

**LOCAL GOVERNMENT (FOOTWAY RESTAURANTS)  
AMENDMENT ACT, 1978, No. 35**

**New South Wales**



ANNO VICESIMO SEPTIMO

**ELIZABETHÆ II REGINÆ**

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**Act No. 35, 1978.**

An Act to amend the Local Government Act, 1919, to enable  
the conduct of restaurants on adjacent public footways.  
[Assented to, 28th March, 1978.]

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*Local Government (Footway Restaurants) Amendment.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the "Local Government Short title. (Footway Restaurants) Amendment Act, 1978".

2. The Local Government Act, 1919, is amended by inserting after Division 3 of Part XXIV the following Division :—

Amendment  
of Act No.  
41, 1919,  
Pt. XXIV,  
Div. 3A.

DIVISION 3A.—*Restaurants on footways.*

520A. (1) In this Division—

"Commission" means the New South Wales Planning and Environment Commission constituted under the New South Wales Planning and Environment Commission Act, 1974;

Interpre-  
tation:  
Pt. XXIV,  
Div. 3A.

"restaurant" means premises in which food is regularly supplied on sale to the public for consumption on the premises and includes premises in which such supply is proposed.

(2) In this Division, a reference to a footway is a reference to a footway in a public road vested in fee-simple in the council.

520B. (1) Subject to this section, the council may grant to a person who conducts or proposes to conduct a restaurant a lease of or a licence in respect of such area of the footway adjacent to the restaurant as the council determines for use solely for the conduct of the restaurant,

Granting of  
lease or  
licence of  
footway for  
restaurant  
purposes.

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*Local Government (Footway Restaurants) Amendment.*

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(2) A lease or licence granted under subsection (1) shall be—

- (a) for, or for such periods as the council determines during, a continuous term not exceeding 7 years; and
- (b) except as provided by paragraph (a), on such terms and subject to such conditions as the council determines.

(3) The council shall not grant a lease or licence under subsection (1) except with the approval of the Minister given after consideration of a report and recommendation by the Commission.

Erection of structures.

520c. (1) The council may, on such terms and subject to such conditions as it determines—

- (a) authorise a person to whom a lease or licence under section 520B (1) is granted to erect and maintain structures, during the occupation of the person pursuant to the lease or licence, in, on, over, under or through the area of footway subject to the lease or licence for use solely for the conduct of the restaurant in respect of which the lease or licence is granted; or
- (b) exercise, at the request and cost of a person referred to in paragraph (a), any power which that person may be authorised to exercise under that paragraph.

(2) The council may, in respect of the footway or any other part of the public road adjacent to an area of footway subject to a lease or licence granted under section 520B (1), erect and maintain such structures as, in its opinion, are necessary to promote or preserve public safety or health.

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520D. (1) Where a person referred to in section 520B (1) has requested the council, in writing, to grant him a lease or licence under section 520B (1) and the council has refused the request or the council has not, within 90 days after the date of the request, granted such a lease or licence to him, the Minister may, after—

Granting of lease, etc.; by Minister.

- (a) consideration of a report and recommendation by the Commission;
- (b) consultation with the Minister administering Part IX; and
- (c) consideration of any representations made to him by the council,

exercise and perform the powers, authorities, duties and functions of the council under section 520B and, if he thinks fit, section 520C.

(2) A lease or licence granted by the Minister under subsection (1) shall be deemed to have been granted by the council in accordance with section 520B.

520E. Where an area of footway subject to a lease or licence granted under this Division is used otherwise than, or ceases to be used, solely for the conduct of a restaurant in conjunction with the use of the adjacent premises as a restaurant, the lease or licence shall, notwithstanding any term or condition of the lease or licence, determine forthwith.

Determination of lease or licence.

520F. (1) Notwithstanding anything contained in this or any other Act or any law to the contrary—

Effect of operation of contrary laws.

- (a) the occupation of an area of footway in accordance with a lease or licence granted under this Division; and
- (b) the erection of a structure in, on, over, under or through such an area or an adjacent area under section 520C or by the Minister pursuant to section 520D (1),

is lawful.

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*Local Government (Footway Restaurants) Amendment.*

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(2) Where the occupation of an area of footway or the erection of a structure in respect of such an area is lawful under subsection (1), the council, the Minister, the person to whom the lease of or licence in respect of that area is granted and the servants, agents and invitees of that person, shall, in respect of the use and occupation of that area solely for the purposes of the conduct of a restaurant, be freed and discharged from all penalties, suits, prosecutions and liabilities which by law the council, the Minister, that person or those servants, agents and invitees, would, but for this Division, be liable as causing an obstruction of a public place or as offending against any provision of this or any other Act or against any other law, being a provision or law relating to the use or occupation of a footway.

(3) Section 10 does not apply to this Division.

Other  
powers,  
etc., not  
affected.

520G. Except as may be provided in a lease or licence granted under this Division, nothing in this Division derogates from or otherwise affects any power, authority, duty or function conferred or imposed on the council by or under this Act.

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