

Australian Capital Territory

Smoke-Free Public Places (Public Transport Interchanges) Declaration 2019 (No 1)

Disallowable instrument DI2019—230

made under the

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

EXPLANATORY STATEMENT

Background

The Smoke-Free Public Places (Public Transport Stations) Declaration 2017 (No 1) came into effect on 1 October 2017. It declared all public transport stations in the ACT to be smoke-free public places under section 90 of the *Smoke-Free Public Places Act 2003* (the Act).

Since 2017, the ACT public transport infrastructure network has undergone significant renewal. Changes include: the commencement of stage one of the Light Rail Network; the opening of the new Gungahlin Place bus interchange; an expansion of the City bus station; and a change in naming conventions by Transport Canberra and City Services so that ‘stations’ are now generally known as ‘interchanges’.

Outline

This Declaration amends the smoke-free areas that apply to public transport interchanges in the ACT. This instrument is jointly made by the Chief Minister and Minister for Health under section 90 of the Act.

This Declaration applies to all named public transport interchanges 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 interchange. Maps are particularly important given that the perimeter of a public transport interchange 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 9O(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 interchanges will vary depending on the interchange, it has been determined that ‘no smoking’ signs are a requirement for this declaration to provide clarification.

Section 9O(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 was given to the impact of declaring public transport waiting areas smoke-free and including matters listed in subsection 9O(3) of the Act. A Regulatory Impact Statement was prepared in 2017 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 support smokers who are trying to quit by reducing social cues to smoke.

The *National Tobacco Strategy 2012-2018* recommended that jurisdictions adopt policies that restrict smoking outdoors where people gather or move in close proximity. Public transport waiting areas, including public transport interchanges, 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.

Exemptions

The Declaration does not apply at the City Bus Interchange 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 interchange 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 interchange and the exemption does not apply to the light rail stop located at the junction of Northbourne Avenue and Alinga St.

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 messaging about smoke-free transport areas will include social media and the installation of signage in new parts of interchange areas. 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 is therefore likely to 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 interchanges and on ACT Government buses.

Inspectors have favoured an educative approach in preventing smoking at public transport stops, public transport waiting areas and public transport interchanges in the ACT. Enforcement of this smoking ban will continue to 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 are only to 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.