

First print



New South Wales

Roads Amendment (Street Vending) Bill 1995

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to enable payments in the nature of rent to be charged for certain structures on public roads used for street vending, to regulate the circumstances when payments may be charged and to make consequential amendments to provisions applying generally to consents to structures on public roads.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the *Roads Act 1993*.

Schedule 1 Amendments

Schedule 1 [1] makes it clear that an obstruction of a public road previously authorised by or under the Act or any other Act will give rise to an offence when that authorisation ends.

Schedule 1 [2] defines *street vending consent*.

Schedule 1 [3] makes it clear that a consent to the erection of a structure on a public road may permit or prohibit its use for a specified purpose or purposes.

Schedule 1 [4] inserts proposed sections 139A–139F.

Proposed section 139A enables a roads authority to permit the use of a structure for the purpose of selling any article or service when it permits its erection in, on or over a public road in a built-up area (a street vending consent). A condition as to payments in the nature of rent may be imposed but the term of the consent must not exceed 7 years.

Proposed section 139B makes it clear that the application of the *Environmental Planning and Assessment Act 1979* is not displaced by the granting of a street vending consent.

Proposed section 139C sets out the circumstances in which a roads authority may revoke a street vending consent.

Proposed section 139D enables a roads authority to extend the term of a street vending consent and also to transfer such a consent and other consents to structures.

Proposed section 139E enables a fresh consent to be granted for the continued erection and use of a structure on a public road if a consent is revoked, expires or lapses for any other reason.

Proposed section 139F requires a roads authority to comply with guidelines relating to street vending issued by the RTA and the Department of Local Government when granting, extending or transferring a street vending consent. It also prevents such a consent from being granted if part of the space occupied by the structure is the subject of a lease from the roads authority.

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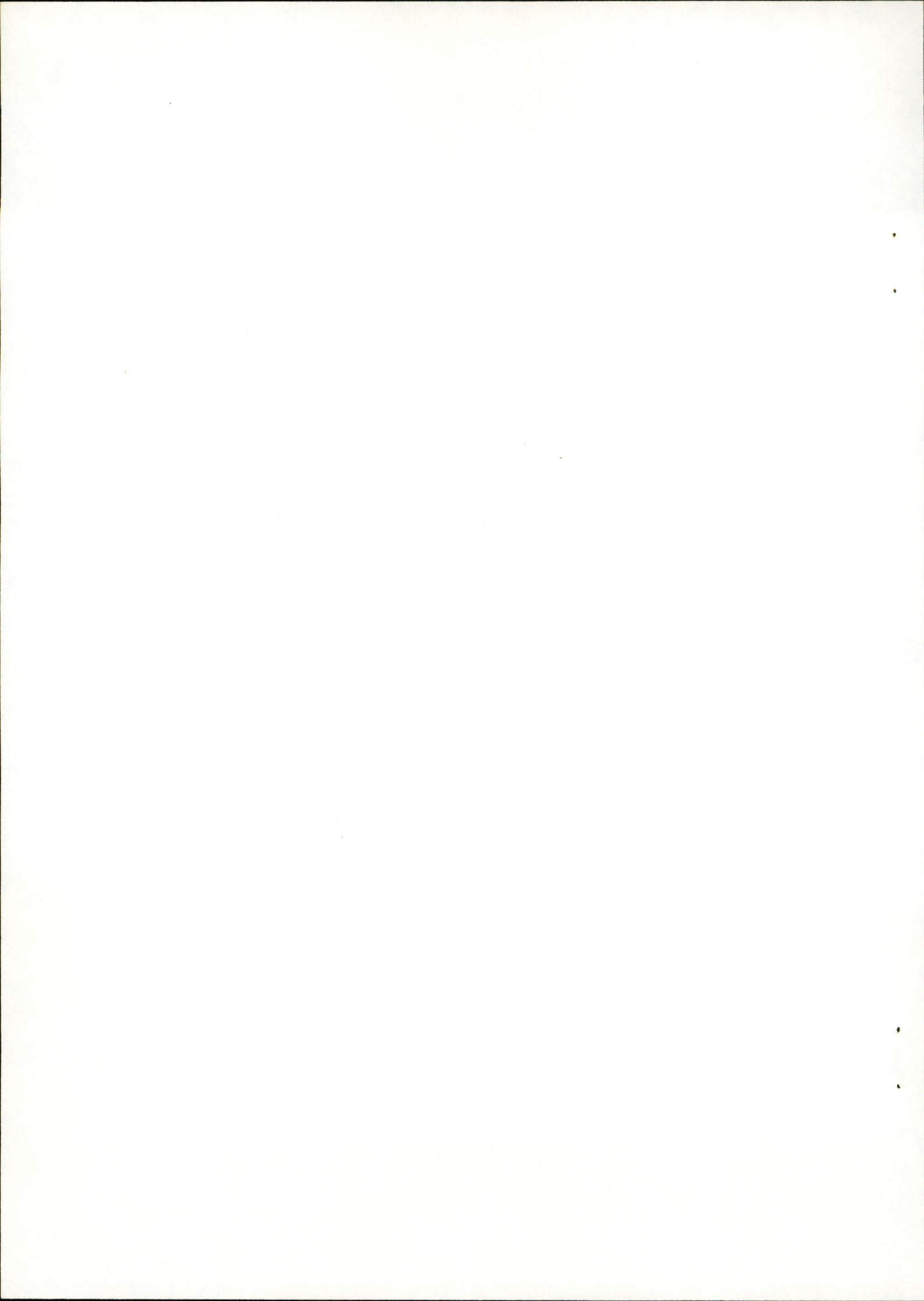
Explanatory note

Schedule 1 [5] amends section 140 as a consequence of the insertion of proposed section 139C.

Schedule 1 [6] and [7] make amendments consequent on the provisions enabling the transfer of consents.

Schedule 1 [8] and [9] amend the provisions relating to evidence to enable proof of the grant, extension or transfer of street vending consents and other consents.

Schedule 1 [10] and [11] insert savings and transitional provisions consequent on the enactment of the proposed Act.



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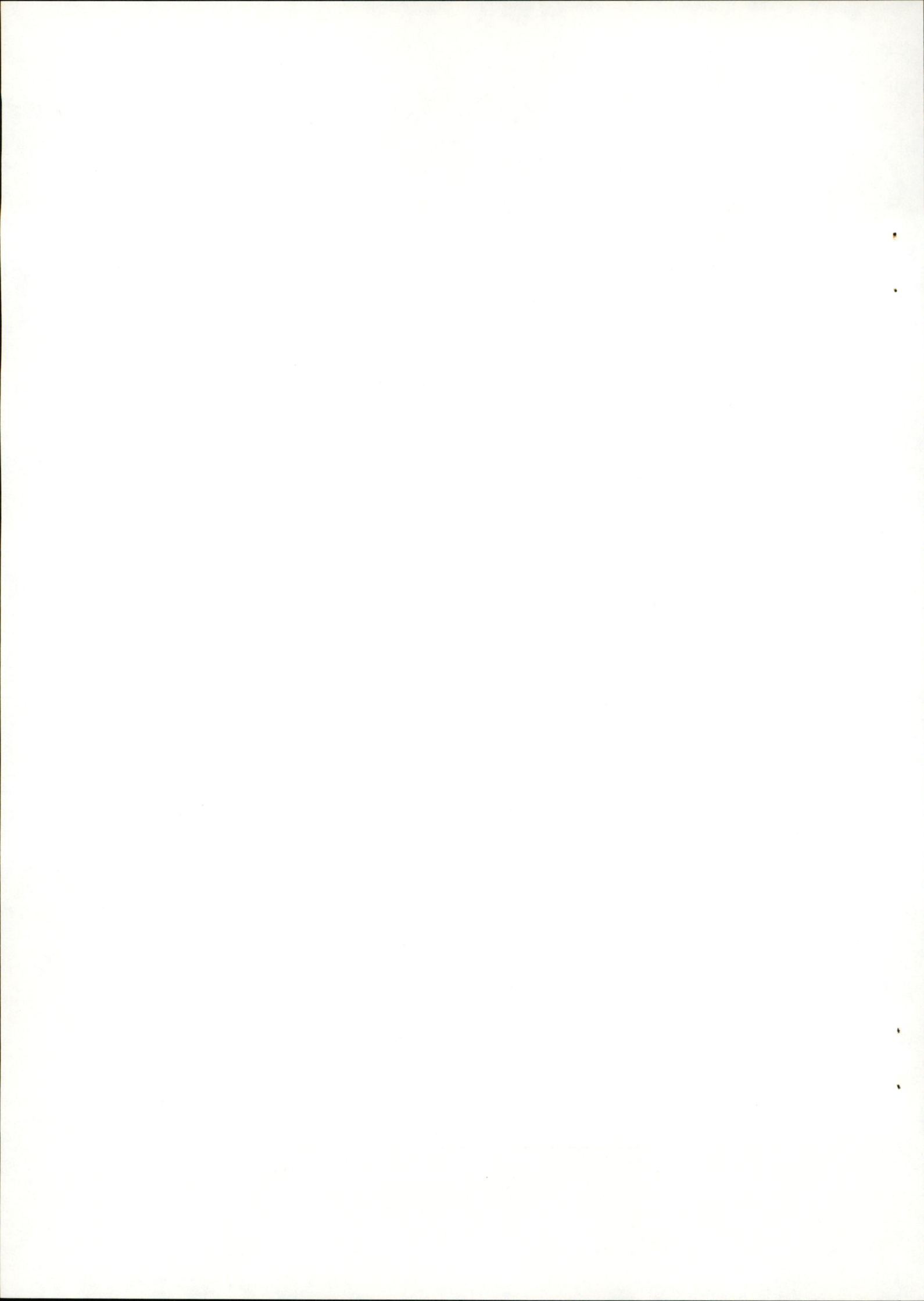


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New South Wales

Roads Amendment (Street Vending) Bill 1995

No , 1995

A Bill for

An Act to amend the *Roads Act 1993* with respect to street vending from structures on public roads and consents to structures; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Roads Amendment (Street Vending) Act 1995*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of Roads Act 1993 No 33

The *Roads Act 1993* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 107 Obstructions and encroachments

Insert after section 107 (4):

- (5) However, this section does apply to an obstruction or encroachment on a public road if its presence ceases to be authorised by or under this or any other Act. 5

[2] Section 137A

Insert after the heading to Division 3, Part 9:

137A Definition 10

In this Division:

street vending consent means a consent under this Division that is subject to a condition referred to in section 139A.

[3] Section 139 Nature of consent 15

Insert after section 139 (2):

- (3) In particular, a consent under this Division with respect to the erection of a structure may be granted subject to a condition that permits or prohibits the use of the structure for a specified purpose or purposes. 20

[4] Sections 139A–139F

Insert after section 139:

139A Street vending consents and charges in built up areas

- (1) A roads authority, in granting consent under this Division to the erection of a structure in, on or over a public road and located in a built-up area, may, without limiting section 139, impose conditions: 25
- (a) permitting the use of the structure for the purpose of selling any article or service, and
- (b) requiring payments in the nature of rent. 30

- (2) The term of a street vending consent is to be such period (not exceeding 7 years) as is specified in the consent.
- (3) For the purposes of this section, a structure is located in a built-up area if the structure is located in, on or over a part of a public road that is lit by street lighting located at intervals of not more than 100 metres for a distance of not less than 500 metres. 5
- (4) Nothing in this section prevents a roads authority from granting a consent under this Division that permits the use of a structure in, on or over a public road and not located in a built-up area for the purpose of selling any article or service. 10
- 139B Application of Environmental Planning and Assessment Act 1979**
- The granting of a consent under this Division that is subject to a condition of a kind referred to in section 139 (3) or 139A concerning the use of a structure does not affect the application (if any) of the *Environmental Planning and Assessment Act 1979*. 15
- 139C Revocation of street vending consents** 20
- (1) A roads authority may revoke a street vending consent if:
- (a) a condition of the consent or a requirement under this Division is breached, or
- (b) it is of the opinion that it is necessary to do so because of a change in the traffic or other road safety circumstances affecting the road. 25
- (2) The roads authority may only revoke the street vending consent by notice in writing served on the holder of the consent.
- 139D Extension and transfer of street vending and other consents** 30
- (1) A roads authority may, at the end of the term of a street vending consent, extend the term of the consent for such further period (not exceeding 7 years) as is specified in the consent. 35

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- (2) An extension may be granted on the application of the holder of the consent.
- (3) A roads authority may transfer a street vending consent or another consent under this Division permitting the erection and use of a structure for a purpose to a person other than the holder of the consent. 5
- (4) A transfer may be granted on the application of the holder of the consent or of another person made with the holder's consent.
- (5) A roads authority may impose a condition as to payments in the nature of rent when it extends or transfers a street vending consent. 10
- (6) Section 139 applies to a consent extended or transferred under this section.
- 139E Fresh consents** 15
- (1) A roads authority may grant a fresh street vending consent or other consent under this Division in respect of a structure if the previous consent is revoked, expires or otherwise lapses.
- (2) The consent granted may be granted on the roads authority's initiative or on the application of any person. 20
- (3) The consent granted may be a street vending consent or other consent even though the previous consent was of a different kind.
- 139F Matters to be taken into account** 25
- (1) When considering whether to grant, extend or transfer a street vending consent, or other consent under this Division permitting the use of a structure in, on or over a public road not in a built-up area, for the purpose of selling any article or service, the roads authority must comply with guidelines relating to street vending jointly issued by the RTA and the Department of Local Government. 30
- (2) A street vending consent may not be granted if a structure is subject to a lease under section 149. 35

[5] Section 140 Revocation of consents

Insert "(other than a street vending consent)" after "Division".

[6] Section 140

Omit "person to whom the consent was granted".
Insert instead "holder of the consent".

5

[7] Section 142 Maintenance of works and structures

Omit "person to whom the consent was granted" from section 142 (4).
Insert instead "holder of the consent".

[8] Section 248 Evidentiary certificates

10

Insert ", extended or transferred" after "given" in section 248 (1) (g).

[9] Section 248 (1) (g1)

Insert after section 248 (1) (g):

(g1) a specified structure in, on or over a specified road was or was not the subject of a specified consent referred to in section 139A, or

15

[10] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Roads Amendment (Street Vending) Act 1995

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[11] Schedule 2, Part 3

Insert after Part 2:

**Part 3 Provisions consequent on the enactment of
the Roads Amendment (Street Vending) Act
1995**

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71 Existing consents

- (1) Nothing in the *Roads Amendment (Street Vending) Act 1995* affects a person's right, under a consent granted under Division 3 of Part 9 before the commencement of this clause, to continue, in accordance with the consent, to use a structure in, on or over a public road for a purpose that was lawful immediately before that commencement. 10
- (2) However, any such consent may be revoked or transferred, and if it is revoked a fresh consent may be granted, in accordance with this Act as amended by the *Roads Amendment (Street Vending) Act 1995*. 15
- (3) The roads authority for the road in, on or over which the structure is situated may impose conditions on the consent, on its own initiative or at the request of the holder of the consent. 20

