



## Tenancies, rooming accommodation, discrimination and litigation

### Residential tenancies in Queensland

A lessor must take reasonable steps to ensure a tenant has quiet enjoyment of the premises.<sup>1</sup> If tenants have the same landlord in common, a neighbour's smoke-drift may be taken up with their shared landlord in relation to the landlord's duty to ensure the tenant has quiet enjoyment. A tenant may also ask a landlord to ensure that another of their tenants does not cause a nuisance or interfere with the reasonable peace and comfort of a neighbour.<sup>2</sup>

In circumstances where neighbours share the same landlord, the Residential Tenancies Authority's dispute resolution service may be used.<sup>3</sup> The Authority encourages tenants and landlords to resolve disputes between themselves, and offers a conciliation service if this is not possible.

A tenant in a community titles scheme may also utilise the Body Corporate and Community Management Office dispute resolution service if they believe a neighbour is causing a nuisance in breach of the *Body Corporate and Community Management Act 1997 (Qld)*. See the Information Sheet *Smoke-drift in multi-unit housing: Private nuisance in Queensland community title schemes*.

### Rooming accommodation in Queensland

A person providing rooming accommodation may make house rules banning smoking.<sup>4</sup> Even if house rules do not prohibit smoking in the private rooms, smoking is prohibited in all enclosed common areas of multi-unit residential accommodation.<sup>5</sup> See the Information Sheet *Smoke-drift in multi-unit housing: Regulation of smoking in Queensland* for more information on smoking bans.

A person providing rooming accommodation must take steps to ensure residents have quiet enjoyment of their room and the common areas.<sup>6</sup> A resident is also obligated not to interfere with the reasonable peace and comfort of another resident.<sup>7</sup>

The Residential Tenancies Authority's dispute resolution service is available to providers and residents where negotiations or dispute resolution between them has failed.<sup>8</sup>



### Discrimination

Banning smoking is not discriminatory.<sup>9,10</sup> The owner of a unit or building can stipulate the terms on which tenants or guests may rent or use their premises, including a complete or partial ban on smoking.

Permitting smoking in certain public places can be discriminatory.<sup>11</sup> However, a remedy for smoking discrimination is most likely in public institutions and workplaces.<sup>12</sup> Whether a building owner who permits smoking in residential units would be indirectly discriminating against neighbouring residents with asthma, pregnant women, children or the elderly has not been tested.

While a building owner can ban smoking through the terms by which tenants or guest rent or use a premises, a body corporate cannot ban smoking through by-laws.



### Litigation

The Full Federal Court held in 1993 that there was overwhelming scientific evidence that second-hand smoke (passive smoking) causes disease in non-smokers.<sup>15</sup> There has been successful litigation of second-hand smoke exposure in public places, institutions, and workplaces.<sup>16</sup> These cases have been based on common law negligence, work health and safety, occupier's liability and contract. However, there are no known Australian cases where a residential building owner who permitted smoking was liable for injury caused due to the spread of second-hand smoke to a non-smoker's unit. Air quality cases in residential buildings involve considerable legal and technical challenges.<sup>17,18,19</sup>

### How to quit

**Call Quitline 13 QUIT (13 7848) for free information, practical assistance and support.**

**Discuss quitting smoking with a health professional and plan your quitting strategy together.**

**Consider using pharmacotherapy such as Nicotine Replacement Therapy (NRT), Bupropion Hcl or Varenicline.**

**Disclaimer:** The information in this publication should not be used as a substitute for advice from a properly qualified medical professional who can advise you about your own individual medical needs. It is not intended to constitute medical advice and is provided for general information purposes only. Information on cancer, including the diagnosis, treatment and prevention of cancer, is constantly being updated and revised by medical professionals and the research community.

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**Endnotes:** <sup>1</sup> Section 183 Residential Tenancies and Rooming Accommodation Act 2008. <sup>2</sup> Section 184 Residential Tenancies and Rooming Accommodation Act 2008. <sup>3</sup> Residential Tenancies Authority <https://www.rta.qld.gov.au/>. <sup>4</sup> Sections 266 and 268 Residential Tenancies and Rooming Accommodation Act 2008. <sup>5</sup> Section 26R Tobacco and Other Smoking Products Act 1998 (Qld). <sup>6</sup> Section 249 Residential Tenancies and Rooming Accommodation Act 2008. <sup>7</sup> Section 253 Residential Tenancies and Rooming Accommodation Act 2008. <sup>8</sup> Section 397(2) Residential Tenancies and Rooming Accommodation Act 2008. <sup>9</sup> Anti Discrimination Commission Queensland. Frequently Asked Questions. Available at: <http://www.adcq.qld.gov.au/resources/faqs#other3>. <sup>10</sup> Australian Human Rights Commission. Frequently asked questions: Who is protected by the DDA? Available at: <https://www.humanrights.gov.au/frequently-asked-questions-who-protected-dda>. <sup>11</sup> *Francey v Hilton Hotels of Australia Pty Ltd* [1997] HREOCA 56 (25 September 1997). <sup>12</sup> *Meuwissen v Hilton Hotels of Australia Pty Ltd* [2000] HREOCA 9 (10 March 2000). <sup>13</sup> Section 11(2) Anti-Discrimination Act 1991 (Qld). <sup>14</sup> See in this series: Smoke-drift in Multi-unit housing: By-laws regulating smoking in Queensland community title schemes. <sup>15</sup> *Tobacco Institute of Australia Limited v Australian Federation of Consumer Organisations Inc* (No 2) (1993) 41 FCR 89. <sup>16</sup> *Ruschena D*, 16.3 Litigation relating to injury from exposure to second-hand smoke in Scollo, MM and Winstanley, MH [editors]. *Tobacco in Australia: Facts and issues*. 4th edn. Melbourne: Cancer Council Victoria; 2012. Last updated on 2010. Available from <http://www.tobaccoinustralia.org.au/chapter-16-litigation/16-3-litigation-relating-to-injury-from-exposure-t>. <sup>17</sup> Pengilly P, Taberner J, Bridgen D. The Legal Implications of Substandard Air Quality. *Australian Construction Law Newsletter Issue #38: 14-26*. (1994). <sup>18</sup> Gilbert D, Back M. Developing policies and risk management systems to ensure healthy indoor air quality. *Indoor Air Quality A report on Health Impacts and Management Options*. Department of Health and Aged Care. Commonwealth of Australia. June 2000. <sup>19</sup> Environment Australia. *Air toxics and indoor air quality in Australia: State of knowledge report*. Australian Government, 2001.