely to be affected by the smoke.

Q: Where can smokers find help to quit?

Many smokers find it very difficult to quit, because nicotine is an addictive drug.⁶² Nevertheless, there are many ex-smokers who have overcome nicotine addiction with or without professional assistance.

But for those who do have difficulty quitting, the 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 number is: 13 7848 (13 QUIT)

⁵⁸ See sample letter and petition under Tenants at www.smokefreehousingbc.ca

⁵⁹ NSW Department of Health Centre for Epidemiology and Research (2009), op. cit.

⁶⁰ Cancer Institute NSW (2009), New South Wales Smoking and Health Survey 2009 at www.cancerinstitute.org.au/cancer_inst/publications/pdfs/web09-287-02_nsw-smoking-and-health-survey_November-2009.PDF

⁶¹ Martin A (2011), op. cit.

⁶² U.S. Department of Health and Human Services. (1988), The Health Consequences of Smoking - Nicotine Addiction: A Report of the Surgeon General. Rockville, Maryland.

7. International developments

The problem of smoke drift in apartment blocks has led to important developments in the United States and Canada. In the private housing sectors of those countries, the number of multi-unit housing developments with comprehensive smokefree policies is rapidly increasing.⁶³ During the decade 2000 to 2010 the numbers of non-smoking apartment blocks in the US grew exponentially from almost nil to a situation in which “virtually every state has smoke-free multi-unit housing available, and many states have thousands, if not hundreds of thousands, of smoke-free units”.⁶⁴ Public opinion surveys, which almost invariably indicate overwhelming support for smokefree

apartments, provide some explanation for this trend.⁶⁵

In California, tobacco control advocates are pushing for local ordinances that would require a certain percentage of apartment complexes to be designated no-smoking. The city of Alameda, California, has recently made all rental housing smokefree.⁶⁶

Canadian websites suggest that smokefree policies in that country are also increasingly prevalent. For example, 50 multi-unit housing complexes have advertised their clean-air status on the website Smoke-free Housing BC.⁶⁷



During the decade 2000-2010 the numbers of smoke-free apartment blocks in the US grew rapidly

⁶³ Smokefree Air For Everyone (SAFE) (2011), Smoke-free Apartment House Registry.

Rental Housing Association of Sacramento Valley and Sacramento Taking Action Against Nicotine Dependence (2011), Smoke-freeRental.com. Non-smokers Rights Association (2011), Second-hand Smoke in Multi-Unit Dwellings. Canada.

⁶⁴ Smoke-Free Environments Law Project, Center for Social Gerontology (2009), “Smoke-Free Multi-Unit Housing in Michigan & the Nation: A Decade of Enormous Growth” (media release).

⁶⁵ Smoke-free Environments Law Project (2011), Environmental Tobacco Smoke in Apartments (Internet site). Ann Arbor, Michigan, USA.

⁶⁶ Latest developments at Americans for Non-Smokers’ Rights website (2011) at <http://www.no-smoke.org/goingsmokefree.php?id=127>

⁶⁷ www.smokefreehousingbc.ca/strata/registry_summary.php



As of January 2011 at least 230 US local public housing authorities had adopted smokefree policies for some or all of their apartment buildings.

The growing trend for smokefree public housing

In 2009, the US Department of Housing and Urban Development issued a notice regarding

Non-Smoking Policies in Public Housing.⁶⁸ The notice encourages public housing authorities to implement smokefree policies in public housing units. The US-based Smoke-free Environments

Law Project reports that as of January 2011 at least 230 US local public housing authorities had adopted such policies for some or all of their apartment buildings.⁶⁹ Over 200 have been adopted since the beginning of January, 2005; an average of over 2.9 per month. Over 230 US housing authorities now have smokefree policies - an increase in the number of housing authorities with these policies of almost 1,300% in 72 months.



⁶⁸ US Department of Housing and Urban Development (2009), HUD Encourages PHAs to Become Smoke Free. *Ecwise* (newsletter), 7.

⁶⁹ Smoke-free Environments Law Project (2011), *op. cit.*

8. Checklist for action

WHO	ACTION	TICK
Governments	<ul style="list-style-type: none"> ● Implement comprehensive smokefree legislation to protect whole populations without exemptions in workplaces and crowded outdoor public places ● Introduce smokefree housing options for multi-unit housing including aged care, retirement villages, public housing, corrective services ● Legislate for smokefree prisons and other custodial settings at least covering all indoor areas ● Enforce legal obligations under OHS laws and disability discrimination as a minimum 	
Housing authorities	<ul style="list-style-type: none"> ● Adopt comprehensive smokefree policies that include: consultation; an accessible smokefree policy for all residents; a complaints and mediation process; signage; and an evaluation plan 	
Real estate agents	<ul style="list-style-type: none"> ● Encourage owners and landlords to gain benefits of smokefree policies by adopting smokefree by-laws and policies ● Communicate smokefree by-laws in relevant advertising, notices to tenants and in lease conditions 	
Owners and landlords	<ul style="list-style-type: none"> ● Seek support from the owners' corporation to establish a strata by-law ● Present case for support with evidence of health, legal and financial benefits ● Check with your state Tenancy Tribunal regarding complaints options ● Check if discounted fees are available for smokefree properties 	
Medical Practitioners	<ul style="list-style-type: none"> ● Assist patients who have SHS concerns with medical assessment and monitoring of health impact 	
Tenants	<ul style="list-style-type: none"> ● Be aware of your rights by using this Guide to resolve SHS complaints ● Keep a log and document incidents of involuntary exposure to SHS in your home ● Consider raising politely with smoking neighbour to seek solutions if safe to do so ● Write to your landlord about your SHS complaint and consider including letter from your doctor regarding your health concerns ● Ask landlord for support at meeting of owners (i.e. body corporate or general meeting) for adoption of a smokefree policy and/or by-law. 	

9. Resources

Australian resources

Action on Smoking and Health (ASH)

Australia

Website: www.ashaust.org.au/lv4/housing.htm

The ASH “Smokefree multi-unit housing” webpage provides up-to-date information on related developments, and resources – including this Guide and...

Smoke-free Retirement Villages factsheet – copy above under 4. Achieving smoke-free housing

Cancer Council NSW

Website: www.cancercouncil.com.au/editorial.asp?pageid=1046

Many factsheets on tobacco and health including “Smoke drift in apartment blocks” at www.cancercouncil.com.au/editorial.asp?pageid=2228 – includes some NSW-specific but also some more general information.

Non-Smokers’ Movement of Australia

Website: www.nisma.org.au/index.htm

A grassroots tobacco control advocacy group with a webpage on “Smoke Drift from Neighbours” containing tips and suggestions for resolving the problem. The Movement welcomes the involvement of members of the community.

NSW:

Relevant legislation

- The Smoke-free Environment Act 2000
www.austlii.edu.au/au/legis/nsw/consol_act/sea2000247/
- Strata Schemes Management Act 1996
www.austlii.edu.au/au/legis/nsw/consol_act/ssma1996242/

- Residential Tenancies Act 2010
www.austlii.edu.au/au/legis/nsw/consol_act/rta2010207/
- Landlord and Tenant (Amendment) Act 1948 – Section 62
www.austlii.edu.au/cgi-bin/sinodisp/au/legis/nsw/consol_act/lata1948257/s62.html?stem=0&synonyms=0&query=nuisance

Peak strata owners’ and tenants’ representative organisations (NSW)

Owners’ Corporation Network

Website: www.ocn.org.au/content/contact-us
Peak body for owners and investors in residential strata developments. Its activities include:

- Educating Executive Committee members and individuals
- Lobbying for necessary changes to Government policy and legislation
- Representing owners on Government, Education and Industry committees
- Playing an active role in the media

Owners’ Corporation Network Australia Inc

PO Box Q933, Queen Victoria Building NSW 1230

E-mail: enquiries@ocn.org.au

Tenants Union of NSW

Website: www.tenants.org.au

NSW’s peak non-government organisation for tenants and that it represents the interests of all NSW tenants, including tenants of private rental housing, social housing tenants, boarders and lodgers, and residential park residents.

Tenancy tribunals in different jurisdictions

AUSTRALIAN CAPITAL TERRITORY

ACT Office of Fair Trading
Level 2 GIO House City Walk Canberra City 2600
GPO Box 158 Canberra 2601

Website: www.ors.act.gov.au

Phone: (02) 6207 0400

Email: ors@act.gov.au

NEW SOUTH WALES

NSW Fair Trading

1 Fitzwilliam Street Parramatta 2150
PO Box 972 Parramatta 2124

Website: www.fairtrading.nsw.gov.au

This site contains comprehensive information on strata schemes in NSW including the composition, role and functions of a strata scheme, its powers and services available to help resolve disputes.

www.fairtrading.nsw.gov.au/Tenants_and_home_owners/Strata_schemes/Frequently_asked_questions_strata_schemes.html

Phone: General consumer enquiries 133 220;
(02) 9895 0111

Consumer, Trader & Tenancy Tribunal

Information and enquiries - 1300 135 399

Website: www.cttt.nsw.gov.au

Phone: 1300 135 399

Email: ctttenquire@cttt.nsw.gov.au

NORTHERN TERRITORY

Consumer Affairs

Postal address - GPO Box 1722 Darwin 0801
Darwin location - Ground floor, Old Admiralty

Towers, 68 The Esplanade, Darwin 0800
Alice Springs location - Level 1, Belvedere House,
Cnr Bath & Parsons Streets,
Alice Springs NT 0870

Phone - (08) 8999 1999 or 1800 019 319

SMS: 040 111 6801

Website: www.nt.gov.au

QUEENSLAND

Office of Fair Trading (OFT)

Queensland Government Service Centre
Upper Plaza Terrace, 33 Charlotte St Brisbane
4000

GPO Box 3111 Brisbane 4001

Website: www.fairtrading.qld.gov.au

Phone: 13 13 04

Queensland Civil and Administrative Tribunal (QCAT)

Level 9, Bank of Queensland Centre, 259 Queen Street, Brisbane Qld 4000

Phone: 1300 753 228 (8.30am - 5pm)

SOUTH AUSTRALIA

Office of Consumer and Business Affairs

Chesser House 91-97 Grenfell Street Adelaide
5000

PO Box 965 Adelaide 5001

Residential tenancies

Website: www.ocba.sa.gov.au

Phone: (08) 8204 9544 (advice)

Email: tenancy.advice@agd.sa.gov.au

TASMANIA

Office of Consumer Affairs and Fair Trading
(CAFT)

GPO Box 1244 Hobart 7001

Website: www.consumer.tas.gov.au

Phone - 1300 654 499 (cost of local call)

E-Mail: consumer.affairs@justice.tas.gov.au

VICTORIA

Consumer Affairs Victoria (CAV)

121 Exhibition St Melbourne 3000. GPO Box
123A Melbourne 3000

Website: www.consumer.vic.gov.au

Phone numbers:

Consumer Helpline 1300 55 81 81

Residential real estate matters - 1300 73 70 30

Email: consumer@justice.vic.gov.au

Victorian Civil and Administrative Tribunal

55 King Street Melbourne Vic 3000 Australia
GPO Box 5408 Melbourne Vic 3001

Tel: (03) 9628 9800

Toll Free: 1800 133 055

Website: www.vcat.vic.gov.au

Email: VCAT-RT@justice.vic.gov.au

WESTERN AUSTRALIA

Consumer Protection

Consumer Protection administers the Fair Trading Act 1987.

219 St Georges Terrace Perth 6000

Locked Bag 14 Cloisters Square WA 6850

Website: www.docep.wa.gov.au

Phone (Advice & complaints) 1300 30 40 54
(cost of a local call)

International resources

Americans for Non-Smokers' Rights

Lists latest developments including smoke-free housing.

Website: www.no-smoke.org/goingsmokefree.php?id=127

MI smoke-free Apartment web site

This initiative of the Smoke-Free Environments Law Project provides interesting advice on legal options, although of course, this is within the context of the US legal environment. Still, the common law possibilities discussed on the site are similar to those in Australia.

Website: www.mismokefreeapartment.org

Smoke-free Apartment House Registry

California, USA.

10722 White Oak Avenue, Suite 5, Granada Hills,
CA 91344

Email: smokefreeapartments@pacifcnet.net

Smoke-Free Environments Law Project

The US-based Smoke-Free Environments Law Project – an initiative of the Centre for Social Gerontology - comprises a comprehensive overview of the many current and recent smoke-free housing related developments in the USA.

Website: www.tcsg.org/sfelp/apartment.htm

Smoke-free Housing Registry

The Smoke-free Housing Registry will list smoke-free multi-unit housing upon application. Although based in the United States, the Registry provides an opportunity for international listings. Smoke-free multi-unit property owners within Australia may wish to apply to have their properties listed.

Website: www.smokefreeapartments.org

Smoke-free Housing BC (Canada)

Described as the “first dedicated website in Canada designed to encourage and assist strata corporations to create more smoke-free options for British Columbians living in condominium complexes”, this excellent site provides resource material including legal information, survey results, “how-to” guides and testimonials; advice for residents, landlords and strata corporations. Website: www.smokefreehousingbc.ca/strata/index.html Under Tools and resources are sample petitions, surveys, complaint letters, by-law violation letters and resident log of exposures.

Tobacco smoke: scientific information about exposure

US-based website created by four SHS-expert research scientists, provides latest scientific information about secondhand exposure – indoor, outdoor and in vehicles.

Website:

<http://tobaccosmoke.exposurescience.org>

World Conference on Tobacco or Health presentations

2009 World Conference on Tobacco or Health

- On the Horizon: Smoke-free Multi-unit Dwellings – Author: Pippa Beck
Abstract: www.14wctoh.org/abstract/abs_detail.asp?AbstractID=425
- The Last Frontier: Second-hand smoke infiltrating apartments – Authors: Jack Boomer, Sharon Hammond, Bobbe Wood, Scott McDonald. Abstract : www.14wctoh.org/abstract/abs_detail.asp?AbstractID=424

2006 World Conference on Tobacco or Health

- Smoke-free Multi-Unit Housing: The Next Frontier – Author: Joanne Wellman-Benson

Abstract: <http://2006.confex.com/uicc/wctoh/techprogram/P6719.HTM>

- North American Efforts to Create Smokefree Housing – Authors: Robin Salsburg, Kimberly Weich Reusche, Jack Boomer, Cassandra Fairclough
Abstract: <http://2006.confex.com/uicc/wctoh/techprogram/P8145.HTM>
- Prohibiting Smoking in Multi-Unit Housing: It's Legal! – Author: Robin Salsburg,
Abstract - <http://2006.confex.com/uicc/wctoh/techprogram/P8880.HTM>

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About ASH Australia

Action on Smoking and Health (ASH) Australia is a national non-government health organisation committed to reducing tobacco use and ending the misleading and deceptive conduct of the tobacco industry. Founded in 1994, ASH is funded by the Cancer Council Australia and the Heart Foundation.

The ASH Board is chaired by Associate Professor Matthew Peters, a Thoracic Physician and includes public health experts from the Cancer Council Australia (Paul Grogan), Heart Foundation (Maurice Swanson), University of Sydney (Professor Simon Chapman) and the Royal Australasian College of Physicians (Dr Stephen Stick).

Anne Jones OAM, Chief Executive Officer since 1994, is a policy adviser on tobacco control in Australia, and a technical adviser on tobacco control for the International Union on Tuberculosis and Lung Disease (The Union). Stafford Sanders is the Communications Officer and coordinator of two national coalitions aiming to reduce tobacco diseases: the Protecting Children from Tobacco coalition of 42 organisations and the SmokeFree Australia workplace coalition of 11 organisations. ASH is a member of Framework Convention Alliance (FCA) made up of over 350 organisations from more than 100 countries working on the development, ratification and implementation of the WHO Framework Convention on Tobacco Control.

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