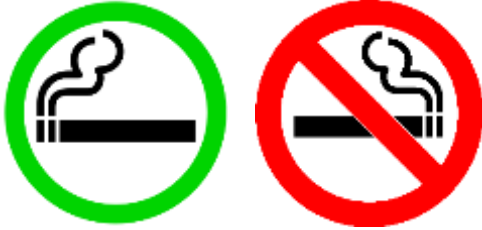


smoking



Smoking “Yes” or Smoking “No”

Smoking ... No Easy Solution!

Here is what the Commissioner says:-

Smoking in community titles schemes (CTS) is the subject of many enquiries received by our information and community education unit. This article aims to provide information to owners and occupiers who may be having a dispute with someone else in their scheme about second-hand tobacco smoke drifting from somewhere else in the scheme. There are a number of things you might want to consider when dealing with this issue in your CTS.

Nuisance

Section 167 of [the Body Corporate and Community Management Act 1997 \(the Act\)](#) provides that occupiers must not use a lot or common property in a way that causes a nuisance or hazard or interferes unreasonably with another person's use or enjoyment of another lot or the common property.

While an occupier of a lot may contravene section 167 of the Act by allowing second-hand cigarette smoke to drift into another lot or the common property, it is also important to note that past decisions by adjudicators and the Queensland Civil and Administrative Tribunal (QCAT) about smoking have found that:

- Smoking is considered to be an ordinary use of a lot.
- The degree of nuisance, hazard or interference caused by second-hand smoke must be more than minor. Smoking is not unlawful simply because a person finds it annoying or unpleasant.
- Each case must be judged objectively, from the point of view of a reasonable ordinary person and taking into account all of the circumstances.

Past decisions on smoking and nuisance are sometimes thought to allow owners and occupiers to smoke without restriction in a lot. However, adjudicators must determine each dispute application on its merits. Adjudicators may consider the unique circumstances of a particular case, new medical evidence about the harmful effects of second-hand smoke and changing community attitudes about the impacts of second-hand cigarette smoke on non-smokers.

By-laws

By-laws are legally enforceable rules specific to a scheme. The Act provides that a by-law may regulate how owners and occupiers use their lots and common property. However, in past decisions about by-laws, adjudicators and QCAT have determined that a by-law cannot completely prohibit an ordinary domestic activity. The Act also provides that a by-law must not be oppressive or unreasonable, having regard to the interests of all owners and occupiers. Therefore, smoking can be regulated, but not entirely prohibited, by a by-law.

Bodies corporate must enforce their by-laws. If you live in a CTS with a by-law that regulates smoking and you are exposed to second-hand smoke from another occupier, you could consider giving your body corporate a notice advising of the breach ([BCCM Form 1](#)). The body corporate will then be required to consider taking action about the matter with the smoker. If the body corporate does not take action you may be entitled to apply for conciliation with our office to address your complaint. Alternatively, if you can demonstrate your attempt to resolve the matter directly with the offending party you may consider lodging a conciliation application directly against them.

Source

https://www.vision6.com.au/em/message/email/view?a=55581&id=1573687&k=PTzRI5TC2vfUZL1ErTMMz3tz9oW6Yv1tcHKzf1R2U_I

Take Home Points

- Smoking is an 'ordinary use'
- Must be more than minor interference
- Case by case
- By-laws can't prohibit smoking in the lot

Some cases



Sun Crest [2009] QBCCMCmr 303 (18 August 2009)

<https://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QBCCMCmr/2009/303.html>

Smoking allowed in the lot

Admiralty Towers [2011] QBCCMCmr 264 (23 June 2011)

<https://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QBCCMCmr/2011/264.html>

Smoking allowed in the lot

Bacala Park [2006] QBCCMCmr 415 (31 July 2006)

<https://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QBCCMCmr/2006/415.html>

Smoking allowed in the lot

Carson Place [2012] QBCCMCmr 503 (8 November 2012)

<https://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QBCCMCmr/2012/503.html>

Smoking allowed in the lot

Villas Mermaid [2005] QBCCMCmr 582 (20 October 2005)

<https://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QBCCMCmr/2005/582.html>

Smoking allowed in the lot

North Shore Apartments [2003] QBCCMCmr 505 (13 May 2003)

<https://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QBCCMCmr/2003/505.html>

Smoking allowed in the lot

Heritage Village Ormiston West [2007] QBCCMCmr 565 (20 September 2007)

<https://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QBCCMCmr/2007/565.html>

Smoking allowed in the lot

North Point Apartments [2019] QBCCMCmr 573 (8 November 2019)

<https://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QBCCMCmr/2019/573.html>

Cease smoking on common property

Other Applications

Yes ... these decisions will have other applications eg

- Cooking fumes (eg spicy food)
- Burning incense
- Etc

