



Australian Capital Territory

Smoking in Cars with Children (Prohibition) Act 2011

A2011-40

Republication No 2

Effective: 1 August 2016 – 28 August 2016

Republication date: 1 August 2016

Last amendment made by [A2016-20](#)

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Smoking in Cars with Children (Prohibition) Act 2011* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 August 2016. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 1 August 2016.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$150 for an individual and \$750 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

Smoking in Cars with Children (Prohibition) Act 2011

Contents

	Page
1 Name of Act	2
3 Dictionary	2
4 Notes	2
5 Offences against Act—application of Criminal Code etc	3
6 Meaning of <i>smoke</i>	3
7 Offence to smoke in a vehicle with a child	4
8 Enforcement powers of police officers	4

R2
01/08/16

Smoking in Cars with Children (Prohibition) Act 2011
Effective: 01/08/16-28/08/16

contents 1

Contents

	Page
Dictionary	6
Endnotes	
1 About the endnotes	8
2 Abbreviation key	8
3 Legislation history	9
4 Amendment history	9
5 Earlier republications	10



Australian Capital Territory

Smoking in Cars with Children (Prohibition) Act 2011

An Act to prohibit smoking in cars when children are present

1 Name of Act

This Act is the *Smoking in Cars with Children (Prohibition) Act 2011*.

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 '*road*—see the *Road Transport (General) Act 1999*, dictionary.' means that the term 'road' 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 the [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.

6 Meaning of *smoke*

(1) For this Act, *smoke* means—

- (a) smoke from an ignited smoking product; or
- (b) vapour from a personal vaporiser.

Note A personal vaporiser is a smoking product (see [Tobacco and Other Smoking Products Act 1927](#), s 3A).

(2) For this Act, a person *smokes* if the person—

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

Examples—devices—par (a)

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

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).

7 Offence to smoke in a vehicle with a child

- (1) A person who is 16 years old, or older, commits an offence if—
- (a) the person smokes in a vehicle that is on a road or road related area; and
 - (b) a child is in the vehicle.

Maximum penalty: 50 penalty units.

Note **Child** means a person under 16 years old (see dict).

- (2) An offence against this section is a strict liability offence.
- (3) In a prosecution for an offence against this section, evidence that a person in the vehicle appeared to be under 16 years old is proof that the person was under 16 years old, in the absence of evidence to the contrary.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

8 Enforcement powers of police officers

- (1) If a police officer suspects on reasonable grounds that a person has committed an offence against section 7, the police officer may do 1 or more of the following:
- (a) require the driver of the vehicle to—
 - (i) stop the vehicle and produce the driver's driver licence; and
 - (ii) state the driver's name, date of birth and home address;
 - (b) require a person who is in the vehicle, and suspected of committing the offence, to—
 - (i) stop smoking; and
 - (ii) state the person's name, date of birth and home address;

- (c) require a person who is in the vehicle, and suspected of committing the offence, to produce an identification document if the person is carrying an identification document.
- (2) A person commits an offence if the person fails to comply with a requirement made of the person by a police officer under subsection (1) (a) or (b).

Maximum penalty: 20 penalty units.

Note It is an offence to produce false or misleading documents (see [Criminal Code](#), s 339).

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

identification document, includes the following:

- (a) an Australian driver licence or foreign driver licence;
- (b) a proof of age card issued under the [Liquor Act 2010](#), section 210 (Proof of age cards), or a corresponding document issued under the law of a State;
- (c) a passport;
- (d) a student card;
- (e) a document that contains a photograph that could reasonably be taken to be the person and states the person's name and date of birth.

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:

- home address
- police officer
- proceeding.

child means a person who is under 16 years old.

driver—see the [Road Transport \(General\) Act 1999](#), dictionary.

driver licence means—

- (a) an Australian driver licence under the [Road Transport \(Driver Licensing\) Act 1999](#); or
- (b) an external driver licence under the [Road Transport \(Driver Licensing\) Act 1999](#).

personal vaporiser—see the [Tobacco and Other Smoking Products Act 1927](#), section 3B.

road—see the [Road Transport \(General\) Act 1999](#), dictionary.

road related area—see the [Road Transport \(General\) Act 1999](#), dictionary.

smoke—see section 6.

smoking product—see the [Tobacco and Other Smoking Products Act 1927](#), section 3A.

vehicle—

- (a) means a motor vehicle under the *Road Transport (General) Act 1999*; but
- (b) does not include—
 - (i) a campervan that is parked and set up as a place for living or sleeping; or
 - (ii) a motorcycle.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

Smoking in Cars with Children (Prohibition) Act 2011 A2011-40

notified LR 1 November 2011

s 1, s 2 commenced 1 November 2011 (LA s 75 (1))

remainder commenced 1 May 2012 (s 2 and LA s 79)

as amended by

Justice Legislation Amendment Act 2016 A2016-7 sch 1 pt 1.10

notified LR 29 February 2016

s 1, s 2 commenced 29 February 2016 (LA s 75 (1))

[sch 1 pt 1.10 awaiting commencement \(s 2\)](#)

Note default commencement under LA s 79: 29 August 2016

Smoke-Free Legislation Amendment Act 2016 A2016-20 pt 3

notified LR 13 April 2016

s 1, s 2 commenced 13 April 2016 (LA s 75 (1))

pt 3 commenced 1 August 2016 (s 2 and [CN2016-13](#))

4 Amendment history

Commencement

s 2 om LA s 89 (4)

Meaning of *smoke*

s 6 hdg sub [A2016-20](#) s 18

s 6 am [A2016-20](#) ss 19-21

Dictionary

dict def ***herbal product*** om [A2016-20](#) s 22
 def ***personal vaporiser*** ins [A2016-20](#) s 23
 def ***smoking product*** sub [A2016-20](#) s 24
 def ***tobacco product*** om [A2016-20](#) s 25

Endnotes

5 Earlier republications

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 1 May 2012	1 May 2012- 31 July 2016	not amended	new Act

© Australian Capital Territory 2016