

Body Corporate and Community Management and Other Legislation Amendment Bill 2023

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Submitter Comments:

The power to prohibit smoking on one's own property as drafted is completely unreasonable. The explanatory notes refer to the significant issue of 'smoke from neighbouring lots can penetrate into other lots or the common property, given the typically close proximity of lots in these schemes. The significant negative impacts of exposure....' The ability to provide a blanket prohibition is an unreasonable balance of power for the issue at hand. It presumes that lots are in close proximity. What about schemes that are not in close proximity? It unreasonably interferes with the enjoyment of the smokers own lot. Evidence of the negative impacts of exposure to second hand smoke are well established but where is the evidence of smoke from a neighbouring lot being equivalent of second hand smoke? The law of nuisance is established. Including 'excessive smoking' in the definition of nuisance provides a balance of power that can be interpreted by the judiciary. An alternative option is restricting smoking from say 3m of an open door or window. Empowering the bylaw to provide a complete prohibition takes away significant rights to individuals and will only affect marginalised groups. It will cause a significant power imbalance. The overall aim stated is to reduce exposure yet the bill refers to a complete prohibition. The complete prohibition has an effect on an individual liberties to smoke on one's own property when the act itself is not causing a nuisance or any form of second hand smoke whatsoever. The proposed bill far exceeds the underlying policy objectives.