

# Smoking in strata and how it affects others



One of the most common disputes strata managers often face is cigarette smoking or second-hand smoke drift, especially as more people are now working from home. There is no doubt about the health risks associated with inhaling cigarette smoke. Passive smoking can increase the risk of lung cancer and heart disease.

Beyond the health concerns, many non-smokers don't appreciate the smell of smoke. Not only can smoking cause fire hazards and be a nuisance to neighbouring tenants, but it can also increase property cleaning costs. The internal smell can also make it harder to rent out the property to new tenants. In New South Wales, smoking in strata buildings is governed by the Strata Schemes Management Act 2015 and the Smoke-free Environment Act 2000.

Under the Smoke-free Environment Act, smoking is prohibited in common areas of strata buildings, such as hallways, stairwells, and foyers. The Act also allows owners corporations to pass by-laws that prohibit smoking in individual lots, including balconies and courtyards. However, to pass a by-law prohibiting smoking in individual lots, a special resolution must be passed at a general meeting of the owners corporation.

This requires at least 75% of the votes of the owners present and eligible to vote. It is important to note that the Smoke-free Environment Act does not apply to the smoking of tobacco in private residences. This means that if an owner or occupier is smoking within the confines of their own apartment or townhouse, it is generally not considered a breach of the law. However, the smoke should not escape into common areas or neighbouring properties. It is recommended that strata buildings have clear by-laws and policies regarding smoking, to ensure the health and safety of all residents and to avoid disputes.

## What is "Common Property"

The owners corporation argued before the Tribunal that common property included the air space immediately outside the smokers' apartment. For the smoke to reach the apartment of the owners affected smoke, it had to travel through common property air space outside the building, through the air space of a balcony and through a common property window to make its way into the apartment.

## Consequences for Smoking in Strata Schemes

The risk for owners corporations seeking penalties against occupants is always that their by-laws may be technically deficient because of the wording of those by-laws. In this case, the owners corporation had a little "wiggle room" because the Tribunal (quite correctly) recognised that common property within a strata scheme consists of more than just a common stairway or laundry area – it consists of the entirety of the parcel making up the strata scheme which is not lot property. However, because of the way in which the by-law was drafted, by reference to the common property, the owners corporation needed to rely on this technical definition of common property.

For most strata schemes, this case illustrates that it is extraordinarily difficult for smokers to avoid breaching by-laws – as we have previously observed in these newsletters, the days of smoking within a strata scheme are almost certainly "numbered".

Nonetheless, it is important to have a well-drafted by-law if the owners corporation wishes to comprehensively deal with the issue, including a by-law which deals with: the use of all tobacco types, including cigarettes, pipes and cigars; vaping, and the debris created by these practices; the issue of "smoke-drift"

[CONTACT US](#)

*Disclaimer:*  
The information contained in this news post is general in nature and is intended to provide a general summary only and should not be relied on as a substitute for professional advice.