

Street Vending

Roads Act 1993 No 33

Part 9 Division 3

Division 3 Other works and structures

137A Definition

In this Division:

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

138 Works and structures

(1) A person must not:

- (a) erect a structure or carry out a work in, on or over a public road, or
 - (b) dig up or disturb the surface of a public road, or
 - (c) remove or interfere with a structure, work or tree on a public road, or
 - (d) pump water into a public road from any land adjoining the road, or
 - (e) connect a road (whether public or private) to a classified road,
- otherwise than with the consent of the appropriate roads authority.

Maximum penalty: 10 penalty units.

(2) A consent may not be given with respect to a classified road except with the concurrence of RMS.

(3) If the applicant is a public authority, the roads authority and, in the case of a classified road, RMS must consult with the applicant before deciding whether or not to grant consent or concurrence.

(4) This section applies to a roads authority and to any employee of a roads authority in the same way as it applies to any other person.

(5) This section applies despite the provisions of any other Act or law to the contrary, but does not apply to anything done under the provisions of the Pipelines Act 1967 or under any other provision of an Act that expressly excludes the operation of this section.

139 Nature of consent

(1) A consent under this Division:

- (a) may be granted on the roads authority's initiative or on the application of any person, and
- (b) may be granted generally or for a particular case, and

(c) may relate to a specific structure, work or tree or to structures, works or trees of a specified class, and

(c1) in relation to integrated development within the meaning of section 91 of the Environmental Planning and Assessment Act 1979, is subject to Division 5 of Part 4 of that Act, and

(d) may be granted on such conditions as the appropriate roads authority thinks fit.

(2) In particular, a consent under this Division with respect to the construction of a utility service in, on or over a public road may require the service to be located:

(a) in such position as may be indicated in that regard in a plan of subdivision or other plan registered in the office of the Registrar-General with respect to the road, or

(b) in such other position as the roads authority may direct.

(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.

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:

(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.

(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.

(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.

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.

139C Revocation of street vending consents

(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.
- (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

- (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.
- (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.
- (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.
- (6) Section 139 applies to a consent extended or transferred under this section.

139E Fresh consents

- (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.
- (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

- (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 RMS and the Office of Local Government.
- (2) A street vending consent may not be granted if a structure is subject to a lease under section 149.

140 Revocation of consents

A roads authority may at any time and for any reason revoke a consent under this Division (other than a street vending consent) by notice in writing served on the holder of the consent.

141 Effect of consent

While a consent under this Division is in force, the taking of action in accordance with the consent is taken not to constitute a public nuisance and does not give rise to an offence against this or any other Act.

142 Maintenance of works and structures

(1) A person who has a right to the control, use or benefit of a structure or work in, on or over a public road:

(a) must maintain the structure or work in a satisfactory state of repair, and

(b) in the case of a structure (such as a grating or inspection cover) located on the surface of the road, must ensure that the structure is kept flush with the surrounding road surface and that the structure and surrounding road surface are so maintained as to facilitate the smooth passage of traffic along the road,

and the person is, by this section, empowered to do so accordingly.

Maximum penalty: 30 penalty units.

(2) Subsection (1) applies to all structures and works in, on or over a public road, including structures and works for which there is no consent in force under this Division.

(3) Subsection (1) does not apply to a person whose right to the control, use or benefit of a structure or work consists merely of a right of passage that the person has as a member of the public or a right of access that the person has as the owner of adjoining land.

(4) If:

(a) a roads authority has granted a consent under this Division to the doing of anything, and

(b) that thing has been or is being done otherwise than in accordance with the consent,

the roads authority may direct the holder of the consent to take specified action to remedy any damage arising from the doing of that thing otherwise than in accordance with the consent.

143 Roads authority may use public road in exercise of functions

Nothing in this Division prevents a roads authority from using a public road in the exercise of a function conferred by this Act so long as the function is exercised in a way that will not unduly interfere with the rights of passage and access that exist with respect to the public road.