

Australian Capital Territory

Smoke-Free Public Places (Public Transport Stations) Declaration 2017 (No 1)

Disallowable instrument DI2017—249

made under the

Smoke-Free Public Places Act 2003, s 90 (Declaration of smoke-free public place or event)

EXPLANATORY STATEMENT

Outline

This Declaration establishes public transport stations in the ACT as smoke-free. This instrument is jointly made by the Chief Minister and Minister for Health and Wellbeing under section 90 of the *Smoke-Free Public Places Act 2003* (the Act).

This Declaration applies to all public transport stations in the ACT and complements any declared smoke-free areas under the *Smoke-Free Public Places (Public Transport Stops) Declaration 2017 (No 1)*.

The Declaration defines the boundary of a declared smoke-free area using maps as attached to Schedule 1 of the Declaration. These maps clearly identify the limits of the smoke-free area with dotted red lines for each public transport station. Maps are particularly important given that the perimeter of a public transport station may not be clearly marked or indicated and may span significant distances. Any transport stop that is outside of the scope of this Declaration may be captured by the corresponding *Smoke-Free Public Places (Public Transport Stops) Declaration 2017 (No 1)*.

Section 90(4) of the Act prescribes that a declaration may require ‘no smoking’ signs to be displayed at a declared smoke-free public place or event. As the boundaries of the smoke-free area for public transport stations will vary depending on the station, it has been determined that ‘no smoking’ signs are a requirement for this declaration to provide clarification.

Section 90(2) of the Act requires community consultation to be undertaken prior to declaring a new smoke-free public place. ACT Health undertook community consultation on a proposed policy to prohibit smoking at public transport waiting areas from 24 February to 7 April 2017. ACT Health received 581 complete submissions to the consultation, with 93 per cent of respondents supporting the introduction of a policy to prohibit smoking at public transport waiting areas.

Due Ministerial consideration has been given to the impact of declaring public transport waiting areas smoke-free and has included matters listed in subsection 9O(3) of the Act. A Regulatory Impact Statement has been prepared to explore the policy options and to assess the potential costs and benefits of smoke-free public transport waiting areas. Smoke-free areas are a vitally important tool to protect community health by reducing exposure to second-hand smoke (SHS) and to improve health outcomes in smokers and non-smokers. They help to denormalise smoking, which helps to prevent people from taking up the habit and also supports smokers who are trying to quit by reducing social cues to smoke.

The *National Tobacco Strategy 2012-2018* recommends that jurisdictions adopt policies that restrict smoking outdoors where people gather or move in close proximity. Public transport waiting areas, including public transport stations, are places that often attract large numbers of people, including school children, the elderly and people with disability. Commuters have limited ability to avoid exposure to SHS when waiting for public transport. Prior to this Declaration the ACT and Western Australia were the only Australian jurisdictions that did not have legislation to prohibit smoking at public transport areas.

Exemptions

The Declaration does not apply at the City Bus Station between the hours of 11:00pm and 6:00am. This exemption is made on the basis of personal safety considerations and to improve the safety of people in this entertainment precinct at night. The bus station is well lit and has CCTV coverage. If smokers move to less safe areas to smoke, there is a higher risk of assault. No exemption is made for any other transport station.

Strict Liability Offences

This Declaration is linked to strict liability offences within the Act under sections 9T and 9U. The appropriateness of strict liability offences relating to Declarations made under section 9O of the Act was considered by the ACT Legislative Assembly as part of the *Smoke-Free Public Places Amendment Act 2016*.

In the case of this Declaration, the application of strict liability offences is considered necessary and appropriate to ensure the integrity of the smoke-free regulatory scheme and to align with Government and community expectations. Public consultation conducted through the ACT Government's *Your Say* [website](#) from 24 February to 7 April 2017, 93 per cent of 581 respondents supported introduction of a policy that would prohibit smoking at public transport waiting areas.

The ACT will implement a public education campaign to generate public awareness and understanding of the newly declared smoke-free areas. Public messaging about smoke-free transport areas will include temporary advertising on buses, posters, information pamphlets and the installation of signage at bus, train and light rail stations. To further help support the public in understanding the impact of a declared smoke-free area, the ACT Government will include information about the ban in the 'OUR CANBERRA' community newsletter for distribution to ACT residents. Temporary signage will also be erected at the 100 most commonly used bus stops for the implementation period. Thus, a defendant can reasonably be expected to be aware of the smoke-free area and possible penalties.

It is also noted that all other Australian jurisdictions, with the exception of Western Australia, have legislated to make smoking at public transport stops an offence. A person travelling in the ACT from another jurisdiction would therefore likely be reasonably aware of a community expectation that smoking in public transport waiting areas is prohibited. This expectation is supported by established offences in neighbouring jurisdictions and the signage displayed in ACT transport stations and on ACT Government buses.

Inspectors should favour an educative approach in preventing smoking at public transport stops, public transport waiting areas and public transport stations in the ACT. Enforcement of this smoking ban should therefore prioritise explaining the ban and requesting that the smoker extinguish their cigarette or move outside the smoke-free area. Inspectors will retain their discretion to issue an infringement notice under the *Magistrates Court (Smoke-Free Public Places Infringement Notices) Regulation 2010* to people found to be smoking within a smoke-free zone. However infringement notices will normally only be issued for repeated contraventions of the Declaration or for disregarding an inspector's direction to stop smoking.

Human Rights Considerations

The application of strict liability has been accepted in the ACT as engaging the right to be presumed innocent under the *Human Rights Act 2004* (HRA). This is because such offences do not require a person to *intend* to undertake the prohibited conduct. It is sufficient to prove only that the defendant engaged in the conduct. The absence of intention as an element of the offence generally places a burden upon the defendant to challenge the prosecution case by establishing a defence. This Declaration has therefore been considered in relation to the factors listed under section 28 of the HRA, section 90 of the Act and community expectation.

Any limitations imposed by this Declaration are considered justified and proportionate in a free and democratic society. This is because the Declaration provides public health protections to the majority of the ACT population using public transport and is largely consistent with other states and territories, as well as community and government expectations. It is suggested that the object of protecting people who are waiting for public transport from the public health risks created by SHS is of sufficient importance to justify limitation to the rights listed above. In addition, the nature and extent to which these rights have been limited is no more than necessary, and they will be supported by an educative approach.