

Publication Date: 06 December 2016

YSP Podcast Transcript: Episode 039. Why All Strata Buildings Should be Smoke-Free (references to NSW legislation, general discussion relevant to all jurisdictions)

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Intro: Welcome to Your Strata Property. The podcast for property owners looking for reliable, accurate, and bite-sized information from an experienced and authoritative source. To access previous episodes and useful strata tips, go to www.yourstrataproperty.com.au.

Amanda Farmer: Hello and welcome. I'm Amanda Farmer and this is Your Strata Property. Scott Walsberger leads the cancer prevention portfolio at the Cancer Council New South Wales including the tobacco control, skin cancer prevention and nutrition units.

The Cancer Council is Australia's largest not for profit cancer control organisation. The tobacco control unit in particular focuses on programs, research, policy, and advocacy to address smoking among priority groups with high prevalence and to expand protections from second-hand smoke exposure.

Now, of course, I've invited Scott on the show today to talk to us about smoking in strata buildings and I know that Scott's concerned about this issue on a few levels: as a father, Scott's concern that parents are forced to expose their children to second-hand smoke; as a strata owner, Scott's concerned about the financial costs of smoking in buildings as well as his responsibilities to provide his tenant with a healthy living environment.

So today I am absolutely delighted to welcome Scott Walsberger from The Cancer Council New South Wales. Welcome, Scott.

Scott Walsberger: Thank you Amanda and thanks for having us on.

Amanda Farmer: Absolute pleasure. I know this is something we've been trying to arrange for a little while Scott so I'm glad that we finally coordinated diaries and we have the pleasure of your company today.

Scott Walsberger: Yes, it's great now that the laws are in place that we can actually talk about what's here and what people can do with them.

Amanda Farmer: Yes, excellent. So we are going to be covering the new New South Wales Strata laws that have just commenced and I want to start by asking you Scott: can you tell us why you think smoking is such a critical issue for those living in strata?

Scott Walsberger: I guess, first of all, we know that second hand smoke is harmful to people's health. We've known that for years and that's why we have smoke free environment laws.

Second-hand smoke exposure causes many diseases in young children and infants including sudden infant death syndrome and asthma. But in adults we know that it causes cardiovascular diseases, respiratory diseases and lung cancer. 6% of lung cancers in Australia we're able to confirm are because of non-smokers living with a smoking partner. Second hand smoke exposure in a home environment, we know that affects people's health. In strata schemes what we see is people aren't protected in the same way that they are protected in public places or people who live in single detached homes are able to set their own rules about whether somebody smokes or not and They're able to enforce those, but in strata schemes, often times because people are living in such close proximity, their neighbour's smoking habit and the smoke from their neighbours is penetrating into their own apartment.

And we know this, Cancer Council's research confirms this, and what our research found earlier this year was that people who live in apartment buildings are twice as likely to be exposed to second-hand smoke as those people who live in single detached homes.

Amanda Farmer: Wow! That's amazing, I didn't know that.

Scott Walsberger: Yes, so that paints a picture of why both from the health effects issue as well as that heightened exposure in



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people who live in apartment buildings.

Amanda Farmer: So it really is a critical issue. Is that research something that is available to the public? Are there reports about that that are accessible?

Scott Walsberger: Yes Amanda, that research is available in our Achieving Smoke Free Apartment Living toolkit which is available on Cancer Council's website under the benefits of smoke free apartments.

Amanda Farmer: Okay, I might grab the link to that from you and I can put a link to that into our show notes so that our listeners can get hold of that. I find that really fascinating, that people who live in strata buildings are twice as likely to suffer from second-hand smoke than others, that's fascinating.

Scott Walsberger: Yes. So the statistics are 34% of people who live in apartment buildings report being exposed to second-hand smoke on a regular basis compared to just 17% of those people who live in single detached homes.

Amanda Farmer: Okay, so what do you think Scott we can be doing about this? What do you say a good smoking or perhaps non-smoking policy is for a strata building?

Scott Walsberger: I think the thing for anybody regardless of what environment they're in is that we need clear rules and people need to be informed about those rules, about whether smoking is allowed or not.

In strata schemes, our suggestion is that we have the power to do that under New South Wales law, through introducing a special by-law to address smoking, and we encourage strata schemes to do that. It just gives people the clarity about what the rules are and how they're going to be enforced and it also gives people the ability to pursue that if they're not being enforced and then there's repercussions that can be taken to address that issue. We recommend that strata schemes introduce a 100% ban on smoking in the building Because we know from years of smoke-free environment laws that partial bans just don't work.

Amanda Farmer: And when you say partial bans what do you mean?

Scott Walsberger: So a partial ban, for instance in what we know from smoke-free environments over the years, is that we started off having partial bans in restaurants or pubs and clubs.

Amanda Farmer: Yes.

Scott Walsberger: Where you can smoke in one area of the restaurant but you couldn't smoke in the other. Well cigarette smoke can't be contained to just one area and we know that in strata schemes you can't contain it even within an apartment unit, that it seeps through many different surfaces, it seeps through windows and doors whether they are open or closed, it will seep through door frames and often times ventilation. We know that research shows that a high percentage, over 60% of the air in strata schemes or in apartment buildings, is re-circulated throughout the building.

So the smoke from a smoker in one unit is very likely being re-circulated through the air conditioning throughout the building. We can't contain the smoke even within somebody's unit and so that's why we recommend that the building goes 100% smoke free because it's the best way to protect people.

Amanda Farmer: Fair enough and we have new laws now that for the first time are referencing smoking and what buildings can do about smoking. Do you want to tell us a little bit about that, Scott?

Scott Walsberger: Yes, so the introduction of the Strata Management Act in 2015 is the first time that smoking has been noted in that Act as a nuisance or a hazard and that's an important step forward because it clearly states that this is a problem and can be a



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problem in apartment buildings.

The Strata Management Regulation of 2016, for the first time, include a suite of model by-laws that can be introduced to strata schemes to address this issue.

The by-laws that are put forward by the government in that regulation don't go to the extent that Cancer Council would encourage strata schemes to go, so they don't include 100% smoke-free ban or by-law, but that doesn't mean that it's not possible, and we know from Cancer Council's research in which we've audited over a thousand strata schemes or their documentation and their by-laws, we know that 5% address smoking anyway but 1% do actually have a complete ban. So this is something that is already being done in New South Wales and strata schemes are able to uphold to those by-laws, so we feel that there's strong precedent for introducing complete bans.

The government's by-laws do address the issue of smoke penetration, so all of the model by-laws that are included in that regulation do ban the smoking if it is going to drift into or penetrate somebody else's unit or common areas.

Amanda Farmer: Yes. I'll just flesh some of that out for our listeners Scott who are, at this point in time, still very much getting use to this new legislation. You've mentioned there that for the first time there is a reference to smoking being a nuisance or a hazard and that is in Section 153 of the Strata Schemes Management Act 2015, and that section basically says that an owner, a tenant, an occupier must not use their lot or permit their lot to be used in a way that causes a nuisance or a hazard to the occupier of any other lot and the legislation now specifically says here that penetration of smoke from smoking may cause a nuisance or a hazard.

So what I'm really interested to see as a lawyer is whether we now see lot owners and owners corporations taking residents and owners to the Tribunal for breach of this Section 153 on the basis that there is smoke penetration and that that's causing a nuisance or hazard.

So that's one way that the new Act deals with it and you've almost mentioned there Scott the model by-laws and these are by-laws that generally are automatically going to apply to new strata plans that are registered from the date the new law has taken effect. So from the 30th of November 2016 and they're the by-laws that the developer will lodge when they register the strata plan.

And we now have a model by-law that says you can ban smoking on the common property and as you say Scott you can also say that permitting smoke to drift, so smoke penetration or smoke drift, from a lot onto the common property is also a breach of the by-law.

So even if you are an old and an established strata scheme if you want to adopt that kind of a by-law, you certainly can, you do that by special resolution, the same way you adopt any other by-law and I have to say Scott I think I'm in your camp when it comes to preferring a more detailed by-law when it comes to dealing with smoking.

I draft a lot of smoking by-laws and I have to say that the by-laws that I draft are far more detailed than what is in the model by-laws attached to the legislation and they do deal with things like if you have visitors, how are you dealing with their smoking, how are you dealing with e-cigarettes... I'm not sure if that's something that you get into with the Cancer Council but a lot of buildings that I see want to deal with e-cigarettes and actually ban the use of those in their building. So for established buildings who are thinking about taking on a smoking by-law, certainly look to the model and that gives you some good guidance, but I do suggest that you have a bespoke non-smoking by-law drafted instead so that it covers what your specific needs are.

Scott Walsberger: Yes. So I think that's what we would encourage is that people introduce by-laws that suit their community but also that address this issue thoroughly and appropriately so that it does protect people.

On the issue of e-cigarettes, in New South Wales legislation at the moment, in our smoke-free environment legislation, e-cigarettes are not included.



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Scott Walsberger: So Cancer Council's position is that's a gap in public places because we don't know what the long-term health effects and the harms are of e-cigarette vapour, both for the user and for non-users that are exposed through second-hand vapour. But what we do know about e-cigarettes is that they are much safer than cigarettes and so it's unlikely that the harms, especially for occasional exposure, would be that of what cigarettes are and I guess we haven't considered a position on whether or not they should be included in the scheme by-laws, but we do feel that we are playing an important role in the smoke-free environment laws that cover public places because there is also that normalisation of smoking and we are cautious about re-normalisation of smoking. We don't want that to become a normal activity again.

Amanda Farmer: Yes, good point.

Scott Walsberger: It's important also to note that under the new regulation all existing strata schemes are required to review their by-laws within 12 months, so by the 30th of November 2017 strata schemes will need to look at their by-laws and consider some of the new by-laws that have been developed and whether they need to update any of them.

So we think that this is a great opportunity for strata schemes to include a by-law that addresses smoking so that they can protect their residents. It's also interesting that 93% of the New South Wales population prefer to live in a smoke-free home, so that would include even smokers in that.

Amanda Farmer: Yes.

Scott Walsberger: Cancer Council research also finds that even smokers would prefer to live in an apartment building that has restrictions on smoking.

Amanda Farmer: Interesting.

Scott Walsberger: So what our research found is 82% of the New South Wales population preferred to live in a building with some type of restriction.

A complete ban was the most preferred of the various options that we put forward to people, but even smokers themselves, I believe about half of the smokers, wanted some type of restriction or wanted to live in a building that had some type of restriction on smoking.

So I think we have to remember that I guess it's because there is always the question of whether this infringes on people's personal rights or is harsh or unconscionable and I think we have to remember that the vast majority of smokers want to quit smoking and most of them would regret ever taking up smoking, and smoke-free laws or policy help smokers to quit and they help them build up their confidence to quit.

So they play 2 important roles: (1) is to protect non-smokers from exposure to second-hand smoke but (2) the other is that they require smokers to go longer without a cigarette or to have to smoke in a different place and so that helps them reduce their nicotine dependency and it also helps them to build up their confidence to eventually quit.

So being able to support smokers through policies such as smoke-free environment in apartment buildings is able to do that as well and so we get benefits and that probably helps explain why smokers themselves would prefer to live in a building that would have restrictions.

Amanda Farmer: Yes, that's really interesting and I think it's important that you make that point because of course we do have now this new section of our legislation that says a by-law must not be harsh, unconscionable or unreasonable.

And I think, in some people's minds there's a bit of a question mark as to whether banning people smoking within their own homes

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would be harsh, unconscionable, or unreasonable, and if I put my lawyer hat on, if I'm arguing for a client who wants to uphold a complete ban, I think relying on the Cancer Council's research and running all of those arguments and points that you've just raised would put you in pretty good stead to say that this by-law is in the best interest of everyone and it's not harsh, unconscionable, or unreasonable.

Scott Walsberger: I think we have to remember that in New South Wales only 13% of our adult population are current smokers, so we have to think about what is harsh or unreasonable. First of all, 2/3 of smokers will die of their smoking related habit and so not supporting people to quit is pretty harsh.

Amanda Farmer: Yes.

Scott Walsberger: And the fact that we are exposing people particularly children to second-hand smoke which is having devastating health impacts on them, not only on their physical health but also on their emotional health.

And this is something we see quite a lot or we hear quite a lot at Cancer Council because probably at least every week we would receive an email or a phone call from somebody seeking our advice on what to do about these situations, about being exposed to second hand smoke in their apartment building, and often times they are from parents of young children or elderly residents who spend a lot of time in their apartments and they're constantly then being exposed to the smoke and I relate very much to the parents who call us because I'm a parent myself and to hear the stories of the fear that they have or the anxiety that they have about what their children are being exposed to and the impact that this is going to have on their children, those are pretty hard and emotional calls to take and as a father I can completely understand that I do everything I can to protect my daughter and if my daughter was in that situation, I would do anything I could to change that.

Amanda Farmer: Yes. So it's a far reaching issue that affects people at the deepest level and that's something that we bear in mind, this isn't just about policy making and interpretation of laws, this is how people live their everyday lives and whether they live in comfort and without fear and in a way that is healthy. So yes, important work is being done that's for sure.

Okay, so let's move on Scott. Could you share a story about how strata owners in buildings are doing well in this area, who are implementing some smoke-free policies and are upholding those and everybody's on board?

Scott Walsberger: To talk about some specific examples, they're in our toolkit, The Achieving Smoke Free Apartment Living Toolkit, we give some case studies of some examples including one where a strata scheme did introduce a by-law and how they went about that.

It's usually driven by interest from the residents and concerned about exposure and often times what we hear is that this happens once somebody is being exposed to second-hand smoke.

Amanda Farmer: Yes.

Scott Walsberger: Which there are positive ways that you can move forward from that, taking the issue to the executive committee, seeking advice on how to write a by-law and now we have the model by-laws, so it is a bit easier because I guess we hear about some challenges as well about cost of getting a by-law drafted and then the issues around the implementation of that, so we would encourage strata schemes to take this opportunity and to introduce a smoke free by-law before it becomes an issue in your building.

Amanda Farmer: Yes, and just addressing those challenges you've mentioned there, costs and enforcement, I mean look how much is your good health and your longevity worth to you? I imagine that would be priceless and I can tell you at least from my perspective, when we are drafting these by-laws, we charge a \$600 flat rate to charge a smoking by-law so really we're not talking big bucks here, and in terms of enforcement, I always say that by-laws are like no standing signs: you get them up, people see

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them, the vast majority of people comply with them and for the minority who don't, some get away with it, some get fined, some get pursued.

But the idea is that by having a by-law in place, you develop this culture of 'this is our community standard, this is what we want for our homes' and you find that the vast majority of people do comply and you don't even have to get to that stage of enforcement. So I would say any concerns about enforcement shouldn't be something that stops you from putting a by-law like this in place.

Scott Walsberger: Yes, I would completely agree, that's what we've seen with our smoke-free environment laws over the years, is that we can't be out there enforcing those at every moment but they become community standards and once people become aware of them, and I guess that's the importance of making people aware residents within the building when a smoke free by-law comes in, or when people are renting or new owners coming in to the scheme, that people are made aware of that, because for the most part people will comply with the rules because as a society we know that we are pretty compliant.

Amanda Farmer: Yes. Yes, definitely.

Scott Walsberger: We want to respect each other and that's going to be the same with a smoke-free by-law in strata schemes.

Amanda Farmer: Yes, absolutely. Okay, you mentioned there Scott a few action steps that our listeners can take if they want to get a by-law like this in place: approach your executive committee, get some advice from your strata manager who's then going to point you in the right direction if you do want to get a by-law drafted. Is there anything that you want to add for our listeners who are looking at solving a smoking problem in their building, today?

Scott Walsberger: Yes. So I guess some additional things I would is to start talking to other residents in the building and start garnering support for the by-law because you still need that 75% majority to pass a by-law and so you'll need other owners in the building to support that and get behind you, and so we would encourage people to start trying to build a bit of campaign to do that.

I guess for residents in strata schemes who are facing the issue right now of being exposed to second-hand smoke I think there's a couple of things to point out: (1) we would encourage people to just talk to the smoker if they know where it's coming from and if they feel comfortable in approaching them, because sometimes it can be resolved just with a conversation and asking a smoker to smoke somewhere else or even arranging times of the day where you're not going to be home that might be a better time for them to smoke. We wouldn't suggest that as a long term solution though, we do think that passing a by-law is the best way to provide protection to everybody in the building, so we still encourage everybody to pursue that option. I think that's probably the advice I would add.

Amanda Farmer: Yes. Something that one of my listeners asked me a little while ago Scott, this listener in particular lives in an inner-city building and she happens to live across the road from a pub and she has patrons of that pub coming out of the pub, crossing the road, standing in front of her building which is a strata building and there is smoke drift from those smokers on the street, so in a public place, then into the building and she had asked me the question is there anything that we can do about that? I know I'm putting you on the spot but I couldn't come up with any answers to that. Have you got any?

Scott Walsberger: Yes. Unfortunately, I don't think there is anything that can be done about that situation. It is difficult because our smoke-free environment laws only go so far and there are advances that we need to make in those laws, but the smoke-free environment laws does exempt residential properties and so we wouldn't get the same types of protections that we have for entrances to public buildings, where you're not allowed to smoke within 4 meters of entrance to a public building, so we don't have the same protection for residential buildings unfortunately.

Amanda Farmer: Perhaps a matter of time though?

Scott Walsberger: Yes, hopefully. The International Gold Standard for smoke-free policies is that 100% of public places are smoke-free.



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Amanda Farmer: Yes.

Scott Walsberger: And that's what we would aim for and there's been many countries in the world that have gone that way, but we have a ways to go about that in New South Wales.

Amanda Farmer: Yes. Well with the good work that you're doing and the Cancer Council is doing, I'm sure we are on the path that's for sure.

Scott Walsberger: That's correct, let's continue to advocate for better protection.

Amanda Farmer: Yes, excellent. Okay, now I'm going to ask you a personal question here Scott: what books have you read that have had the greatest impact on you and why?

Scott Walsberger: I think the book that comes to mind of having the greatest impact on me was Nelson Mandela's autobiography.

Amanda Farmer: Yes.

Scott Walsberger: I think it's such a powerful story of a leader who has overcome such adversity, had such a vision and with such a fair and gentle person. I think in our current political environment around the world, and particularly for me as an American, you know we could use a bit more of that these days. But I just think Nelson Mandela is an inspirational person that I think we can all learn several lessons from and lead our lives just to benefit everybody and I guess it's also inspiring in the work that I do to have such a committed advocate for the right cause and pursuing that throughout his life and that's also an inspiration for doing this type of work.

Amanda Farmer: Yes, excellent. Great suggestion, as always I'll make sure that there's a link to that one in the show notes for any of our listeners who haven't found their way over to Nelson Mandela's biography yet. Anything else that you want to add there Scott before we say goodbye and how do our listeners find out more about you?

Scott Walsberger: The listeners can find out more information about Cancer Council's work on smoke-free apartment living at www.cancercouncil.com.au/smokefree.

Amanda Farmer: Yes.

Scott Walsberger: That's where you can find our toolkit, which has fact sheets on the benefits of going smoke-free as well as by-laws and we provide an example of a by-law to address a complete ban on smoking in strata schemes, and there's also some tips on how to advocate for introducing a model smoke-free by-law within your scheme, so you can find out a bit on how to go about that, how to tell a story and build up your story that can bring other people along.

Amanda Farmer: Thank you so much. Thank you for your time today, Scott. I have to say from me personally as a non-smoker, as an asthmatic, and as the mother of a 3 year old, I feel so lucky to have people like yourself and Cancer Council out there advocating for our health and for the future of ourselves, of our children and just keep up the good work.

Scott Walsberger: Thank you, Amanda.

Amanda Farmer: Thanks, Scott.

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