

PART 8—TRADING ON STREETS AND LOCAL GOVERNMENT PROPERTY

Division 1—Alfresco Dining Areas

8.1 Interpretation

(1) In this Division unless the context otherwise requires—

eating area means an area in which tables, chairs and other structures are provided for the purpose of supplying food or drink to the public or the consumption of food or drink by the public;

food business means any land, premises or place, or any part thereof, on or in which meals are prepared for service or are served to the public for gain or reward. This term does not include any building, tent or other structure used temporarily for the preparation for service or service of meals to the public, at any fair, show, military encampment, races, or other public sports, games or amusements;

Health Act means the *Health Act (Miscellaneous Provisions) 1911* and includes regulations and local laws made thereunder or any subsequent legislation repealing and replacing this legislation;

licence means a licence issued by the local government under this Division to set up and conduct an outdoor eating area;

licensee means the person who is the holder of a licence;

licence plans means plans attached to and forming part of a licence depicting those areas of a street or public place within which an outdoor eating area may be set up and conducted;

alfresco dining area means an alfresco dining area in a street or public place;

proprietor has the same meaning assigned to it by Section 160 of the Health Act, or means the holder of a licence granted under the *Liquor Control Act 1988* where the premises in question are the subject of a Hotel licence, a licence or a Restaurant licence or Extended Trading Permit granted under that Act;

public facility means any structure, item or fitting whether in a street or public place that is the property of or has been provided by a Government Department, instrumentality of the Crown or the local government.

8.2 Alfresco Dining areas located on private property

This Division does not apply to any alfresco dining area set up or conducted in a place located on private property notwithstanding that the public are allowed to use that place.

8.3 Constraints to set up or conduct an alfresco dining area

(1) No person shall set up or conduct an alfresco dining area in a street or public place—

(a) other than in a portion of a street or public place adjacent to a food business;

(b) unless the person is the proprietor of the food business referred to in subclause (1)(a);

(c) unless the person is the holder of a valid and current licence issued pursuant to this Division; and

(d) otherwise than in accordance with—

(i) licence plans;

(ii) statement or declarations within the proprietor's licence application;

(iii) licence conditions; and

(iv) full observance of any requirements of the Health Act.

8.4 Form of application

The form of application for any licence under this Division shall be in the form determined by the local government.

8.5 Application for licence

(1) A proprietor shall complete an application form when applying for a licence. The form shall—

(a) include that person's full name and address;

(b) be accompanied by specifications and a plan showing the proposed alfresco dining area. The plan shall be at a scale of not less than 1:50 and show—

(i) the location and dimensions of the proposed alfresco dining area; and

(ii) the position of all tables, chairs and other structures proposed to be provided in the eating area and how such items are to be confined within the alfresco dining area;

(c) be accompanied by specifications and a plan on a scale of not less than 1:200 showing the alfresco dining area and all structures thereon including any public facility, parking area or parking restriction within 30 metres of the boundaries of the alfresco dining area;

(d) be accompanied by a coloured photograph or a detailed drawing of the tables, chairs and other structures to be set up in the alfresco dining area;

(e) provide the local government with written particulars of arrangements made with respect to public risk and any other relevant insurance; and

(f) provide the local government with any other information that the local government considers necessary in the circumstances of the case.

8.6 Determination of application

The local government or an authorised person may approve an application on such terms and conditions, if any, as it sees fit.

8.7 Form of licence

The form of a licence under this Division shall be in the form determined by the local government.

8.8 Refusal of licence

- (1) The local government or an authorised person may refuse to issue a licence if—
- (a) the applicant has at any time failed to comply with any provision of this Division;
 - (b) the applicant has failed to comply with any provision of the Health Act;
 - (c) any element of the proposed alfresco dining area is contrary to any condition of approval made by resolution of the local government as an adjunct to this Division; or
 - (d) the proposed alfresco dining area is in the opinion of the local government undesirable or unsuitable.
- (2) In the case of subclauses (1)(c) and (1)(d), the local government or an authorised person shall provide the applicant with the reasons in writing.

8.9 Conduct of alfresco dining area

- (1) The licensee shall—
- (a) ensure that the alfresco dining area is conducted at all times in accordance with the provisions of this Division and the terms and conditions of the licence;
 - (b) maintain the chairs, tables and other structures set up in the alfresco dining area in a clean and serviceable condition at all times;
 - (c) maintain the paving of the alfresco dining area in a clean condition, free from staining and ingrained food deposits;
 - (d) be solely responsible for all or any costs associated with restoring the street, footpath, public facility, tree or plant within or adjacent to the outdoor eating area where damage has been caused as a result of the conduct of the alfresco dining area;
 - (e) not allow for any reason whatsoever business activities associated with the alfresco dining area to obstruct the free passage of pedestrians on any footpath or the free passage of motor vehicles on any street or any part of a footpath used for vehicle crossings, notwithstanding the provisions of this local law;
 - (f) not allow the alfresco dining area to be situated in such a way that access from the footpath to kerbside parking is unreasonably obstructed;
 - (g) not allow the alfresco dining area equipment to hazardously obstruct the vision of vehicle drivers or pedestrians;
 - (h) produce a licence whenever requested to do so by an authorised person; and
 - (i) not transfer, assign or dispose of the licence.

8.10 Period of licence

A licence is valid for the period between the date of issue and the following 31 August, or until its revocation.

8.11 Licence fees and charges

The licence fees and charges shall be paid by the licensee to the local government prior to the issuing of the licence.

8.12 Revocation of licence

- (1) The local government or an authorised person may revoke a licence if—
- (a) the licensee breaches clause 8.3 or clause 8.9;
 - (b) the licensee breaches any provision of the Health Act; or
 - (c) the local government or a Crown agency, instrumentality or department requires access to the place to which a licence applies for the purpose of carrying out works on, over or under that place.

8.13 Refund of fees from revoked licence

Where a licence is revoked the local government or an authorised person shall if requested provide the licensee with written reasons for the revocation and shall refund the fee having first deducted the fee applicable to the period from the issuing of the licence to the revocation thereof.