

2011

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

Smoking in Cars with Children (Prohibition) Bill 2011

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Smoking in Cars with Children (Prohibition) Bill 2011

A Bill for

An Act to prohibit smoking in cars when children are present

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

- 1 **1 Name of Act**
- 2 This Act is the *Smoking in Cars with Children (Prohibition)*
- 3 *Act 2011*.
- 4 **2 Commencement**
- 5 This Act commences on a day fixed by the Minister by written
- 6 notice.
- 7 *Note 1* The naming and commencement provisions automatically commence on
- 8 the notification day (see Legislation Act, s 75 (1)).
- 9 *Note 2* A single day or time may be fixed, or different days or times may be
- 10 fixed, for the commencement of different provisions (see Legislation
- 11 Act, s 77 (1)).
- 12 *Note 3* If a provision has not commenced within 6 months beginning on the
- 13 notification day, it automatically commences on the first day after that
- 14 period (see Legislation Act, s 79).
- 15 **3 Dictionary**
- 16 The dictionary at the end of this Act is part of this Act.
- 17 *Note 1* The dictionary at the end of this Act defines certain terms used in this
- 18 Act, and includes references (*signpost definitions*) to other terms
- 19 defined elsewhere.
- 20 For example, the signpost definition '*road*—see the *Road Transport*
- 21 *(General) Act 1999*, dictionary.' means that the term 'road' is defined in
- 22 that dictionary and the definition applies to this Act.
- 23 *Note 2* A definition in the dictionary (including a signpost definition) applies to
- 24 the entire Act unless the definition, or another provision of the Act,
- 25 provides otherwise or the contrary intention otherwise appears (see
- 26 Legislation Act, s 155 and s 156 (1)).
- 27 **4 Notes**
- 28 A note included in this Act is explanatory and is not part of this Act.
- 29 *Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of
- 30 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** and **smoking product**

(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 for the inhalation of smoke by a smoker; or

(b) holds or has control over a smoking product while it is ignited.

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).

(3) For this Act, each of the following is a **smoking product**:

(a) a tobacco product;

(b) a herbal product;

(c) any other product that is designed for smoking.

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;

- 1 (c) require a person who is in the vehicle, and suspected of
 2 committing the offence, to produce an identification document
 3 if the person is carrying an identification document.
- 4 (2) A person commits an offence if the person fails to comply with a
 5 requirement made of the person by a police officer under
 6 subsection (1) (a) or (b).
- 7 Maximum penalty: 20 penalty units.
- 8 *Note* It is an offence to produce false or misleading documents (see Criminal
 9 Code, s 339).
- 10 (3) An offence against this section is a strict liability offence.
- 11 (4) In this section:
- 12 ***identification document***, includes the following:
- 13 (a) an Australian driver licence or foreign driver licence;
- 14 (b) a proof of age card issued under the *Liquor Act 2010*,
 15 section 210 (Proof of age cards), or a corresponding document
 16 issued under the law of a State;
- 17 (c) a passport;
- 18 (d) a student card;
- 19 (e) a document that contains a photograph that could reasonably
 20 be taken to be the person and states the person's name and date
 21 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*.

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

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 section 6.

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

1 ***vehicle***—

2 (a) means a motor vehicle under the *Road Transport (General)*
3 *Act 1999*; but

4 (b) does not include—

5 (i) a campervan that is parked and set up as a place for living
6 or sleeping; or

7 (ii) a motorcycle.

Endnotes

1 **Presentation speech**

Presentation speech made in the Legislative Assembly on 2011.

2 **Notification**

Notified under the Legislation Act on 2011.

3 **Republications of amended laws**

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