



Australian Capital Territory

Smoking (Prohibition in Enclosed Public Places) Act 2003

A2003-51

Republication No 1

Effective: 1 December 2006 – 8 December 2010

Republication date: 1 December 2006

Last amendment made by A2005-6
(republication for new Act and amendments by A2005-5
and A2005-6)

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Smoking (Prohibition in Enclosed Public Places) Act 2003* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 December 2006. It also includes any amendment, repeal or expiry affecting the republished law to 1 December 2006.

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 or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

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 *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

Smoking (Prohibition in Enclosed Public Places) Act 2003

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Australian Capital Territory

Smoking (Prohibition in Enclosed Public Places) Act 2003

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

R1
01/12/06

Smoking (Prohibition in Enclosed Public Places) Act 2003
Effective: 01/12/06-08/12/10

page 1

Part 1 Preliminary

1 Name of Act

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

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.

Part 1A Important concepts

5A Object

The object of this Act is to promote public health by minimising the exposure of people in enclosed public places to environmental smoke.

5B Meaning of *smoke*

- (1) For this Act, *smoke* means smoke from an ignited smoking product.
- (2) For this Act, a person *smokes* if the person—
 - (a) directly puffs smoke, 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 of devices for par (a)

- 1 a cigarette holder
- 2 a pipe (including a 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).

Part 2 Smoking prohibited in enclosed public places

6 Offence to smoke in enclosed public place

- (1) A person commits an offence if the person smokes in an enclosed public place.

Maximum penalty: 5 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes that he or she held or had control over the smoking product for the purpose only of extinguishing it or removing it from the public place.

7 Offence to smoke in contravention of direction

- (1) This section applies to a person if the person—
- (a) smokes in an enclosed public place; and
 - (b) is directed to stop smoking in the enclosed public place by an inspector or the occupier of the enclosed public place.

- (2) The person commits an offence if the person contravenes the direction.

Maximum penalty: 20 penalty units.

- (3) However, a person does not commit an offence against this section if—
- (a) the inspector who gives the direction is not a uniformed police officer; and
 - (b) when asked by the person, the inspector does not produce an identity card that identifies him or her as a person who is an inspector.

(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—person smoking in enclosed public place

(1) The occupier of an enclosed public place commits an offence if someone else commits an offence against section 6 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).

8A Offence by occupier—permitting smoke into enclosed public place from another part of premises

The occupier of premises on which there is an enclosed public place commits an offence if the occupier fails to take reasonable steps to prevent smoke entering the enclosed public place from another part of the premises occupied by the occupier.

Maximum penalty: 10 penalty units.

9 Offence by neighbouring occupier

The occupier of premises commits an offence if the occupier fails to take reasonable steps to prevent smoke from the premises entering an enclosed public place on other premises.

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.

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 is enclosed as prescribed by regulation.

Examples of public places

The following may be ***public places*** (see definition of ***public place***):

- 1 business premises, including professional, trade and commercial premises
- 2 a cinema or theatre
- 3 a club, hotel or motel
- 4 a community centre, hall or public library
- 5 government premises
- 6 a hostel or nursing home
- 7 a place of worship
- 8 a public transportation vehicle (including, a bus, taxi or boat)
- 9 a restaurant or cafeteria
- 10 a school, college or university
- 11 a shopping centre, mall or plaza
- 12 sporting or recreational premises

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 premises or a part of premises (including an enclosed public place), means a person having the management or control, or otherwise being in charge, of the premises or part of the premises.

public place means a place to which the public or a section of the public has access, whether—

- (a) by payment, membership of a body or otherwise; or
- (b) by entitlement or permission.

Examples

The places, or parts of the places, mentioned in the examples for the definition of ***enclosed public place*** may be ***public places***.

smoke—see section 5B.

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

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 and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

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

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

Endnotes

3 Legislation history

3 Legislation history

Smoking (Prohibition in Enclosed Public Places) Act 2003 A2003-51

notified LR 25 November 2003

s 1, s 2 commenced 25 November 2003 (LA s 75 (1))

pt 4 commenced 26 November 2003 (s 2 (2))

remainder commenced 1 December 2006 (s 2 (1))

as amended by

Justice and Community Safety Legislation Amendment Act 2005 A2005-5 pt 14

notified LR 23 February 2005

s 1, s 2 commenced 23 February 2005 (LA s 75 (1))

pt 14 commenced 24 February 2005 (s 2 (2))

Smoking (Prohibition in Enclosed Public Places) Amendment Act 2005 A2005-6

notified LR 22 February 2005

s 1, s 2 commenced 22 February 2005 (LA s 75 (1))

remainder commenced 1 December 2006 (s 2)

4 Amendment history

Commencement

s 2 om LA s 89 (4)

Important concepts

pt 1A hdg ins A2005-6 s 4

Object

s 5A ins A2005-6 s 4

Meaning of *smoke*

s 5B ins A2005-6 s 4

Offence by occupier—person smoking in enclosed public place

s 8 hdg sub A2005-6 s 5

s 8 am A2005-6 s 6

Offence by occupier—permitting smoke into enclosed public place from another part of premises

s 8A ins A2005-6 s 7

Offence by neighbouring occupier

s 9 sub A2005-6 s 7

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

pt 4 hdg om LA s 89 (3)

Legislation amended

s 15 om LA s 89 (3)

Annual fees**New section 9 (6)**

s 16 om LA s 89 (3)

Section 11

s 17 om LA s 89 (3)

Repeals and consequential amendments

pt 5 hdg om LA s 89 (3)

Repeals

div 5.1 hdg om LA s 89 (3)

Act repealed

s 18 om LA s 89 (3)

Regulations repealed

s 19 om LA s 89 (3)

Gaming Machine Act 1987

div 5.2 hdg om LA s 89 (3)

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

s 20 om LA s 89 (3)

Section 24

s 21 om LA s 89 (3)

Grounds for disciplinary action**Section 24A**

s 22 om LA s 89 (3)

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

s 23 om LA s 89 (3)

Section 24A (1)

s 24 om LA s 89 (3)

New section 24A (2)

s 25 om LA s 89 (3)

Liquor Act 1975

div 5.3 hdg om LA s 89 (3)

Grounds for issue of directions**Section 82**

s 26 om LA s 89 (3)

Endnotes

4 Amendment history

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

s 27 om LA s 89 (3)

Section 82 (1)

s 28 om LA s 89 (3)

New section 82 (2)

s 29 om LA s 89 (3)

Types of directions

Section 85 (2) (c)

s 30 om LA s 89 (3)

New section 93A

s 31 om A2005-5 s 47

New section 110A

s 32 om LA s 89 (3)

Ground for cancellation

New section 116 (2) (ab)

s 33 om LA s 89 (3)

Section 116 (2)

s 34 om LA s 89 (3)

New section 116A

s 35 om A2005-5 s 47

Dictionary

dict

def **enclosed public place** sub A2005-6 s 8

def **occupier** sub A2005-6 s 8

def **public place** sub A2005-6 s 8

def **smoke** sub A2005-6 s 8

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