

Managing Smoke Drift in Multi-Unit Developments

Overview

Under the *Smoke-Free Public Places Act 2003*, in the ACT smoking is banned:

- in all enclosed public places, including shopping centres, cinemas, office buildings, buses, taxis, restaurants, pubs and clubs;
- in outdoor eating and drinking areas;
- in underage music/dance functions;
- in cars when children under the age of 16 years are present;
- within 10 metres of play equipment at ACT Government managed [play spaces](#); and
- at public transport stops, stations and waiting areas.

Smoking [bans](#) at public places apply to the use of all smoking products, including tobacco and electronic cigarettes. Smoke-free policies also apply at the Canberra Stadium and Manuka Oval, all ACT Government schools, ACT Government buildings and health facilities. The ACT Government plans on increasing the number of declared smoke-free public places to: support those who have quit; make smoking less visible to children and young people; and reduce the community's exposure to second hand smoke.

Issues

Exposure to second-hand tobacco smoke increases the risk of cardiovascular disease, lung cancer and other lung diseases. It can worsen other illnesses such as asthma and bronchitis¹. Additionally, there is no safe level of exposure to second-hand tobacco smoke².

Smoke drift refers to second-hand smoke drifting to and invading a neighbour's unit and/or common areas, causing hazard and/or nuisance. Smoke drift is more prominent in multi-unit developments than in detached dwellings due to the increased density and proximity of residents. It is also due in part to the design elements of multi-unit developments that allow second hand smoke to spread between units via a number of pathways including, mechanical ventilation and air conditioning systems, elevator shafts, hallways, stairwells, balconies and courtyards.

¹ Parkin DM. 2. *Tobacco-attributable cancer burden in the UK in 2010*. Br J Cancer 2011 Dec 6;105 Suppl 2:S6-S13 [Abstract available at <http://www.ncbi.nlm.nih.gov/pubmed/22158323>].

² [2] Pandeya N, Wilson LF, Bain CJ, Martin KL, Webb PM, Whiteman DC. *Cancers in Australia in 2010 attributable to tobacco smoke*. Aust NZ J Public Health 2015 Oct;39(5):464-70 [Abstract available at <http://www.ncbi.nlm.nih.gov/pubmed/26437733>].

Smoke drift in multi-unit developments can be a complex issue when considering both the personal liberties of smokers and the public health rights of other residents. People living in multi-unit settings share common space and infrastructure and, as a consequence, rules apply that seek to balance the interests of all residents. In the ACT multi-unit developments are managed through the *Unit Titles (Management) Act 2011* ([the Act](#)).

Options for Management

Cooperative Approach

Where a perceived issue with smoke drift arises in a multi-unit development, in the first instance unit owners and the owners corporation should facilitate a discussion with those creating the smoke drift to make them aware of the issue and its effect on other residents/owners. Smokers may not be aware of the extent or consequence of smoke drift and hopefully after becoming aware smokers would be willing to voluntarily take measures to limit exposure of other residents to their second-hand smoke. When initiating a cooperative approach a mediator, such as the Conflict Resolution Service (www.crs.org.au), can be useful to help clarify the scope of the issue and assist parties reach mutual agreement on the issue.

Prescriptive Approach

In instances where the cooperative approach fails, the Act provides a number of mechanisms that may be used to address persistent smoke drift. Schedule 4 *Default Rules* can be adopted by the owners corporation to prevent Hazardous use of unit (7) and nuisance and annoyance use of unit (8). Evidence of persistent smoke drift between units could be reasonably interpreted to be a breach of these rules. An example of this could be that the owners corporation seek to adopt a rule to prohibit smoking in the common areas of the units plan such as car parks, stairwells, foyers etc.

Additionally, the Act also provides a further mechanism (S 108) whereby an owners corporation can move to amend rules. This would involve the owners corporation creating a rule or amending the default rules (schedule 4) to specifically address where smoking can or cannot be undertaken and/or that smokers must take measures to prevent smoke drift. This process requires owners corporations to amend rules by special resolution and require that new rules are registered with Land Titles Office. Owners corporations are encouraged to seek advice from their strata manager or Access Canberra prior to pursuing this path.

Enforcement

The Act provides enforcement powers and enables the owners corporation to issue a rule infringement notice for non-compliance with rules. The owners corporation is not able to directly impose a monetary penalty, however it can apply to the ACT Civil and Administrative Tribunal (ACAT) for an order in relation to the failure to comply with the notice.

Finally, if there is a dispute that cannot be resolved through other means, a resident can apply directly to ACAT for an order to the owners corporation or another resident.

Access Canberra is responsible for administration of the Act. For further information, please contact the Access Canberra Advice and Complaints team at <https://www.accesscanberra.act.gov.au/app/ask/> (phone: 132281).

Resources

Unit Titles (Management) Act 2011 (www.legislation.act.gov.au)

Schedule 4 Default Rules

7. Hazardous use of unit

(1) A unit owner must not use the unit, or permit it to be used, so as to cause a hazard to an owner, occupier or user of another unit.

8. Use of unit—nuisance or annoyance

(1) A unit owner must not use the unit, or permit it to be used, in a way that causes a nuisance or substantial annoyance to an owner, occupier or user of another unit.

(2) This rule does not apply to a use of a unit if the executive committee has given an owner, occupier or user of the unit written permission for that use.

(3) Permission may be given subject to stated conditions.

(4) Permission may be withdrawn by special resolution of the owners corporation.

Section 108

108 Owners corporation may amend rules

(1) An owners corporation may, by special resolution, amend its rules.

(2) An amendment of the rules of an owners corporation takes effect—

(a) on the registration of a copy of the special resolution making the amendment, certified under the seal of the corporation as a true copy; or

(b) from a later date stated in the resolution.

(4) An amendment to the rules of an owners corporation has no effect to the extent that it results in the rules—

- (a) being inconsistent with this Act or another territory law; or
- (b) giving a function to the corporation that is not incidental or ancillary to the exercise of its functions under this Act; or
- (c) prohibiting or restricting any dealing (including devolution, transfer, lease and mortgage) with—
 - (i) an interest in a unit; or
 - (ii) the equitable estate of a unit owner in the common property; or
- (d) prohibiting or restricting the installation, operation or maintenance of sustainability or utility infrastructure.

(5) In this section: **amendment**, of rules, includes variation, rescission, substitution or addition.

Disclaimer

This factsheet is intended to guide users of the legislation, including unit owners, executive committees and managers to meet their requirements under the law. While reasonable steps have been taken to ensure the information in this guide is accurate, you should not rely solely on that information. The factsheets do not constitute legal advice. If you are uncertain of your legal obligations or rights or if you are having a dispute involving an owners corporation, you should seek independent legal advice.

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