



Australian Capital Territory

Smoking (Prohibition in Enclosed Public Places) Act 2003

A2003-51

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Australian Capital Territory

Smoking (Prohibition in Enclosed Public Places) Act 2003

A2003-51

An Act to prohibit smoking in enclosed public places, and for related purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

2003 082B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Part 1 Preliminary

1 Name of Act

This Act is the *Smoking (Prohibition in Enclosed Public Places) Act 2003*.

2 Commencement

- (1) This Act (other than part 4) commences on 1 December 2006.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

- (2) Part 4 commences on the day after this Act's notification day.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*smoking product*—see the *Tobacco Act 1927*, dictionary.' means that the expression 'smoking product' is defined in that dictionary and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

(4) In this section:

occupier, of a place, includes—

- (a) a person believed on reasonable grounds to be an occupier of the place; and
- (b) a person apparently in charge of the place.

8 Offence by occupier

(1) The occupier of an enclosed public place commits an offence if someone else commits an offence against section 7 (1) in the enclosed public place.

Maximum penalty: 10 penalty units.

(2) It is a defence to a prosecution for an offence against subsection (1) if the occupier establishes—

- (a) that the occupier did not provide anything designed to facilitate smoking in the enclosed public place; and
- (b) that—
 - (i) the occupier was not aware, and could not reasonably be expected to have been aware, that the person was committing the offence; or
 - (ii) the occupier told the person that the person was committing an offence and asked the person to stop committing the offence; or
 - (iii) the person held or had control over the smoking product for the purpose only of extinguishing it or removing it from the enclosed public place.

Examples for par (a)

- 1 ashtray

2 cigarette lighter

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

9 Offence by neighbouring occupier

The occupier of premises where smoking is not prohibited under this Act commits an offence if the occupier fails to take reasonable steps to prevent smoke from the premises from entering an enclosed public place at any time when the public, or a section of the public, has access to the place.

Maximum penalty: 10 penalty units.

Part 3 Enforcement

10 Inspectors

- (1) Each of the following is an inspector for this Act:
 - (a) an authorised officer under the *Tobacco Act 1927*, section 32;
 - (b) a public servant appointed under subsection (2).
- (2) The chief executive may appoint a public servant as an inspector for this Act.

Note 1 For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

11 Identity cards for inspectors

- (1) The chief executive must give an inspector appointed under section 10 (2) an identity card that states the person is an inspector for this Act and shows—
 - (a) a recent photograph of the person; and
 - (b) the name of the person; and
 - (c) the date of issue of the card; and
 - (d) an expiry date for the card; and
 - (e) anything else prescribed under the regulations.
- (2) A person commits an offence if—
 - (a) the person was appointed as an inspector under section 10 (2); and

- (b) the person ceases to be an inspector; and
- (c) the person does not return the person's identity card to the chief executive as soon as practicable (but within 7 days) after the day the person ceases to be an inspector.

Maximum penalty: 1 penalty unit.

- (3) An offence against this section is a strict liability offence.

12 Powers of inspectors

- (1) An inspector may enter an enclosed public place at any time when the public, or a section of the public, has access to the place, whether by payment or not.
- (2) If an inspector believes on reasonable grounds a person is committing or has just committed an offence against this Act, the inspector may—
 - (a) if the person is smoking in an enclosed public place—direct the person to stop smoking; and
 - (b) require the person to give the inspector the person's name and usual address.

13 Obstructing inspector

- (1) A person commits an offence if—
 - (a) the person knows, or is reckless about the fact, that the person is an inspector; and
 - (b) the person obstructs, hinders, intimidates or resists a inspector in the exercise of the inspector's functions.

Maximum penalty: 10 penalty units.

- (2) Strict liability applies to subsection (1) (b).

14 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) The regulations may exempt an area of premises from the operation of part 2 (Smoking prohibited in enclosed public places) if—
- (a) the premises are occupied by a university or another entity prescribed by the regulations; and
 - (b) the area is for scientific research into the effects of smoking.

Part 4

Amendments of Smoke-free Areas (Enclosed Public Places) Act 1994

15 Legislation amended

This part amends the *Smoke-free Areas (Enclosed Public Places) Act 1994*.

16 Annual fees New section 9 (6)

insert

- (6) Despite subsections (1) to (5), for a certificate of exemption that ceases to have effect less than 2 years after it is granted—
- (a) the occupier must pay to the Territory the fees determined for this subsection under section 22 within the time determined by the Minister; and
 - (b) if a fee payable under this section is not paid in accordance with the determination, the Minister may cancel the certificate.

17 Section 11

substitute

11 Duration of certificates of exemption

- (1) A certificate of exemption ceases to have effect 3 years after the day the certificate is granted.
- (2) However, a certificate of exemption that is granted after the notification day for the *Smoking (Prohibition in Enclosed Public Places) Act 2003* ceases to have effect on the earlier of—

- (a) 3 years after the day the certificate is granted; and
- (b) 1 December 2006.

Part 5 Repeals and consequential amendments

Division 5.1 Repeals

18 Act repealed

The *Smoke-free Areas (Enclosed Public Places) Act 1994* No 63 is repealed.

19 Regulations repealed

The *Smoke-free Areas (Enclosed Public Places) Regulations 1994* No 37 are repealed.

Division 5.2 Gaming Machine Act 1987

20 Commission may take disciplinary action against licensee New section 24 (3A)

insert

(3A) The licence conditions that may be imposed or varied under subsection (1) (b) include, but are not limited to, conditions to ensure the licensee complies with the *Smoking (Prohibition in Enclosed Public Places) Act 2003*, section 8 (Offence by occupier) or section 9 (Offence by neighbouring occupier).

21 Section 24

renumber subsections when Act next republished under Legislation Act

**22 Grounds for disciplinary action
Section 24A**

omit

In this Act

substitute

- (1) In this Act

23 New section 24A (1) (ba) and (bb)

insert

- (ba) the licensee has permitted people to smoke in a part of the licensed premises that is an enclosed public place; or
- (bb) the licensee has fails to take reasonable steps to prevent smoke from another area occupied by the licensee entering an enclosed public place; or

24 Section 24A (1)

renumber paragraphs when Act next republished under Legislation Act

25 New section 24A (2)

insert

- (2) In this section:

enclosed public place—see the *Smoking (Prohibition in Enclosed Public Places) Act 2003*, dictionary.

smoke—see the *Smoking (Prohibition in Enclosed Public Places) Act 2003*, dictionary.

Division 5.3 Liquor Act 1975

26 Grounds for issue of directions Section 82

omit

For this part,

substitute

- (1) For this part,

27 New section 82 (1) (ca) and (cb)

insert

- (ca) a licensee has permitted people to smoke in a part of the licensed premises that is an enclosed public place;
- (cb) the licensee has failed to take reasonable steps to prevent smoke from another area occupied by the licensee entering an enclosed public place;

28 Section 82 (1)

renumber paragraphs when Act next republished under Legislation Act

29 New section 82 (2)

- (2) In this section:

enclosed public place—see the *Smoking (Prohibition in Enclosed Public Places) Act 2003*, dictionary.

smoke—see the *Smoking (Prohibition in Enclosed Public Places) Act 2003*, dictionary.

30 Types of directions
Section 85 (2) (c)

substitute

- (c) a direction requiring the licensee to do, or not to do, something to comply with the licensing standards manual;
- (d) if section 82 (1) (ca) or (cb) applies—a direction to ensure that the licensee complies with the *Smoking (Prohibition in Enclosed Public Places) Act 2003*, section 8 (Offence by occupier) or section 9 (Offence by neighbouring occupier).

31 New section 93A

93A Automatic cancellation of licence

A licence is cancelled automatically if the licensee is found guilty or convicted of an offence against the *Smoking (Prohibition in Enclosed Public Places) Act 2003*, section 8 (Offence by occupier) in relation to any part of the licensed premises.

32 New section 110A

insert

110A Permit to be subject to condition about smoking

- (1) It is a condition of a permit that the permit-holder must not permit people to smoke in a part of the premises for which the permit is issued that is an enclosed public place.
- (2) The condition under subsection (1) is in addition to any condition to which the permit is subject under section 110 (2).

**33 Ground for cancellation
New section 116 (2) (ab)**

insert

- (ab) whether the permit-holder has permitted people to smoke in a part of the premises for which the permit is issued that is an enclosed public place;

34 Section 116 (2)

renumber paragraphs when Act next republished under Legislation Act

35 New section 116A

insert

116A Automatic cancellation of permit

A permit is cancelled automatically if the permit holder is found guilty or convicted of an offence against the *Smoking (Prohibition in Enclosed Public Places) Act 2003*, section 8 (Offence by occupier) in relation to any part of the premises for which the permit is issued.

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- contravene
- found guilty
- must
- police officer.

enclosed public place means a public place, or part of a public place, that has a ceiling or roof and is, except for doors and passageways, completely or substantially enclosed by walls or windows.

Examples

- 1 a shopping centre, mall or plaza
- 2 a restaurant or cafeteria
- 3 a school, college or university
- 4 a community centre, hall or place of worship
- 5 a hostel or nursing home
- 6 a bus or taxi
- 7 the enclosed part of a boat

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

occupier, of an enclosed public place, means a person having the management or control, or otherwise being in charge, of the place.

public place means a place to which the public, or a section of the public, has access, whether by payment or not.

smoke—a person ***smokes*** if the person—

- (a) directly puffs the smoke of an ignited smoking product, whether or not the person uses a device designed for the inhalation of smoke by a smoker; or
- (b) holds or has control over a smoking product while it is ignited.

Examples for par (a)

- 1 a cigarette holder
- 2 a pipe (including a water pipe or bong)

smoking product—see the *Tobacco Act 1927*, dictionary.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 25 June 2003.

2 Notification

Notified under the Legislation Act on 25 November 2003.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Smoking (Prohibition in Enclosed Public Places) Bill 2003 which was passed by the Legislative Assembly on 19 November 2003.

Clerk of the Legislative Assembly

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