

Safe at Home:

PROTECTING QUEENSLANDERS FROM
SMOKE-DRIFT IN MULTI-UNIT HOUSING



**Cancer
Council**
Queensland



Cancer Council Queensland is the only charity to work across every area of cancer, including research, prevention and support services. We support Queenslanders from the point of diagnosis through to treatment and survivorship.

Cancer Council Queensland is committed to reducing the burden of cancer and helping the Queensland community live happy, healthy lives.

Second-hand smoke is a health hazard and there is no safe level of exposure. Second-hand smoke can cause coronary heart disease and lung cancer in non-smoking adults and induces and exacerbates a range of mild to severe respiratory effects in infants, children and adults.

The Queensland Government has been praised for its leadership in creating more smoke-free places, however, many Queenslanders are still exposed to the dangers of second-hand smoke— including in their homes. Cancer Council Queensland is contacted regularly by concerned members of the community regarding smoke-drift in multi-unit housing, with Queenslanders seeking advice and sharing frustrations at their limited options.

In 2021, Cancer Council Queensland surveyed Queenslanders about their experiences and concerns regarding smoke-drift (second-hand smoke exposure) while living in multi-unit housing such as apartments and townhouses. Survey results identified overwhelming support for reducing smoke-drift in multi-unit housing, with 88% calling for action.

We urge the Queensland Government to act, to enable Queenslanders to live safely at home.

The Queensland Government could:

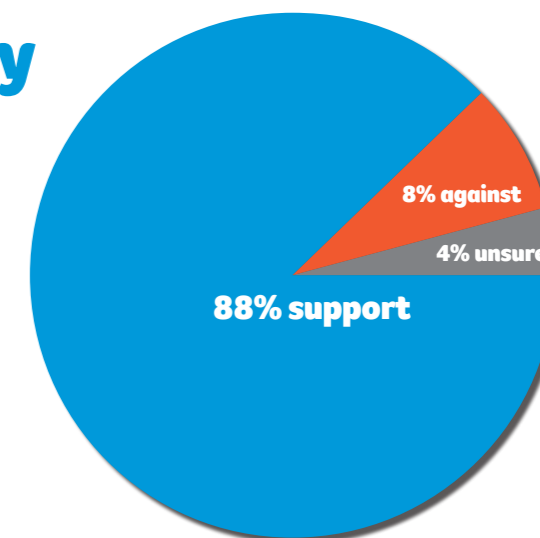
1. Make multi-unit housing smokefree by introducing a 'no smoking law' in either
 - a. the *Tobacco and Other Smoking Products Act 1998* or
 - b. the *Body Corporate and Community Management Act 1997*
2. Amend the *Body Corporate and Community Management Act 1997* to allow bodies corporate to adopt and enforce a no smoking bylaw, including developing a model bylaw and clarifying how these bylaws can be adopted (we recommend a simple majority (50% +1 in support) rather than a special majority)
3. Lower the extraordinarily high test from *Norbury vs Hogan* which requires that smoke (caused by the respondent) is of such a 'volume and frequency' that it is an 'unreasonable interference' with a resident of 'ordinary sensitivity' before it will be considered 'nuisance' under the *Body Corporate and Community Management Act 1997*.

Regardless of the option taken, it is clear that action is needed to protect Queenslanders from second-hand smoke in their own homes.

Chris McMillan
Chief Executive Officer

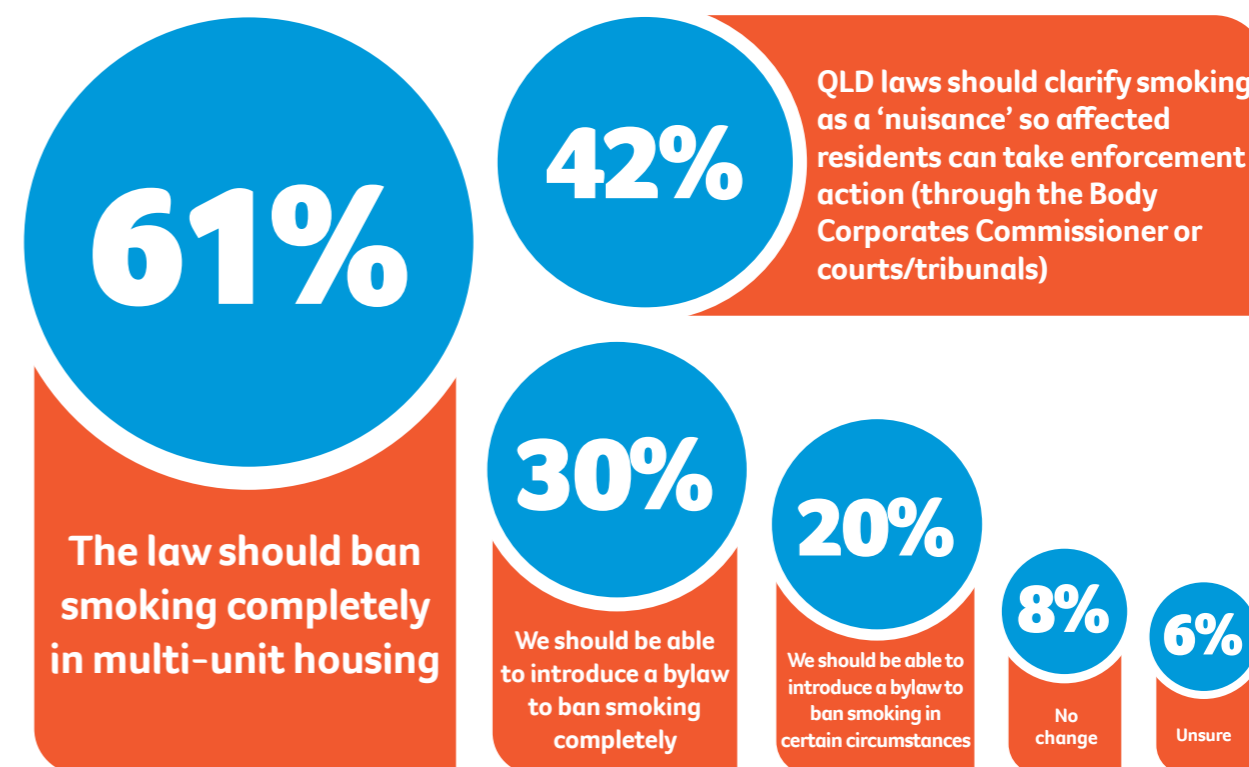
Queenslanders strongly support action to reduce smoke-drift in multi-unit housing

There was overwhelming support for action to reduce smoke-drift in multi-unit housing, with **88%** of respondents in support, **8%** against, and **4%** unsure.



What Queenslanders want done to tackle this issue

When asked what specific changes Queenslanders wanted to see, respondents indicated they supported a range of actions.



Queenslanders feel very strongly about the need for action to be taken. Nearly **two in three** respondents support Queensland laws banning smoking completely in multi-unit housing

— ***I have extensively researched this issue and discovered there are thousands like me screaming out for help on this....***

Ben and Di's story

When Ben was diagnosed with terminal lung cancer, he and his wife Di decided to move into an apartment that required less upkeep, and where they could focus on Ben's health. Unfortunately, the couple was immediately affected by smoke from several neighbours.

'The last thing we want is more smoke affecting Ben. He quit smoking over 40 years ago, and this is having a significant impact on his health,' said Di. 'I am also affected by COPD - chronic obstructive pulmonary disease, so the smoke-drift is really problematic.'

Di wrote to one of her neighbours explaining the situation, who immediately took action to reduce the smoke-drift. 'She stopped smoking on her balcony and moved to another, outdoor area, and I think she eventually quit, which is great for her and for us.' However, attempts to convince another neighbour weren't as successful. 'He just refused to take any action, and when we went to the body corporate, they

couldn't take any action either. I think they addressed it by writing to him about the litter issue because he was leaving butts around, but that didn't change the amount of smoke that came onto our balcony and into our home.' That neighbour recently moved out, much to Ben and Di's relief.

Di says that more should be done to protect people from second-hand smoke. 'In buildings like this, you don't want to make waves with your neighbours, but more has to be done. Queensland has laws that prevent smoking around schools, government departments, hospitals - why can't government take action to prevent cigarette smoke coming into our homes?'

The impact of smoke-drift

Where are people smoking and would a ban negatively impact them?

Among respondents who live in multi-unit housing, **nearly 9%** were daily or occasional smokers.

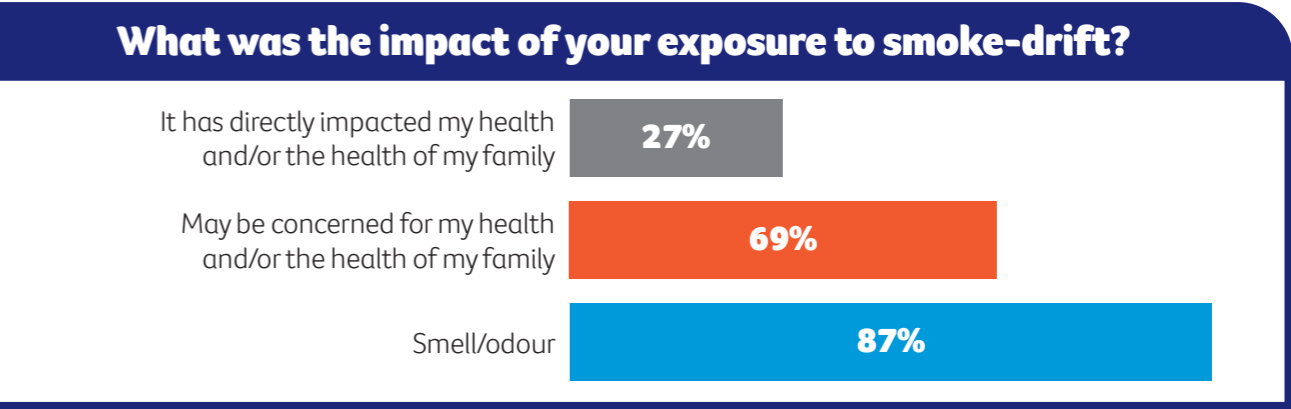
More than two in three daily or occasional smokers smoked at home, with the vast majority (**88%**) smoking on balconies or outside areas within their property, **10%** inside their home and only **2%** on common property only.

20% of smokers said if smoking was banned in multi-unit housing it wouldn't have a negative impact on them.

'I smoke on my balcony because it's nowhere near anybody else's unit. Ironically, I strongly support smoke-free laws.'

Where are non-smokers being exposed and what is the impact?

Alarmingly, **nearly 95%** of non-smoker respondents reported they had been affected by smoke-drift from neighbours, with **99%** reporting exposure while within their home.



'As a former smoker, the smell now makes me physically nauseous and want to vomit. I am not kidding. I don't want to have to feel like that in the comfort of my home.'

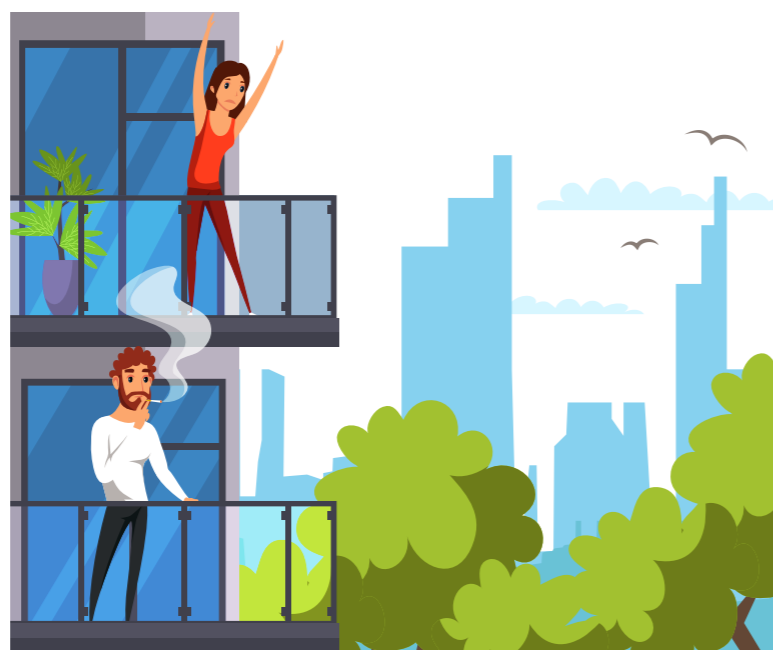
'We constantly smell cigarette smoke from other apartments. It's disgusting, unhealthy and directly impacts our ability to enjoy our property.'

With more than two in three non-smokers reporting concerns over their and their families health, it is particularly concerning to note that some respondents report not only concerns but direct health impacts.

'I would like to see smoking completely banned in multi-unit buildings. I suffer from Bronchiectasis and second-hand smoke brings on a coughing attack. Further, it is also a fire risk. We had cigarette burns on our outdoor furniture as well as my outdoor rug.'

One option available to Queenslanders who need to prevent second-hand smoke exposure, and limit nuisance and health impacts is to move homes. This should not be necessary as it is not always feasible and can cause housing displacement and unnecessary strain on individuals and their families. Alarming, **20% of non-smokers have moved home because they were negatively affected by smoke-drift.**

'If not banned, complexes should declare if they permit smoking, or are smoke free. Having this option and line of sight would sway decisions on buying or moving to certain properties. Hotels can be smoke free, why not homes?'



What does the science say?

The World Health Organisation recognises second-hand smoke as a health hazard to which there is no safe level of exposure. Second-hand smoke is a combination of thousands of chemical compounds, including at least 250 chemicals known to be toxic or carcinogenic.^[1]

Second-hand smoke can cause coronary heart disease and lung cancer in non-smoking adults and induces and exacerbates a range of mild to severe respiratory effects in infants and children.^[2] This is concerning as children are particularly vulnerable to poor health outcomes as a result of exposure to second-hand smoke as they have a higher breathing rate per kilogram of body weight, their lungs are still developing, and they are unable to control their environment.

While it is promising that fewer people are choosing to smoke inside their homes^[5], research indicates that the home remains a source of second-hand smoke exposure for both adults and children.^[3] Tobacco smoke can contaminate non-smoking units and common areas via open doors and windows, cracks in walls, floors and ceilings, shared ventilation gaps around plumbing, gaps under doors or through poor insulation – meaning is not easily contained within multi-unit housing.^[3]



Lynnor's story

Lynnor moved into an apartment on the Gold Coast in late 2019, and immediately noticed the impact of smoke from her neighbour. 'He lives in the apartment immediately below mine, and smokes on his balcony. The smoke-drifts straight up into my apartment, and it is having a significant impact.'

Lynnor has chronic health issues, that have worsened since she moved into her apartment. 'I suffer from haemochromatosis (iron overload), the treatment for which is regular venesections. Unfortunately, there is a direct link between inhaling cigarette smoke/smoke-drift and iron levels. The cigarette smoke has caused excessive absorption of iron in my body so instead of having only two venesections in the past year as ordered by my haematologist, I have had to endure eight in total. This has a major impact on my health – haemochromatosis is complex and affects many organs in the body, including heart and lungs, both of which are suffering from this exposure to my neighbour's smoking habit.'

Another friendly neighbour approached Lynnor's neighbour, who became abusive

and actually started smoking more. When Lynnor's building manager approached the body corporate, they were told that nothing could be done.

Lynnor has directly engaged with her local MP, ministers and Queensland Health about this issue, as she recognises the need for law reform to address this issue. 'I just think smoking should be banned totally. If smokers want to smoke, that's their privilege, but the smoke cannot be contained – it doesn't stay in their apartment or their balcony.'

'There are so many people in this building that hate the exposure to smokedrift – wouldn't it be wonderful if it could be banned, so we could be totally smokefree?'

'I suffer from haemochromatosis (iron overload), the treatment for which is regular venesections. Unfortunately, there is a direct link between inhaling cigarette smoke/smoke-drift and iron levels.'

People can't deal with their problems under the current system

Within the current model **there is no real protection for non-smokers**, and Cancer Council Queensland is often contacted by members of the community who are frustrated with the options available to them. Without meaningful avenues to resolve disputes, we recommend that if a Queenslander has an issue with someone smoking in their scheme, or with smoke-drift, that they try to resolve the issue directly. If this is not possible, then they can make a nuisance claim which then triggers conciliation and adjudication^[4], but this is unlikely to resolve the dispute.

Smokers – One in ten smokers had been approached by a neighbour about their smoking, and 6% had a formal complaint made about their smoking to their Body Corporate Manager or unit manager. Two-thirds were unsatisfied or very unsatisfied with the process, and half reported having an argument or breakdown of their neighbour relationship.

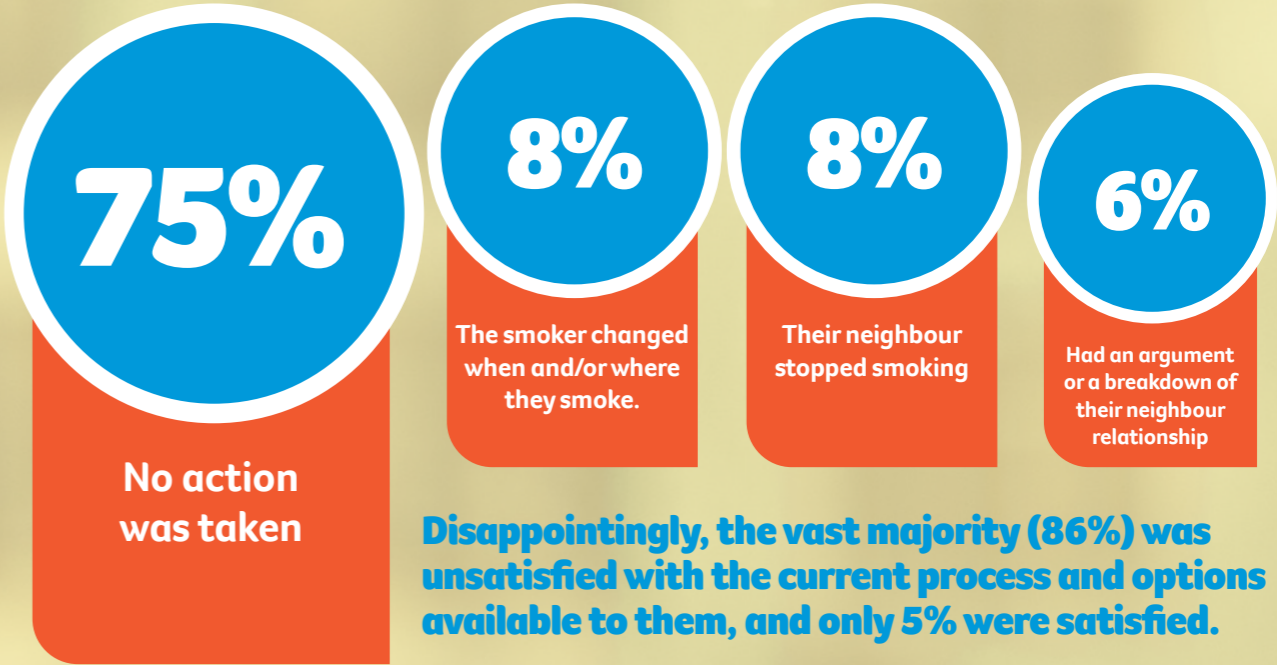
Non-smokers – One-third (31%) of non-smokers reported that they directly approached their neighbour to complain about their smoking. Disappointingly, three-quarters (73%) said no action was taken, and the remaining one-quarter said they had an argument or breakdown of their neighbour relationship.

'A lot of smokers chain smoke for hours on their balcony and the smell can be smelt for long after. It ruins the quiet enjoyment of my space and some smoke in common areas with no regard for others. If you politely ask them to stop they act like you you're unreasonable and sometimes get abusive.'

'I have never approached neighbours about their smoking as that can have a negative impact and can cause disputes with neighbours. Basically to fearful of their reaction to any approach.'

'I live with my wife and young son in an apartment and our neighbour living in the apartment below smoked which constantly entered our apartment and made us concerned for our health, but particularly for our son as smoke elevates the risks of SIDS. We requested the neighbour stop smoking, and raised the issue with body corporate but nothing was done so we were forced to move apartments at our own cost. We are now experiencing the same issue with a different neighbour and it is both frustrating and disappointing as we have no ground to stand on and are once again forced to deal with it or move. I fully support a law to ban smoking completely in multi-unit housing as it is a significant health risk and concern, particularly for other parents with young children.'

One third (32%) of non-smokers reported making a formal complaint about their neighbours smoking. In nearly all cases this was through the body corporate committee or manager, with only a few going to police or a government department.



How the law currently works

The *Body Corporate and Community Management Act 1997* (BCCM Act) states that owners and occupiers who live in a community titles scheme must ensure their behaviour does not cause a nuisance or hazard.

Second-hand smoke is a health hazard and a nuisance, although it is not currently recognised as such under the law.

Smoking nuisance claims have been unsuccessful in Queensland to date, despite several community title scheme residents claiming their neighbour's smoke-drift is a nuisance.

A bylaw in Queensland community titles schemes cannot validly ban smoking completely: a bylaw can regulate but cannot prohibit an activity.

Options for regulating smoking in community title schemes are also limited because a bylaw that attempts to regulate smoking by imposing greater restrictions on residents than exist under the *Tobacco and Other Smoking Products Act 1998 (Qld)* (TOSP Act) is likely to be regarded as oppressive or unreasonable. A bylaw cannot be inconsistent with the BCCM Act or another Act.

'Second hand smoke affects health and is a nuisance.'

Under the TOSP Act smoking is not permitted in enclosed common areas, but this doesn't apply to open common areas or balconies that are part of people's apartments.

'The worst part is when your windows and doors are all closed but it comes through the vents and you can't sleep at night because you're inhaling toxic substances.'

In 2017, the Commercial and Property Law Research Centre at the Queensland University of Technology provided an options paper to government on a broad range of body corporate governance issues, including smoke-drift.^[5] It stated:

A bylaw prohibiting smoking in an outdoor area that is part of a lot (including balconies, courtyards etc) or on common property (including common property subject to an exclusive use bylaw) should be enforceable against lot owners and occupiers if: the original owner includes the bylaw in the schedule of bylaws attached to the first CMS for the scheme; or the corporate adopts the bylaw by resolution without dissent.

Cancer Council Queensland supports allowing a simple majority to adopt a bylaw, which would make it more accessible and enable strata committees to act on this nuisance and hazard, and ensure the bylaw is effective.

'I acknowledge that the current laws and body Corp bylaws prevent me taking further action to stop my neighbour smoking in her courtyard next to me - I fully support a call to change, as I palliatively cared for a family member who died from lung cancer due to second hand smoke...'

How the law could be improved

Cancer Council Queensland believes that people have the right to breathe clean air, especially in their homes, as smoke-drift is both a health hazard and a nuisance.

Drawing on the opinions of Queenslanders surveyed, as well as the evidence of the negative health impacts of smoke-drift and the benefits of smoke-free places, Cancer Council Queensland suggests the following options:

- 1

Make multi-unit housing smoke-free by introducing a ‘no smoking law’ in either
a. the *Tobacco and Other Smoking Products Act 1998* or
b. the *Body Corporate and Community Management Act 1997*
- 2

Amend the *Body Corporate and Community Management Act 1997* to allow bodies corporate to adopt and enforce a no smoking bylaw, including developing a model bylaw and clarifying how these bylaws can be adopted (we recommend a simple majority (50% +1 in support) rather than a special majority)
- 3

Lower the extraordinarily high test from *Norbury vs Hogan*^[8] which requires that smoke (caused by the respondent) is of such a ‘volume and frequency’ that it is an ‘unreasonable interference’ with a resident of ‘ordinary sensitivity’ before it will be considered ‘nuisance’ under the *Body Corporate and Community Management Act 1997*.

Any legislative changes will need to be supported by appropriate enforcement powers, resourcing, as well as information and support for Body Corporate to make relevant amendments and understand new processes.

Example bylaws

Any bylaw that addresses smoke-drift will require legislative change to the BCCM Act. If that change is made, we propose the below possible wording for a model bylaw*, and recommend the default being *Bylaw option 1*, whereby if no option is selected, then *Bylaw option 1* automatically applies.

*These suggestions are based on existing bylaws in other jurisdictions, and therefore are subject to legal review for alignment with Queensland legislation.

Bylaw option 1:

An owner or resident of a lot, and any invitee of the owner or resident, must not smoke tobacco or any other substance on the lot or on common property.

Bylaw option 2:

1. An owner or resident, and any invitee of the owner or resident, must not smoke tobacco or any other substance on the common property.
2. An owner or resident of a lot must ensure that smoke caused by the smoking of tobacco or any other substance by the owner or resident, or any invitee of the owner or resident, on the lot does not penetrate to the common property of any other lot.

Bylaw option 3:

1. An owner or resident of a lot, and any invitee of the owner or resident, must not smoke tobacco or any other substance on the common property, except: (a) in an area designated as a smoking area by the owners’ corporation, or (b) with the written approval of the owners’ corporation.
2. A person who is permitted under this bylaw to smoke tobacco or any other substance on common property must ensure that the smoke does not penetrate to any other lot.
3. An owner or resident of a lot must ensure that smoke caused by the smoking of tobacco or any other substance by the owner or resident, or any invitee of the owner or resident, on the lot does not penetrate to the common property or any other lot.

How does Queensland compare to other States?

While smoking is banned in enclosed common or shared areas of multi-unit housing in several Australian states and territories, including Queensland, private living areas are generally exempt from these bans. Both New South Wales (NSW) and South Australia have taken action to allow strata committees to pass bylaws about smoking.

Legislation before the South Australian Parliament in May 2021 would allow bylaws that ‘regulate or prohibit smoking in the common property or the drifting of tobacco smoke from one lot to another or to the common property’. A noteworthy point being lowering of the requirements to make changes, now as a quorum for corporation meetings which means a simple majority (50% + 1).

NSW has developed model bylaws which specifically address the issue of smoking in multi-unit housing. The model bylaws are contained in the Strata Schemes Management Regulation 2016 (NSW), and include a ‘tier’ of bylaws regarding smoking from which an owners corporation can choose. Where an owners corporation has not made a selection between the tiers, the ‘default’ tier will apply. The ‘default’ bylaw prohibits smoking on common

property, but not in private living areas, however, under the default bylaw an owner or occupier has an obligation to ensure that smoke from a private living areas does not penetrate common property or any other private space. This ensures that if a resident’s smoke is drifting onto another lot (including balcony or courtyard) then they are in breach of the law. This action taken in NSW is commendable, particularly as nearly half of all Australian apartments are in NSW (47.2%).^[6]

Prior to the development of model bylaws, a Cancer Council NSW survey of 1308 strata schemes found that around 200 had already implemented smoke-free bylaws, with some even implementing a 100% smoke-free bylaw.^[7] There were no known challenges to these bylaws being adopted or enforced since 2011 – this is unlike Queensland.

Making amendments to enable smoke-free living in Queensland is necessary and highly supported by the community. Smoke-drift is a health hazard and a nuisance, and should be treated as such under the law, with appropriate protection for non-smokers.

‘I don’t understand why smoking is banned within 10 metres from childrens play grounds, yet my children can’t play in their own playground (courtyard) at free will; without being put at risk from smoke-drift. I’m forced to live with windows and doors shut, to avoid smoke-drift into my home, to protect my son’s health (allergies, asthma and other health concerns under review – mulitple referrals for QLD children’s hospital). If I was in a rental I would consider moving due to imapct of smoke-drift, however, not an easy option as a single (sole) parent and home owner (debt owner to say the least). What’s more is current laws do not safe gaurd my families health even if I do move, not really a solution to to chase good health, keep moving. It’s truly disheartning that this is an issue that I have no control over in my own home negtively impacts my mental health, affordable housing (multi-unit dwellings) should not mean health is compromised.’

About the survey

In February and March 2021, Cancer Council Queensland conducted a community survey to explore Queenslanders’ experiences with smoke-drift in multi-unit housing. The survey asked where people are exposed to smoke-drift and its impact; how they accessed services to resolve disputes with neighbours; and what more needs to be done to address this issue.

This survey was the seventh in a series of Everyday Health Surveys designed to give Queenslanders a voice and engage them in conversations about the health issues that affect all members of the community.

Respondents

The survey attracted 1049 completed responses. There was an even distribution of respondents who own (53%) and rent (47%) their homes. The majority lived in an apartment or unit (66%), and 9% were daily or occasional smokers.

The respondents can be described as:

- Female (67%)
- Living in Brisbane (72.5%)
- Aged 30-49 (41%) Although, overall relatively representative of Queensland age distribution
- Tertiary educated (60%)
- Have a taxable yearly income of \$26,000-\$79,999
- 1% of respondents identified as Aboriginal or Torres Strait Islander.

Overall, the survey cohort is more female and more likely to live in Brisbane than the general Queensland population. 2016 Australian Bureau of Statistics data indicates that approximately 78% of Queenslanders who live in multi-unit housing reside in the regions of Metro North, Metro South, Gold Coast and Sunshine Coast.^[6] This more suitably aligned with the 92% of survey respondents residing in these regions.

References

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- 7 - Cancer Council NSW. Achieving smoke-free apartment living: a summary of two research projects. 2016. Available from: <https://www.cancercouncil.com.au/cancer-prevention/smoking/smoke-free-environments/>
- 8 - [2010] QCATA 27

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