

**15 April 2016**

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The Hon. Jane Garrett  
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Dear Ms. Garrett,

**Re: Smoke Free Housing in Multi-Unit Dwellings**

I am writing to request your consideration of the following three key recommendations as part of the current review of the Owners Corporation Act 2006.

1. That the default standard for apartments in multi-unit dwellings be changed to 'smoke free'.
2. That apartment purchasers be given the opportunity to choose an apartment that is totally smoke-free.
3. That apartment purchasers and renters be fully informed of the possibility of smoke drift from neighbouring units before they commit to an apartment.

Currently the default standard is to allow smoking in all apartments, thereby limiting purchasers' options and providing purchasers and renters with inadequate disclosure about smoke drift. The rationale for these recommendation is outlined below.

- A. Australia is bound by the WHO Framework Convention on Tobacco Control (FCTC) to protect all persons from exposure to second hand smoke (SHS)

Australia's commitment to the FCTC has been clearly demonstrated, most recently, by the introduction of the *Tobacco Plain Packaging Act 2011* (Cth). The Guiding Principles of the FCTC articulated in Article 4 recommend measures be taken to inform every person of the health consequences of exposure to tobacco smoke and recommend measures be put in place to protect all persons from exposure to tobacco smoke. Article 7, *Non-price measures to reduce the demand for tobacco*,

requires the adoption and implementation of effective legislative, executive, administrative or other measures necessary to implement its obligations pursuant to Articles 8-13. Article 8, *Protection from exposure to tobacco smoke*, obliges the recognition that scientific evidence has unequivocally established that exposure to tobacco smoke causes death, disease and disability.

B. The ability to live in a smoke free home is a right that everyone should have.

Unfortunately for those who live in multi-unit buildings such as apartments, breathing SHS from neighbouring apartments has become a health threat. Most multi-unit dwellings use common heating, air-conditioning or ventilation systems, which allow smoke to drift from one apartment to another. SHS also seeps into neighbouring apartments through cracks in walls, power points and through open windows. It only takes one cigarette to contaminate air flowing to neighbouring apartments with smoke drift.

C. Declaring smoke drift a 'nuisance or hazard' does not protect people from exposure to SHS

The *NSW Strata Schemes Management Act 2015* now recognises smoke drift as a 'nuisance or hazard'. Article 8 of the FCTC requires the recognition that exposure to SHS can cause death, disease and disability. SHS is clearly more than just a 'nuisance', so adopting an *equivalent response* in Victoria would not satisfy Article 8 of the FCTC and would leave the onus on the individual to take up the issue to prevent SHS from drifting into their apartment. This would fail to comply with Article 7 of the FCTC and has the potential to lead to disputes between neighbours. This would also create a potential risk for an apartment landlord should SHS drift into an apartment and interfere with the tenant's 'quiet enjoyment of the premises' as a result of being exposed to such a known hazard.<sup>1</sup>

D. The current controls for tobacco smoke in multi-unit dwellings do not work.

The *Owners Corporation Act 2006 (Vic)*, the *Owners Corporation Model Rules* and the *Residential Tenancy Act 1997 (Vic)* are silent on the issue of smoking and SHS. Furthermore, Owners Corporations rarely attempt to change or introduce a new rule to their owners' corporation rules as it is extremely difficult to get the required majority of members to attend a general meeting, and it may also require the matter to be taken to VCAT.

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<sup>1</sup> The *Residential Tenancy Act 1997 (Vic)* Section 67.

E. Purchasers currently do not have the opportunity to purchase a smoke free apartment when purchasing off the plan.

In Victoria, when a person purchases an apartment off the plan, the Owners Corporation Rules have already been decided by the developer and come attached to the sales contract. The purchaser has no opportunity to voice his choice to have a 'smoke free' unit and must accept a default he is unable to change without agreement from 75 percent of other purchasers in the multi-unit dwelling (purchasers whose contact details are not disclosed and the developer is precluded from revealing). In 2016, with over 85 per cent of Victorians being non smokers, the default standard when purchasing a unit should be changed to 'smoke free'. In California, most counties have legislated that smoking, including the use of electronic cigarettes, be prohibited within all units in new multi-unit developments, and many counties include this restriction to existing units as well.<sup>2</sup> There is no valid common law argument for denying Victorians the same protections.

F. Owners Corporation lack transparency of where smoking is allowed.

Currently, smoking prohibition in a rented apartment, if any, would be stipulated in the lease, which is not made available to the Owners Corporation. A search of the well known property websites in Australia revealed that the designation of an apartment as a 'smoking' or 'smoke free' apartment was not available as a specific selection criterion.<sup>3</sup> Requiring the inclusion of this criterion would increase awareness of smoking controls attached to apartments, enable tenants and purchasers can be fully informed prior to committing to apartments and enable Owners Corporations to be fully informed when having to deal with smoke drift complaints.

G. The benefits of smoke free housing are significant

The financial benefits of smoke free housing include reduced risk of fire, reduced cleaning needs and costs and possibly cheaper insurance.<sup>4</sup> The more significant benefit is the potential for further reducing smoking rates as expressed by **Tobacco In Australia:**

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<sup>2</sup> <http://center4tobaccopolicy.org/wp-content/uploads/2013/12/FINAL-Local-California-Smokefree-Housing-Policies-Sept-2015.pdf>

<sup>3</sup> For example: [www.domain.com.au](http://www.domain.com.au), [www.realestateview.com.au](http://www.realestateview.com.au).

<sup>4</sup> ASH Australia. Smoke-Free Multi Unit Housing - A guide for owners, tenants, agents, authorities and governments.

*“Adoption of smoke free policies at home appears to promote anti-smoking attitudes among youths, and reduce progression to smoking experimentation among youths who live with non-smokers. The policies appear to reduce consumption of tobacco products and increase the success of quitting among adult smokers and reduce relapse. In its systematic review of all the relevant studies published on this topic to date, the International Agency for Research on Cancer concluded that the evidence from such studies was strong with regard to youth smoking and sufficient for reductions in adult smoking.”<sup>5</sup>*

I would welcome your careful consideration of these recommendations. To protect the health of all Victorians, the only appropriate default standard is for apartments to be 'smoke free'. I would greatly appreciate the opportunity to meet with you and your representatives, to further discuss this issue.

Yours Sincerely,

A handwritten signature in black ink, enclosed in a hand-drawn oval. The signature reads "M Peril".

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***Supported by -***

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Cr Richard Foster, Councillor City of Melbourne & Chair People City Portfolio

Ms Vicki Pridmore, CEO BreastScreen Victoria

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<sup>5</sup> Scollo, MM and Winstanley, MH. Tobacco in Australia: Facts and issues. Melbourne: Cancer Council Victoria; 2015. Chapter 15.6.3. Available from [www.TobaccoInAustralia.org.au](http://www.TobaccoInAustralia.org.au).