



Australian Capital Territory

Smoke-Free Public Places Act 2003

A2003-51

Republication No 2

Effective: 9 December 2010 – 30 June 2011

Republication date: 9 December 2010

Last amendment made by A2010-43
(republication for renaming and other
amendments by A2009-51 and A2010-43)

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Smoke-Free Public Places Act 2003* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 9 December 2010. It also includes any commencement, amendment, repeal or expiry affecting the republished law to 9 December 2010.

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

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

Smoke-Free Public Places Act 2003

Contents

	Page	
Part 1	Preliminary	
1	Name of Act	2
3	Dictionary	2
4	Notes	2
5	Offences against Act—application of Criminal Code etc	3
Part 1A	Important concepts	
5A	Object	4
5B	Meaning of <i>smoke</i>	4
Part 2	Smoking prohibited in enclosed public places	
6	Offence to smoke in enclosed public place	6
7	Offence to smoke in enclosed public place in contravention of direction	6

R2
09/12/10

Smoke-Free Public Places Act 2003
Effective: 09/12/10-30/06/11

contents 1

Contents

		Page
8	Offence by occupier—person smoking in enclosed public place	7
8A	Offence by occupier—permitting smoke into enclosed public place from another part of premises	7
8AA	Offence by occupier—not displaying required signs	7
9	Offence by neighbouring occupier	8
Part 2A	Smoking prohibited in outdoor eating or drinking places	
Division 2A.1	General	
9A	Meaning of <i>outdoor eating or drinking place</i>	9
Division 2A.2	Smoking prohibited—outdoor eating or drinking places	
9B	Offence to smoke in outdoor eating or drinking place	10
9C	Offence to smoke in outdoor eating or drinking place in contravention of direction	11
9D	Offence by occupier—person smoking in outdoor eating or drinking place	11
9E	Offence by occupier—not displaying required signs etc	12
Division 2A.3	Designated outdoor smoking areas	
9F	Designating outdoor smoking area	12
9G	Licensee to notify commissioner of designated outdoor smoking area	15
9H	Obligations of licensee—things not allowed in designated outdoor smoking area	15
9I	Offence by occupier—permitting smoke from designated outdoor smoking area to enter another part of outdoor eating or drinking place	16
9J	Smoking management plan	17
Part 2B	Smoking prohibited at underage functions	
9K	Meaning of <i>underage function</i> —pt 2B	18
9L	Smoking prohibited at underage function	19
9M	Obligations on organiser of underage function	19
9N	Offence to smoke at underage function in contravention of direction	20
Part 3	Enforcement	
10	Inspectors	21
11	Identity cards for inspectors	21

	Page	
12	Power to give directions	22
13	Power to enter premises	22
14	Production of identity card	22
15	Consent to entry	23
16	General powers on entry to premises	24
17	Power to require name and address	24
18	Power to seize things	25
19	Receipt for things seized	26
Part 4	Miscellaneous	
20	Acts and omissions of representatives	27
21	Approved forms	28
22	Regulation-making power	28
Dictionary		29
Endnotes		
1	About the endnotes	31
2	Abbreviation key	31
3	Legislation history	32
4	Amendment history	33
5	Earlier republications	38



Australian Capital Territory

Smoke-Free Public Places Act 2003

An Act to prohibit smoking in certain public places, and for other purposes

Part 1 Preliminary

1 Name of Act

This Act is the *Smoke-Free 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 to environmental smoke—

- (a) in enclosed public places; and
- (b) in outdoor eating or drinking places; and
- (c) at underage functions.

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 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) However, a person does not *smoke* if the person holds or has control over a smoking product for the purpose only of extinguishing it or removing it from—
 - (a) an enclosed public place; or
 - (b) an outdoor eating or drinking place; or
 - (c) an underage function.

- (4) 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.

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) An offence against this section is a strict liability offence.

7 Offence to smoke in enclosed public place in contravention of direction

- (1) A person commits an offence if—

- (a) the person smokes in an enclosed public place; and
- (b) an inspector, or the occupier of the place, directs the person to stop smoking in the enclosed public place; and
- (c) the person contravenes the direction.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.

- (3) A person does not commit an offence against this section if—

- (a) the direction was given by an inspector who is not a uniformed police officer; and
- (b) when asked by the person, the inspector does not produce the inspector's identity card for inspection.

8 Offence by occupier—person smoking in enclosed public place

- (1) The occupier of an enclosed public place commits an offence if a person smokes in the enclosed public place.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) The occupier does not commit an offence against this section if—
- (a) the occupier was not aware, and could not reasonably be expected to have been aware, that the person was smoking in an enclosed public place; or
 - (b) the occupier directed the person to stop smoking in the enclosed public place and the person contravened the direction.

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.

8AA Offence by occupier—not displaying required signs

- (1) The regulations may prescribe requirements in relation to the display of ‘no smoking’ signs in enclosed public places.
- (2) The occupier of an enclosed public place commits an offence if—
- (a) a ‘no smoking’ sign is required by regulation to be displayed in the enclosed public place; and

(b) the sign is not displayed as required by regulation.

Maximum penalty: 5 penalty units.

(3) An offence against this section is a strict liability offence.

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 2A **Smoking prohibited in outdoor eating or drinking places**

Division 2A.1 **General**

9A **Meaning of *outdoor eating or drinking place***

- (1) A place is an *outdoor eating or drinking place* if—
- (a) it is a public place (other than an enclosed public place); and
 - (b) people at the place may consume food or drink provided from an on-site service; and
 - (c) either—
 - (i) the place is licensed premises; or
 - (ii) tables and chairs are provided by the on-site service for use by people consuming food or drink at the place.

Examples—par (c) (ii)

- 1 an area containing tables and chairs on a footpath outside a cafe or takeaway food shop
- 2 an outdoor area at a shopping centre, surrounded by food outlets, containing tables and chairs at which food or drink purchased at the outlets may be consumed
- 3 an area containing tables and chairs, and bounded by hoardings or planter boxes, that is around a food caravan at a sporting ground

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).

- (2) However, a place is an outdoor eating or drinking place only while—
- (a) food or drink is being provided, or is available to be provided, at the place from an on-site service; or

- (b) food or drink provided from an on-site service is being consumed at the place; or
 - (c) clearing or cleaning related to the provision of food or drink in the place is being done.
- (3) Food or drink is taken to be provided from an on-site service whether it is—
- (a) served to a person in the outdoor eating or drinking place by or for the person conducting the on-site service; or
 - (b) taken by a person from the on-site service for consumption in the outdoor drinking or eating place.

- (4) In this section:

food or drink service means a business, or an enterprise of a commercial, charitable or community nature, that sells food or drink.

on-site service, in relation to a place, means a food or drink service at the place.

provide, food or drink, includes distribute, give or sell the food or drink.

Division 2A.2 Smoking prohibited—outdoor eating or drinking places

9B Offence to smoke in outdoor eating or drinking place

- (1) A person commits an offence if—
- (a) the person smokes in an outdoor eating or drinking place; and
 - (b) the place where the person smokes is not a designated outdoor smoking area.

Maximum penalty: 5 penalty units.

- (2) An offence against this section is a strict liability offence.

9C Offence to smoke in outdoor eating or drinking place in contravention of direction

- (1) A person commits an offence if—
- (a) the person smokes in an outdoor eating or drinking place; and
 - (b) the place where the person smokes is not a designated outdoor smoking area; and
 - (c) an inspector, or the occupier of the place, directs the person to stop smoking in the outdoor eating or drinking place; and
 - (d) the person contravenes the direction.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) A person does not commit an offence against this section if—
- (a) the direction was given by an inspector who is not a uniformed police officer; and
 - (b) when asked by the person, the inspector does not produce the inspector's identity card for inspection.

9D Offence by occupier—person smoking in outdoor eating or drinking place

- (1) The occupier of an outdoor eating or drinking place commits an offence if—
- (a) a person smokes in the outdoor eating or drinking place; and
 - (b) the place where the person smokes is not a designated outdoor smoking area.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.

- (3) The occupier does not commit an offence against this section if—
- (a) the occupier was not aware, and could not reasonably be expected to have been aware, that the person was smoking in an outdoor eating or drinking place that was not a designated outdoor smoking area; or
 - (b) the occupier directed the person to stop smoking in the outdoor eating or drinking place and the person contravened the direction.

9E Offence by occupier—not displaying required signs etc

- (1) The occupier of an outdoor eating or drinking place must ensure that ‘no smoking’ signs are prominently displayed at the place.

Maximum penalty: 20 penalty units.

- (2) The occupier of an outdoor eating or drinking place that is not licensed premises must ensure that tables and chairs provided by the on-site service for use by people consuming food or drink at the place are clearly identified by either or both of the following:

- (a) a plan displayed at the place;
- (b) signs or markings on the tables and chairs.

Maximum penalty: 20 penalty units.

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

Division 2A.3 Designated outdoor smoking areas

9F Designating outdoor smoking area

- (1) This section applies to—
- (a) premises in relation to which a club licence under the *Liquor Act 2010* is in force; and

- (b) premises in relation to which a licence under the *Liquor Act 2010* is in force authorising the sale of liquor for consumption on the premises, and that are used principally for that purpose.

Example—par (b)

a pub or tavern

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).

- (2) The licensee of the premises may designate part of the licensed outdoor area of the premises as an area in which drinking and smoking is allowed (a ***designated outdoor smoking area***) by displaying a notice near the area—
- (a) stating that the area is a designated outdoor smoking area for this Act; and
 - (b) stating that a person under 18 years old is not permitted in the area; and
 - (c) stating that a smoking management plan for the premises is available for inspection at any time; and
 - (d) including a diagram that sets out the limits of the area.
- (3) There may be more than 1 designated outdoor smoking area at the premises.
- (4) The parts of the licensed outdoor area of the premises that may be designated outdoor smoking areas are—
- (a) any part (an ***off-gaming area***) that—
 - (i) is adjacent to a gaming area and accessible only from a gaming area; and
 - (ii) was part of the licensed outdoor area of the premises on 1 November 2009; and

- (b) up to 50% of the total area of the licensed outdoor area of the premises that is not an off-gaming area.
- (5) Each designated outdoor smoking area must have a buffer on its perimeter wherever it is adjacent to other parts of the outdoor area of the premises ordinarily accessed by patrons.
- (6) A buffer must be—
 - (a) a screen or wall that is impervious to smoke and at least the height prescribed by regulation; or
 - (b) an area at least 4m wide where patrons are not allowed to eat, drink or smoke, half of which must be taken from the area that would otherwise form part of the designated outdoor smoking area.
- (7) A designated outdoor smoking area—
 - (a) must not be adjacent to an entrance to the premises (unless it is an off-gaming area); and
 - (b) must be in a position that minimises smoke from the area entering any part of an outdoor eating or drinking place that is not a designated outdoor smoking area.
- (8) A licensee of premises must not designate a part or parts of the licensed outdoor area of the premises under subsection (2) otherwise than in accordance with this section.

Maximum penalty: 50 penalty units.
- (9) An offence against this section is a strict liability offence.

9G Licensee to notify commissioner of designated outdoor smoking area

- (1) The licensee of premises at which there is a designated outdoor smoking area must give the commissioner notice of the designated outdoor smoking area within 14 days after the day the licensee designates the outdoor smoking area.

Note If a form is approved under s 21 for this provision, the form must be used.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

9H Obligations of licensee—things not allowed in designated outdoor smoking area

- (1) The licensee of premises at which there is a designated outdoor smoking area must ensure that, in the designated outdoor smoking area—

- (a) there are no people under 18 years old; and
- (b) there is no food or drink service; and
- (c) no food is consumed; and
- (d) no entertainment is offered or directly accessible; and
- (e) there are no gaming machines.

Maximum penalty: 50 penalty units.

Note For where gaming machines may be located, see the *Gaming Machine Act 2004*.

- (2) An offence against this section is a strict liability offence.

(3) The licensee does not commit an offence against this section in relation to a contravention of subsection (1) (c) if the licensee was not aware, and could not reasonably be expected to have been aware, that food was being consumed in the designated outdoor smoking area.

(4) In this section:

entertainment includes television (for example, televised sporting events), but does not include public announcements or recorded music.

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).

9I Offence by occupier—permitting smoke from designated outdoor smoking area to enter another part of outdoor eating or drinking place

(1) This section applies to premises at which there is a designated outdoor smoking area.

(2) The occupier of the premises commits an offence if the occupier fails to take reasonable steps to prevent smoke from the designated outdoor smoking area entering any part of an outdoor eating or drinking place at the premises that is not a designated outdoor smoking area.

Maximum penalty: 50 penalty units.

Note The occupier also commits an offence if smoke from the premises enters an enclosed public place on the premises (see s 8A).

(3) An offence against this section is a strict liability offence.

9J Smoking management plan

- (1) A *smoking management plan* is a document, prepared for premises at which there is a designated outdoor smoking area, stating how smoking is managed at the premises with the aim of reducing harm from environmental smoke at the premises.
- (2) A smoking management plan must include—
 - (a) a diagram of the premises that identifies—
 - (i) the designated outdoor smoking area; and
 - (ii) the buffer for the designated outdoor smoking area; and
 - (iii) the location of the notice mentioned in section 9F (2); and
 - (b) a statement of how the exposure to environmental smoke will be minimised; and
 - (c) a description of the training given to workers about the requirements of this Act; and
 - (d) a description of how the prohibition on food or drink service in designated outdoor smoking areas will be managed; and
 - (e) anything else prescribed by regulation.
- (3) The licensee of premises at which there is a designated outdoor smoking area must—
 - (a) prepare and keep up-to-date a smoking management plan that complies with this section; and
 - (b) make the smoking management plan available for inspection on request.

Maximum penalty: 50 penalty units.

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

Part 2B Smoking prohibited at underage functions

9K Meaning of *underage function*—pt 2B

(1) In this part:

underage function means a function that—

- (a) has as its principal purpose the provision of live or recorded music (for listening to, dancing to or both); and
- (b) is predominantly organised for people under 18 years old; and
- (c) is open to the public or a section of the public (with or without payment); and
- (d) takes place in an area or premises other than a private residence.

Examples—underage functions

- 1 a blue light disco
- 2 a live band performance organised for students at a secondary school
- 3 a lakeside dance party organised for under 18 year olds only

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).

(2) In working out whether a function is predominantly organised for people under 18 years old, each of the following must be considered:

- (a) the name of the function;
- (b) the nature of the body or person who is the organiser of the function;
- (c) the ways used to publicise the function;

- (d) who the function is publicised to;
- (e) ticketing arrangements for the function (if any);
- (f) anything else prescribed by regulation.

Note Section 9M (1) (b) requires any tickets issued for an underage function to state that smoking is prohibited.

9L Smoking prohibited at underage function

Smoking is prohibited at an underage function.

9M Obligations on organiser of underage function

- (1) The organiser of an underage function must ensure that—
 - (a) ‘no smoking’ signs are prominently displayed at the function; and
 - (b) any ticket issued for the function includes a statement that smoking is prohibited; and
 - (c) a public announcement that smoking is prohibited is made at the beginning of the function.

Maximum penalty: 20 penalty units.

- (2) The organiser of an underage function must—
 - (a) give a direction to stop smoking to any person who smokes at the function; and
 - (b) give a direction to immediately leave the function to any person who continues to smoke in contravention of a direction given to the person under paragraph (a).

Maximum penalty: 20 penalty units.

- (3) Subsection (2) (a) does not apply if the organiser was not aware, and could not reasonably be expected to have been aware, that the person was smoking at the function.

9N Offence to smoke at underage function in contravention of direction

- (1) A person commits an offence if—
- (a) the person smokes at an underage function; and
 - (b) an inspector, or the organiser of the function, directs the person to stop smoking at the function; and
 - (c) the person contravenes the direction.

Maximum penalty: 10 penalty units.

- (2) A person does not commit an offence against this section if—
- (a) the direction was given by an inspector who is not a uniformed police officer; and
 - (b) when asked by the person, the inspector does not produce the inspector's identity card for inspection.

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 Power to give directions

If an inspector believes on reasonable grounds that a person is smoking in contravention of the Act, the inspector may direct the person to stop smoking.

13 Power to enter premises

- (1) For this Act, an inspector may—
 - (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment); and
 - (b) at any time, enter premises with the occupier's consent.
- (2) However, subsection (1) (a) does not authorise entry into a part of premises that is being used only for residential purposes.
- (3) An inspector may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
- (4) To remove any doubt, an inspector may enter premises under subsection (1) without payment of an entry fee or other charge.

14 Production of identity card

An inspector must not remain at premises entered under this part if the inspector does not produce his or her identity card when asked by the occupier.

15 Consent to entry

- (1) When seeking the consent of an occupier of premises to enter the premises under section 13 (1) (b), an inspector must—
 - (a) produce his or her identity card; and
 - (b) tell the occupier—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this part may be used in evidence in court; and
 - (iii) that consent may be refused.
- (2) If the occupier consents, the inspector must ask the occupier to sign a written acknowledgment (an *acknowledgement of consent*)—
 - (a) that the occupier was told—
 - (i) the purpose of the entry; and
 - (ii) that anything seized under this part may be used in evidence in court; and
 - (iii) that consent may be refused; and
 - (b) that the occupier consented to the entry; and
 - (c) stating the time and date consent was given.
- (3) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.
- (4) A court must find that the occupier did not consent to entry to the premises by the inspector under this part if—
 - (a) the question arises in a proceeding in the court whether the occupier consented to the entry; and
 - (b) an acknowledgment of consent is not produced in evidence; and

- (c) it is not proved that the occupier consented to the entry.

16 General powers on entry to premises

- (1) An inspector who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything on the premises:
 - (a) inspect or examine;
 - (b) take measurements or conduct tests;
 - (c) take samples;
 - (d) take photographs, films, or audio, video or other recordings;
 - (e) require the occupier, or anyone at the premises, to give information, answer questions, or produce documents or anything else, reasonably needed to exercise the inspector's functions under this Act.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (2) A person must take all reasonable steps to comply with a requirement made of the person under subsection (1) (e).

Maximum penalty: 10 penalty units.

17 Power to require name and address

- (1) An inspector may require a person to state the person's name and home address if the inspector suspects on reasonable grounds that the person is committing or has just committed an offence against this Act.
- (2) The inspector must tell the person the reason for the requirement and, as soon as practicable, record the reason.
- (3) The person may ask the inspector to produce the inspector's identity card for inspection by the person.

- (4) A person must comply with a requirement made by the inspector under subsection (1) if the inspector—
- (a) tells the person the reason for the requirement; and
 - (b) complies with any request made by the person under subsection (3).

Maximum penalty: 10 penalty units.

18 Power to seize things

- (1) An inspector who enters premises under this part with the occupier's consent may seize anything in the premises if—
- (a) the inspector is satisfied on reasonable grounds that the thing is connected with an offence against this Act; and
 - (b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.
- (2) An inspector who enters premises under this part (whether with the occupier's consent or otherwise) may seize anything at the premises if satisfied on reasonable grounds that—
- (a) the thing is connected with an offence against this Act; and
 - (b) the seizure is necessary to prevent the thing from being—
 - (i) concealed, lost or destroyed; or
 - (ii) used to commit, continue or repeat the offence.
- (3) Having seized a thing, an inspector may remove the thing from the premises where it was seized to another place.
- (4) A person commits an offence if—
- (a) the person interferes with a seized thing; and

- (b) the person does not have an inspector's approval to interfere with the thing.

Maximum penalty: 10 penalty units.

- (5) An offence against this section is a strict liability offence.

19 Receipt for things seized

- (1) As soon as practicable after an inspector seizes a thing under this part, the inspector must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the inspector must leave the receipt, secured conspicuously, at the premises where the thing was seized.
- (3) A receipt under this section must include the following:
 - (a) a description of the thing seized;
 - (b) an explanation of why the thing was seized;
 - (c) the inspector's name, and how to contact the inspector;
 - (d) if the thing is moved from the premises where it is seized—where the thing is to be taken.

Part 4 Miscellaneous

20 Acts and omissions of representatives

- (1) In this section:

person means an individual.

Note See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

representative, of a person, means an employee or agent of the person.

state of mind, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
 - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.

- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.

21 Approved forms

- (1) The commissioner may approve forms for this Act.
- (2) If the commissioner approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

22 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:

- commissioner for fair trading
- contravene
- found guilty
- must
- police officer.

commissioner means the commissioner for fair trading.

designated outdoor smoking area—see section 9F (2).

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).

gaming area—see the *Gaming Machine Act 2004*, dictionary.

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

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.

outdoor area, of premises, means any part of the premises that is not an enclosed public place.

outdoor eating or drinking place—see section 9A.

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 management plan—see section 9J.

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

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

underage function—see section 9K.

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

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

Endnotes

3 Legislation history

3 Legislation history

The *Smoke-Free Public Places Act 2003* was originally the *Smoking (Prohibition in Enclosed Public Places) Act 2003*. It was renamed by the *Smoking (Prohibition in Enclosed Public Places) Amendment Act 2009 A2009-51* (see s 5).

Smoke-Free 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)

Smoking (Prohibition in Enclosed Public Places) Amendment Act 2009 A2009-51

notified LR 18 December 2009

s 1, s 2 commenced 18 December 2009 (LA s 75 (1))

remainder commenced 9 December 2010 (s 2 (1) (b) and CN2010-4)

Liquor (Consequential Amendments) Act 2010 A2010-43 sch 2 pt 2.2

notified LR 8 November 2010

s 1, s 2 commenced 8 November 2010 (LA s 75 (1))

sch 2 pt 2.2 commenced 9 December 2010 (s 2 (3) and see Smoking (Prohibition in Enclosed Public Places) Amendment Act 2009

A2009-51, s 2 and CN2010-4)

4 Amendment history**Long title**

long title sub A2009-51 s 4

Name of Act

s 1 sub A2009-51 s 5

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
sub A2009-51 s 6

Meaning of *smoke*

s 5B ins A2005-6 s 4
am A2009-51 s 7, s 8

Offence to smoke in enclosed public place

s 6 sub A2009-51 s 9

Offence to smoke in enclosed public place in contravention of direction

s 7 sub A2009-51 s 9

Offence by occupier—person smoking in enclosed public place

s 8 hdg sub A2005-6 s 5
s 8 am A2005-6 s 6
sub A2009-51 s 9

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

s 8A ins A2005-6 s 7

Offence by occupier—not displaying required signs

s 8AA ins A2009-51 s 10

Offence by neighbouring occupier

s 9 sub A2005-6 s 7

Endnotes

4 Amendment history

Smoking prohibited in outdoor eating or drinking places

pt 2A hdg ins A2009-51 s 11

General

div 2A.1 hdg ins A2009-51 s 11

Meaning of *outdoor eating or drinking place*

s 9A ins A2009-51 s 11

Smoking prohibited—outdoor eating or drinking places

div 2A.2 hdg ins A2009-51 s 11

Offence to smoke in outdoor eating or drinking place

s 9B ins A2009-51 s 11

Offence to smoke in outdoor eating or drinking place in contravention of direction

s 9C ins A2009-51 s 11

Offence by occupier—person smoking in outdoor eating or drinking place

s 9D ins A2009-51 s 11

Offence by occupier—not displaying required signs etc

s 9E ins A2009-51 s 11

Designated outdoor smoking areas

div 2A.3 hdg ins A2009-51 s 11

Designating outdoor smoking area

s 9F ins A2009-51 s 11
am A2010-43 amdt 2.11

Licensee to notify commissioner of designated outdoor smoking area

s 9G ins A2009-51 s 11

Obligations of licensee—things not allowed in designated outdoor smoking area

s 9H ins A2009-51 s 11

Offence by occupier—permitting smoke from designated outdoor smoking area to enter another part of outdoor eating or drinking place

s 9I ins A2009-51 s 11

Smoking management plan

s 9J ins A2009-51 s 11

Smoking prohibited at underage functions

pt 2B hdg ins A2009-51 s 11

Meaning of *underage function*—pt 2B

s 9K ins A2009-51 s 11

Smoking prohibited at underage function

s 9L ins A2009-51 s 11

Obligations on organiser of underage function

s 9M ins A2009-51 s 11

Offence to smoke at underage function in contravention of direction

s 9N ins A2009-51 s 11

Power to give directions

s 12 sub A2009-51 s 12

Power to enter premisess 13 om A2009-51 s 13
ins A2009-51 s 12**Production of identity card**s 14 **orig s 14**
renum as s 22
pres s 14
ins A2009-51 s 12**Consent to entry**s 15 om LA s 89 (3)
ins A2009-51 s 12**General powers on entry to premises**s 16 om LA s 89 (3)
ins A2009-51 s 12**Power to require name and address**s 17 om LA s 89 (3)
ins A2009-51 s 12**Power to seize things**s 18 om LA s 89 (3)
ins A2009-51 s 12**Receipt for things seized**s 19 om LA s 89 (3)
ins A2009-51 s 12**Miscellaneous**pt 4 hdg om LA s 89 (3)
ins A2009-51 s 13**Acts and omissions of representatives**s 20 om LA s 89 (3)
ins A2009-51 s 13**Approved forms**s 21 om LA s 89 (3)
ins A2009-51 s 13

Endnotes

4 Amendment history

Regulation-making power

s 22 **orig s 22**
 om LA s 89 (3)
 pres s 22
 (prev s 14) renum as s 22 A2009-51 s 14

Repeals and consequential amendments

pt 5 hdg om LA s 89 (3)

Repeals

div 5.1 hdg om LA s 89 (3)

Gaming Machine Act 1987

div 5.2 hdg 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)

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 am A2009-51 s 15
def **commissioner** ins A2009-51 s 16
def **designated outdoor smoking area** ins A2009-51 s 16
def **enclosed public place** sub A2005-6 s 8
def **gaming area** ins A2009-51 s 16
def **herbal product** ins A2009-51 s 16
def **occupier** sub A2005-6 s 8
def **outdoor area** ins A2009-51 s 16
def **outdoor eating or drinking place** ins A2009-51 s 16
def **public place** sub A2005-6 s 8
def **smoke** sub A2005-6 s 8
def **smoking management plan** ins A2009-51 s 16
def **tobacco product** ins A2009-51 s 16
def **underage function** ins A2009-51 s 16

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 Dec 2006	1 Dec 2006– 8 Dec 2010	A2005-6	new Act and amendments by A2005-5 and A2005-6

© Australian Capital Territory 2010