

2016

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Assistant Minister for Health)

# Smoke-Free Public Places Amendment Bill 2016

## Contents

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		Page
1	Name of Act	2
2	Commencement	2
3	Legislation amended	2
4	Offence to smoke at underage function in contravention of direction Section 9N (2), new note	2
5	New part 2C	3
6	Inspectors Section 10 (2), new note	10
7	Dictionary, note 2	10
8	Dictionary, new definitions	10

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J2015-423

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

Contents

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		Page
9	Further amendments, new note	10
10	Magistrates Court (Smoke-Free Public Places Infringement Notices) Regulation 2010 Schedule 1, new items 12A to 12F	11

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(Assistant Minister for Health)

# Smoke-Free Public Places Amendment Bill 2016

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## A Bill for

An Act to amend the *Smoke-Free Public Places Act 2003*, and for other purposes

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

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J2015-423

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

1 **1 Name of Act**

2 This Act is the *Smoke-Free Public Places Amendment Act 2016*.

3 **2 Commencement**

4 This Act commences on the day after its notification day.

5 *Note* The naming and commencement provisions automatically commence on  
6 the notification day (see [Legislation Act](#), s 75 (1)).

7 **3 Legislation amended**

8 This Act amends the *Smoke-Free Public Places Act 2003*.

9 *Note* This Act also amends the *Magistrates Court (Smoke-Free Public Places*  
10 *Infringement Notices) Regulation 2010* (see s 10).

11 **4 Offence to smoke at underage function in contravention**  
12 **of direction**  
13 **Section 9N (2), new note**

14 *insert*

15 *Note* The defendant has an evidential burden in relation to the matters  
16 mentioned in s (2) (see [Criminal Code](#), s 58).

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**5** **New part 2C***insert***Part 2C** **Smoking prohibited at declared  
smoke-free public places or  
events****90** **Declaration of smoke-free public place or event**

- (1) The Chief Minister and Minister may jointly declare that a public place or event is a smoke-free public place or event (a *declared smoke-free public place or event*).

*Note* Power to make a statutory instrument (including a declaration) includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

- (2) Before making a declaration, the Minister must consult with the community, including people or organisations that would be directly affected if the declaration is made.
- (3) In deciding whether to make a declaration, the Chief Minister and Minister must consider the following matters:
- (a) the frequency with which the public place or event is visited by children or families;
  - (b) the number of people likely to be present at the public place or event;
  - (c) whether the declaration will promote a more supportive environment for people who have, or are trying to, quit smoking;

- 1 (d) whether the declaration will help reduce people’s exposure to  
2 smoking-related harms, including environmental tobacco  
3 smoke;  
4 (e) the outcome of community consultation;  
5 (f) any identified costs and benefits of establishing the area as  
6 smoke-free, including economic and business impacts;  
7 (g) measures to promote compliance.

8 (4) A declaration may—

9 (a) state that ‘no smoking’ signs must be displayed at the public  
10 place or event; and

11 (b) set out requirements for the signs.

12 *Note* Requirements for ‘no smoking’ signs may also be determined under  
13 s 9P.

14 (5) A declaration may also—

15 (a) provide that an area may be designated in which smoking is  
16 allowed at the public place or event; and

17 (b) set out requirements for the area.

18 **Examples—requirements for designated smoking areas**

19 1 size, location and number of areas

20 2 words and images that may be displayed in the area

21 3 erection of partitions or barriers to prevent the penetration of smoke  
22 into areas that are not designated smoking areas.

23 *Note 1* Requirements for designated smoking areas are also set out under  
24 s 9Q.

25 *Note 2* An example is part of the Act, is not exhaustive and may extend,  
26 but does not limit, the meaning of the provision in which it  
27 appears (see [Legislation Act](#), s 126 and s 132).

1 (6) A declaration is a disallowable instrument.

2 *Note* A disallowable instrument must be notified, and presented to the  
3 Legislative Assembly, under the [Legislation Act](#).

4 (7) If the Chief Minister is also the Minister, another Minister must  
5 make the joint declaration under subsection (1) with the  
6 Chief Minister.

## 7 **9P Signage**

8 (1) The Minister may determine requirements in relation to the display  
9 of ‘no smoking’ signs at a declared smoke-free public place or  
10 event.

### 11 **Examples—requirements for display of signs**

12 1 size, location and number of signs

13 2 words and images that may be displayed on signs

14 *Note* An example is part of the Act, is not exhaustive and may extend, but  
15 does not limit, the meaning of the provision in which it appears (see  
16 [Legislation Act](#), s 126 and s 132).

17 (2) A determination is a notifiable instrument.

18 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

## 19 **9Q Requirements for designated smoking areas**

20 (1) This section applies if a declaration under section 9O provides that  
21 an area may be designated in which smoking is allowed at a  
22 declared smoke-free public place or event.

23 (2) The occupier or manager of the public place or event may designate  
24 an area at the public place or event as an area in which smoking is  
25 allowed (a *designated smoking area*) by displaying a notice near the  
26 area—

27 (a) stating that the area is a designated smoking area for this Act;  
28 and

- 1 (b) stating that a person under 18 years old is not permitted in the  
2 area; and
- 3 (c) including a diagram that sets out the limits of the area.
- 4 (3) Unless otherwise stated in the declaration, there may be more than  
5 1 designated smoking area at the public place or event.
- 6 (4) A designated smoking area—
- 7 (a) must not be adjacent to an entrance to the public place or  
8 event; and
- 9 (b) must be in a position that minimises smoke from the area  
10 entering any part of the public place or event that is not a  
11 designated smoking area.
- 12 (5) The occupier or manager of the public place or event must not  
13 designate an area under subsection (2) other than—
- 14 (a) in accordance with this section; or
- 15 (b) as required by the declaration.
- 16 Maximum penalty: 50 penalty units.
- 17 (6) An offence against this section is a strict liability offence.

18 **9R Obligations of occupier or manager—things not allowed**  
19 **in designated smoking area**

- 20 (1) The occupier or manager of a declared smoke-free public place or  
21 event at which there is a designated smoking area must ensure that,  
22 in the designated smoking area—
- 23 (a) there are no people under 18 years old; and
- 24 (b) there is no food or drink service; and
- 25 (c) no food is consumed; and

1 (d) no entertainment is offered or directly accessible.

2 Maximum penalty: 50 penalty units.

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

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

9 *Note* The defendant has an evidential burden in relation to the matters  
10 mentioned in s (3) (see [Criminal Code](#), s 58).

11 (4) In this section:

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

15 *Note* An example is part of the Act, is not exhaustive and may extend, but  
16 does not limit, the meaning of the provision in which it appears (see  
17 [Legislation Act](#), s 126 and s 132).

18 **9S Offence by occupier or manager—permitting smoke from**  
19 **designated smoking area to enter another part of public**  
20 **place or event**

21 (1) This section applies to a declared smoke-free public place or event  
22 at which there is a designated smoking area.

23 (2) The occupier or manager of the public place or event commits an  
24 offence if the occupier or manager fails to take reasonable steps to  
25 prevent smoke from the designated smoking area entering any part  
26 of the public place or event that is not a designated smoking area.

27 Maximum penalty: 50 penalty units.

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

- 1     **9T           Offence to smoke at declared smoke-free public place or**  
2           **event**
- 3           (1) A person commits an offence if —
- 4                 (a) the person smokes at a declared smoke-free public place or  
5                         event; and
- 6                 (b) the place where the person smokes is not a designated smoking  
7                         area.
- 8                 Maximum penalty: 5 penalty units.
- 9           (2) An offence against this section is a strict liability offence.
- 10          (3) A person does not commit an offence against this section if—
- 11                 (a) a declaration under section 9O states that ‘no smoking’ signs  
12                         must be displayed at the public place or event; and
- 13                 (b) the signs are not—
- 14                         (i) displayed as required by the declaration; or
- 15                         (ii) in accordance with any requirement determined under  
16                                 section 9P.
- 17                 *Note*     The defendant has an evidential burden in relation to the matters  
18                                 mentioned in s (3) (see [Criminal Code](#), s 58).
- 19     **9U           Offence to smoke at declared smoke-free public place or**  
20           **event in contravention of direction**
- 21           (1) A person commits an offence if—
- 22                 (a) the person smokes at a declared smoke-free public place or  
23                         event; and
- 24                 (b) the place where the person smokes is not a designated smoking  
25                         area; and

- 1 (c) an inspector, the occupier of the public place or manager of the  
2 event, directs the person to stop smoking at the public place or  
3 event; and
- 4 (d) the person contravenes the direction.
- 5 Maximum penalty: 20 penalty units.
- 6 (2) An offence against this section is a strict liability offence.
- 7 (3) A person does not commit an offence against this section if—
- 8 (a) the direction was given by an inspector who is not a uniformed  
9 police officer; and
- 10 (b) when asked by the person, the inspector does not produce the  
11 inspector's identity card for inspection.
- 12 *Note* The defendant has an evidential burden in relation to the matters  
13 mentioned in s (3) (see [Criminal Code](#), s 58).

- 14 **9V Offence by occupier or manager—not displaying required**  
15 **signs**
- 16 (1) This section applies if a declaration under section 9O states that 'no  
17 smoking' signs must be displayed at a public place or event.
- 18 (2) The occupier or manager of the public place or event commits an  
19 offence if the signs are not—
- 20 (a) displayed as required by the declaration; or  
21 (b) in accordance with a requirement determined under section 9P.
- 22 Maximum penalty: 5 penalty units.
- 23 (3) An offence against this section is a strict liability offence.

1 **6** **Inspectors**  
2 **Section 10 (2), new note**

3 *insert*

4 *Note 3* Power to make a statutory instrument (including an appointment)  
5 includes power to make different provision in relation to different  
6 matters or different classes of matters, and to make an instrument that  
7 applies differently by reference to stated exceptions or factors (see  
8 [Legislation Act](#), s 48).

9 **7** **Dictionary, note 2**

10 *insert*

- 11 • Minister (see s 162)

12 **8** **Dictionary, new definitions**

13 *insert*

14 ***declared smoke-free public place or event***—see section 9O (1).

15 ***designated smoking area***—see section 9Q (2).

16 ***manager***, in relation to a declared smoke-free public place or event,  
17 means the person responsible (whether wholly or in part) for the  
18 management of the public place or event.

19 **9** **Further amendments, new note**

20 *insert*

21 *Note* The defendant has an evidential burden in relation to the matters  
22 mentioned in s (3) (see [Criminal Code](#), s 58).

23 *in*

- 24 • section 7 (3)
- 25 • section 8 (3)
- 26 • section 9C (3)
- 27 • section 9D (3)
- 28 • section 9H (3)

1 **10** **Magistrates Court (Smoke-Free Public Places**  
2 **Infringement Notices) Regulation 2010**  
3 **Schedule 1, new items 12A to 12F**

4 *insert*

12A	9Q (5)	50	1000
12B	9R (1)	50	1000
12C	9S (2)	50	1000
12D	9T (1)	5	110
12E	9U (1)	20	440
12F	9V (2)	5	110

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 18 February 2016.

**2 Notification**

Notified under the [Legislation Act](#) on 2016.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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