

Policy Purpose

Strata Community Association WA provides this policy as a guideline for its members to use when necessary to educate owners of property within a scheme. It has been created for the members to distribute should the question arise about SCA WA's position regarding smoking in schemes.

Policy Basis

Strata living is now the preferred choice for those buying a home. The majority of new homes now being built in Australia are strata-titled.

Often, the living spaces in strata titles lots are closer to each other than has traditionally been the case in stand-alone green titled housing. That being the case, owners and tenants may be more concerned about issues such as smoke drift than was previously the case. Smoke drift can cause significant nuisance for owners and tenants and may cause health problems.

Smoke can drift throughout a building via courtyards, balconies, door and window jambs, wall-inset air vents, mechanical ventilation and air conditioning systems, elevator shafts, hallways, stairwells, cracks in walls and plumbing and electrical systems.

Western Australian legislation

Since 31 July 2006, smoking has been prohibited in all enclosed public places (the only exception to this is the Burswood Casino's International Room) under the *Tobacco Products Control Act 2006* (WA) and *Tobacco Products Control Regulations 2006* (WA). This means that in addition to venues that were required to be smoke-free before 31 July 2006 (for example, shopping centres, theatres, airports and cinemas), enclosed public places in venues such as pubs, sporting clubs, nightclubs and restaurants are also required to be smoke-free.

Private guest rooms of hotels and residential accommodation are not considered to be public places, although other areas, including corridors, foyers and lobbies within these premises, may be required to comply with the legislation.

The *Strata Titles Act 1985* (WA) is silent on smoking. However, the default by-laws found in that Act (that apply to every scheme unless the developer or the strata company have deleted, added to or changed them) addresses the right to quiet enjoyment of the common property and the lot in schedule 1 by-laws 1 (2)(a)-(c):

(2) A proprietor, occupier or other resident of a lot shall —

(a) use and enjoy the common property in such a manner as not unreasonably to interfere with the use and enjoyment thereof by other proprietors, occupiers or residents, or of their visitors; and

(b) not use the lot or permit it to be used in such manner or for such purpose as causes a nuisance to any occupier of another lot (whether a proprietor or not) or the family of such an occupier; and

(c) take all reasonable steps to ensure that his visitors do not behave in a manner likely to interfere with the peaceful enjoyment of the proprietor, occupier or other resident of another lot or of any person lawfully using common property;.....

If the lot is tenanted, the *Residential Tenancies Act 1987* (WA) also provides:

39. Tenant's conduct on premises

It is a term of every residential tenancy agreement that the tenant —

... (b) shall not cause or permit a nuisance.

42. Lessor's responsibility for cleanliness and repairs

... (2) It is a term of every residential tenancy agreement that the lessor —

... (c) must comply with all requirements in respect of buildings, health and safety under any other written law insofar as they apply to the premises.

44. Quiet enjoyment

... (2) It is a term of every residential tenancy agreement —

... (b) that the lessor must not cause or permit any interference with the reasonable peace, comfort or privacy of the tenant in the use by the tenant of the premises; and

(c) that the lessor must take all reasonable steps to enforce the obligation of any other tenant of the lessor in occupation of adjacent premises not to cause or permit any interference with the reasonable peace, comfort or privacy of the tenant in the use by the tenant of the premises.

Choice

If problems arise with smoke drift within a scheme, owners and tenants in the scheme must address them.

Relatively minor changes to a well-designed building can sometimes help. Good management by an independent manager can also help owners and tenants address specific complaints that arise such as displaying “No Smoking” or “Smoking is prohibited” signs in appropriate places where there is a problem as well as increasing knowledge of by-laws.

Further, if an owner or tenant are concerned about smoke drift, they may wish to speak to the owners or tenants whose smoke causes concern. The smokers may be unaware of the smoke drift and its effect on neighbouring owners and tenants.

If that does not produce a satisfactory outcome, they may seek to obtain support for restrictions on smoking. They should first speak to other owners and tenants and then the strata manager / strata council.

Restrictions may be implemented in WA schemes by adopting new by-laws specifically addressing smoking within the scheme. A lawyer can draft by-laws to suit the specific circumstances of each scheme. Owners may want the by-laws to restrict smoking in certain areas or at certain times or impose graduated restrictions if genuine complaints are made. Any proposed new by-laws must be sent out to all owners and then voted on at a general meeting of owners.

Owners must be mindful of all owners’ rights and existing obligations in adopting new by-laws.

Finally, existing legislation and regulations may be able to be used by strata companies, owners or tenants to address their concerns by applying to the State Administrative Tribunal or a Court for a decision.