

Smoke-Free Public Places (Play Spaces) Declaration 2016 (No 1)

Disallowable instrument DI2016—250

made under the

Smoke-Free Public Places Act 2003, s 9O (Declaration of smoke-free public place or event)

Explanatory Statement

Outline

Part 2C of the *Smoke-Free Public Places Act 2003* (the Act) provides for the establishment of new smoke-free public places and events by Ministerial declaration. Section 9O of the Act allows the Chief Minister and responsible Minister to jointly declare that a public place or event is a smoke-free public place or event.

This declaration establishes smoke-free children's play equipment and a smoke-free area 10 metres around children's play equipment in ACT Government managed outdoor play spaces in the ACT. It utilises the existing regulatory framework for smoke-free areas to facilitate compliance and enforcement with existing measures.

Smoke-free areas are a vitally important tool to protect community health by reducing exposure to second hand smoke (SHS) and improve health outcomes in smokers and non-smokers. They help to denormalise smoking, which helps to prevent children and young people from taking up the habit and also support smokers who are trying to quit by reducing social cues to smoke.

The 10 metre perimeter follows a study published in the journal for *Nicotine and Tobacco Research* (2014) that recommended that the distance from a smoking source should be at least 9 metres to reduce public exposure to SHS. It is also consistent with the perimeter used in other Australian jurisdictions.

Detailed explanation

This declaration legislates smoke-free play equipment and a smoke-free area 10 metres around such equipment in ACT Government managed outdoor play spaces in the ACT. The combined application of this declaration, and offences within the Act such as sections 9T and 9U, is to prohibit smoking on or within 10 metres of children's play equipment in these places.

Smoking in a legislated smoke-free area is a strict liability offence under section 9T of the Act, and carries a maximum penalty of 5 penalty units. At present a penalty unit for an

individual is \$150. Accordingly, the maximum penalty for an offence against section 9T amounts to \$750; that is \$150 multiplied by five.

An exception to the offence in section 9T is provided by subsection 3 of that provision, which provides that the offence is not committed if a smoke-free declaration requires the display of 'no smoking' signs and such signs are not displayed as required. However, as this declaration does not require the display of 'no smoking' signs subsection 3 will not be applicable to smoke-free play spaces.

It is also a strict liability offence under section 9U for a person to smoke within a legislated smoke-free area contrary to a direction to stop smoking. The maximum penalty for an offence against section 9U is twenty penalty units, which amounts to \$3000; that is \$150 multiplied by twenty. The maximum penalty under section 9U is much greater than that under section 9T, which reflects that the culpability of the offending behaviour is escalated by having failed to comply with a lawful direction to cease smoking in the smoke-free area by an inspector under the Act.

Under section 9U(1)(c) a direction to stop smoking can be made by an inspector. For declarations pertaining to public places, an occupier of the public place may also issue a direction to stop smoking. For declarations of public events, a manager of the declared smoke-free event may also issue a direction to stop smoking.

However, as the subject of this declaration is ACT government managed play spaces it is expected that only inspectors under the Act will be issuing a direction to stop smoking in the smoke-free area. Inspectors under the Act are public servants appointed under section 10(1)(c) of the Act, as well as investigators under the *Fair Trading (Australian Consumer Law Act 1992)* and authorised officers under the *Tobacco Act 1927*, which includes police officers and public health officers under the *Public Health Act 1997*. Under Section 10 (2) of the Act Canberra Transport and City Services city rangers have been appointed as officers by the ACT Health Director-General to provide additional enforcement.

It should also be noted that when directing a person to stop smoking in a declared smoke-free public place an inspector must if requested produce identification evidencing their status as an inspector, unless the inspector is a uniformed police officer. Should an inspector not produce identification as requested the direction to stop smoking will be invalid and the offence under section 9U will not have been committed. It must however be noted that the lesser offence under section 9T may still have been committed.

Smoking refers to the use of a smoking product. 'Smoking' and 'smoking products' are defined in the Act, and currently include but are not limited to tobacco products and personal vaporisers, commonly known as electronic cigarettes.

This instrument does not apply to a person in or on a vehicle that is travelling within the 10 metre radius of play equipment. However the declaration will apply to a vehicle is stationary within the 10 metre perimeter. This instrument applies if the vehicle is stationary, regardless of whether the engine is running or the windows are up. SHS could be generated by the persons smoking in the vehicle and released into the smoke-free area upon exiting the vehicle. However, irrespective of whether SHS escapes the vehicle, smoking in or on a stationary vehicle within the 10 metre smoke-free area is likely to be clearly visible to

children and to adults trying to quit. This is undesirable, particularly as denormalisation of smoking is an important public health measure to minimise uptake of smoking among youth.

This instrument does not apply to a person at a residential premises or on land which residential premises are built or may be lawfully built.

Whenever appropriate an educative approach is to be preferred by inspectors in implementing the smoking ban at ACT Government managed play spaces in the ACT. However, this recognises that if faced with repeated contraventions of the declaration an educative approach must give way to more significant enforcement action.

Wherever possible, signage will be erected at ACT Government managed play spaces in the ACT to inform the community about the law. Signage will be complemented with a public education campaign to generate public awareness of the new declared smoke-free areas. Signage is not a requirement to indicate that smoking is not permitted within 10 metres of children's play equipment at ACT Government managed play spaces in the ACT.

Definition of children's play equipment and ACT Government owned public playgrounds or play spaces

The following is designed to provide clarity as to what areas will be legislated as smoke-free under this declaration. Depending on the nature of an ACT Government managed public playground or play space and the positioning of children's play equipment, there may be multiple smoke-free areas within the one play area or play space.

Children's play equipment

Children's play equipment is defined as interactive outdoor structures specifically constructed in playgrounds and play spaces for children's amusement and recreation. Play equipment provides a controlled setting for children's play and encourages motor development, strength and flexibility, as well as providing amusement and enjoyment. This definition incorporates conventional play equipment and 'natural' play equipment in urban play spaces.

Conventional play equipment includes traditional man-made structures used for outdoor play or recreation, especially by children. Common conventional play equipment includes the seesaw, merry-go-round, swings, slide, jungle gym, sandbox, spring rider, monkey bars, overhead ladder, double rocker, speed gyro, hip-hop, talk tubes, playhouses and mazes. Play areas commonly have structures that link multiple pieces of equipment.

Natural play equipment is defined through a shaping of the landscape to encourage play and interaction. It is constructed from natural or integrated products within natural and/or built landscaped environment. Play components may include integrated play equipment (such as slides); earth shapes (sculptures); environmental art, boulders or other rock structures, logs or tree stumps often arranged as stepping stones or balancing beams; hopscotch panels; natural fences (stone, willow, wooden); stencilled or decorated pathways for children to follow; and natural water features incorporated into the designed play area.

Public equipment that is not intended for children's play and amusement in play spaces managed by ACT Government is not included in the definition of *play equipment* for the purposes of this instrument. Examples include skate parks, sporting facilities, sports grounds

and fitness stations. Accordingly, such equipment will only be smoke-free if located within the 10 metre smoke-free perimeter of surrounding *play equipment*.

ACT Government managed play spaces

This declaration only applies to ACT Government managed play spaces. Play spaces that are owned by other entities (National Capital Authority, shopping centres, child care centres) are not captured by the declaration unless responsibility for managing the play space has been assigned to the ACT Government. Private playgrounds and play spaces (playgrounds in multi-unit developments, play equipment at residential premises) are outside the scope of this declaration.

A play space, which incorporates playgrounds, is an area of land within a park on which children have multiple quality play opportunities to address a broad range of play types and experiences. It is an area not necessarily restrained by a soft-fall edge or standard manufactured structures. A playground is defined as the entire area of play within a park (usually District Park) that may include one or many soft-fall areas.

Playgrounds and play spaces may contain multiple play areas. A play area is the individual soft-fall areas within a larger playground or play space. A play area may contain one or more piece of play equipment. The individual play areas in the same park make up one playground or play space.