

Australian Capital Territory

Work Safety (ACT Code of Practice for Smoke Free Workplaces) Code of Practice 2010

Disallowable instrument DI2010 – 230

made under the

Work Safety Act 2008, section 18 (Codes of Practice)

1 Name of instrument

This instrument is the *Work Safety (ACT Code of Practice for Smoke Free Workplaces) Code of Practice 2010*.

2 Commencement

This instrument commences on 1 October 2010.

3 Approval of a code of practice

Under section 18 of the *Work Safety Act 2008*, having consulted with the ACT Work Safety Council, I approve the ACT Code of Practice for Smoke Free Workplaces as a code of practice.

Katy Gallagher
Minister for Industrial Relations
3 September 2010



OFFICE OF REGULATORY SERVICES
DEPARTMENT OF JUSTICE & COMMUNITY SAFETY



SMOKE-FREE WORKPLACES

CODE OF PRACTICE

OCTOBER 2010

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1 INTRODUCTION

1.1 Title

This is the Smoke Free Workplaces Code of Practice.

1.2 Authority

This code of practice is approved, in accordance with section 18 of the *Work Safety Act 2008*, by the Minister for Industrial Relations, as the Minister responsible for the Act, on the recommendation of the ACT Work Safety Council.

1.3 Purpose

This code of practice provides practical guidance on achieving the standard of workplace safety required by the *Work Safety Act 2008* (Work Safety Act) with specific reference to achieving smoke free workplaces. The purpose of this code is not to change whether people smoke, but rather where they smoke to reduce non-smokers' risk through exposure to environmental tobacco smoke (ETS).

An approved code of practice is designed to be used in conjunction with the Work Safety Act and Regulation, but does not have the same legal force. A person or corporation can not be prosecuted for failing to comply with a code of practice. The code should be followed unless there is an alternative course of action that achieves the same or better standard of workplace safety.

An Office of Regulatory Services (ORS), WorkSafe ACT inspector may cite a relevant approved code of practice in a direction, Improvement or Prohibition Notice, indicating the measures that should be taken to remedy a contravention or non compliance with the Work Safety Act or its Regulation.

Any failure to comply with a requirement in an Improvement or Prohibition Notice is an offence.

1.4 Scope

The Smoke Free Workplaces Code of Practice applies to all workplaces in the ACT, but is subordinate to any legislation already in effect for the purpose of achieving smoke free workplaces.

The code recommends that the most effective manner by which persons in control of a workplace can fulfil their legal obligations to ensure work safety by managing risk in relation to ETS is through the implementation of a "no smoking policy".

2 DEFINITIONS AND INTERPRETATIONS

“**Business or Undertaking**” includes—

- (a) a not-for-profit business; and
- (b) an activity conducted by a local, state or territory government.

“**environmental tobacco smoke (ETS)**” means the mixture of chemicals and particles released into the air whenever someone smokes a cigarette, cigar or pipe.

“**passive smoking**” means the involuntary inhalation of ETS.

“**person in control**” means - for premises - anyone who has control of the premises, including anyone with authority to make decisions about the management of the premises.

“**worker**” means an individual who carries out work in relation to a business or undertaking, whether for reward or otherwise, under an arrangement with the person conducting the business or undertaking.

3 WHAT IS “PASSIVE SMOKING”?

Passive smoking describes the involuntary inhalation of other peoples’ tobacco smoke.

It may take the form of either “mainstream smoke” inhaled and exhaled by the smoker, or “sidestream smoke” emitted directly from burning tobacco.

The term “environmental tobacco smoke” (ETS) refers to the combination of sidestream and exhaled mainstream smoke in the atmosphere.

Smoke inhalation by non-smokers in this manner is, therefore, unintended or involuntary. Passive smokers run the risk of developing diseases caused by tobacco smoke without lighting up themselves.

4 THE RELATIONSHIP BETWEEN PASSIVE SMOKING AND ILL HEALTH

There is a continuing increase in the body of scientific evidence, endorsed in Australia by the National Health and Medical Research Council and internationally by the World Health Organisation, that inhalation of ETS poses the same types of threats to the health of passive smokers as active smoking does to smokers.

4.1 Research on Medical Effects of Tobacco Smoke Inhalation

The causal connection between tobacco smoke inhalation and various medical conditions has been the subject of considerable research.

The International Agency for Research on Cancer, an agency of the World Health Organisation, lists tobacco smoke as a Group 1¹ carcinogen. This category is used only when the Agency considers there is sufficient evidence of carcinogenicity in humans. The Environmental Protection Agency in the USA has also classed tobacco smoke as a Group A² carcinogen.

In Australia, the National Health and Medical Research Council has produced a report on the effects of passive smoking on health, based on a thorough review of the literature. The Council identified relationships between passive smoking and ill health.

1Group 1 Category - The agent (mixture) is carcinogenic to humans. This category is used when there is sufficient evidence of carcinogenicity in humans.

2Group A - (known human) carcinogen designation is used when there is sufficient evidence from epidemiological studies to support a causal association between exposure to the agents and cancer.

References to extensive literature on the medical evaluation of the health risks of passive smoking are also contained in the Federal Court finding of Justice Morling in February 1991, and a subsequent full Federal Court Appeal in late 1992.

4.2 Interactive Effects of “Concurrent Smoking”

Tobacco smoke inhalation concurrently with exposure to other hazards present in a workplace can compound the health effects of those hazards.

For example, smoking is known to increase the risk of lung cancer for people exposed to asbestos and there are other interactions with cement dust, chlorine and irritant gases.

4.3 Outdoor Workplaces

There is no safe amount of ETS. Outdoor tobacco smoke levels are a relatively new area for research, however it is known that ETS can still present a problem in outdoor areas. Research has shown that ETS levels are reduced significantly at a distance of two metres from the source and are almost negligible at four metres. Ventilation and proximity to workers and the general public should be considered in the planning of a designated outdoor smoking area (DOSA).

Designated smoking areas are only to be outdoors.

Outdoor areas of workplaces could include rooftops, balconies, verandahs, street frontages, car parks, loading bays, atriums and external areas adjacent to the internal workplace covered, for example, by a canopy or tent roof. A DOSA must not be covered and 75 percent or more enclosed. If a DOSA is covered and 75 percent or more enclosed, it is considered an enclosed place under the *Smoking (Prohibition in Enclosed Public Places) Act 2003*.

If a DOSA is part of a building structure, it must have a separate air circulation and supply system to the building's system. Furthermore, a DOSA must meet the same criteria as any outdoor workplace, specified above, and the air from this area should not contaminate the non-smoking areas.

4.4 Indoor Workplaces

Indoor or other enclosed workplaces do not contain the same inherent safeguards against the effects of passive smoking as outdoor environments, i.e. movement of substantially fresh air. Accordingly, they do not replicate the outdoor environment in the sense of a constant and significant movement of substantially fresh air which may reduce the involuntary inhalation of other people's tobacco smoke. Smoking in enclosed public places is prohibited under the *Smoking (Prohibition in Enclosed Public Places) Act 2003*.

5 THE LEGAL POSITION

There are a number of legislative provisions in the ACT relating to smoking at the workplace. These take the following forms:

- (1) direct bans on smoking in certain workplaces or in special circumstances, under specific provisions in various legislation; and
- (2) general duty of care covering all workplaces, where there is a statutory obligation on persons in control to ensure the workplace safety of workers.

This obligation has four main sources:

- *Smoking (Prohibition in Enclosed Public Places) Act 2003*
- *Work Safety Act 2008*
- *Workers Compensation Act 1951*
- Common Law Liability

5.1 Direct bans on smoking in certain workplaces

Some workers are protected from exposure to ETS under the *Smoking (Prohibition in Enclosed Public Places) Act 2003* and its Regulation. Public places in which smoking is prohibited include, but are not limited to, venues such as clubs, hotels, business premises, cinemas, public transportation, places of worship, shopping centres, and recreational facilities.

5.2 General duty of care provisions applicable to all workplaces

The liability of employers to provide a workplace free of the risks associated with passive smoking has three main sources:

- (a) *Work Safety Act 2008*
- (b) *Workers Compensation Act 1951*
- (c) Common Law.

5.2.1 (a) Work Safety Act

By virtue of Division 3.1 of the *Work Safety Act 2008*, persons conducting a business or undertaking and persons in control have a duty to ensure work safety by managing risk. A duty to manage risk means the person must take reasonably practicable steps to identify, eliminate and minimise any risk that may arise and informing anyone else who has a duty in relation to the risk. This means that there is a statutory obligation establishing a far reaching obligation and imposing a duty in absolute terms that the persons in control must provide a safe place of work for the health, safety and welfare of its workers.

ETS is one of a number of major airborne contaminants and persons in control are required to take preventative steps to ensure that overall air quality at a workplace over which a person has control to any extent, does not endanger the work safety of any workers employed. This includes third parties bringing hazardous substances into the workplace.

The implication of recent legal cases is that passive smoking constitutes a risk which could lead to an alleged breach of the statutory obligations afforded in division 3.1 of the Work Safety Act. In other words, employers who continue to allow smoking at the workplace which constitutes a health, safety or welfare risk to workers, and ignore the issues raised in this Code, could be in contravention of their legislative obligations.

Legislative obligations for work safety at the workplace are incumbent on workers as well as employers. Under Section 27 of the Work Safety Act, workers have a duty not to expose themselves or others who may be affected by the worker's work, to work safety risks because of their work. There is a further obligation to co-operate and comply with the persons conducting the business or undertaking and persons in control as far as is necessary to enable requirements imposed for work safety to be complied with.

5.2.2 (b) Workers' Compensation Act

Workers' Compensation is another legal framework for dealing with work injuries arising from passive smoking. The principle issue is whether the work environment or work performed substantially contributed in any way to the disease or illness suffered, or that aggravation/exacerbation of an existing disease occurred due to the workplace environment.

5.2.3 (c) Common Law

In November 1986, the Federal Attorney General, in a statement in the House of Representatives, said:

"An employer has a common law duty of care to take reasonable steps to protect its employees' health and safety, including the provision and maintenance of safe workplaces.

...It could be argued that injury from passive smoking is reasonably foreseeable and that consequently such an injury could give rise to an action for damages at common law."³

The use of common law in recent court cases has further highlighted an employer's obligation to provide a safe and healthy workplace for their workers. However, in determining whether failing to provide a smoke-free workplace constitutes negligence, the Court must consider whether the employer took reasonable action to reduce the risk associated with passive smoking, this may include a no-smoking policy.

³Hansard, House of Representative, 13 November 1986, 2979, Canberra Australian Government Publishing Service.

5.3 The Relationship between Legislative Requirements and Workplace Air Quality

It should be recognised that under the Work Safety Act, persons conducting a business or undertaking and persons in control have a responsibility to eliminate all work safety hazards emanating from air contaminants (of which ETS is one element). This responsibility is also outlined in other work safety codes of practice and standards, such as the *National Exposure Standard for Atmospheric Contaminants in the Occupational Environment* as adopted in the ACT.

The ACT Work Safety Council recommends that this Smoke Free Workplaces Code of Practice be used in conjunction with other preventative strategies to improve the quality of air at the workplace.

The ORS, WorkSafe ACT does not consider that persons conducting a business and persons in control have fulfilled their legislative obligations concerning improvement of air quality solely by reliance on this Code of Practice. WorkSafe ACT can provide a range of advice to persons conducting a business and persons in control on preventative strategies for other airborne contaminants other than ETS.

6 IMPLEMENTING THE CODE OF PRACTICE - KEY PRINCIPLES

In implementing the Smoke Free Workplaces Code of Practice, the following principles should be followed.

6.1 Principle 1 - Consultation

Consultation with workers during the development and implementation of a workplace program is essential for its success, and required under the Work Safety Act. Discussion with members of the work safety committee, where one exists, is the appropriate way to begin this consultation.

Unions, employer associations and professional bodies can assist with advice on program development and materials to help in the implementation of a workplace program.

6.2 Principle 2 - Organisational Support

Demonstrated commitment by management is essential.

A workplace program to reduce exposure to ETS needs to be observed by all workers if it is to be effective. In all workplaces, all levels of worker will need to be involved in the consultation process as well as participating in no-smoking programs. A smoke-free policy must apply equally to persons in control and workers.

6.3 Principle 3 - Timetable

Once an organisational commitment to implement a smoke-free work environment has been made, then a workplace program should be phased in according to an agreed timetable.

This phasing-in period should be developed in consultation with workers. A reasonable time frame, within a 12 month period, is appropriate for development of the policy; keeping with established practice concerning staged implementation of new policies or

programs. Specifying such a time recognises that program implementation will take place progressively and in a way that suits each workplace.

7 AN IMPLEMENTATION FRAMEWORK

After it has been decided to implement a workplace program, a number of approaches may be taken. These depend on the time over which the program is to be implemented and the degree to which the physical layout of the workplace has to be changed.

Four components are necessary to ensure success:

- education and information program;
- a work environment that enables the workplace program to be implemented;
- personnel support facilities; and
- grievance handling procedures.

7.1 Education and information

Education and information programs should be developed and provided to all workers about:

- the effects of ETS on health;
- the reasons for the workplace policy; and
- the timetable for the program's introduction.

This information should be available in a form readily understandable to all workers. This may mean that it will need to be in community languages for those from a non-English speaking background, and in plain language for workers with a low level of literacy.

7.2 Work environment

The changes to the work environment required to introduce a workplace program will realistically take account of the nature of the particular workplace, for example:

- the physical layout of the workplace;
- the nature of the work; and
- the availability and effectiveness of ventilation if there are to be Designated Outdoor Smoking Areas.

Implementing changes to the work environment should include the following steps:

Step 1 In all workplaces, particular areas should be designated immediately as smoke-free areas.

Areas that should be designated immediately as smoke-free areas include:

- fire hazard areas;
- fire escapes;
- conference rooms, training areas and interview rooms;
- areas in which chemicals are stored or areas containing flammable substances;
- areas used for food preparation;
- sick rooms and first aid posts;
- confined and poorly ventilated spaces;
- toilets;
- stairways/stairwells and other major internal thoroughfares;
- libraries;
- motor vehicles which carry passengers;
- enclosed areas of public access, e.g. foyers;
- lifts;
- areas where equipment can be damaged by smoke, for example, computer rooms, photocopier rooms and storerooms; and
- lunch rooms and employee recreation areas.

Step 2 Work areas should be made smoke-free

Smoke-free work areas need to be identified from the beginning of the program for the health and comfort of non-smoking workers. It will also indicate to workers that there is an organisational commitment to the introduction of a non-smoking workplace.

Step 3 Signs should be in place to clearly identify the presence of non-smoking areas.

Signs should use standard symbols and are available from organisations listed at the end of this document in Appendix 3.

If the signs are situated at the entrance to non-smoking areas, then provide ash trays or smoker's bins outside the non-smoking area. Thought should be given as to the placement of these receptacles to ensure they do not encourage smoking near building entrances or similar areas that will cause ETS to move into smoke-free areas.

7.3 Personnel policies

The introduction of a policy for a smoke-free work environment will benefit all who work there. Its introduction needs sensitivity on the part of smokers, non-smokers,

management, supervisors and other workers. Consultation and an explanation of the planned changes, and the reasons for them will be necessary. Persons in control who consider the issues, have a reasonable commitment to change, and show concern for workers - both smokers and non-smokers, will be essential.

Implementing changes to personnel policies includes the following:

- Offering smokers access to programs which help people to stop smoking, for example, counselling programs and the QUIT program. Implementation of a workplace program combined with access to skilled counselling programs may be of great benefit in helping people to give up smoking. When offering smokers access to cessation programs it is usually advised that persons conducting the business or undertaking and workers make a joint financial commitment so that the cost to the worker is reduced.
- Job recruitment advertisements should clearly state that workers will be working in a smoke-free environment. **However, smokers should not be discriminated against in the offer of employment.**
- Implementation of an acceptable grievance handling procedure.

7.4 Grievance handling procedures

The smoke-free policy should not be regarded differently from any other work safety issue. Workers should be treated in a sensitive manner, dealing with each person individually.

Consideration needs to be given to:

- workers being given information about services provided to assist people in giving up smoking;
- providing counselling and support for workers experiencing difficulties in quitting smoking whilst at work;
- all disciplinary procedures must be in writing and accessible to all workers, and displayed on staff notice boards;
- no workers being dismissed without consultation with any involved union; and
- all counselling and discipline sessions properly recorded in writing.

If a visitor breaches a policy:

- inform the visitor of the smoke-free policy;
- worker to inform person in control if visitor continues to smoke; and
- person in control to enforce the smoke-free policy.

Appendix 1 - Model Smoke-free Workplace Policy

[WORKPLACE] Smoke-Free Policy

Introduction

Considerable medical and scientific evidence indicates that there is a relationship between passive smoking (breathing other people’s tobacco smoke) and ill health. There is a relationship with lung cancer and heart disease in non-smokers, asthma attacks, chest infections, watery eyes, headaches and sore throats. It is also be dangerous for people with pre-existing heart or lung conditions.

Under the *Work Safety Act 2008* (Work Safety Act)(and ancillary legislation) a person conducting a business or undertaking and persons in control have a duty to provide a safe working environment and to protect the health of all workers from illness or injury arising from the workplace. To protect the health of all workers from the harmful effects of tobacco smoke, at work, *[name of company]* has adopted a policy of providing a smoke-free workplace.

Under the Work Safety Act, all people at a workplace have a duty not to expose other people at the workplace to work safety risks because of their conduct.

To design the best way of introducing such a policy, a working party, with representatives from all groups affected by this policy, has been set up. At the recommendation of the working party, the following timetable outlines a gradual progression to no smoking in all indoor areas.

Certain areas within the workplace are already designated as smoke-free areas for health, safety or other reasons (e.g. fire, food preparation, sensitive equipment areas).

These areas will remain smoke-free.

Timetable

Phase 1 Commencement date.....

Smoking will NOT be allowed in the following areas:

.....
.....
.....
.....
.....

Ashtrays will be removed from all smoke-free areas and the appropriate signs displayed.

Smoking will be permitted in the following areas during this phase:

.....

.....
.....
.....
.....
Workers wishing to leave their work stations to smoke may do so in their lunch and tea breaks, and during pre-determined adjustment breaks. Adjustment breaks (e.g. four 5-minute breaks) will be permitted in order to assist smokers to gradually cut down their smoking following the introduction of this phase of the policy.

Phase 2 Commencement date.....

In addition to the areas designated as smoke-free up to and including Phase 1, the following areas will now be designated smoke-free:

.....
.....
.....
.....
.....

Smoking will only be permitted in [*nominated remaining working area or an appropriate outdoor area, preferable away from public view*] during lunch and tea breaks. Adjustment breaks will be reduced (e.g. two five-minute breaks).

Phase 3 Commencement date.....

All indoor areas will be smoke-free. Adjustment breaks will be phased out. Smoking may continue during lunch and tea breaks in [*nominate an outdoor area*].

Smokers who experience difficulties adjusting are advised to contact their supervisor or [*nominate a contact person associated with the policy*] to discuss individual concerns.

ASSISTANCE FOR SMOKERS:

It is recognised that while this initiative will provide a positive benefit to all workers, some workers may have difficulty in adjusting, particularly those whose smoking habit is a long standing one. Smokers are being asked to restrict their smoking in the workplace, rather than to stop smoking altogether. Every effort will be made to assist smokers to adapt to working conditions under the policy:

The following assistance will be provided:

.....
.....
.....
.....

.....

PROCEDURES FOR BREACH OF POLICY:

Non-compliance with the smoke-free policy will be viewed as a serious matter. While all efforts will be made to help individuals meet the requirements of this policy, any disregard for the policy will be viewed in the same way as any breach of the work safety policy, and standards disciplinary procedures will apply. Any individual repeatedly breaching this policy will be asked to have discussions involving their union representative (if requested) and [*name or contact person*].

If you have any questions about this policy the contact [*names*] located at [*location*].

APPENDIX 2- Sources of Advice and Further information Relating to Smoke Free Workplaces.

A number non-profit organisations promote information on the health effects of smoking and give practical guidance on how to formulate and implement a no-smoking policy. Some sources are:

- National Health and Medical Research Council, Effects of Passive Smoking on Health (1987);
- The National Heart Foundation: "Going Smoke Free, A Guide for Workplaces "1991;
- The National Occupational Health and Safety Commission National Policy Statement on Smoking in the Workplace. (1990).

The following are organisations which offer quit-smoking programs, therapy and counselling services for those workers needing assistance:-

Alcohol and Drug Service, ACT Health

1st Floor, ACT Health Building

CNR Moore & Alinga Streets

Canberra City, ACT 2601

Phone: 6207 9977

ACT Cancer Society Quitline

5 Richmond Avenue

Fairbairn, ACT 2609

Phone 13 78 48 or 6257 9999

National Heart Foundation, ACT Division

1st Floor, 64 Colbee Court

Phillip, ACT 2626

Phone: 6282 5744

Seven Day Adventist Church, Quit Now Program

3 Mackay Gardens

Turner, ACT 2601

Phone: 6249 6822

**APPENDIX 3 - Organisations from which signs are
available**

**Office of Regulatory Services, WorkSafe
ACT 1st Floor North Building**

Level 3, Callam Offices

Easty St, Phillip

CANBERRA ACT 2601

Phone 6207 3000

ACT Cancer Society

**5
Richmond Avenue**

Fairbairn, ACT 2609

Phone 13 78 48 or 6257 9999

**National Heart Foundation, ACT Division
1st Floor, 64 Colbee Court**

Phillip, ACT 2626

Phone: 6282 5744