

Body Corporate and Community Management and Other Legislation Amendment Bill 2023

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A body corporate of a community title scheme should be able to determine whether their scheme is to be free from smoke in outdoor communal areas including balconies, courtyards and the like. The harmful effects of exposure to toxic second-hand smoke have been well researched and documented. Existing schemes should be able to amend their bylaws to prohibit smoking in an outdoor area by majority vote or at most, by special resolution. It should not require a resolution without dissent as recommended by QUT for existing schemes as that would effectively enable one member to prevent the majority from enacting bylaws for the common good of the members of the scheme. Such a requirement would circumvent any benefit that the bill either aims or purports to achieve and frustrate members in schemes seeking to address this hazard to their health. We have firsthand experience of the impact of smoke drift on adjoining lots as our daughter lives in a two-bedroom apartment with a large balcony. The amenity of her apartment and balcony have been severely impacted because of smoke drift from an apartment immediately below hers. This apartment was rented and attempts to engage both with the tenant and the owner made no difference to the profound impact on our daughter's enjoyment of her unit. In fact, the owner did not want the tenant smoking in his unit but was not concerned about the tenant smoking outside on the balcony. The negative impact on our daughter's life and basic enjoyment of her lot which we also experienced as regular visitors was as follows:

1. Any attempt to eat outside at usual times, breakfast, lunch or dinner were constantly interrupted with smoke drift so as to force her and/or any guests inside to eat.
2. Windows to the apartment had to be kept shut whenever she went out otherwise, she would often come home to an apartment permeated with the smell of smoke, and residue on her furniture, carpets, clothes and other surfaces.
3. Caused additional expense to purchase air purifiers for her bedroom and additional expense running the air conditioning during summer throughout the night to avoid smoke infiltrating through opens balcony doors and windows.
4. She was required to sleep at night even in summer with her windows and balcony doors closed because attempts to do otherwise resulted in smoke drifting into her apartment until up to 12pm at night and as early as 6am.

The end result is that the balcony is an area that can only be enjoyed for very short periods of time and her enjoyment is at the complete discretion of the smoker in the apartment below. The enjoyment of her unit is also compromised by the need to keep windows and doors shut for the vast majority of the time.