



Staysafe 29

PARLIAMENT OF NEW SOUTH WALES JOINT STANDING
COMMITTEE ON ROAD SAFETY

PEDESTRIAN SAFETY II. Cleaning windcreens and other itinerant commercial activities on or alongside the roadway

*INCORPORATING EDITED TRANSCRIPTS OF EVIDENCE
AND CERTAIN SUBMISSIONS RECEIVED*

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(Chairman)
Member for Londonderry



Mr Jeff Hunter, M.P.
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CHAIRMAN'S FOREWORD

Paul Gibson MP, Member for Londonderry

Chairman, STAYSAFE

Joint Standing Committee on Road Safety

Following the re-establishment of STAYSAFE for the term of the 51st Parliament, the Members of the Committee resolved to approach Ministers with portfolio responsibilities in areas associated with road safety requesting References for inquiries.

This process has drawn a number of Ministerial References.

Some Ministerial References request STAYSAFE to perform a comprehensive review of an issue such as the management of the New South Wales driver licensing system, or to review a proposal to introduce a general speed limit of 50 km/h to apply in residential areas of New South Wales.

Other Ministerial references request STAYSAFE to examine problematic and contentious issues, such as bicycle courier activities in the Sydney central business district, or, as is the case with this report, the problems posed by persons conducting windscreen cleaning or other commercial activities on New South Wales roads.

STAYSAFE expresses its strong concern for public safety and efficient traffic movement if persons are permitted to wash the windscreens of motor vehicles, sell newspapers, collect monies for charities or similar activities on carriageways of public streets. STAYSAFE has accepted evidence presented during the inquiry that such activities are potentially dangerous and interfere with the safe and efficient movement of traffic. These activities do not, in STAYSAFE's view provide a necessary, or even useful, social function.

The current legislation covering these types of activities is not adequate to address the problems associated with permitting persons to wash the windscreens of motor vehicles, sell newspapers, collect monies for charities or similar activities on carriageways of public streets. An amendment to the legislation is required to control the activities of persons who engage in itinerant commercial activities on or alongside the carriageway of public streets.

STAYSAFE has been careful to recognise that there are some activities of a commercial nature that should continue to be permitted, under the existing controlled circumstances. These activities include the sale of fruit and vegetable produce or the sale of flowers. The existing powers of the roads authority or of local government authorities to permit such activities under safe conditions should be maintained.

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However, STAYSAFE has concluded that children and juveniles should not be permitted to engage in these activities. The specific activity of children or adults washing vehicle windscreens while traffic is stopped at intersections is undesirable, and any observance of such conduct should be followed by immediate police intervention.

STAYSAFE believes that, in general, the responsibilities of drivers of motor vehicles under existing legislation in respect of permitting persons to wash the windscreens of motor vehicles, sell newspapers, collect monies for charities or similar activities on carriageways of public streets should remain unchanged. STAYSAFE recognises that drivers or passengers of vehicles may permit or encourage such activities in situations where some danger is likely to exist for road users, and in particular, some likelihood of danger to the person(s) seeking to perform the activities. However, STAYSAFE does not believe it is necessary to introduce a specific offence whereby the driver of a motor vehicle being driven on a public street is guilty of an offence if the driver or a passenger being conveyed in the vehicle request or permit persons to engage in transactions associated with itinerant commercial activities on or alongside the carriageway of public streets.

STAYSAFE has noted that the current process to develop nationally uniform traffic law --the Australian Road Rules-- has not provided sufficient consideration to the law as it relates to pedestrian movement, and has further noted that sections of the proposed Australian Road Rules dealing with aspects of pedestrian law are to be omitted in subsequent drafts. This means that New South Wales is effectively free to modify its traffic law relating to pedestrian activities for the purpose of commercial gain without recourse to the processes and procedures required under the Heads of Government agreement for micro-economic reform in the road transport sector.

Acknowledgments

On occasion, Parliamentary Committees are requested to conduct an inquiry and report to Parliament within very short time frames. This report is the outcome of just such a situation, as STAYSAFE wished to report before the 1995-96 summer school holidays. I am grateful for the assistance of my Parliamentary colleagues and Members of the Committee in inquiring into the road safety implications of persons cleaning windscreens and conducting other itinerant commercial activities on or alongside the roadway at such short notice. As is usual for STAYSAFE's work, the report and its recommendations carry the unanimous support of all Members.

STAYSAFE is grateful for the assistance of Parliamentary staff in the conduct of the public hearing into cleaning windscreens and other itinerant commercial activities on or alongside the roadway and in the preparation of this report. The Director of the STAYSAFE Committee, Mr Ian Faulks, supervised the operations of the Committee Secretariat and drafted the report. The temporary staff assigned to the STAYSAFE Committee: Mr James Tremain (acting Research Officer), and Mrs Maria Tyrogalas and Ms Michelle Brown (acting Assistant

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Committee Officers); provided useful research and administrative functions to support the Committee. The Editor of Debates, Mr Robin Dennis, ensured that an accurate transcription was made available of the verbal evidence heard before the Committee, and Mr Paul Guilfoyle, Manager (Printing) and Mrs Pat Makin, Supervisor (Printing and Copying) of the Parliamentary Printing Services, ensured the final report was printed as quickly as possible.

I commend this report to Parliament.

CHAIRMAN'S FORE WORD

RECOMMENDATIONS

RECOMMENDATION 1: The Minister for Roads amend the Traffic Act 1909, or any statutory instrument made under the Act, to:

- (i) prohibit any person on the roadway who:
 - (a) in the course of offering for sale any goods or service, or
 - (b) in the pursuit of any business, calling or employment for reward or otherwise,
impedes or interferes, or is likely to impede or interfere, with the progress or convenience of others;
- (ii) this provision is not to apply to a police officer, member of the emergency services, or any other person as designated by the roads authority or the Minister, for their actions in the lawful conduct of their duties.

(Page 25, Paragraph 2.14)

RECOMMENDATION 2: The Commissioner' of Police, after' consultation with the Minister for Police, issue an instruction to police officers to caution motorists who request or permit a person to:

- (a) offer for sale any goods or service, or
- (b) pursue any business, calling or employment for reward or otherwise,
that impedes or interferes, or is likely to impede or interfere, with the progress or convenience of others.

(Page 27, Paragraph 2.20)

RECOMMENDATION 3: The Roads and Traffic Authority review the existing guidelines for street vending, including itinerant commercial activities on or alongside the roadway, and publish revised guidelines that incorporate legislative changes affecting the responsibilities of roads and local government authorities, and reflect the many different circumstances that may arise in pedestrian-vehicle interactions.

(Page 33, Paragraph 2.36)

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The Ministerial Reference - The terms of reference adopted - The behaviour causing concern - The approach adopted by STAYSAFE

1.1 This report is the second publication in a planned series of reports by STAYSAFE to be Tabled as part of its inquiry into pedestrian safety. Prior to the announcement of this inquiry in late 1993, there had not been a major review of pedestrian road trauma in New South Wales, even though pedestrian fatalities have, on average, comprised about 20% of the total road fatalities in recent years. The approach adopted by STAYSAFE has been to proceed slowly and systematically to examine a range of issues associated with pedestrian safety. STAYSAFE has taken extensive evidence relating to child pedestrian issues over the past two years, which has resulted in the Tabling of one report on child pedestrians around buses (STAYSAFE 26, 1994), and the preparation of draft reports on bicycle courier activities and on general child pedestrian issues which will be Tabled as soon as possible.

1.2 This report arises from the provision of a Ministerial Reference from the Minister for Police requesting STAYSAFE to examine the activities of children and adults who seek to conduct itinerant commercial activities on or alongside the roadway, usually in circumstances of heavy traffic movement. This Ministerial Reference was accepted by STAYSAFE, and incorporated as part of the general inquiry into pedestrian safety matters.

The Ministerial Reference

1.3 In mid-November 1995, STAYSAFE received a Ministerial Reference from the Honourable Paul Whelan MP, Minister for Police. The Minister indicated:

"I am aware that the STAYSAFE Committee is currently inquiring into pedestrian safety. The

practice of persons washing windscreens of motor vehicles at intersections would seem to be an issue the Committee may wish to consider as part of its inquiry." (Letter from Mr Ian McManus MP, Parliamentary Secretary assisting the Minister for Police, to Mr Paul Gibson MP, Chairman of the STAYSAFE Committee, 16 November 1995)

The Ministerial Reference also suggested some specific terms of reference to be considered by STAYSAFE.

The terms of reference adopted

1.4 STAYSAFE's inquiry into pedestrian safety did not provide a specific head of inquiry to examine the road safety implications of itinerant commercial activities on or alongside the carriageway of public streets. However, the terms of reference did provide for an assessment of such matters as the characteristics of pedestrian behaviour affecting safety and the likelihood of injury, the safety of children as pedestrians, legislation relating to pedestrians, and the enforcement of traffic law relating to pedestrians. These matters are of importance when examining the safety aspects of permitting persons to wash the windscreens of motor vehicles, sell newspapers, collect monies for charities or similar activities on carriageways of public streets.

1.5 STAYSAFE established specific terms of reference for an inquiry into itinerant commercial activities on or alongside the carriageway of public streets. The terms of reference require an assessment of:

- The implications for public safety and efficient traffic movement of permitting persons to wash the windscreens of motor vehicles, sell newspapers, ~~collect~~ collect monies for charities or similar activities on carriageways of public streets
- Whether the current legislation is adequate to address the problem, and if not, whether additional legislation is required to control the activities of persons who engage in itinerant commercial activities on or alongside the carriageway of public streets
- What enforcement activity should be taken against juveniles who engage in itinerant commercial activities on or alongside the carriageway of public streets
- What are the responsibilities of drivers of motor vehicles under existing legislation in respect of permitting persons to wash the windscreens of motor vehicles, sell newspapers, collect monies for charities or similar activities on

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carriageways of public streets

- Whether a specific offence should be created whereby the driver of a motor vehicle being driven on a public street is guilty of an offence if the driver or a passenger being conveyed in the vehicle request permit persons to engage in transactions associated with itinerant commercial activities on or alongside the carriageway of public streets
- Any other relevant matters that may arise during the course of the inquiry.

The behaviour causing concern

1.6 The immediate cause of the Ministerial Reference lay in media interest resulting from a serious injury crash involving a juvenile who was struck by a vehicle while cleaning the windscreen of another vehicle which was stopped at a traffic light. On 29 September 1995, a schoolboy aged 14 years was injured after colliding with a truck while trying to get back to the median strip after washing the windscreens of vehicles stopped at traffic lights at the intersection of South Dowling Street and Cleveland Street in inner city Surry Hills.

1.7 Earlier that day, Senior Sergeant Ian Watson, Cumberland District Traffic Co ordinator, had called for action to be taken to make windscreen washing at traffic intersections illegal. Senior Sergeant Watson was reported to have said:

"Children had 'run the gauntlet' for too long and must be stopped for their own safety Children are risking their lives by zipping between lanes during heavy traffic Most of the time our [i.e., the police] hands are tied. We can merely tell the kids it is not a desirable thing to do and move them on. We can only charge them if they are causing an obstruction. But I now believe the problem is so widespread we need specific laws to make it an offence to carry out a windscreen wash at an intersection."(*Telegraph Mirror*, 29 September 1995)

1.8 Figure 1 provides an example of the behaviour causing concern. As can be seen from this photograph the child washing the vehicle windscreen is barely of a height to be seen above the lower edge of the windscreen. The movement of children within a traffic stream--away from a marked pedestrian crossing--is a source of concern. As will be

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FIGURE 1: A young child washing windscreens at the Taylor Square intersection in Darlinghurst. The child is almost obscured from drivers in following vehicles. (from John Larkin's story on persons washing windscreens at street intersections, *Sunday Telegraph*, 19 November 1995, p. 11)

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reported in detail in a later report on child pedestrian safety the small height of children, together with inexperience with the road environment and a lack of maturation of perceptual and cognitive abilities have been identified as important factors in child pedestrian safety.

1.9 STAYSAFE recognises that the behaviour of persons conducting other similar activities on or alongside the roadway is also of concern. These activities include:

- selling flowers and other produce
- selling newspapers
- distributing pamphlets
- collecting charity monies

1.10 These activities are conducted by persons actually moving on the roadway between streams of vehicles stopped at *traffic* lights, or from the median strip, or from the footpath adjacent to the roadway.

1.11 The activity of washing the windscreens of vehicles stopped at signalised traffic intersections seems to have become more prevalent in recent years.

1.12 On 18 April 1989, the then Minister for Police and Emergency Services indicated in a response to a Question Without Notice that although there was no record of anyone being killed or injured while washing car windscreens while the vehicles are stopped at traffic intersections, police were concerned that it was a potentially dangerous practice. The Minister indicated that there was no specific legislation prohibiting this activity as well as other practices directly targeted towards drivers and passengers of motor vehicles, for example, selling of goods, distribution of pamphlets, newspapers, etc.. He indicated that he would seek the advice of the then Minister for Transport.

1.13 The Minister for Transport replied that:

"The Roads and Traffic Authority considers that the General Traffic (Pedestrian) Regulations which provide for the behaviour of pedestrians on public streets are appropriate for the control of 'windscreen washers' at traffic lights, as well as paper sellers, etc.. In this regard, the regulations provide that no person shall obstruct, hinder or prevent the free passage of any person or any vehicle, nor ignore any reasonable direction by a police officer in respect of traffic control."

The Minister then added:

"From the safety point of view the [Roads and Traffic] Authority has no evidence to suggest that the existing regulatory provisions are inadequate." (Letter from the Honourable Bruce Baird MP, Minister for Transport, to the Honourable Ted Pickering MP, Minister for Police, 23 June 1989)

1.14 From time to time, police---and in particular, the Traffic Services branch--raised the issue of problems posed by persons washing windscreens, but without success. For example, in mid 1994, an internal memorandum within the New South Wales Police Service stated:

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The practice of individuals washing windscreens of motor vehicles at intersections is becoming an ever increasing activity. This activity is usually carried out at busy sets of traffic lights where the operator washes the windscreens of vehicle waiting at red lights and receives a donation for the service provided.

... this practice is both dangerous and disruptive to the operators and the traffic flow.

CURRENT POSITION

Clause 7 (1) of the General Traffic Pedestrian Regulations creates a number of appropriate offences such as

obstruct, hinder or prevent the free passage of any person or vehicle stand or loiter to the inconvenience, annoyance or obstruction of any person fail to observe or comply with any reasonable direction of any member of the police force as to the regulation of traffic

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While these particular offences may apply to this activity, it is a cumbersome and difficult issue to enforce. For example, proof of hinder, obstruction or annoyance must be established before an offence takes place. If a supervisor was to task a uniformed police officer with enforcement of the activity it is highly unlikely that an operator would offend while he was present " (Memorandum, Senior Sergeant Whatson, Traffic Coordinator, Cumberland District. File ref: North West Region 94/902/101).

1.15 While the memorandum was supported by District and Regional police, it seems no particular action was taken by the New South Wales Police Service, either through an internal forum such as the Traffic Strategies Meeting, or through a more general external road safety forum such as the Road Safety Advisory Council.

The approach adopted by STAYSAFE

1.16 This then was the situation faced by STAYSAFE. Police argue that in typical operational situations they can do little under the current legislation to control the activities of persons who wash vehicle windscreens or conduct other itinerant commercial activities at intersections on or alongside the roadway. The Roads and Traffic Authority argue that the existing legislation does provide adequate means for police to effectively enforce safe

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pedestrian behaviour in these circumstances.

1.17 STAYSAFE scheduled a half day public hearing to review the issues, and requested detailed documentation from the government agencies involved. Representatives of the New South Wales Police Service and the Roads and Traffic Authority were called to give verbal evidence. As well, representatives of local government--in this case, Parramatta City Council--were called to discuss the role they might play in dealing with issues arising out of itinerant commercial activities on or alongside the roadway.

1.18 Because this issue has proven apparently difficult to resolve, STAYSAFE has adopted the tactic of incorporating an edited transcript of the verbal evidence presented during the public hearing, together with selected submissions and other papers Tabled during the public hearing. This tactic should also ensure that, as much as possible, relevant documents and reports are placed in the public domain and are accessible for later reference to those with interests and responsibilities in matters of pedestrian safety and traffic law enforcement.

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ISSUES ASSOCIATED WITH THE ACTIVITIES OF PERSONS WASHING WINDSCREENS AT INTERSECTIONS AND OTHER ITINERANT COMMERCIAL ROADSIDE AND ROADWAY ACTIVITIES

The suitability of allowing persons to wash motor vehicle windscreens while the vehicles are stopped on the roadway - The hub of the argument - It takes two to tango - The development of Australian Road Rules to provide for uniform road traffic law - Moving or standing on or alongside the roadway in conduct itinerant commercial transactions - Issues associated with young children

2.1 An examination of the road safety problems posed by persons--young children, teenagers, or adults--who wash windscreens of motor vehicles stopped at street intersections requires STAYSAFE to review the perspectives of the Roads and Traffic Authority, who administer the Traffic Act 1909, and the New South Wales Police Service, who enforce the relevant sections of the Traffic Act 1909.

2.2 STAYSAFE also recognises that both the behaviour of the person seeking to wash the windscreen and the behaviour of the driver of the motor vehicle need to be examined.

2.3 Finally, STAYSAFE recognises that any recommended actions regarding the road safety problems posed by persons who wash windscreens of motor vehicles stopped at street intersections must be proposed in the context of the wider arena of reasonable and lawful pedestrian movement on or alongside roadways. That is, it seems that there are fundamental issues associated with access, freedom of movement, and amenity which must be considered in light of recommended action concerning what is a small and specific road safety issue.

The suitability of allowing persons to wash motor vehicle windscreens while the vehicles are stopped on the roadway

2.4 Witnesses who appeared before STAYSAFE believed that allowing persons to move or stand on or along the roadway in order to wash windscreens, to sell goods such as newspapers or flowers, or to collect charity money, created a dangerous situation which, at a

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minimum, provided a distraction to road users and was a nuisance, and at the extreme, provided for a situation of real danger to persons carrying out these activities.

2.5 Inspector Lester commented:

"We consider it is a danger to not only themselves but also to other motorists, and it creates a nuisance Generally, the nature of the complaints are delays caused to traffic whilst these people are washing windscreens or doing whatever they do, the danger caused to the individuals, and the fact that the activity does distract the attention of drivers in the vicinity. Quite a few motorists have indicated that they have been intimidated by the activities of windscreen washers or the charity collectors and various others involved in commercial activities being carried out at intersections." (see Appendix A, p.42)

2.6 However, there is an alternative view that there are some benefits in allowing persons to do such activities on or alongside the roadway.

2.7 For example, Mr Loveridge (Submission PED 300) claimed that when travelling around the city vehicle windscreens become dirty with particulate matter and aerosols from vehicle engines and from the roadway. Driving in the late afternoon, when the sun is low, a driver's ability to see through the windscreen becomes a safety issue if the windscreen is smeared. While it is the onus on the driver to ensure that the windscreen is clean, children cleaning the windscreen do provide a good, accessible service to drivers. Mr Loveridge did not believe that children washing windscreens are in any danger, provided that they use their common sense--and wait for the traffic stop before stepping out onto the roadway, and made sure they are quick to get back onto the roadside when the traffic signals change to allow vehicles to move away.

The nub of the argument

2.8 The nub of the argument over children and adults washing motor vehicle windscreens rests on the differing views of the Roads and Traffic Authority, which is the agency responsible for the Traffic Act 1909 and associated statutory rules, and the New South Wales Police Service, which is the agency with the particular responsibility for enforcing the provisions of the Traffic Act 1909 and associated statutory rules regarding pedestrian and general traffic movements.

2.9 In short, the Roads and Traffic Authority holds that the existing legislation allows police to deal effectively with persons seeking to wash motor vehicle windscreens while the

vehicles are stopped on the roadway; the New South Wales Police Service holds that police cannot, in any realistic or reasonable fashion, do so under the current legislation.

2.10 Witnesses representing the Roads and Traffic Authority stated that:

Mr REECE: "... There is no specific law about the carrying on of business, but there are specific laws about the duties and behaviour of people upon roadways, and they are covered under the general pedestrian laws. In this view we have often been at odds with the Police Service; it is my view that the existing pedestrian traffic law is adequate. If persons are walking directly across the road, or do not obey certain rules, they ought not to be on the road and they are guilty. And the police, if they have the resources, could breach them now.

I would also say there are provisions by which the police may direct a person to move from a road if the person is being unreasonable or is in an unsafe position. Those powers currently exist. There are infringement notices that exist for them also. The police, I understand, do not choose to use those. That is something they will have to answer for you. I am not sure what the position is there. But I believe there are existing laws to breach those persons now.

Also, there are powers under the Traffic Act. If the police see a motorist pulling up to buy something off these people, they could direct that person to move on. If the police made that direction and the motorist was to be disobedient, then they are subject to summons and possible fines which incur a maximum penalty of \$2,000. That already exists in the law now. That is under Motor Traffic Regulation No. 59." (see Appendix A, p.50)

2.11 Under questioning from Mr Harrison MP, representatives of the New South Wales Police Service clearly articulated the difficulty faced by police:

Mr HARRISON (STAYSAFE): "Are the General Traffic (Pedestrian) Regulations 1916, which provide for the behaviour of pedestrians on public streets, appropriate and sufficient for the control of children and adults washing windscreens at intersections and at the roadside?"

Inspector LESTER: "I might ask Sergeant Duncan to respond to this."

Senior Sergeant DUNCAN: "I would not have thought so. There is nothing specific in the regulations which prohibits the washing of windscreens and that sort of activity. Clause 7(1)(a) says that a person cannot obstruct, hinder or prevent the free passage of any person or vehicle, but in my opinion for an offence to be committed under that clause police would actually have to see an obstruction, hindrance or prevention of the free passage of persons or traffic. There is, in my opinion, nothing that would allow police to stop people washing windscreens on the off chance there might be an obstruction."

Mr HARRISON (STAYSAFE): "Are the General Traffic (Pedestrian) Regulations 1916 appropriate and sufficient for the control of other roadside and roadway commercial activities, including the selling of newspapers, flowers, etc., and the collection of charity moneys?"

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Senior Sergeant DUNCAN: "Again I would answer in much the same way. The same clause, 7(1)(h), says that you cannot sell, offer for sale, solicit wares and merchandise in such a way as to cause inconvenience or obstruction to any person. So, if an inconvenience or an obstruction was caused, yes, the regulations are sufficient. But, in the absence of proof of that, no, they are not." (see Appendix A, pp.43-44)

2.12 As it currently stands, it appears that a police officer must observe and document an actual obstruction or hindrance of traffic before any action can be taken against a person seeking to wash motor vehicle windscreens.

2.13 STAYSAFE has concluded that the most appropriate resolution of this issue rests on providing a legislative basis to support the opinion of the police officer at the scene that the potential for some danger, obstruction or impedance exists, taking into account all of the relevant factors that may give rise to a situation of danger of injury, or a situation where the movement of vehicles and other road users may be jeopardised.

2.14 STAYSAFE therefore recommends that the Minister for Roads should amend the Traffic Act 1909, or any statutory instrument made under the Act, to prohibit any person on the roadway who, in the course of offering for sale any goods or service or in the pursuit of any business, calling or employment for reward or otherwise, impedes or interferes, or is likely to impede or interfere, with the progress or convenience of others. Obviously, with such a general sanction, there needs to be provision for exemption in order to enable police officers, members of the emergency services, or other such persons as may be permitted by the relevant authority or the Minister, to conduct of their duties lawfully.

RECOMMENDATION 1: The Minister for Roads amend the Traffic Act 1909, or any statutory instrument made under the Act, to:

(i) prohibit any person on the roadway who:

(a) in the course of offering for sale any goods or service, or

(b) in the pursuit of any business, calling or employment for reward or otherwise,

impedes or interferes, or is likely to impede or interfere, with the progress or convenience of others;

(ii) this provision is not to apply to a police officer, member of the emergency services, or any other person as designated by an authority or Minister responsible for managing the road, for their actions in the lawful conduct of their duties.

It takes two to tango

2.15 Of course, the conduct of itinerant commercial activities such as washing vehicle windscreens, selling goods such as newspapers or flowers, or collecting charity money, while on or alongside the roadway requires the participation of motorists or their passengers.

2.16 The New South Wales Police requested STAYSAFE to consider whether there was a need to introduce a specific offence for motorists who allowed, or encouraged, dangerous behaviour by persons seeking to wash windscreens, to sell goods such as newspapers or flowers, or to collect charity money, etc..

2.17 STAYSAFE does not believe that there is a need for a specific offence related to the motorists who requests or permits pedestrians to engage in itinerant commercial activities. Ultimately, the decision to engage in the pursuit of itinerant commercial activities rests with the pedestrian. It is the individual choice of each person to travel to an intersection or other section of roadway with a mop and bucket, or a bundle of newspapers or pamphlets, or with a collection tin, and to enter onto the roadway to pursue a particular interest or objective, usually for monetary gain.

2.18 STAYSAFE also recognises that the behaviour of persons seeking to clean the windscreens of motor vehicles may be upsetting or threatening to drivers, and notes that there have been reported instances of such persons attacking and damaging a driver's vehicle if the driver declines or refuses to pay for the cleaning service.

2.19 However, STAYSAFE does believe it is reasonable for police to caution motorists who allow or encourage such activities in circumstances where, in the opinion of the police, a situation of some danger or a situation of impedance or interference exists, or can be reasonably expected to be caused, through the actions of persons seeking to conduct itinerant commercial activities on or alongside the roadway. Put simply, STAYSAFE is suggesting that **the** duty of care owed by a motorist to a pedestrian can be reasonably expected to extend to forewarning or forestalling behaviour which might result in some danger of injury to **the** pedestrian, or some impedance or interference to the surrounding traffic, if permitted or encouraged by the motorist.

2.20 STAYSAFE believes that in such circumstances it is appropriate for police who observe such behaviour by a motorist, or a passenger in a vehicle being driven by a motorist, to caution the motorist.

RECOMMENDATION 2: The Commissioner of Police, after consultation with the Minister for Police, issue an instruction to police officers to caution motorists who request or permit a person to:

(a) offer for sale any goods or service, or

(b) pursue any business, calling or employment for reward or otherwise,

that impedes or interferes, or is likely to impede or interfere, with the progress or convenience of others.

2.21 In extreme situations where a motorist actually obstructs or hinders other road users, then police already have the provisions of the General Traffic Regulations 1916 and the Motor Traffic Regulations 1935 to take action against the motorist.

2.22 For example, Section 1 IA, Clause 8C of the General Traffic Regulations 1916 relating to vehicle standing restrictions states that a person shall not cause or permit any vehicle to stand in such a position as to obstruct traffic or unreasonably cause inconvenience to any person. Also, Section 4, Clause 1 of the same regulation, which relates to obstruction by motor vehicles, may be applicable. This section provides that the driver of a vehicle upon a public street shall not negligently or wilfully obstruct, hinder or prevent the free passage of any person.

2.23 As well, if a police officer sees a motorist pulling up to buy something off an itinerant vendor, charity collector, etc., the police officer can direct that motorist to move on. If a police officer makes such a direction and the motorist disobeys, then the motorist can be summonsed, and possibly fined by a magistrate to a maximum penalty of \$2,000 under Motor Traffic Regulation 1935 Clause 59.

The development of Australian Road Rules to provide for uniform road traffic law

2.24 One of the most road safety significant activities under way in Australia currently is the project to reform road transport operations across all Australian jurisdictions.

2.25 The impetus to reform of Australia's land transport systems began with a Heads of Government Agreement in 1990-91 to facilitate the Commonwealth Government's objectives for micro-economic reform across all sectors of the Australian economy. A National Roads Transport Commission was established to carry out the process. As envisaged by the Heads of Government Agreement and subsequent legislation, the National Roads Transport Commission is responsible for developing draft legislation for road transport which it submits to a Ministerial Council of Transport Ministers from each Australian jurisdiction to be adopted nationally.

2.26 Currently, one project of the National Road Transport Commission is the development of uniform traffic law--the Australian Road Rules (Austroads, 1994a). An important part of the justification for nationally uniform road rules is safety:

"The major benefit is expected to be a lower level of road accidents. There are basically three reasons for this.

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1. A number of the changes are expected to reduce accident incidence or severity in some or all States and Territories. Examples are putting the onus on pedestrians to find a safe gap between cars, requiring horse riders to wear helmets, allowing bicyclists to ride on footpaths, and removing exemptions for helmet wearing for bicyclists and motorcyclists.

2. A number of other changes will facilitate deterrence, reducing the incidence of unsafe behaviour. Examples are the requirement to carry a licence at all times, and to obtain a permit to conduct a wider range of on-road events.

3. Because the Regulations will be simpler to understand, it is expected that the general knowledge of their provisions will be higher, and the level of compliance better. This should result in fewer accidents." (Austroads, 1994b, p.39)

2.27 There are a number of areas where road safety issues are significant and there is no general agreement at this stage between the States. For example, New South Wales has special speed limits, requiring 80 km/h for learner and provisional licences, 90 km/h for trucks and buses (except where a speed limiter is in use), and 80 km/h for light vehicles carrying caravans (see also STAYSAFE 22, 1992, Recommendation 19). However, the draft Australian road rules do not include special speed limits

2.28 There are a number of other areas where what is current in New South Wales is proposed to be different under the draft Australian road rules. STAYSAFE was particularly interested in the draft Australian Road Rules provisions for pedestrians. STAYSAFE questioned police witnesses on this issue:

Mr HARRISON (STAYSAFE): Are the draft provisions of the Australian Road Rules, which are under development currently, sufficient to control children and adults washing windscreens at intersections and at the roadside, and to control other roadside and roadway commercial activities, including the selling of newspapers, flowers, etc., and the collection of charity moneys?

Inspector LESTER: I have a copy of the current draft, which I believe will be redrafted within the next 10 days. We have concerns in the same respects about the Australian Road Rules. We do not think that the new legislation, if adopted, will cover the situation. So we are in much the same situation whether under the new legislation or old legislation, which is a little unfortunate.

We go further than that. We are concerned that under 14(2) of the new legislation, the Australian Road Rules, it simply says that as a pedestrian you must not put yourself or anyone else in danger by moving into the path of an oncoming vehicle. That could mean--and this is our proposition so far--is that we will have difficulty convicting any person driving a motor car if they happen to hit a pedestrian "(see Appendix A, p.44)

2.29 The Roads and Traffic Authority indicated that Part 19 of the draft Australian Road Rules also was the subject of concern. Part 19 refers to processions, races, collections, sales

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and other events on roads. Mr Harrison MP questioned Mr Reece, representing the Roads and Traffic Authority, on this issue:

Mr HARRISON (STAYSAFE): Are the draft provisions of the Australia Road Rules, which are under development currently, sufficient to control children and adults washing windscreens at intersections and at the roadside, and to control other roadside and roadway commercial activities, including the selling of newspapers, flowers, etc., and the collection of charity moneys?

Mr REECE: There was a provision that was under Part 19 of the Australian Road Rules.

Mr HARRISON (STAYSAFE): Is this the draft rule?

Mr REECE: I am referring to the Australian Road Rules. I was advised by the chief executive of the Road Transport Commission as late as last week that we should have a fresh draft out for consideration within the next two weeks. That is the latest advice we have got. There was a provision in there, which was Part 19, which dealt with processions, races, collections, sales and other events on the road. That has been dropped. There were objections from the New South Wales Attorney General, and particularly from all other Attorneys General throughout Australia, with the result that they have dropped that and left it in the province of New South Wales or wherever the jurisdictional law is. That whole compartment has been dropped.

That provision was dropped on the basis of the view held by our Attorney General, and shared by others, that these matters raised broader issues of public policy, civil liberties, and should be given careful consideration before being included in any law. So the National Road Transport Commission chose to delete this from their area of reference. So it has been left solely to each jurisdiction to determine what they will do. There were particular objections raised that stemmed from the introduction by Joh Bjelke-Petersen some years ago about controlling the activities on public streets when it related to the Queensland electricity strikes. I think a lot of the objections from Attorneys [General] and civil libertarians stem back to those sorts of days--that people have a right at common law to travel on a public street unless they are doing something wrong or they are at risk or are putting others at risk. (see Appendix A, pp.52-53)

2.30 The Roads and Traffic Authority witnesses Tabled, as an example, a letter from the Director General of the Attorney General's Department to the Roads and Traffic Authority's National Policy Co-ordinator which raised concerns with the provisions of Part 19 of the draft Australian Road Rules. The Director General commented:

".... Generally the Rules appear to raise policy issues that are primarily concerned with road safety and as such do not warrant comment by this Department. However, a number of matters contained within the proposed Rules appear to have wider implications. For example, proposed Clause 19.1 requires that permit be obtained for the conduct of all processions, races and other road events involving vehicles or pedestrians. Clauses 19.2-19.4 prohibit the use of roads to buy or sell goods and services; conduct charitable collections or for the purpose of hitch-hiking.

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These matters raise broader issues of public policy and civil liberties and should be given careful consideration before being included in the proposed Rules."

2.31 STAYSAFE has been mindful of these more general concerns in the deliberations of the issues regarding persons washing windscreens at street intersections.

Moving or standing on or alongside the roadway in conduct itinerant commercial transactions

2.32 Specific actions recommended to address the problems, or potential problems, associated with persons seeking to wash motor vehicle windscreens while the vehicles are stopped on the roadway must be taken against a background of an array of commercial activities which may occur on or alongside a roadway. In fact, it seems that there is a continuum of activities, extending from itinerant commercial activities such as washing motor vehicle windscreens or other, similar activities (e.g., selling goods such as flowers or newspapers from the roadside or median strip, which can involve stepping into lines of stopped traffic to effect a sale) or collecting charity monies at street intersections. Other commercial activities may be more stable in location, for example, selling flowers or other farm produce from roadside stalls. Finally, at the other end of the continuum, there are such 'fixed' commercial activities such as the provision of footpath dining facilities (e.g., as effected within the traffic management plan of Parramatta City Council).

2.33 The Roads and Traffic Authority witnesses addressed these differing activities and the management of the demands they placed on the operation of a road system:

Mr FORD: "On heavily trafficked roads or at intersections which are heavily trafficked, it is clearly not prudent for people to stand adjacent or on the carriageway for those purposes. In fact, in some instances it is really quite dangerous. However, on other roads--lightly trafficked roads or roads where lay-bys can be provided adjacent to the traffic stream--that practice can be safely conducted. I can cite quite a few examples of this.

In other instances--where we have local roads where the nature of the activity is fairly intense--again it is more prudent to close the road for the purpose of a street festival or street carnival, etc.. So there are a variety of situations where it can be managed, and managed quite safely but, equally, where it is potentially quite dangerous

We have produced some guidelines for the control and operation of street vending. Those guidelines do in fact cover the area I have just mentioned. Over the years we have had a number of concerns expressed to the former Traffic Authority [of New South Wales] and now to the Roads and Traffic Authority about these practices. By and large, we would actively dissuade that

type of practice where it is unprotected on a heavily trafficked road. But, where it can be accommodated adjacent to the road--in, say, a lay-by-- or can be formalised within the road with correct traffic management and traffic devices, and signposted, it can be safely managed. But, again, we would work in concert with local government and police to make sure that was the case. In the main, however, in those situations, we would be strongly advocating that we close the road for that purpose." (See Appendix A, pp.47-48)

2.34 STAYSAFE noted that there are specific guidelines that were developed to manage roadside commercial activities, but that these guidelines need to be reviewed and updated as new problems emerge and as legislation is introduced or amended (e.g., Local Government Act 1993, Roads Act 1993, and more recently, the introduction of the Roads (Street Vending) Amendment Bill 1995).

2.35 Mr Ford, representing the Roads and Traffic Authority, commented:

Mr FORD: "... By and large, the activities that I have mentioned have been reasonably well managed, with the exception of the matter we are talking about today, and we have major concerns about this particular activity. The guidelines I have mentioned are under review again. They were originally put out in 1988, they were revised in 1993, and it is timely to re-address the guidelines specifically with this intent." (See Appendix A, pp.48-49)

2.36 STAYSAFE endorses the Roads and Traffic Authority initiative to review the existing guidelines for street vending, and suggests that the new guidelines should address the full spectrum of commercial activities that can exist on or alongside a roadway.

RECOMMENDATION 3: The Roads and Traffic Authority review the existing guidelines for street vending, including itinerant commercial activities on or alongside the roadway, and publish revised guidelines that incorporate legislative changes affecting the responsibilities of roads and local government authorities, and reflect the many different circumstances that may arise in pedestrian-vehicle interactions.

2.37 There is also the need to ensure that these guidelines are disseminated to local government, and to the agencies involved in these managing roadside commercial activities in a timely and effective manner.

Issues **associated with young children**

2.38 STAYSAFE examined the question of the effective dealing of children under 14 years of age who commit traffic offences. At the present time traffic infringement notices are issued to persons only above the age of 14 years. There is provision in the current law to prosecute

minors from the age of 10 years in respect of criminal offences, which, of course, include traffic offences. However, the current policy is not to issue infringement notices to those below 14 years of age. If required, action can be taken against children aged 10-14 years by summons.

2.39 STAYSAFE notes that the concept of official cautions has been suggested as a potentially useful additional enforcement tool for some offences. In fact, a previous Minister for Police and Emergency Services under the Fahey Coalition Government went some way to developing an options paper proposing the introduction of a cautioning system for certain offences, including traffic offences and what can be loosely termed 'street offences'. The concept relies on the caution being officially recorded, so that future, repeated offences of the same nature can attract appropriate penalties.

2.40 Mr Ford, representing the Roads and Traffic Authority, indicated that in specific circumstances police officers were using a system similar to a general official cautioning system:

Mr FORD: "By way of example, we have been, with the Police Service, running a number of campaigns in the central business district of North Sydney with respect to inappropriate pedestrian behaviour when crossing roads--jaywalking, for example. The process we have used in each case, with the Police Service, is to issue a caution, enforce the caution at a subsequent date, and then record the caution. So this practice is actually at hand." (see Appendix A, p.58)

2.41 STAYSAFE notes that there is already a general provision within the law for police to issue unrecorded cautions.

2.42 STAYSAFE has not draw any specific conclusions regarding the introduction of an general official cautioning system for traffic offences, although clearly the concept is supported. STAYSAFE notes that the detailed examination of the desirability of the introduction of an general official cautioning system for traffic offences is a head of inquiry for the STAYSAFE inquiry into the proposed introduction of 50 km/h local road speed limits in residential areas of New South Wales.

2.43 STAYSAFE considers that if the recommendations suggested earlier are accepted, the problems posed by persons--including young children--will decline, and are likely to disappear except in isolated instances. However, there may be a need to develop an education strategy to alert persons who already engage in washing windscreens of changes in the law. STAYSAFE considers that the use of cautions in this context would be appropriate.

2.44 STAYSAFE also considers that there should, in cases where a young child continues to engage in this activity after caution, be provision for some form of "follow-up" caution to be issued to the parents of the child. STAYSAFE considers that the parents or guardians have to take some responsibility for what their child is doing, especially where they are putting

themselves and others in danger?

2.45 Finally, STAYSAFE notes the following discussion between the Chairman and Mr Ford:

Mr GIBSON (CHAIRMAN): "Mr Ford, should the Roads and Traffic Authority try to target specific school populations regarding this problem of windscreen washing and selling on the sides of roads and so on?"

Mr FORD: "Mr Chairman, that is a very good suggestion. In fact, we have a vehicle through the schools, both the Police Service and the Roads and Traffic Authority, and I will take that up." (see Appendix A, p.59)

ISSUES

SUMMARY REMARKS

The implications for public safety and efficient traffic movement - Is the current legislation is adequate ? - What enforcement activity should be taken? - What are the responsibilities of drivers of motor vehicle? - Should a specific offence should be created to target the driver? - Towards the development of uniform traffic law in Australia

3.1 As a result of its inquiries, STAYSAFE is now in a position to reply to the terms of reference established for the Ministerial Reference to investigate and report on the question of the safety of persons washing windscreen.

The implications for public safety and efficient traffic movement

3.2 STAYSAFE expresses its strong concern for public safety and efficient traffic movement if persons are permitted to wash the windscreens of motor vehicles, sell newspapers, collect monies for charities or similar activities on carriageways of public streets. STAYSAFE accepts evidence presented during the inquiry that such activities are potentially dangerous and interfere with the safe and efficient movement of traffic. Further, STAYSAFE believes that persons seeking to wash the windscreens of vehicles stopped at street intersections or engage in other similar activities are placing themselves in a situation of potential, and often real, danger. STAYSAFE is particularly concerned that young children and teenagers are engaging in these activities. STAYSAFE does not accept evidence presented during the inquiry that these activities provide a necessary, or even useful, social function.

Is the current legislation adequate?

3.3 STAYSAFE has found, on the materials presented for its consideration, that the current legislation is not adequate to address the problems associated with permitting persons to wash the windscreens of motor vehicles, sell newspapers, collect monies for charities or similar activities on carriageways of public streets. Therefore, additional legislation is required to control the activities of persons who engage in itinerant commercial activities on or alongside the carriageway of public streets.

What enforcement activity should be taken?

SUMMARY REMARKS

3.4 STAYSAFE believes that police enforcement activity should be taken against persons who engage in itinerant commercial activities on or alongside the carriageway of public streets. In some circumstances, such as the sale of fruit and vegetable produce or the sale of flowers, the power of the roads authority or of local government authorities to permit such activities under safe conditions should be maintained. However, children and juveniles should not be permitted to engage in these activities.

3.5 STAYSAFE believes that the specific activity of children or adults washing vehicle windscreens while traffic is stopped at intersections is undesirable, and any observance of such conduct should be followed by immediate police intervention.

What are the responsibilities of drivers of motor vehicle?

3.6 STAYSAFE believes that, in general, the responsibilities of drivers of motor vehicles under existing legislation in respect of permitting persons to wash the windscreens of motor vehicles, sell newspapers, collect monies for charities or similar activities on carriageways of public streets should remain unchanged. However, STAYSAFE recognises that drivers or passengers of vehicles may permit or encourage such activities in situations where some danger is likely to exist for road users, and in particular, some likelihood of danger to the person(s) seeking to perform the activities.

Should a specific offence should be created to target the driver?

3.7 STAYSAFE has concluded, based on the evidence presented during the inquiry, that it is not necessary to introduce a specific offence whereby the driver of a motor vehicle being driven on a public street is guilty of an offence if the driver or a passenger being conveyed in the vehicle request or permit persons to engage in transactions associated with itinerant commercial activities on or alongside the carriageway of public streets.

SUMMARY REMARKS

REFERENCES

Austroads (1994a). Proposed Australian Road Rules. Melbourne, Vic.' National Road Transport Commission

Austroads (1994b). Proposed Australian Road Rules: Preliminary evaluation of impact. Melbourne, Vic.' National Road Transport Commission.

STAYSAFE 22 (1992). Towing caravans and trailers safely. Third report of the Joint Standing Committee of the 50th Parliament. Sydney, NSW: Parliament of New South Wales.

STAYSAFE 26 (1994). Pedestrian safety. I. School children around buses. Eighth report of the Joint Standing Committee of the 50th Parliament. Sydney, NSW: Parliament of New South Wales.

REFERENCES

APPENDIX A:

**TRANSCRIPT OF EVIDENCE RELATING TO THE
ACTIVITIES OF CHILDREN AND ADULTS
WASHING WINDSCREENS AT INTERSECTIONS AND
OTHER COMMERCIAL ROADSIDE AND ROADWAY
ACTIVITIES**

Evidence taken from the New South Wales Police Service..... p. 42
Evidence taken from the Roads and Traffic Authority..... p. 48
Evidence from Parramatta City Council.....p.60

Evidence taken from the New South Wales Police Service

Witnesses: Inspector Terry Lester (Traffic Services Branch), Senior Sergeant Ian Watson (Cumberland District Highway Patrol), and Senior Sergeant Ian Duncan (Office of the Police Solicitor)

Mr GIBSON (CHAIN): *Is it prudent to allow persons to move or stand on or along the roadway in order to wash windscreens, to sell goods such as newspapers or flowers, or to collect charity money?*

Inspector LESTER: No, I do not believe so, and neither does the Police Service. We consider it is a danger to not only themselves but also to other motorists, and it creates a nuisance.

Mr GIBSON (CHAIRMAN): *Has the New South Wales Police Service received letters from the public raising concerns about the activities of children and adults washing windscreens at intersections and at the roadside, or with any other roadside and roadway commercial activities, including the selling of newspapers, flowers, etc., and the collection of charity money?*

Inspector LESTER: Yes, we do receive complaints. I might ask Senior Sergeant Watson to respond to that.

Senior Sergeant WHATSON: As late as this morning I got a copy of a complaint received from a motorist in relation to this activity. I have also received numerous phone calls over a period of time in relation to this activity. People generally are quite peeved at the nuisance value of this thing and other aspects, such as the danger and distractions and so forth.

Inspector LESTER: Generally, the nature of the complaints are delays caused to traffic whilst these people are washing windscreens or doing whatever they do, the danger caused to the individuals, and the fact that the activity does distract the attention of drivers in the vicinity. Quite a few motorists have indicated that they have been intimidated by the activities of windscreen washers or the charity collectors and various others involved in commercial activities being carried out at intersections.

Mr GIBSON (CHAIRMAN): *Do you regard this as a really serious offence or potential offence?*

Inspector LESTER: It could be a serious offence, yes.

The Hon. J. S. TINGLE (STAYSAFE): *Have the police actually had the opportunity to see what is going on on the roads, and have you made any study of it? Often when I am going home from here along Sir John Young Crescent, in front of the Domain parking station, even on a winter night in the dark, I see children who look to be as young as eight running around in four lanes of moving traffic trying to clean windscreens. Have you actually had the chance to study this activity to actually form an opinion?*

Inspector LESTER: No. Unfortunately, we do not have a huge research budget. There is a lot of anecdotal evidence. We experience

the same sorts of experiences when we are in our private cars. It is not very often that we get the police car windscreen washed, I can tell you. But we have not carried out any definitive studies on the problem at all.

The Hon. J. S. TINGLE (STAYSAFE): *Is it your impression, though, as a police officer, that it is something that we should really be thinking about again?*

Inspector LESTER: Yes, it is time the whole subject was revisited, which is the object of the exercise today I guess.

Senior Sergeant WHATSON: If I could make a point there. The legislation in relation to pedestrian activity was drafted in 1916. Perhaps it needs to be reviewed.

Mr GIBSON (CHAIRMAN): *On 17 June 1994 a request was made that action should be taken on this very issue. My question is: Has there been any action taken on this issue?*

Inspector LESTER: I am sorry, sir. Are you talking about legislation?

Mr GIBSON (CHAIRMAN:): *I was trying to cut corners. I note that Senior Sergeant Whatson's memorandum about the problems posed by persons washing windscreens is dated 17 June 1994, and that the action officers named in the memorandum agreed that the issue should be discussed at a future date. I was wondering whether it has been discussed since 1994 and what action was suggested to be taken.*

Senior Sergeant WHATSON: It has not been discussed in official circles. It has been discussed through the media. I have had

several interviews on this matter. But, through our Traffic Services branch, we have made representations and so on. Nothing has ever got to this stage.

The Hon. A. B. MANSON (STAYSAFE): *Inspector Lester, what reports have been written, or research conducted, into itinerant commercial activities on or alongside the roadway, including washing windscreens, selling flowers or newspapers, and collecting money for charities? Are you able to direct the attention of the Committee to any relevant reports or research on those activities?*

Inspector LESTER: We do have a number of reports that were submitted to this Committee prior to putting in our submission. We do not have any research, as I have stated before, because we do not have much of a research budget. The Roads and Traffic Authority, whose officers are appearing later today, may be able to help on this issue.

Mr HARRISON (STAYSAFE): *Are the General Traffic (Pedestrian) Regulations 1937, which provide for the behaviour of pedestrians on public streets, appropriate and sufficient for the control of children and adults washing windscreens at intersections and at the roadside?*

Inspector LESTER: I might ask Sergeant Duncan to respond to this.

Senior Sergeant DUNCAN: I would not have thought so. There is nothing specific in the regulations which prohibits the washing of

windscreens and that sort of activity. Clause 7(1)(a) says that a person cannot obstruct, hinder or prevent the free passage of any

person or vehicle, but in my opinion for an offence to be committed under that clause. police would actually have to see an obstruction, hindrance or prevention of the free passage of persons or traffic. There is, in my opinion, nothing that would allow police to stop people washing windscreens on the off chance there might be an obstruction.

Mr HARRISON (STAYSAFE): *Are the General Traffic (Pedestrian) Regulations 1937 appropriate and sufficient for the control of other roadside and roadway mean commercial activities, including the selling of newspapers, flowers, etc., and the collection of charity moneys?*

Senior Sergeant DUNCAN: Again I would answer in much the same way. The same clause, 7(1)(h), says that you cannot sell, offer for sale, solicit wares and merchandise in such a way as to cause inconvenience or obstruction to any person. So, if an inconvenience or an obstruction was caused, yes, the regulations are sufficient. But, in the absence of proof of that, no, they are not.

Mr HARRISON (STAYSAFE): *Are the draft provisions of the Australian Road Rules, which are under development currently, sufficient to control children and adults washing windscreens at intersections and at the roadside, and to control other roadside and roadway commercial activities, including the selling of newspapers, flowers, etc., and the collection of charity moneys?*

Inspector LESTER: I have a copy of the age current draft, which I believe will be redrafted within the next 10 days. We have concerns in same respects about the Australian Road Rules. We do not think that the new

legislation, if adopted, will cover the situation. So we are in much the same situation whether under the new legislation or old legislation, which is a little unfortunate.

We go further than that. We are concerned that under 14(2) of the new legislation, the Australian Road Rules, it simply says that as a pedestrian you must not put yourself or anyone else in danger by moving into the path of an oncoming vehicle. That could

and this is our proposition so far--is that we will have difficulty convicting any person driving a motor car if they happen to hit a pedestrian. I know this has been of some concern to this STAYSAFE Committee. So we have a number of concerns. I would Table that, if I may.

Mr GIBSON (CHAIRMAN): *Inspector Lester, what would the Police Service like to see happen in this regard? Would you like us to aim any legislation at the children who are selling their services at intersections, or would you like us to aim it at the motorist?*

Inspector LESTER: We have a number of suggestions in that area. I might have Sergeant Watson address you on one or two of those suggestions.

Senior Sergeant WHATSON: I feel that it would perhaps be more practical to aim at the driver, considering the age of some of the people who conduct these activities; they can be as young as eight years of age. Of course, we have a policy that we do not issue infringement notices to children under the age of 14 years. We can still put them before the courts via a summons, however, it is a lengthy the process. We would be looking at something

like making it an offence for a motorist to offer moneys for the rendering of any of these services. On the other hand, you may well look at a specific offence for the person engaged in delivering the service.

Mr GIBSON (CHAIRMAN): *In what way could that action be taken? Would it be a citation against that street person?*

Senior Sergeant WHATSON: I would suggest a traffic infringement notice of some monetary value.

Mr GIBSON (CHAIRMAN): *What type of monetary value?*

Senior Sergeant WHATSON: Around the \$50 to \$70 mark.

Mr THOMPSON (STAYSAFE): *What are the responsibilities of drivers of motor vehicles under existing legislation regarding the activities of persons seeking to wash windscreens, to sell goods such as newspapers or flowers, or to collect charity moneys?*

Inspector LESTER: There is no legislation currently in place that regulates the drivers or passengers of motor vehicles purchasing these services or purchasing goods. It is part of the suggestion that we put up to the STAYSAFE Committee to consider whether or not the drivers or passengers should be targeted as the offending person, rather than the other way round. Mr Duncan might like to add to that.

Senior Sergeant DUNCAN: It is something similar to the actual person washing the

windscreen. Section 11A(8)(c) of the General Traffic Regulations 1916 states that a person shall not cause or permit any vehicle to stand in such a position as to obstruct traffic or unreasonably cause inconvenience to any person. So there could be circumstances where that regulation may be applicable, but it is not certainly not a specific offence to deal with persons undertaking these activities. Also, section 4(1) of the same regulation may be applicable. It says that the driver of a vehicle upon a public street shall not negligently or wilfully obstruct, hinder or prevent the free passage of any person. So, again, that is a general regulation that may have application, but it is not a specific offence to respond to those activities.

Mr GIBSON (CHAIRMAN): *Has anybody ever been booked for this practice under the law as it stands at the moment?*

Senior Sergeant DUNCAN: I am afraid I do not know, and therefore I cannot comment.

Mr GIBSON (CHAIRMAN): *If nobody has been booked, why have they not been booked?*

Senior Sergeant DUNCAN: Again, I could not say. It may be because no actual obstruction or hindrance has been observed. There may have been a potential obstruction or hindrance, but not an actual obstruction or hindrance. But that is only supposition.

Senior Sergeant WHATSON: I might be able to provide some comment on that. Once again, as I indicated in my earlier submission, the legislation is quite cumbersome in that we would really need to have somebody there

watching and waiting, and it would be done by uniform police. And, if you task an officer to observe this type of activity, it is highly unlikely that the people would offend by causing obstruction. There is other legislation under which we may well give a reasonable direction, but they might move on and we move on, and then they are back there in half an hour. The problem is that we need to observe an activity and go and issue a traffic infringement notice, and then we are out of there. That would be a deterrent. This is what we really are suggesting.

Mr GIBSON (CHAIRMAN): *Do you find it happens more in school holidays ?*

Senior Sergeant WHATSON: It does. But it happens all year round. I have done a little research through the Sydney metropolitan area. In the eastern suburbs it is fairly prevalent. Taylor Square is another place where it is prevalent. The worst part about this activity is that it usually occurs at very busy intersections, where there are bad traffic accident histories. This is the part that is worrying to us.

Mr THOMPSON (STAYSAFE): The Committee is drafting its report on general issues associated with child pedestrian safety. I think Senior Sergeant Whatson touched on this matter earlier, and perhaps he might expand on his answer. With regard to children under the age of 14 years, how best should we deal with children committing pedestrian offences? I note that at present traffic infringement notices are only issued to persons of or above the age of 14 years. Should we be thinking about some form of official cautioning system for traffic

offences generally, under which children can be cautioned if they commit a pedestrian offence?

Senior Sergeant WHATSON: My personal opinion is that if there is no monetary fine attached, the sting is not there. I really think, to be honest with you, that the cautioning system would have very little impact. I believe that there should be monetary fines attached, although I do not believe that children under the age of 14 years should be issued with traffic infringement notices. However, as I said before, they can still be summonsed and put before the courts where they are under the age of 14 years. I really do not think a cautioning system would have the desired effect.

(Their evidence completed, the witnesses representing the New South Wales Police Service were excused)

Evidence taken from the Roads and Traffic Authority

Witnesses: Mr Chris Ford (Road Safety and Traffic Management Directorate), Mr Bob Reece (National Policy Co-ordinators Unit, Driver and Vehicle Policy and Regulation Directorate), and Mr Sam Swaminathan (Road Safety and Traffic Management Directorate).

Mr GIBSON (CHAIRMAN): *Is it prudent to allow persons to move or stand on or along the roadway in order to wash windscreens, to sell goods such as newspapers or flowers, or to collect charity moneys?*

Mr FORD: On heavily trafficked roads or at intersections which are heavily trafficked, it is clearly not prudent for people to stand adjacent or on the carriageway for those purposes. In fact, in some instances it is really quite dangerous. However, on other roads - lightly trafficked roads or roads where lay-bys can be provided adjacent to the traffic stream - that practice can be safely conducted. I can cite quite a few examples of this.

In other instances--where we have local roads where the nature of the activity is fairly intense--again it is more prudent to close the road for the purpose of a street festival or street carnival, etc.. So there are a variety of situations where it can be managed, and managed quite safely but, equally, where it is potentially quite dangerous.

Mr GIBSON (CHAIRMAN): *Would you not be giving two messages to the public to say: It is all right to do it on some roads but it is not okay to do it on other roads?*

Mr FORD: We have produced some

guidelines for the control and operation of street vending. Those guidelines do in fact cover the area I have just mentioned. Over the years we have had a number of concerns expressed to the former Traffic Authority and now to the Roads and Traffic Authority about these practices. By and large, we would actively dissuade that type of practice where it is unprotected on a heavily trafficked road. But, where it can be accommodated adjacent to the road--in, say, a lay-by--or can be formalised within the road with correct traffic management and traffic devices, and signposted, it can be safely managed. But, again, we would work in concert with local government and police to make sure that was the case. In the main, however, in those situations, we would be strongly advocating that we close the road for that purpose.

The Hon. J. H. JOBLING (STAYSAFE): *I have observed a great deal of public concern and media reporting regarding the matter of adults, and particularly children, washing windscreens at intersections. Can you give more detail of what the Roads and Traffic Authority has received by way of letters from the public, specifically relating to concerns about children and adults washing windscreens at intersections and at the roadside? Could you broaden the question further, to other commercial and roadside activities, including the selling of*

newspapers, flowers and the collection of charity moneys?

Mr FORD: We have received various correspondence on this matter over the years, both in relation to the specific activity of washing windscreens as well as a variety of other activities, from charity collections, touting, selling flowers by the side of the road and so on. I have a sample or selection of that sort of correspondence that I would like to make available, together with the response in each case that we have made at the time. Generally, in terms of the activities we have mentioned, we reference our guidelines, but in most cases we would not favour the activity. We have indicated that quite clearly.

Mr GIBSON (CHAIRMAN): *This problem has been around for a long time. Why has it not been resolved before today?*

Mr FORD: As I say, Mr Chairman, we have produced guidelines. Those guidelines have been largely disseminated to local government, to the agencies involved in these activities, as well as to our colleagues in the Police Service. By and large, the activities that I have mentioned have been reasonably well managed, with the exception of the matter we are talking about today, and we have major concerns about this particular activity. The guidelines I have mentioned are under review again. They were originally put out in 1988, they were revised in 1993, and it is timely to re-address the guidelines specifically with this intent.

The Hon. J. S. TINGLE (STAYSAFE): *Mr Ford, I ask this question quite sincerely because I do not know the answer. Is there*

not a law against trading on a public road in New South Wales - using it as a place of trade? I am not asking you to be expert on the law, but I think it is generally accepted that you are not supposed to trade on a public road.

Mr FORD: I might ask my legal colleague to answer.

Mr REECE: There are provisions under section 68 of the Local Government Act whereby you are required to have a licence or permission from local government to conduct business from a motor vehicle, but there is no specific law preventing that practice.

The Hon. J. S. TINGLE (STAYSAFE): *So the flower sellers by the side of the road and windscreen washers are not breaking any specific law?*

Mr REECE: No. Within a public street, which the road transport law in New South Wales currently covers, it is openly encouraged, particularly in Sydney, with public street vending, such as in Martin Plaza, Pitt Street Mall and various kerbs where there are street barrows and various activities like that occur. It has been the practice for many, many years.

The Hon. J. S. TINGLE (STAYSAFE): *But they are purpose-organised areas, are they not? It is advertised that that is the sort of place where people are licensed to have barrows and stalls. I think that is a bit different to a bunch of kids with buckets of dirty water and squeegees working on the road.*

Mr REECE: Yes, I agree.

The Hon. J. S. TINGLE (STAYSAFE): I come back, then, to Mr Ford's suggestion that maybe this activity could be organised in lay-bys. Could we really allow it in some areas and not in others? Human nature being what it is, if somebody sees someone in a lay-by washing a windscreen, they will think, "It is okay for me to do it at the next set of traffic lights", surely. We either ban it altogether or we allow it.

Mr FORD: We had exactly the same dilemma with the flower vendors. There was a proliferation at one stage of flower vendors on the streets and at intersections, causing very much the same sort of concerns being caused by the windscreen washers. That activity is licensed by local government, and within the guidelines that we have put out. So, if the activity can be accommodated safely--and I could nominate two areas, and only two, that come to mind readily where it can be--then it can be licensed and enforced accordingly.

The Hon. J. S. TINGLE (STAYSAFE): say "licensed". I think that is the control of other roadside and roadway mean important point.

I am talking about the licences issued by local government. That has worked reasonably well. But, let me add, if I may, that we would actively discourage the proliferation of it and use any powers that we have, in concert with police and local government, to make that work.

The Hon. J. H. JOBLING (STAYSAFE): Mr Chairman, I would like to check whether

I understand Mr Ford correctly. Are you saying that at this stage there are laws that prevent somebody doing this. Therefore, could not the absurd situation arise where you could have somebody in the centre of the road selling flowers, or selling fish, or selling anything? You are saying to me that there is no law to prevent that, outside local government licensing those activities via by-laws?

Mr FORD: No.

Mr REECE: If I could answer this. There is no specific law about the carrying on of business, but there are specific laws about the duties and behaviour of people upon roadways, and they are covered under the general pedestrian laws. In this view we have often been at odds with the Police Service; it is my view that the existing pedestrian traffic law is adequate. If persons are walking directly across the road, or do not obey certain rules, they ought not to be on the road and they are guilty. And the police, if they have the resources, could breach them now. I would also say there are provisions by which the police may direct a person to move from a road if the person is being unreasonable or is in an unsafe position. Those powers currently exist. There are infringement notices that exist for them also. The police, I understand do not choose to use those. That is something they will have to answer for you. I am not sure what the position is there But I believe there are existing laws to breach those persons now Also, there are powers under the Traffic Act. If the police see a motorist pulling up to buy something off these people, they could direct that person to move on. If the police made that direction and the motorist was to be

disobedient, then they are subject to summons and possible fines which incur a maximum penalty of \$2,000. That already exists in the law now. That is under Motor Traffic Regulation No. 59.

Mr GIBSON (CHAIRMAN): *Has anyone ever been booked under that section? Is there any case law to back up that statement?*

Mr REECE: We are not the enforcement agency. I am unaware of that.

The Hon. J. H. JOBLING (STAYSAFE): *I suspect there is a distinct difference of views between the Roads and Traffic Authority and the Police Service. Have you actually sat down with the Police Service, discussed this, and come to a conclusion as to how to resolve it?*

Mr REECE: I have responded to both Mr Pickering and Mr Griffiths when they were police ministers at the time with this same view. If members could be provided with a copy of a document that I thought was already provided with one of the responses that Mr Ford has given you. There are provisions under Regulations 5 and 7, particularly, that are quite explicit as to the duties and powers of police.

The Hon. J. H. JOBLING (STAYSAFE): *Why do they not work then?*

Mr REECE: The police are not enforcing the regulations.

The Hon. J. H. JOBLING (STAYSAFE): *So you blame them entirely for the failure?*

Mr REECE: No. I would say it is not a specific offence, as the police would argue; that they would like to have a clear-cut specific offence to provide that if you are selling or doing something on a roadway then you are guilty of an offence, full stop, without the need for evidentiary proof. These current provisions in the law have certain regimes in which people have a common law right to travel on public streets, and if they are behaving within those rules then they are entitled to do as they will.

The Hon. J. H. JOBLING (STAYSAFE): *I am sorry, but I must say, Mr Chairman, that it seems both sides have dug themselves into their views rather than be willing to find an answer to it. You are saying, Mr Reece, that it is basically a police matter, and people can travel on the road if they are doing the right thing. This completely avoids the question of addressing the windscreen washers of motor vehicles at intersections. Take the intersection at City Road and Parramatta Road: it is quite busy there, and there are many of these intersections. If they can be there and the police are not booking them or charging them with an offence, then somebody could set up something else there.*

Mr REECE: I am putting forward the view that those people in doing that are committing an offence now.

The Hon. J. S. TINGLE (STAYSAFE): *But they are not being booked?*

Mr REECE: They are not being booked.

The Hon. J. H. JOBLING (STAYSAFE): *Do you have any specific correspondence*

that you can show us to indicate that you have actually raised this matter with the police in discussions and that you have sought an answer?

Mr FORD: Yes. In the information I have just tabled there are a number of referrals to the Police Service. In one of those referrals under the previous Minister for Transport we asked the police to identify to us exactly where their concerns are with the existing laws. In other words, we have invited the Police Service to come back and identify to us exactly where they want the changes.

The Hon. J. H. JOBLING: (STAYSAFE)
How long ago was that, approximately?

Mr REECE: October 1994.

The Hon. J. H. JOBLING (STAYSAFE):
So it is a reasonably slow response you are getting?

Mr REECE: Yes.

Mr GIBSON (CHAIRMAN): *From some of the material you tabled I note that section 8(23) of the old Police Offences Act, which was created in 1901--which has since been repealed--straight out prohibited the cleaning of any vehicle in any street or public place. What you are saying is that we should have something to that effect written back into the law now?*

Mr REECE: No, I am not saying that at all. If we are talking about controlling windscreen washers and flower sellers, the power is there under the law. How it is to be applied is a matter for the police.

Mr MILLS (STAYSAFE): *My question concerns the General Traffic (Pedestrian) Regulations 1937. Are those regulations appropriate and sufficient for the control of roadside and roadway commercial activities, including the selling of newspapers, flowers, etc., and the collection of charity moneys?*

Mr REECE: I think those are the regulations that I basically canvassed before. They are regulations 6, 7 and 9, of which your executive officers has got copies, and they list the duties of pedestrians. If they are not strictly obeying those duties, then they may be breached for an offence. Could I add one thing? At common law in New South Wales there is a basic duty applied to every driver or rider of a motor vehicle to adopt due care with regard to pedestrians. In other words, the paramount duties are on the driver. There is only variable from that in New South Wales law, and that is in the case of a shared zone, where equal rights apply. In every other case there is a greater duty of care on the driver or rider of a motor vehicle.

Mr HARRISON (STAYSAFE): *Are the draft provisions of the Australia Road Rules, which are under development currently, sufficient to control children and adults washing windscreens at intersections and at the roadside, and to control other roadside and roadway commercial activities, including the selling of newspapers, flowers, etc., and the collection of charity moneys?*

Mr REECE: There was a provision that was under part 19 of the Australian Road Rules.

Mr HARRISON (STAYSAFE): *Is this the draft rule?*

Mr REECE: I am referring to the Australian Road Rules. I was advised by the chief executive of the Road Transport Commission as late as last week that we should have a fresh draft out for consideration within the next two weeks. That is the latest advice we have got. There was a provision in there, which was Part 19, which dealt with processions, races, collections, sales and other events on the road. That has been dropped. There were objections from the New South Wales Attorney General, and particularly from all other Attorneys General throughout Australia, with the result that they have dropped that and left it in the province of New South Wales or wherever the jurisdictional law is. That whole compartment has been dropped.

That provision was dropped on the basis of the view held by our Attorney General, and shared by others, that these matters raised broader issues of public policy, civil liberties, and should be given careful consideration before being included in any law. So the National Road Transport Commission chose to delete this from their area of reference. So it has been left solely to each jurisdiction to determine what they will do. There were particular objections raised that stemmed from the introduction by Joh Bjelke-Petersen some years ago about controlling the activities on public streets when it related to the Queensland electricity strikes. I think a lot of the objections from Attorneys and civil libertarians stem back to those sorts of days--that people have a right at common law to travel on a public street unless they are doing something wrong or they are at risk or are putting others at risk.

Mr GIBSON (CHAIN): *Could you table that document?*

Mr REECE: Yes. By the way, that is addressed to the Coordinator of the National Policy Unit.

Mr THOMPSON (STAYSAFE): *Mr Reece, earlier you referred in fairly broad terms to there being under the common law a greater duty of care on drivers and riders of motor vehicles. Could you expand on that and tell us what are the responsibilities of drivers of vehicles under existing legislation, particularly regarding activities of persons seeking to wash windscreens, sell goods and so on?*

Mr REECE: There are no specific duties placed on drivers - none at all - as to that activity. But there are powers, as I said earlier, under both the General Traffic Regulations 1916 and under the Motor Traffic Regulations 1935 whereby if the police have a reasonable belief that a motorist's actions are unsafe or whatever, they can direct the motorist to move on, and if the motorist does not move on then he could be guilty of an offence which could incur a penalty, as determined by a court, up to a maximum of \$2,000.

The Hon. J. S. TINGLE (STAYSAFE): *The Committee at the present time is drafting its report on the general issue of child pedestrian safety. When it comes to the question of children under 14 years of age, I just wonder how we could best deal with children who commit pedestrian offences. At the present time traffic infringement notices are issued to persons*

only above the age of 14 years. Have you any thoughts about whether we should be thinking about a sort of official caution for traffic offences generally where those offences are committed by children under the age of 14 years? Is there some system we should adopt, or should we just wipe them and say, "We will ignore what you are doing"?

Mr FORD: The police advise that there is provision in the current law to prosecute minors from the age of 10 in respect of offences. However, the current policy is not to issue infringement notices to those below 14 years of age. The concept of official cautions has been suggested as a potentially useful additional enforcement tool for some offences. The concept relies on the caution being officially recorded, so that future offences can attract appropriate penalties. By way of example, we have been, with the Police Service, running a number of campaigns in the central business district of North Sydney with respect to inappropriate pedestrian behaviour when crossing roads--jaywalking, for example. The process we have used in each case, with the Police Service, is to issue a caution, enforce the caution at a subsequent date, and then record the caution. So this practice is actually at hand. However, there is provision within the law for police to issue unrecorded cautions. This could well be applied to child offenders. So we have in place, with the Police Service, a process whereby any campaign will be run in conjunction with the police, with public education as well as the enforcement aspects of it, whereby we rely very heavily on the caution prior to the enforcement, the prosecution. So that is actually in place.

The Hon. J. S. TINGLE (STAYSAFE): *You say from the age of 10 years onwards?*

Mr FORD: Within the law, yes.

The Hon. J. S. TINGLE (STAYSAFE): *We have been told that some of the people washing windscreens are as young as eight. Now, I am not suggesting we clap them in irons and haul them off to gaol, but I have seen very little kids doing that and I am just wondering if there should not be introduced a specific form of caution, such as a note that the kids will take home to their parents saying that they have been caught doing this and if they are caught doing it again they will be dealt with. As some kids under the age of 10 years are working, should we not be able to deal with them?*

Mr REECE: The criminal age of responsibility in New South Wales is 10 years. These are criminal offences. Traffic law offences are criminal offences.

The Hon. J. S. TINGLE (STAYSAFE): *Maybe they should be warned that they are getting into a dangerous area. I have seen kids washing windscreens who are so small that I cannot see them over the bonnet of my car, and it worries me.*

Mr FORD: The official cautions can be issued to people of any age. However, the enforcement of the caution is against people of 10 years and more, and in practice of 14 years and more.

Mr HARRISON (STAYSAFE): *Is it possible that there be some sort of follow-up caution to be issued to the parents of these*

children, because parents or guardians have to take some responsibility for what their children are doing, especially where they are putting themselves and others in danger?

Mr FORD: Really, that is a matter for the Police Service, but I do know of examples of that having occurred.

Mr HARRISON (STAYSAFE): *Are there provisions in the law?*

Mr REECE: The provisions in law in so far as the choice to prosecute are the prosecutors. The police in many cases have discretion as to whether they are going to prosecute a case. If they do not think there is sufficient evidence to proceed, or they think it warrants some other treatment, they have discretion. But police are loath to use those discretionary powers because obviously that brings the suggestion of corruption that the police officer did not proceed when he ought to have proceeded because there was an offence

Mr HARRISON (STAYSAFE): *But surely the police have the right to issue some sort of a caution to parents or guardians of young children in that they are allowing the children in their charge to place themselves at risk. Surely follow-up action could be taken against those parents or guardians.*

Mr REECE: I do not know about that sort of action, because there is a principle in law unless there is some specific provision, another person is not guilty for the offences of another. That is unless you make a specific provision. Now, that is fairly

draconian stuff, but it could be done in the case of a minor if you were willing to do so. But, as Mr Ford said to you, there were some earlier examples where, for instance, under the Newcastle bike plan for about six months the police picked up little Johnny, a minor rider

on the road, and took him home to tell mum, "I caught him down the road". Of course, that was pretty resource-intensive for the police, and it is up to the Police Service to tell you how that went. But I suppose it was a resource question more than anything else.

Mr FORD: There have also been some precedents with respect to damage to motor cars. Hub cap stealing came to mind when you raised the question. The same procedure was applied. The child was actually taken not under arrest, if you like, but was taken home and the issue was raised with the parents of the child. Now, in my own mind I believe it really is a matter for the Police Service to comment on, but I know that there are processes within the Police Service that enable this to happen.

Mr GIBSON (CHAIRMAN): *How serious is the problem? Is it important to get a solution to the problem fairly quickly?*

Mr REECE: Mr Ford may have another view on the safety side of it, but I find it difficult to see the need for more legislation. We are in a society of deregulation. If we have law in place that may not have been tried and tested. I think it is for the police to of try the existing law. If it does not work and that, the police can come up with elements for a some more streamlined offence within justifiable parameters, then we could consider those. But we have not had a response yet, nor have

we any case law evidence, that the existing law does not work. Until it is tried, we do not know.

Mr GIBSON (CHAIN): *Surely the proof of the pudding is in the eating. The fact is that to my knowledge, and to the knowledge of the police that I asked here today, there has never been an arrest in this area. So, apparently, they are not too confident in the legislation that exists at the moment for doing anything about the problem.*

Mr REECE: It seems to me, if you look at regulation 7 under the General Traffic (Pedestrian) Regulations 1937, there is one specific provision there that no person on any public street shall fail to observe or comply with any reasonable direction of any member of the Police Force. If you do not obey that direction, you are guilty of an offence and are liable to a penalty of up to \$2,000. I would have thought that if a person was putting himself and others at risk, the police would be using that provision. Of course, they would have to go before a magistrate. Whether a magistrate would accept that what those persons had was dangerous or not is another question. But the power is there.

Mr GIBSON (CHAIRMAN): *Surely you are not saying that we should fine a child of 10 years of age \$2,000 under that piece of legislation?*

Mr REECE: No, I am not. In my experience, District Courts or Local Courts will not have anybody before them under 16 years of age.

The Hon. J. S. TINGLE (STAYSAFE): *And the test, of course, is that before an order can be issued that these people should move on the police have got to be there to issue that order*

Mr REECE: That happens with every offence.

The Hon. J. S. TINGLE (STAYSAFE): *Exactly.*

Mr REECE: There are only two offences under the traffic law in New South Wales where the police do not have to be in attendance: they are red light traffic cameras and radar speed cameras. They do not have to apprehend the offender in those instances. In every other case I would have thought to establish that a person commits a crime they have got to be nabbed doing that. Otherwise, it is on hearsay that they proceed on the basis that someone has committed a crime.

The Hon. J. S. TINGLE (STAYSAFE): *The point I make is that is why these laws or regulations are not being enforced, because the police are not there; there are not enough police to do it?*

Mr FORD: That may well be the case. But if I may come back to the earlier part of the question, Mr Chairman. From a road safety point of view, we are concerned and we are very concerned about activities adjacent to roads which are potentially dangerous. Our position is very clear on that. For example, we have recently issued some guidelines for safe work practice with respect to any works undertaken on roads. This is the document I am talking about, entitled "Traffic Control at

Work Sites". Principally, that was because of the poor history we have had in recent times in relation to accidents occurring adjacent to work sites and our concerns for the adequacy of traffic control at work sites. In the same way, we are now revising our guidelines for the control and operation of street vending, and that is partly in response to issues like this and also to the Australian Road Rules and advice that we are given that that will probably come back to the State jurisdictions to sort out. So we are concerned. I do not want to leave this Committee with any other impression than that. However, at the moment, the accident history to which we are responding with respect to this particular activity is fairly light. But, as you have pointed out, we really do need to get together with the police to see if we can put together a package that would more adequately address the issue.

The Hon. J. H. JOBLING (STAYSAFE): *Mr Ford or Mr Reece referred to unrecorded cautions. Obviously, to indicate that there are possibly a number of unrecorded cautions, you must have some access to either data or general discussions. In your understanding, what would you feel is the percentage of unrecorded cautions that are issued to people who are creating this particular problem?*

Mr FORD: I really do not have that data at hand. That really is a matter for the Police Service. But, if I may, I would suggest that the unofficial cautions may far exceed the official cautions in this area.

The Hon. J. H. JOBLING (STAYSAFE): *Therefore, would it not be very likely that the*

young people who are performing the windscreen washing, the flower selling, the fish selling or whatever activity it is that they are undertaking, be likely to be totally aware that the unrecorded cautions system is in operation and that in actual fact there are very few police who are likely to turn up to these activity spots, for whatever reason, and therefore they know that they can quickly disappear and return in half an hour? What I am putting to you is that this activity is known to be occurring and there is a turning of the so-called blind eye?

Mr FORD: If I may respond to that. I am not aware of any situation in the Police Service whereby the activities are being ignored. I can only fall back on some previous experience we have had with respect to the enforcement of the flower selling law. It was a very similar exercise carried out not so long ago, as you may recall. In those circumstances it was quite a clear part of the duties of the patrol to identify the activity and enforce the law and take whatever action was appropriate at the time. I would be very surprised with respect of windscreen washers if similar standing orders did not exist - in other words, within an operating patrol it would be identified as a clear activity.

The Hon. J. H. JOBLING (STAYSAFE): *From the Roads and Traffic Authority's point of view, as an organisation that is principally concerned with road safety, whether that be of the driver or the 8-year-old or 14-year-old windscreen washers, it seems that you have little dialogue with the police in resolving this matter.*

Mr FORD: I accept the comment. Certainly,

the legal aspects of it do need to be resolved. However, in terms of the operational aspects, I mentioned earlier the pedestrian campaigns that we run jointly with the Police Service and the Roads and Traffic Authority, and the processes we have discussed with respect to cautions and enforcement for such activities as inappropriate crossing behaviour--that is, outside the marked crossing areas, jaywalking, etc. Also, with respect to such activities as touting there are similar processes being put in place between the Police Service and local government--again, largely targeted towards the Sydney central business district.

The Hon. J. H. JOBLING (STAYSAFE):
In view of the campaigns that you and the police run in the spheres that you have just mentioned, could you tell me how you assess or follow up these campaigns to try to determine their success or otherwise? Who does this, and by what means do you attempt to assess them?

Mr FORD: The campaigns we are talking about are largely our pedestrian safety campaigns. They are targeted to different issues in different areas. For example, in the lower North Shore we have an increasing incidence of the elderly involved in pedestrian crashes. So we spent a lot of time and effort in organising the campaign in such a way to specifically address that issue at the subregional level as well as at the local government level through the local road safety officers. In other areas, like the Sydney central business district, say in Oxford Street, you have a major issue there with drink-walker crashes, so the drink-walker campaigns were run in that area specifically to target that issue. It was specifically to

organise the enforcement aspect of the public education campaign to that issue.

In terms of the evaluation, we can monitor quite closely both the before and after crash histories, the observance histories--from observational surveys--and we do undertake before and after awareness. For example, as part of the pedestrian campaigns in the lower North Shore, we reactivated a program called Safe Seniors. The Safe Seniors program was designed to specifically raise awareness and to get information on issues relating to safe crossing behaviours and attitudes and issues associated with the elderly. We can actually, as part of that Safe Seniors campaign that we ran last year, get a benchmark as to how effective any public education campaigns have been by way of recall at that level from those groups. So it is a recall survey on top of that as well. So, at the grass roots, the before and after crash statistics; at the other levels, if you like, the recall surveys that we run as part of the post evaluation of the major public education campaigns.

The Hon. J. H. JOBLING (STAYSAFE):
It strikes me as an interesting thing to look at because I have never actually seen an evaluation in this area by the Roads and Traffic Authority. Would it be possible to make available to the Committee an evaluation of a campaign, such as the one you mentioned, the drink-walker?

Mr FORD: Sure.

The Hon. J. H. JOBLING: *So that we can understand how you did it, what results you got, how you followed up and assessed the success of the campaign, and what follow-up*

came from there. I think that could be interesting, Mr Chairman.

Mr FORD: I would be pleased to do that.

Mr GIBSON (CHAIN): *Mr Ford, should the Roads and Traffic Authority try to target specific school populations regarding this problem of windscreen washing and selling on the sides of roads and so on ?*

Mr FORD: Mr Chairman, that is a very good suggestion. In fact, we have a vehicle through the schools, both the Police Service and the Roads and Traffic Authority, and I will take that up.

Mr GIBSON (CHAIRMAN): *If there are no further questions, I thank you for your time and expertise.*

(Their evidence completed, the witnesses representing the Roads and Traffic Authority were excused)

Witnesses representing Parramatta City Council

Witnesses: Mr Marzi De Santi (Manager, Traffic Division), Mr Syd Cooke, (Senior Town Planner--Evaluation), Mr Joe Peteira (Road Safety Officer)

Mr GIBSON (CHAIN): *In previous evidence given before the STAYSAFE Committee, witnesses representing the Roads and Traffic Authority on pedestrian safety matters have tabled the 1994 progress overview of the local council safety campaign. Included in this two-part volume of work was an account of the road safety activities of Parramatta City Council. I understand the Director has given you a copy of that. I direct that this copy be appended to your evidence today. Do you have any further material to place before the Committee at this time?*

Mr De SANTI: Yes. Parramatta City Council will be putting forward a copy of its transport management plan and also a copy of a recent report submitted to the Roads and Traffic Authority called "Safe Routes to School".

Mr CHAIRMAN (STAYSAFE): *Before we ask questions, would you like to make an opening statement?*

Mr De SANTI: Only to say, Mr Chairman, that we are more than pleased to contribute in any way to the resolution of the obvious problem that currently exists with windscreen washing in particular.

Mr GIBSON (CHAIN): *Is it prudent to allow persons to move or to stand on or*

along the roadway in order to wash windcreens, to sell goods such as newspapers or flowers, etc., or to collect charity moneys?

Mr De SANTI: It obviously depends on the perspective, but from a pedestrian/vehicle conflict point of view, I do not believe that it is prudent. The current situation with, particularly, young adults and children in some cases washing windcreens on some of our arterial roads do cause a major pedestrian/vehicle conflict. There is also concern in terms of the escalation of the problem, particularly as those individuals wishing to clean windcreens may seek further support from the motorists through attention-seeking mechanisms, in terms of their appearance and the manner in which they dress, and also the possibility of distracting the motorists as well in attempting to gain that advantage.

Mr GIBSON (CHAIN): *Does the Council receive many letters of complaint from the general public regarding this problem?*

Mr De SANTI: In speaking to Traffic Division staff, we have not sighted any letters that we can recall over the past two years. There may be one or two that have been received, but we do not particularly recall those. We can, of course, do a very

comprehensive investigation of our correspondence to do that, but offhand we do not recall any letters that have come in during the past two years.

Mr MILLS (STAYSAFE): *Based on the data which is available within the Parramatta City Council, what is the situation regarding the safety of children and adults washing windscreens at intersections and at the roadside, or people engaging in other roadside and roadway commercial activities, like selling newspapers, flowers and so on, and the collection of charity moneys? What is the position regarding the safety of the children, based on the data that the Council has?*

Mr De SANTI: In terms of accident statistics, we do not believe that in the Parramatta City Council area it has been a major problem when compared to other types of pedestrian accidents or motor vehicle accidents, but it is obviously of significant concern in terms of its potential.

Mr PEREIRA: In terms of who is actually featured in the accident statistics, we have basically two groups. Those of primary school age, which will be round about years 5 to 12, and then also a problem within the central business district with adult pedestrians. So between the ages of about 25 and 45. However, in the CBD figures, I would imagine that would not include any windscreen washers from that area.

Mr Be SANTI: I might add, too, that it appears that the windscreen washing activity occurs on arterial routes, where obviously

there are high traffic volumes and considerable queuing at traffic signals. In speaking to staff of Parramatta City Council, we have not been made aware of that activity being on solely Council-controlled roads.

Mr HARRISON (STAYSAFE): *Does Parramatta City Council have a policy on itinerant commercial activities on or alongside the roadway, including washing windscreens, selling flowers or newspapers, or collecting charity moneys? What are the issues that have been identified in this policy?*

Mr COOKE: I am not aware of any policy whatsoever that Council has on the matter, nor has there been cause to even consider a policy on the matter.

Mr HARRISON (STAYSAFE): *You do have a policy register as such, and this is not included in it?*

Mr COOKE: Certainly, from the town planning perspective, the section that I come from, there is no policy that Council has entered into over the past 30 years.

Mr GIBSON (CHAIRMAN): *Should you have a policy?*

Mr COOKE: As a town planner, I do not believe the issue warrants a policy. My perspective is pretty narrow as a town planner, Mr Chairman. Our sort of functions and authority more or less stems from what you and I might do after we step off the road, whereas the road is owned by the public. Town planning legislation does not really set out to curtail you and me in terms of our

access to our public streets. So I do not see, from a town planning point of view, that we ought to have a policy.

Mr HARRISON (STAYSAFE): *Has there been discussion of this issue with your local traffic committee?*

Mr De SANTI: I do not recall an item being before the local traffic committee.

As I said earlier, the issue does seem to revolve around arterial roads rather than Parramatta Council roads. Apart from one or two locations, I personally am not aware of the situation being prolific within the Parramatta local government area. But I am aware that there are some locations just outside the local government area where the activity of windscreen washing does occur.

Mr GIBSON (CHAIN): *What about on the corner of Windsor Road and Victoria Road?*

Mr De SANTI: I am not personally aware of that particular location being a place of that particular activity, but that does not preclude it occurring there. I am aware that it does happen on the Great Western Highway near the Cumberland Highway, and I have been made aware that it also occurs along James Ruse Drive, near Victoria Road, I think.

Mr PEREIRA: In terms of anecdotal or perceptual evidence, as well as to the traffic committee, sometimes inquiries like that would be directed to the steering committee for the road safety education program, which I run. In the time that the committee has been up and running, we have not received any complaints from the general public about

windscreen washing or any other collection of money type activities.

Mr GIBSON (CHAIN): *From the Council's perspective, do you see a problem or possible problem in the future, or do you think it will be okay?*

Mr PEREIRA: This is where at Parramatta placed City Council we are very concerned at tacking issues before they become a problem. To that end, we have conducted research amongst the general community to find out what are those perceptual-type problems before they become a matter of having to look at statistics where problems have already occurred.

Mr THOMPSON (STAYSAFE): *Do you know of any reports that have been written, or any research conducted, into itinerant commercial activities on or alongside the roadway, particularly regarding windscreen washing, selling flowers and newspapers and the like, as well as collecting charity moneys? If so, are you able to direct the Committee's attention to relevant reports or research?*

Mr COOKE: I have no knowledge of such reports emanating from Parramatta Council at all.

Mr PEREIRA: If I might add to that. I do have something else that I would like to submit. I did not mention it before. It is the report on the Parramatta Local Government Area Community Road Safety Management Study. It surveyed a representative sample of the Parramatta community, asking for its perceptions and attitudes towards a variety of road safety issues. As I mentioned earlier,

this is part of our proactive approach that we would like to take to Council, where we ask the community what it sees as the problems and then we will investigate and act on it accordingly, before it becomes an actual accident problem that is reflected in statistics.

Mr GIBSON (CHAIN): *Are the provisions of the Local Government Act 1993 sufficient for council to control children and adults windscreen washing at intersections and selling flowers etc.?*

Mr COOKE: Mr Chairman, my narrow perspective is from the town planning point of view, which comes from the Environmental Planning and Assessment Act rather than from the Local Government Act, so I am no expert on the Local Government Act and thus probably am not really entitled to answer the question at all. But, in Parramatta, since there has not been any real incidence of the problem that has come to my notice, I would imagine that the provisions are adequate the way they stand. But that is only my personal opinion.

Mr De SANTI: I would like to add to Mr Cooke's comment. There may be difficulties with controlling these activities under the Local Government Act in that, particularly along arterial roads. Whereas Council's fundamental controls are along footpaths, if the activity is actually emanating from the median strip, and the windscreen washers are operating from the median strip rather than being involved in a footpath activity, from the local council's point of view, where activities are taking place along arterial roads within its local government area, it is my understanding and belief that we would find it very difficult to control those activities under the Local

Government Act.

Mr MILLS (STAYS SAFE): *The Committee has noted the recent release by Parramatta City Council of a traffic management plan for the Parramatta CBD and surrounding areas. How does this plan address pedestrian safety issues?*

Mr PEREIRA: Before the I talk about the plan in detail, I should preface my remarks by explaining that this traffic management plan is the latest in a series of ongoing initiatives that Parramatta City Council has been undertaking. We, as much as possible, try to use an integrated environmental engineering approach, of which this traffic management plan is the latest example. It was described at the meeting of Council on 13 November 1995. Basically, one of the main elements of the traffic management plan is to create what is known as an environmental precinct within the central business district bounded by four streets--Marsden Street, Phillip Street, Charles Street and Park Street. Those four streets will form a ring road which will service the central business district. Within that ring road will be pedestrian improvements, new traffic signals, and also the introduction of a 40 kilometre an hour zone. So, basically, what we are trying to do is make a more pedestrian-friendly environment for people who have business within the city. Coupled with that are measures to improve access for car drivers, and the ring road also happens to service a number of carparks in the area. So the idea is that, instead of driving your car directly into the centre of the city, you would go to the nearest parking station and then it is only a short and convenient walk to wherever it is

that you want to go to. Another measure to improve pedestrian safety under this traffic management plan is to reduce the number of cars entering the central business district which basically do not need to be there. How we will do that is by introducing, in the centre of the city near the railway station, bus and taxi priority. The intention behind that is that private vehicles will need to use that ring road, and it will be to their benefit anyway to use that ring road because things like traffic signals will be co-ordinated to give shorter travelling times and easier access to the carparks. So there are a whole package of different measures that we are hoping to introduce in the Parramatta central business district, with the eventual aim of significantly improving pedestrian safety within that city area. The plan which we are using involves computer modelling. The computer hardware and software that we are using is state of the art. It is internationally recognised. So we are really trying to go for the best possible result, and we have found that we have had very good support from the Roads and Traffic Authority, from the Police Service, from the Department of Urban Affairs and Planning, and from many businesses also. We have conducted surveys to try to find out whether we are on the right track, and the survey results have been most encouraging. So that report was tabled to Council on 13 November 1995, and it is now available for public comment. We would also be very happy to submit it as part of today's inquiry, presentation.

Mr GIBSON (CHAIRMAN): *When will that plan come into effect?*

Mr De SANTI: There will be a consultation

period of at least four weeks, or 28 days, and we will obviously be seeking comments from the public. Following that, a final report will be presented to Council for Council's consideration and endorsement. Then, I daresay, if adopted by Council in full, or even in part, implementation could proceed very shortly thereafter. We do expect, though, that some funding allocation would need to be made available; and any opportunities for funding from the State Government or other agencies would be most welcome. Council does have a sum of money allocated for some priority measures, but of course the support of State or Federal governments would go a long way.

Mr MILLS (STAYS SAFE): *I have a question, which I guess should be directed to Mr Cooke. Are there any planning steps that Council has considered, or should consider, to deal with the obvious need of people to engage in small commercial activities around roadways? The pedestrian mall is one obvious answer, but are there any other considerations that you think, from a local government perspective, might be introduced? People keep carrying out various forms of these activities--selling things and collecting charity donations, a small commercial activity that has been going on at traffic lights for years, but it is potentially dangerous. Is there any other way of dealing with this as a community?*

Mr COOKE: I do not think the town planning statutes or legislative base is the right way to try to control public roads that are not regulated by planning schemes in normal circumstances.

Mr MILLS (STAYSAFE): *The provision of alternatives is what I am really looking for.*

Mr COOKE: I cannot think of an alternative, especially in Parramatta. It has not really developed into a big problem in Parramatta. I would not like to see us not being allowed to allow boy scout activities or some other activities that go on through a year. I would not want to see town planning be a regulator of those essential activities that a community likes to do in its own public space.

Mr De SANTI: Mr Chairman, I would like to make a minor comment. If any regulation or legislation is considered, one thing that Parramatta City Council is basically trying to encourage for its Parramatta central business district is a very friendly atmosphere, a very friendly pedestrian atmosphere. Certainly, alfresco-type dining is one of the considerations before Council. In terms of legislation or some activity to prevent roadside selling, etc., perhaps we would need to be sympathetic towards the future prospects of that alfresco-type dining. So we would obviously be a little concerned at legislation that might inhibit that vision that Council has to make the Parramatta central business district a very friendly environment.

Mr GIBSON (CHAIRMAN): *If there are no further questions, we thank you for your time and for your expert advice.*

(Their evidence completed, the witnesses representing Parramatta City Council were excused)

APPENDIX A: EDITED TRANSCRIPTS OF EVIDENCE

**APPENDIX B:
SELECTED DOCUMENTS TENDERED**

B. 1 During the public hearing on 20 November 1995, a number of documents were tendered by witnesses. These documents included formal submissions to the STAYSAFE inquiry into pedestrian safety, copies of letters and briefing notes, and guidelines and reports.

B.2 These documents are included within this report, in order to provide a complete a record as possible of the materials available to STAYSAFE during this phase of the inquiry into pedestrian safety.

B3 The following papers are included in Appendix B:

Extract from Submission PED 142: New South Wales Police Service, concerning windscreen washing and similar activities conducted on public streets. Includes copy of letter from Mr I. McManus MP, Parliamentary Secretary for Police and attached papers..... Page 67

General Traffic (Pedestrian) Regulations 1937 Clause 7, relating to causing and obstruction, nuisance, etc..... Page 71

Extract from the draft Australian Road Rules 1995: Part 14--Special rules applying to pedestrians; and Part 19--Processions, races, collections, sales and other events on roads Page 72

Correspondence relating to the draft Australian Road Rules, from the Attorney General's Department to the Roads and Traffic Authority..... Page 80

Miscellaneous correspondence relating to windscreen washing and similar activities conducted on public streets, received from the Roads and Traffic Authority witnesses Page 81

Roads and Traffic Authority (1988). Guidelines for the control of roadside vending. Sydney, NSW: Roads and Traffic Authority..... Page 90

Roads and Traffic Authority (1993). Guidelines for the control and operation of street vending. Sydney, NSW: Roads and Traffic Authority..... Page 98

B.4 Several documents have not been included, due to their size and diverse content. These are:

Aryal, K, Peteira, J. & John Barnes Consulting (1995). Safe routes to school: A report of Parramatta City Council prepared for the Roads and traffic Authority of NSW. Parramatta, NSW: Parramatta City Council.

J.K. Wylie & Associates (1994). Parramatta City Council. Report on the Parramatta LGA community road safety management study. Parramatta, NSW: Parramatta City Council.

Parramatta City Council (1995). PTS: Parramatta transport strategy. Parramatta, NSW: Parramatta City Council.

Roads and Traffic Authority (1995). Traffic control at work sites. Rosebery, NSW: Roads and Traffic Authority.

APPENDIX B: SELECTED DOCUMENTS

I am aware that the Staysafe Committee is currently inquiring into pedestrian safety. The practice of persons washing windscreens of motor vehicle at intersections would seem to be an issue the Committee may wish to consider as part of its inquiry. In this regard, I would like to suggest the following terms of reference might be considered:-

Is it prudent to permit persons to wash windscreens of motor vehicles, sell newspapers, collect monies for charity or similar activities on carriageways of public streets?

Is the current legislation adequate to address the problem? If not,

Is additional or new legislation required?

What are the responsibilities of drivers of motor vehicles under existing legislation in respect to these issues?

What enforcement action should be taken against persons of tender age, eg. presently, infringement notices are only issued to persons of, or above the age of 14 years?

Should an offence be created whereby the driver of a motor vehicle, being driven upon a public street, is guilty of an offence if the driver or passengers conduct the following activities from the vehicle?

- o donate monies to charities etc,
- o permit persons to wash the windscreen of the vehicle,
- o purchase goods through the open window eg. newspapers, flowers etc. (Annexure 5)

Your consideration of issues raised would be appreciated and I look forward to your reply in due course.

Yours sincerely

IAN McMANUS, MP
PARLIAMENTARY SEC

RECEIVED IN EVIDENCE.

Mr P Gibson
Chairman
Staysafe,
Joint Standing Committee on Road Safety
Parliament House
Macquarie Street
2000

7960996Q

Dear Mr. Gibson,

You will no doubt be aware of ongoing media reports concerning windscreen washing and similar activities conducted upon public streets. The dangerous practice of persons washing windscreens of motor vehicles at intersections first came to notice in 1989, when similar community concerns were raised.

At that time the Police Service, through the then Minister for Police, Mr. Picketing, requested specific legislation to address this dangerous activity. (Annexure 1)

Advice from the then Minister for Transport, Mr. Baird., indicated the Roads and Traffic Authority considered the provisions of the General Traffic (Pedestrian) Regulations were appropriate for the control of "windscreen washers" at traffic lights, as well as paper sellers etc. (Annexure 2)

In this regard, the regulations provide that no person shall obstruct, hinder or prevent the free passage of any person or vehicle, nor ignore any reasonable direction by a police officer in respect to traffic control. (Annexure 3)

Operational police indicate the existing provisions are cumbersome and difficult to enforce as there must be an actual obstruction, hindrance or annoyance established before action can be taken. (Annexure 4)

OWN - WINDSCREEN WASHING

MEMBER: The Hon. E. Kirkby

DATE: Tuesday, 18 April, 1989

QUESTION: Is the Minister for Police and Vice President of Executive Council aware stopped at traffic lights? Is pocket-money in this dangerous way? Minister taken to prevent the practice Although there is no record of person/s being killed or injured from this activity, police remain concerned that this is a potentially

At the present time there is no specific legislation prohibiting this activity as well as other practices directly targetted towards drivers and passengers of motor vehicles e.g. selling of goods, distribution of pamphlets, newspapers etc.

The resolution rests with changes to the Motor Traffic Act 1909 and colleague the Hon. B.G. Baird, Minister for Transport, for his urgent consideration.

Ted Pickering, MLC.



New South Wales

Minister for Police and Emergency Services

The Hon. B.G. Baird
Minister for Transport
20th Level
Aetna House
Cnr. Elizabeth & Bathurst Streets
SYDNEY 2000

My dear Minister,

I refer to a Question Without Notice (copy attached) which was asked in the House on 18th April, 1989 by the Hon. E. Kirkby, MLC regarding windscreen washing of motor vehicles at traffic lights.

The Commissioner of Police, Mr. Avery and I are concerned that there is currently no legislation prohibiting this activity as well as other practices directly targetted towards drivers and passengers of motor vehicles e.g. selling of goods, distribution of pamphlets, newspapers etc.

The solution rests I believe with amendments to the Motor Traffic Act 1909 and your comments in this regard would be appreciated.

Yours sincerely,

Ted Pickering, MLC

23 JUN 1989

The Hon. E.P. Pickering, M.L.C.,
Minister for Police and Emergency Services,
9th Level,
Legal and General House,
8-18 Bent Street,
2000

Dear Minister,

I refer to your letter concerning windscreen washing of motor vehicles at traffic lights.

The Roads and Traffic Authority considers that the General Traffic (Pedestrian) Regulations which provide for the behaviour of pedestrians on public streets are appropriate for the control of "windscreen washers" at traffic lights, as well as paper sellers, etc. In this regard, the regulations provide that no person shall obstruct, hinder or prevent the free passage of any person or any vehicle, nor ignore any reasonable direction by a police officer in respect to traffic control.

From the *safety* point of view the Authority has no evidence to suggest that the existing regulatory provisions are inadequate.

Yours sincerely,

B.G. BAIRD,
Minister for Transport.

BRIEFING NOTES

REFERENCE: Newspaper article concerning the practice of young people washing car windscreens while vehicles are stopped at traffic lights.

RESPONSIBLE OFFICER/S: Inspector G.S. Dunger.

SECTION: Traffic Operations Group.

TELEPHONE: 55512

BACKGROUND:

The Minister for Police and Emergency Services has been requested to address the concern expressed by the Hon. Elizabeth Kirkby, M.L.C. in relation to the practice of young people washing car windscreens while vehicles are stopped at traffic lights, suggesting that individuals have been killed and injured while..so engaged.

Attached hereto is a newspaper article which makes reference to the practices of young persons aged 12 to 14 years engaging in this type of activity.

COMMENT:

- A search of Police records has failed to identify any person killed or injured while engaged.. in this activity.
- At the present time there is no specific legislation prohibiting the activity referred to.
- Section 8, . Clause (xxiii) Police Offences Act, 1901 (repealed) , prohibited the cleaning of any vehicle in any street or public place.

Present Police Powers.

Regulation 7 General Traffic (Pedestrian) Regulations to the Traffic Act 1909 provides:-

- No person in any public street shall -
 - (a) obstruct, hinder or prevent the free passage of any person or any vehicle'
 - (b) fail to observe or comply with any reasonable direction of any member of the Police Force as to the Regulation of Traffic

Regulation 9 provides -

Every person upon the carriageway of any public street shall take due precautions to avoid a collision with any vehicle or horse upon such street.

- proposed amendment to the Children (Care and Protection) Act 1987 will address the employment of a child below 15 years of age (a licence shall not be issued to a child below 12 years for newspaper selling).

while the question is specifically directed at windscreen washing by young persons, it highlights the absence of suitable legislation to control the activities of persons engaged in various types of occupations directly targetted towards drivers and passengers of motor vehicles, e.g. selling of goods, distributions of pamphlets, literature, etc., on public streets. The hazard these types of activities create not only to the occupants of the vehicle, but also the participants, cannot be over emphasised.

Provisions contained in the Traffic Act allows for the making of Regulations to prohibit the sale ' of goods, or for the pursuit of any business, calling or employment in any public street.

RECOMMENDATION:

Specific legislation be provided, possibly in the Traffic Act 1909 to prohibit on road, any person from offering for sale any goods or service or in the pursuit of any business, calling or employment for reward or otherwise, likely to impede or interfere with the progress or convenience of others.

NSW POLICE SERVICE

District Command Cumberland

ISSUE:

Suggested specific legislation required in relation to the activity of windscreen washing of motor vehicles at intersections ·

BACKGROUND:

The practise of individuals washing windscreens of motor vehicles at intersections is becoming an ever increasing activity. This activity is usually carried out at busy sets of traffic lights where the operator washes the windscreens of vehicles waiting at red lights and receives a donation for the service provided.

It is my submission that this practice is both dangerous and disruptive to the operators and traffic flow.

CURRENT POSITION:

Clause 7 (1) of The General Traffic (Pedestrian) Regulations creates a number of appropriate offence such as

- Obstruct Hinder or prevent the free passage of any person or vehicle.
- Stand or loiter to the inconvenience, annoyance or obstruction of any person.
- Fail to observe or comply with any reasonable direction of any member of the Police Force as to the regulation of traffic.

COMMENT:

While these particular offences may apply to this activity, it is a cumbersome and difficult issue to enforce. For example proof of hinder~~obstruction~~ or annoyance must be established before an offence takes place. If a supervisor was to task a uniformed Police Officer with enforcement of the activity it is highly unlikely that an operator would offend while he was present.

I have recently made comments in relation to this activity via media outlets. The response from the media and the public have confirmed my views that this activity is both dangerous and causing a considerable annoyance to the motoring public

Some female members of the public have indicated that they feel intimidated by these people when they wash the windscreens of their vehicles and then demand money for the service. Other people have indicated that they have had their windscreens washed and when they have refused to pay the operator they have been abused or had the door of their car kicked.

P.O. Box 76 Parramatta 2124

Ferguson Centre. 130 George St. Parramatta NSW 2150

Telephone 833 0784 Fax 689 7266 Eaglenet 78 764 Eaglefax 79 266

- 2 -

RECOMMENDATION:

That this matter be discussed at a future Traffic strategies Meeting with a view to having ..specific legislation drafted to make this activity an offence.

Ian D Whatson Senior Sergeant Traffic Coordinator
Cumberland District Eagle Net 78775
17 June 1994

1. Distict Commander Cumberland
2. Traffic Coordinator North West Region
3. Commander Traffic Operations Unit

The Hon T A Griffiths, MP Minister for Police and
Minister for Emergency Services Level 20
Avery Building
14-24 College Street
SYDNEY 2000

Dear Mr Griffiths

I refer to your concerns about the adequacy of existing traffic law to police the activities of people washing car windscreens on public streets, particularly at traffic lights.

The Roads and Traffic Authority is of the view that police currently have adequate powers under Regulations 6, 7 and 9 (copy attached) of the General Traffic (Pedestrian) Regulations 1937. This view was expressed as the aforementioned regulations impose specific duties upon pedestrians on a public street, and people wandering around upon the street other than as prescribed, as would be the case with people washing windscreens, would in the RTA's view clearly be in breach of those Regulations.

If the existing traffic law seems inadequate, I would appreciate your advice as to what amendments are considered necessary to meet the enforcement difficulties of police.

Yours sincerely

BRUCE BAIRD

[4.2880] GENERAL TRAFFIC (PEDESTRIAN) REGULATIONS 1916

[4.2880] Obstruction, nuisance etc

7. (1) No person in any public street shall:

- (a) obstruct, hinder or prevent the free passage of any person or any vehicle;
- (b) stand at or near the corner of any footpath to the inconvenience, annoyance or obstruction of any person;
- (c) stand or loiter to the inconvenience, annoyance or obstruction of any person;
- (d) carry or convey any article or substance of an offensive or indecent character, or any article of such length or dimensions as to be an inconvenience, obstruction or danger to any person; place, or cause or permit to be placed thereon or thereover, anything whatsoever to the inconvenience, obstruction or danger of any person;
- (f) fail to observe or comply with any reasonable direction of any member of the Police Force as to the regulation of traffic;
- (g) push into or get out of any line of pedestrians fixed by any member of the Police Force;
- (h) sell or offer for sale, or solicit in any manner the purchase of any goods, wares or merchandise in such a way as to cause inconvenience or obstruction to any person in such street;
- (i) tout for passengers to proceed by any vessel, or for any person to take up his residence at any hotel, or boarding-house, or for the conveyance of passengers, goods or luggage in any vehicle.

[4.2890] Loitering

To "loiter" with a vehicle in a street, contrary to a municipal by-law, connotes something in the nature of stopping to chat with other drivers, gossiping, or idling; merely driving a charabanc slowly backwards and forwards to pick up passengers is not "loitering", especially if there be no obstruction to traffic *Fairfoul v Sommerville* 33 ScLR 34. A man can loiter in a motor car by "shadowing" another vehicle *Bridge Campbell* (1947) 63 TLR 470. Looking into and trying to open the doors of motor vehicles standing unattended in the street is "loitering": *Rawlings v. Smith* [1938] ~ 675. In *Johns v Benny* [1934] SASR 11, it was held that, at the natural sense of word "loiter" is that of staying in a place without any sufficient reason for being there and that a person sitting in a stationary motor car can be said to be loitering. But mere slothfulness is not sufficient to constitute loitering: *Hivix; Re Achaelis* (1933) 50 X (NSW) 90. Loitering has been defined as remaining in or about the vicinity of a restricted but not necessarily defined place without any apparent purpose or reason such as one might be expected to have in the conditions existing: *Hagan Ridley* (1948) 50 WALR 112.

(2) Clause (1) (e) does not prohibit a person from placing a building waste container in a public street if the person does

(a) where the container is placed within a local government area, with the prior written consent of the Council of the Local Government

PART 14--SPECIAL RULES APPLYING TO
PEDESTRIANS

NOTE

This Part deals with the duties of pedestrians on roads, footpaths or shared zones, and restrictions that apply to movements of pedestrians.

See regulations 5.10, 7.2 to 7.6 (inclusive), 7.9 (3), 11.3 11.4. and 11.6 about requirements for motorists to give way to pedestrians.

Application of this Part

14.1 (1) This Part applies to you if you are a pedestrian.

Moving into the path of vehicles

14.2 (1) You must not put yourself or anyone else in **danger** by moving into the path of an oncoming vehicle.

Prohibited crossing places on roads

14.3 (1) You must not cross a road within 20 metres of: (a) a marked foot crossing; or (b) a pedestrian crossing; or (c) a children's crossing;

unless you use the crossing.

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PART 14 (SPECIAL RULES APPLYING TO PEDESTRIANS)--continued

- 14.3 (2) However, subregulation 14.3 (1) does not apply if you are:
- (a) crossing the part of the road to the left of a tram line to get on, or immediately after getting off, a tram or a public bus in a tram lane at a tram stop; or
 - (b) crossing to or from a safety zone; or
 - (c) crossing at an intersection where traffic lights allow pedestrians to cross at the same time from the edges of all roads forming part of the intersection; or
 - (d) helping someone else do any of the activities described in (a), (b) or (c); or in a shared zone, or a road or a part of a road from which vehicles are excluded.
- 14.3 (3) You must not cross a road within 100 metres of a pedestrian overpass or underpass.

Duties of pedestrians crossing roads

- 14.4 (1) You must cross a road by the shortest and most direct route practicable.
- 14.4 (2) However, subregulation 14.4 (1) does not apply if you are crossing at an intersection where traffic lights indicate that pedestrians may cross at the same time from the edges of all roads forming part of the intersection.

PART 14 (SPECIAL RULES APPLYING TO PEDESTRIANS)--continued

Standing on roads

14.5 (1) You must not obstruct traffic by unreasonably remaining on a road.

14.5 (2) If you are waiting in a place other than a safety zone for a tram, or a public bus in a tram lane, you must not go onto the road until the tram or bus has arrived and has stopped.

14.5 (3) However, you may go onto the road to get to a safety zone before a tram, or a public bus in a tram lane, arrives at a stop in the safety zone.

14.5 (4) Subregulations 14.5 (1) and (2) do not apply if:

(a) you are a uniformed employee of a public transport authority performing your duties;
or

(b) you are in a shared zone.

Getting off trams or other vehicles

14.6 (1) If you get off or out of a tram or other vehicle onto the road outside a safety zone, you must cross to the nearest footpath by the shortest and most direct route as soon as practicable.

14.6 (2) However, subregulation 14.6 (1) does not apply if:

(a) you are a uniformed employee of a public transport authority performing your duties;
or

(b) you are in a shared zone.

PART 14 (SPECIAL RULES APPLYING TO PEDESTRIANS)--continued

Pedestrians and bicycle riders on a footpath

- 14.7 (1) You must not unreasonably get in the way of a bicycle rider who is on or entering the footpath.

NOTE

Regulation 15.10 requires a bicycle rider on a footpath to give way to a pedestrian.

Pedestrians travelling on roads

- 14.8 (1) You must not travel on a road if there is a footpath that it is practicable for you to use.
- 14.8 (2) If you are travelling on a road other than a road for vehicles travelling in the one direction only, you must travel on the right side of the road.
- 14.8 (3) If you are travelling on a road, you must travel as close as is practicable to the edge of the road.
- 14.8 (4) You must not travel more than two abreast on a road.
- 14.8 (5) Subregulations 14.8 (1),(2),(3) and (4) do not apply if you are in a shared zone or a road or part of a road from which vehicles are excluded, or are taking part in an event approved under regulation 19.1.
- 14.8 (6) Subregulation 14.8 (2) does not apply if you are in a wheelchair or if you are walking a bicycle along the road.
- 14.8 (7) You must not travel on a road past a sign with words NO PEDESTRIANS.

PART 14 (SPECIAL RULES APPLYING TO PEDESTRIANS)--continued

NOTE

One of the purposes of subregulation 14.8(6) is to avoid the need to cross the road to walk a bicycle uphill. See regulation 19.1 for exemptions for races and other events on roads. See regulation 18.10 for additional restrictions on the use of wheeled toys on the roads.

Duties of a pedestrian in a shared zone

- 14.9 (1) You must not unreasonably get in the way of another pedestrian or a vehicle that is in, or is about to enter, a shared zone.

Pedestrian crossing a railway line

- 14.10 (1) You must not use the road to go over a railway level crossing if another means for pedestrians to cross is provided within 20 metres of the level crossing.

Other restrictions on the movement of a pedestrian

14.11 (1) You must not:

(a) attempt to get on a moving vehicle; or

(b) stay on a marked foot crossing, pedestrian crossing or children's crossing for longer than is necessary to cross the road; or use a bicycle path or that part of a separated footpath that is reserved for bicycles, unless you are in a wheelchair; or

PART 14 (SPECIAL RULES APPLYING TO PEDESTRIANS)--continued

- (d) cross a bicycle path or separated footpath if, in so doing, you would get in the way of a bicycle
 - that is going along the path.

NOTE

Similarly, a rider of a bicycle must not use that part of a separated footpath that is reserved for pedestrians.
(See regulation 15.9.)

- 14.11 (2) However, paragraph 14.11(1)(b) does not apply to you if you are:
- (a) a uniformed municipal traffic officer: or
 - (b) in uniform and supervising a children's crossing, pedestrian crossing or a marked foot crossing.

**PART 19--PROCESSIONS, RACES, COLLECTIONS, SALES AND OTHER EVENTS ON
ROADS****Processions, races and other events**

- 19.1 (1) You must not on a road conduct or take part in a race for vehicles, a speed or reliability trial for vehicles, a foot race, a procession except a funeral procession, a parade or other event, unless:
- (a) the race, trial, parade, procession or other event does not disrupt traffic or increase the risk of injury to any person; or
 - (b) the Authority has given approval for the race, trial, parade, procession or other event to take place and any conditions of the approval are complied with.
- 19.1 (2) The Authority may exempt participants in a race, trial, parade, procession or other event approved under subregulation 19.1(I) from any of the Australian Road Rules.

Using a vehicle on a road for business or fund-raising

- 19.2 (1) You must not drive, ride or stop a vehicle on a road in order to sell goods or to seek a contribution, employment or business from the vehicle, or to permit another person to sell goods or to seek a contribution, employment or business from the vehicle, if it is likely to increase the risk of injury to any person or to disrupt traffic.

PART 19 (PROCESSIONS. RACES. COLLECTIONS. SALES AND OTHER EVENTS ON
ROADS)--

continued

Using a road for business, fund-raising or hitch-hiking

19.3 (1) You must not stand on or move onto a road on foot in order to:

- (a) offer for sale, or sell, goods or services; or
- (b) seek employment or business from a person in a vehicle: or
- (c) display an advertisement; or
- (d) seek a ride from a person in a vehicle.

19.3 (2) You must not stand on or move onto a road on foot in order to seek a contribution from a person in or on a vehicle unless the Authority has approved the seeking of contributions from a person in or on a vehicle and you comply with any conditions of the approval.

19.3 (3) The Authority may exempt those seeking contributions in accordance with approval under subregulation 19.3(2) from any of the Australian Road Rules.

Buying from a person standing on a road

19.4 (1) If you are in or on a vehicle, you must not buy, offer to buy or accept an article or service from a person standing on a road.

ATTORNEY GENERAL'S DEPARTMENT
New South Wales

-

Mr P Murray
National Policy Co-ordinator
Driver and Vehicle Policy and Regulation Directorate
Roads and Traffic Authority
DX 13 SYDNEY

Your **Ref:**
Our Ref: P6932
Kay Leah
Contact: 228 7589
Phone:

Dear Mr Murray

I refer to your letter enclosing a copy of the Preliminary Evaluation of Impact document and the proposed Australian Road Rules (the "Rules") for comment by this Department.

The issue of penalty levels has been highlighted in previous correspondence and I note that the revised draft Rules now adopt a system of maximum penalties, rather than differing penalty rates based on gross vehicle masses.

Generally the Rules appear to raise policy issues that are primarily concerned with road safety and as such do not warrant comment by this Department. However, a number of matters contained in the proposed Rules appear to have wider implications. For example, proposed Clause 19.1 requires that a permit must be obtained for the conduct of all processions, races and other road events involving vehicles or pedestrians. Clauses 19.2 - 19.4 prohibit the use of roads to buy or sell goods and services; conduct charitable collections or for the purpose of hitch-hiking.

These matters raise broader issues of public policy and civil liberties and should be given careful consideration before being included in the proposed Rules.

Yours faithfully

for Director General

Goodsell Building, 8-12 Chifley Square Sydney 2000 o 80: < 6 GPO Sydney 2001
Tel: (02) 228 7777 * Fax (02) 2288608. Dx 1227

~

SYDNEY DISTRICT BUSINESS ASSOCIATION

SYDNEY

TOWN HALL- SYONEY TEL: 265 9600

FAX: 265 9526

The Hon. Anne Margaret Cohen ME
Chief Secretary and
Ministerr For Administrative Services
1 Francis Street
DARLINGHURST NSW 2010

5 September 1994

Dear Minister,

The Sydney Dismet Business Association (SDBA) is an organisation representing key stakeholder groups in t~e City of Sydney. Members include principal retailers, hotels and professions whose collective aims are to promote the interests of businesses located in the Sydney Business District.

This ~sociation is becoming increasingly concerned at the proliferation of different types of intrusions into the ambience and environment of the city. Two prime examples are: collectors for charitable organisations and shopping touts..

1. Charity Collectors

The City has become a fertile ground for a veritable army of collectors, some of whom exhibit an aggressive and sometimes intimidating manner when collecting. Others, will actually lie on the footpath and cause an obstruction.

Our members have observed an increase in these activities at particular key crowd points in the City., such as Pitt Street Mall and the corner of Park and George Street outside Woolwor-das.

The authori~ty to regulate such activity is located in your office and this association writes to you to complain in the strongest terms that this excess of collecting activines is diminishing the enjoyment of being tn the City. The SDBA firmly believes that continued permission of this behaviour by the State Government will damage the retail potential of the City with both local Sydney residents and the significant number of visitors who are being awracted to Sydney by the efforts of Tour'ism New South Wales and your colleague, the Min~sref for Tourism Mrs Virginia Chadwick.

A recent Bureau of Tourism Research study on visitor shopping, 'Hotidays in Store', identified a staggering \$1.5 billion expenditure on shopping. As Sydney at~tracts 63.5% of all international visitors to Australia. this market alone is worth over 5;950 million!

Then there are the domestic visitors who represent over 90% of all visitors to New South Wales. While their expenditure on shopping is somewhat lower than international visitors, Tourism New South Wales' statistics demonstrate that this market represents a value of \$1.7 billion. These are revenues which must not be put at risk.

Please understand that the SDBA is not anti-charity. Indeed, our members, individually and collectively, give ready support to many worthy causes. Our complaint is related to the proliferation of collectors and their intrusive pursuit of potential donors.

Sydney City Council is without power to control or limit these collectors as it no longer has the authority to do so.

The SDBA appeals to you to examine this issue closely and act to prevent these apparently uncontrolled collectors further damaging the appeal of our City.

2. Touting-

Another phenomenon that has been observed recently is that of touts from tourism-related retail establishments, such as duty free and souvenir stores which specialise in more expensive merchandise. These touts aggressively prospect customers with handbills, particularly Japanese and Asian visitors to the City.

The SDBA is advised that Sydney City Council has taken action against some of these touts under the Roads (General) Transitional Regulations, 1993 which regulates against the handing out of handbills on a public street.

The SDBA commends Sydney City Council for its actions, however we are also advised that the penalty applicable in this case is \$200! This is little more than petty cash and we believe that such penalties are regarded by these establishments as merely another Unpleasant but necessary cost of doing business!

On occasions, the activities of these touts attract the anger of merchants on, or near whose premises the touts distribute their material. As these practises occur on private property, the council is unable to act and the responsibility becomes that of the centre management concerned. We should like to see this inappropriate activity nipped in the bud by regulation, to preserve the nature of CBD shopping.

Yours sincerely

Bryan Pritchard

RECEIVED IN EVIDENCE. DATE'

Chief Secretary and
Minister for Administrative Services
Level 12, 1 Francis Street
DARLINGHURST NSW 2010

Dear Mrs Cohen

Thank you for your letter of 22 November last (ref. RML 94/1444, 94/2312) regarding representations you received from Mr B Pritchard, Chairman, Sydney District Business Association, expressing concern over charity collections and touting in the Central Business District of Sydney.

As you are aware, the Local Government Act 1919 was repealed in 1993. The provisions formerly contained in Ordinance No 30 made under that Act, which included the regulation of touting, were transferred, as a temporary measure, to the Roads (General) Transitional Regulation 1993.

However, that Regulation has since been replaced by the Roads (General) Regulation 1994 and, as the Roads legislation is limited to roads rather than the broader classification of public places, the provisions relating to touting were considered irrelevant and omitted from the new Regulation.

Limited powers to control persons selling or soliciting in public streets are provided by clause 7(1)(h) of the General Traffic (Pedestrian) Regulations 1937, but only in circumstances where the offender is causing obstruction or inconvenience. Furthermore, the prescribed penalty for this offence is the common fixed penalty for all pedestrian offences, currently \$38.

If the problem of touting in public places is to be effectively controlled, it appears appropriate that a suitable regulation and penalty be provided under the Local Government legislation, with enforcement being performed by Council Ordinance Inspectors.

I note that you have already referred Mr Pritchard's representations to our colleague, the Minister for Energy and Minister for Local Government and Co-operatives, and that a review of councils' powers to regulate collections in public places is presently being undertaken.

This may be an opportune time to request that the Minister arrange to include the regulation of touting within the terms of reference of that review and, if he considers it necessary, for the Local Government legislation to be amended accordingly.

I trust that the above information will be of assistance, and that you will keep Mr Pritchard informed once you have the benefit of Mr Pickering's advice.

Yours sincerely

BRUCE BAIRD

NEW SOUTH WALES

CHIEF SECRETARY AND MINISTER FOR ADMINISTRATIVE SERVICES

22 NOV 1994

OUR REF: RML 94/1444
94/2312

Mr B Pritchard
Chairman
Sydney District Business Association
C/- Box 1591 GPO
SYDNEY NSW 2000

Dear Mr Pritchard

I refer to your letter of 5 September 1994 concerning persons collecting and hawking in the Central Business District of Sydney.

Under the Charitable Fundraising Act any person or organisation wishing to conduct a fundraising appeal for a charitable purpose must do so under an authority to fundraise issued under the Act, or be authorised by an authority holder. This authority allows the authority holder to conduct any number of fundraising appeals, and does not require it to obtain a separate authority each time it wishes to conduct an appeal.

I am sure that you would appreciate that charities use many methods and practices to solicit funds for their charitable activities. The practice of soliciting funds from persons in streets and public places, or from door to door, may attract criticism. It is inevitable that some members of the community will disagree with or find distasteful certain types of fundraising methods or practices adopted.

The test as to whether a charity continues with a particular method of raising funds will be determined by its success and other influences, such as donor or subscriber concerns. The opportunity is available to you and other community members to raise any matters of concern with a charity, and to obtain a response. Dissatisfied members of the community may exercise their ultimate right and determine not to donate.

I note that you have also raised concern that the Sydney City Council has advised you that it is "without power to control or limit these collectors as it no longer has the authority to do so".

LEVEL 12, 1 FRANCIS STREET, DARLINGHURST, N.S.W. 2010
TELEPHONE: (02) 339 7109 FACSIMILE(02) 339 7788

As you may be aware, the Local Government Act 1993 which commenced on 1 July 1993 repealed the Local Government Act 1919. The former Local Government Act gave local councils the power to control and regulate any solicitation or collection of money, gifts or subscriptions for charitable purposes on roads or from house to house. This approval power was not recreated in the new Local Government Act.

Concern has been previously raised with me that councils no longer have the ability to regulate collections in public places or from door to door. Accordingly, I had raised this matter with the Minister for Energy and Minister for Local Government and Co-operatives, who has advised me that a review of the matter is presently being undertaken.

I have taken the opportunity of referring a copy of your letter to the Minister for Local Government and Co-operatives for his information.

Touting is a matter for my colleague, the Hon B Baird, Minister for Transport, and Minister for Roads. Accordingly, I have referred a copy of your letter to him for his attention and response direct to you.

I am advised that officers of the Charities Division of the Chief Secretary's Department are currently monitoring the collection activities being undertaken in streets in the Central Business District.

Thank you for your interest in this matter.

Yours sincerely

SIGNED- MRS ANNE COHEN MP

Mrs Anne Cohen, MP
Minister

CCC 46M26
R92 167 21

Mr W J Davoren MP
Member for Lakemba
PO Box 74
LAKEMBA NSW 2195

21 JUN 1992

Dear Mr Davoren,

I refer to your representations to the Attorney General, on behalf of Mr M Slater of 3/511 Burwood Road, Be]more, N.S.W., 2192, objecting to people who wash windscreens at traffic lights. As you are aware, a copy of your representations was forwarded to me.

The control of the activities mentioned in your representations is provided for by the Regulations under the General Traffic Act and would be a matter for the Police. Accordingly, I have taken the liberty of forwarding a copy of your representations to the Hon E P Pickering MLC, Minister for Police and Emergency Services, for his consideration.

Yours sincerely,
(Sgd.) WAL MURRAY

WAL MURRAY MP
DEPUTY PREMIER Minister for. Roads

R92 167 21

Hon E P Pickering MLC
Minister for Police and
Emergency Services and
Vice President of the Executive Council
Parliament House
SYDNEY NSW 2000

Dear Mr Pickering,

I have enclosed for your consideration a copy of representations I have received from the Attorney General, on behalf of Far M Slater of 3/511 Burwood Road, Belmore, N.S.W., 2192, objecting to people who wash windscreens at traffic lights.

Enclosed also is a copy of my reply.

Yours sincerely,

WAL MURRAY MP
DEPUTY PREMIER Minister for Roads

PARLIAMENT OF NEW SOUTH WALES
LEGISLATIVE ASSEMBLY

MEMBER FOR LAKEMBA

Attorney General of N.S.W.
15 APR 1992
RECEIVED
10 April, 1992

My dear Attorney General

I have received the attached from Mr Michael Slater of 3/511 Burwood Road, Belmore who you will note has had a nasty experience, and apparently costly, caused by people who offer to clean car windscreens at intersections controlled by traffic lights.

i recall some discussion regarding prevention of charity collection at such intersections but cleaning of windscreens seems to be a new exercise.

Any advice that I can tender to Mr Slater would be appreciated.

Yours sincerely

WES DAVOREN. M.P.

Minister for Consumer Affairs and
Minister for Arts
Level 20, Goodsell Building
Chifley Square
SYDNEY 2000

I ...

DEPARTMENT OF PHYSIOLOGY
UNIVERSITY OF SYDNEY ,
NSW2008 AUSTRALIA

Dr. R.S. Mason
Vitamin D Metabolism
Laboratory

Phone (61) (2) 692 4802
FAX (61) (2) 692
Bitnet davida%physiol.au.oz.au

Michael Slater'

3/511 Burwood Rd
Belmore 2192
4/3/92

The Hon Leo McLeay ;

2 Holden St, Ashfield

Dear Sir,

I would be grateful if some legislation could be enacted to curb the activities of members of the public who wait for cars to stop at traffic lights in order to clean their windscreens, invited or not. My windscreen was scratched by one of these people who would not stop when I said no. The rubber section of his squeegee had come adrift from the metal backing section. [went to the police who said there was no law against it, even if they cause damage.

Not only is it distressing to have to fend off these people at traffic lights, but large proportion of them will cover the windscreen with suds and continue to clean the windscreen even after you say "dont touch it". They then demand money (even though you told them not to touch the car) and insult you if you refuse.

In this society of ours with so much legislation on the books, we desperately need legal protection from these "traffic light bandits".

Yours sincerely,

Michael Slater BSc (Hons) F.A.I.M.S.

RECEIVED IN EVIDENCE. DATE: 20 November 1995
BY:

GUIDELINES FOR THE
CONTROL OF ROADSIDE
VENDING

The Roads and Traffic Authority

November, 1988.

GUIDELINES FOR THE CONTROL OF ROADSIDE VENDING,

FOREWORD:

The current practice of roadside vending has led to the localised degradation of the State's road system, both in terms of safety and efficiency. As the Traffic Authority is responsible for promoting the safe and efficient operation of the State's road system, it would ideally prefer to have no roadside vending at all. However, whether roadside vending is prohibited or not, it is likely that this activity will continue due to the economic factors involved.

Consequently it is necessary to "legalise" and control this activity in order to improve the safety and efficiency aspects of the State's road system.

This document has been prepared to provide councils and roadside vending operators with details of the measures introduced by the Traffic Authority to control roadside vending activities.

It is expected that councils and roadside vending operators will respond appropriately to the responsibilities and requirements outlined and help rectify the situation.

1. DEFINITIONS:

This document deals only with "roadside vending" in regard to the problems associated with their activity and the recommended requirements. In order to understand the meaning of the term 'roadside vending' it is necessary to define the different types of roadside selling activities currently occurring. The types and their associated definitions are as follows:-

- (a) "Roadside vending":- shall mean the setting up or use of any stall, stand, or standing vehicle, other than a roadside stall, street vending vehicle, fruit and vegetable barrow or newspaper stand, for the purpose of offering for sale any goods, or for the pursuit of any business, calling, or employment.
- (b) "Roadside stall":- In accordance with the *Environmental Planning and Assessment Act Model provisions 1980*, a roadside stall means a building or place not exceeding 20 square metres in floor space area respectively where only primary products produced on the property on which the building or place is situated are exposed or offered for sale or sold by retail.
- (c) "Street vending vehicle":- In accordance with *Local Government Ordinance 30 and the Motor Traffic Regulations*, a street vending vehicle means a motor vehicle used for the hawking of ice cream or any of the other products referred to in Regulation 46 of the Pure Food Regulations, 1937, or chocolates, sweets or other confectionery.
- (d) "Fruit and vegetable barrow":- shall mean any stall, stand or barrow, subject to Council agreement, having a maximum area specified by Council, set up on a public street or on a public place, for the purposes of selling fruit and vegetables therefrom for a period specified by Council.

Guidelines for the safer operation of mobile vending vehicles (i.e. street vending vehicles) were published by the Authority in January, 1983.

2. THE PROBLEM

The practice of roadside vending has been gaining momentum in recent times. The primary problems associated with this activity, insofar as traffic safety and efficiency are concerned, include:

- (i) the lack of defined access and egress locations;
- (ii) inadequate or no areas for off-street or on-street parking; and
- (iii) unsightly or hazardously located advertising signs.

Often, roadside vending activities produce more hazardous conditions than a comparable permanent development as no defined access and egress or parking locations exist and random and uncontrolled movements eventuate.

3. RESPONSIBILITIES

The responsibilities of different government authorities and all roadside vending operators with respect to roadside vending activities are detailed below:

(1) Council

To review submissions by any approved person to set up a stall, stand or standing vehicle (other than a street vending vehicle) on a public street, and to either reject or approve for licensing, subject to concurrence being obtained from the Local Traffic Committee and provided due consideration is given to:-

- (a) the conditions detailed in this guideline;
- (b) the nature of the proposed business; and
- (c) the proximity of the proposed roadside vending site to establishments providing the same service.

Where submissions received refer to classified main roads, the Council must inform the DMR of the proposal and seek their advice.

There is no need for councils to obtain approval of the Authority if the representatives from the Department of Main Roads and the Police Department on the Local Traffic Committee concur with the proposal.

(2) **Department of Main Roads:**

To attend Local Traffic Committee meetings and to give advice on matters relating to road efficiency and safety.

(3) Police Department:

To attend Local Traffic Committee meetings and to give advice on matters relating to safety and enforcement.

(4) Traffic Authority:

To co-ordinate the activities of public authorities and to provide advice to Councils.

(5) Roadside Vending Operators:

To apply to the local council for a licence to operate a roadside vending facility providing details of:

- (a) the proposed site location; the proposed times of operation;

(c) the type of business, giving full details of the type of goods for sale. Operators must immediately produce the licence if required to do so by an authorised Council officer or by the Police. Failure to produce the licence may incur a fine.

Operators must comply with the conditions detailed in the licence otherwise the licence may be evoked.

Operators must display the licence or permission at all times for public view. Operators must comply with Council's health and hygiene requirements.

4. REQUIREMENTS FOR ROADSIDE VENDING:

Tighter operational controls will be required to alleviate the problems associated with roadside vending. Strict controls need to be imposed on roadside vending locations as well as on the health and hygiene aspects of roadside vending operation. The health and hygiene controls placed on this type of activity is a matter for Council to determine.

The prohibited and permissible locations for roadside vending activities are detailed below:

(1) Prohibited Locations:

The following locations are prohibited for roadside vending activities.

- (a) on freeways;
- (b) on highways, main roads, secondary roads and arterial/sub-arterial roads unless sufficient off-street parking is provided adjacent to the roadside vending locations and access/egress paths are adequately defined;
- (c) where parking is prohibited for motor vehicles under the Motor Traffic and General Traffic Regulations;
- (d) on any road where the speed limit is 80 km/h or higher;
- (e) on a hill or bend where the view is not clear for at least 80 metres.
- (f) on footpaths or public reserves unless consent provided by Council; and
- (g) where sufficient off-street or on-street parking is not provided adjacent to the roadside vending location.

(2) Permissible Locations:

Roadside vending activities may be set up in areas or in specific locations permitted by Council provided the conditions in these guidelines are met.

Council may permit the setting up of roadside vending activities in areas where kerbside period parking is permitted. However, in such instances, the parking signs should either be removed or covered for the period of vending permitted.

Advertising signs on classified roads are controlled by the Department of Main Roads under Section 3.6 of "Interim Guide to Signs and Markings". It is recommended that Council adopt these guidelines for the control of advertising on local roads.

5. LICENSING:

The granting of a licence to operate a roadside vending facility is Council's responsibility. The Council may grant a general or a site specific licence.

A general licence will apply to a certain area wherein the operator may set up the roadside vending activity provided the activity is not of an itinerant nature.

A site specific licence applies to a specified roadside location for the approved roadside vending activity. Under this type of licence, the operator must only set up the roadside vending activity in the specified location. Failure to comply with this condition may result in the cancellation of the licence, the imposition of a fine and the banning of the operator from conducting other roadside vending activities for a period determined by Council.

Local Traffic Committee's concurrence is required for both types of licence. The licence shall also indicate the following:

- (i) the permitted location for roadside vending (either general area or site specific);
- (ii) the approved times of operation;
- (iii) the types of goods permitted for vending purposes;
- (iv) health and hygiene conditions of operation; and
- (v) other conditions as may be deemed appropriate or necessary by Council.

A licence may be revoked if the operator does not comply with the conditions of licensing or at the Council's discretion.

ORDINANCE 30 LOCAL GOVERNMENT ACT

now stands as:-

- Clause 12 (a) Except with the permission of Council, a person shall not in any road set up or use any basket, box, stall, stand or standing vehicle for the purpose of offering for sale any article, or for the pursuit of any business, calling or employment.

The Council may grant to any approved person a licence to set up a stall, stand or vehicle (other than a street vending vehicle) at a specified place in a public road, on such conditions as may be set out in such licence.

PROPOSED AMENDMENTS,

- Clause (a) **after the word 'the' in first line include the word 'written' to read -**

12 (a) Except with the written permission of Council

after Clause (b) include additional Clause to read

- (c) A permission or licence pursuant to Clause (a) and (b) may not be given or granted by the Council without the approval of the Traffic Authority of New South Wales, which approval may be given in respect of a specific application or in general terms regarding applications of particular classes.

GENERAL TRAFFIC (GENERAL) REGULATIONS.

now stands as:-

No person shall, upon any public street -

- (9) Set up or use any stall, stand or standing vehicle for the purpose of offering for sale any goods or for the pursuit of any business, calling or employment.

Provided that it shall not be an offence under this sub-section for any person who has the approval in writing of the Commissioner of Police for the purpose and who is licensed in that behalf by the Council of the City of Sydney under Ordinance No. 30, made under the Local Government Act, 1919, as amended, and who complies with all such conditions as may be set out in such approval and licensed, to set up or use any stall or stand for the purpose of offering for sale any newspaper, book, pamphlet, periodical or other printed publication.

PROPOSED AMENDMENT

No person shall, upon any public street -

- . (9) Set up, permit or use any stall, stand or standing vehicle for the purpose of offering for sale any goods or for the pursuit of any business, calling or employment.

Provided that it shall not be an offence under this sub-section for any person who has the permission of or is licensed by the Council pursuant to Ordinance No. 30 under the Local Government Act, 1919.

In this regard goods include a vehicle.

RTA

GUIDELINES FOR THE

CONTROL AND

OPERATION OF STREET VENDING

Prepared by:
Roads and Traffic Authority
in association with
Department of Local Government and Co-operatives

January 1993
ISBN 0-7305-9109-3

FOREWORD

Over the years a variety of goods has been sold from the roadside to the public, both to passing motorists and to pedestrians.

The operation of street vending facilities to date has been uncontrolled to a large extent. This has led in many instances to unsafe practices; in particular, the placement of such facilities in situations where they could endanger road users. Also the operations have created unfair competition with established businesses in some cases and there have been some concerns regarding hygiene with the sale and preparation of food.

There are several organisations with an interest in street vending. The Roads and Traffic Authority is responsible for the safe and efficient use of the State's roads. The Department of Local Government and Co-operatives, among other things, promotes efficiency in local government administration. Councils, having a detailed knowledge of local circumstances, are in the best position to control street vending to ensure a proper balance between the interests of operators of such activities, established businesses and residents.

Although there have been some problems to date with street vending, there will be many occasions where the operation will not jeopardise road safety and efficiency, fair trading or hygiene.

These guidelines, prepared by the Roads and Traffic Authority in association with the Department of Local Government and Co-operatives and the Police Service, provide guidance as to the responsibilities and requirements of Councils, operators and others in street vending operations. It is a requirement of Ordinance No 30 under the Local Government Act that Councils have regard to these guidelines before granting approval to any application for permission to conduct street vending.

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I INTRODUCTION

The practice of street vending within road reserves can have adverse traffic safety and operational effects on the road system. In principle the use of public streets for vending purposes should be prohibited whenever there is a conflict with vehicular or pedestrian traffic. However, there will be some circumstances where such activities can be accommodated without adverse effects on the safety and efficiency of traffic flow. For example, locations with wide footpaths in commercial areas or wide shoulders on low speed roads may be suitable.

This document provides Councils and street vending operators with guidelines to more effectively and consistently control and operate street vending activities within road reserves, ie anywhere between the road boundaries including footpaths and shoulder areas, see Figure 1. In particular, the guidelines outline the responsibilities and requirements of all parties so that problems *associated* with street vending are minimised.

2 DEFINITIONS

This document deals only with "street vending", the problems associated with the activity and the requirements necessary to overcome the problems. The definitions of the different types of street selling activities currently occurring are given below.

- i) "Street vending" means the setting up or use within the road reserve of any box, stall, stand, barrow or stationary vehicle, other than a "roadside stall" or "mobile vending vehicle" defined hereunder, for the purpose of offering for sale any goods, or for the pursuit of any business, calling, or employment.

Examples of street vending are:

- Sale of fruits and vegetables from barrows on a footpath.
- Sale of newspapers from a stand on a footpath.
- Sale of food and drinks from a stall or a stationary vehicle near a tourist area, sporting complex or the like.
- Sale of goods from a box, stall or stand located on a footpath (this activity is often conducted by charitable organisations in commercial areas).
- Sale of any goods from a stall, stand, or stationary vehicle located in a kerbside lane or on the side of a road.

Note: A number of activities such as the sale of newspapers, charity collections and windscreen cleaning from the road, usually at traffic signal controlled intersections, are illegal under Section 7 of the General Traffic (Pedestrian) Regulations as the people involved in such activities are likely to obstruct, hinder or prevent the free passage of traffic.

- ii) "Roadside stall" means a building or place not exceeding 20 square metres in floor space or area respectively where only primary products produced on the property on which the building or place is situated are exposed or offered for sale or sold by retail. (Environmental Planning and Assessment Act, Model Provisions 1980).

A roadside stall under this definition lies outside the road reserve.

Appendix A is an extract from RTA guidelines for consideration of this type of development.

- iii) "Mobile vending vehicle" means a motor vehicle plying on public streets and making brief intermittent stops (on lightly trafficked roads) for the hawking of ice cream, chocolates, sweets or the like. By law, these vehicles require the display of warning signs and fitting of flashing lights.

See Appendix B for the RTA's guidelines.

3 THE PROBLEM

The practice of street vending has existed for many years. The lack of adequate control of selling to passing motorists from the kerbside lane or the side of a road has become particularly apparent in recent times as traffic volumes have increased. Further, established businesses have often suffered because of street vending operations close by.

The main problems associated with this activity, so far as traffic safety and efficiency are concerned, include:

- i) the lack of defined entry and exit to street vending locations;
- ii) inadequate or non-existent areas for parking; and
- iii) unsightly or hazardously located advertising signs.

Street vending activities often produce more hazardous traffic conditions than comparable off-road developments as no defined entry and exit or parking locations exist, leading to random, uncontrolled and unexpected traffic manoeuvres. This is particularly the case on high speed roads and on busy arterial roads.

Another problem with street vending activities is the need to conform to established health and hygiene requirements.

4 THE LAW

Subsection 9 of Section 6 of the General Traffic Regulations prohibits street vending on all public streets except with the approval of the local Council.

Clause 12 of Ordinance 30 under the Local Government Act empowers Councils to approve applications for permission to conduct street vending after taking into consideration these guidelines.

See Appendix C for details of the relevant General Traffic Regulation and the Ordinance.

5 RESPONSIBILITIES

The responsibilities of Councils, government authorities and street vending operators with respect to street vending activities are detailed below:

i) Council

The Council has a responsibility to review any applications to set up a stall, stand or vehicle (other than a 'roadside stall' or 'mobile vending vehicle' as defined in Section 2) on a public street, and to either reject or approve in writing, under the provisions of the Local Government Ordinances, subject to advice being obtained from the Local Traffic Committee on traffic aspects and provided due consideration is given to:-

- the conditions detailed in these guidelines;
- nature of the proposed business;
- the proximity of the proposed street vending site to establishments providing the same service; and
- health and hygiene requirements, including collection and disposal of litter.

Proposals for the location of street vending facilities on roads classified under the State Roads Act are generally subject to the consent of the RTA under Section 60 of the Act. The Authority, in principle, *does not favour street vending facilities on classified roads* for traffic safety and efficiency reasons. Councils should not approve street vending proposals involving such roads without the Authority's consent.

ii) Roads and Traffic Authority

The Authority's responsibility is to give advice on matters relating to road efficiency and safety, either directly or through the Local Traffic Committee.

iii) Police Service

The role of the Police Service in street vending is to give advice on matters relating to safety and enforcement through the Local Traffic Committee.

(iv) Street Vending Operators

Operators must apply to the local Council for approval in writing to operate a street vending facility. The application must provide details of:

- the proposed site location;
- the proposed times and days of operation;
- the type of business including full details of the goods for sale; and
- advertising signs, if any.

Operators must immediately produce the written approval if required to do so by an authorised Council employee or by the Police.

Operators must comply with the conditions detailed in the written approval; otherwise the approval may be revoked.

Operators must display the approval at all times for public view.

Operators must provide proof of identity when requested by an authorised Council employee or by the Police.

Operators must comply with Council's health and hygiene requirements.

6 REQUIREMENTS FOR STREET VENDING

Operational controls are required to alleviate the problems previously associated with street vending. Strict traffic controls should be imposed on street vending operations. The health and hygiene controls placed on this type of activity are a matter for Council to determine.

Traffic warning and information signs should conform to these guidelines. See Figure I for details. Advertising signs should be limited to the immediate street vending site.

Applications for street vending activities should be declined at the following locations:

- i) on tollways, freeways and other access controlled roads;
- ii) on classified roads as defined in the State Roads Act;
- iii) where parking is prohibited or during periods when period parking is permitted for motor vehicles under the Motor Traffic Regulations;
- iv) on any road where the speed limit is 80 km/h or higher;
- v) on a hill or bend where the view of the street vending facility is not clear for less than 240 metres;
- vi) within 100 metres of intersecting roads;
- vii) where sufficient parking is not provided or available adjacent to the street vending location;
- viii) where it is hazardous for pedestrians to approach the vending facility set up on a footpath.

7 APPROVALS

The granting of an approval to operate a street vending facility is Council's responsibility. The Council may grant a general or a site-specific approval or reject the application. In all cases, the approvals shall be endorsed "non-transferable" and shall include name, address and signature of the applicant.

A **general area approval** will apply to a certain area wherein the operator may set up the street vending facility provided the activity is not of an itinerant nature from a vehicle.

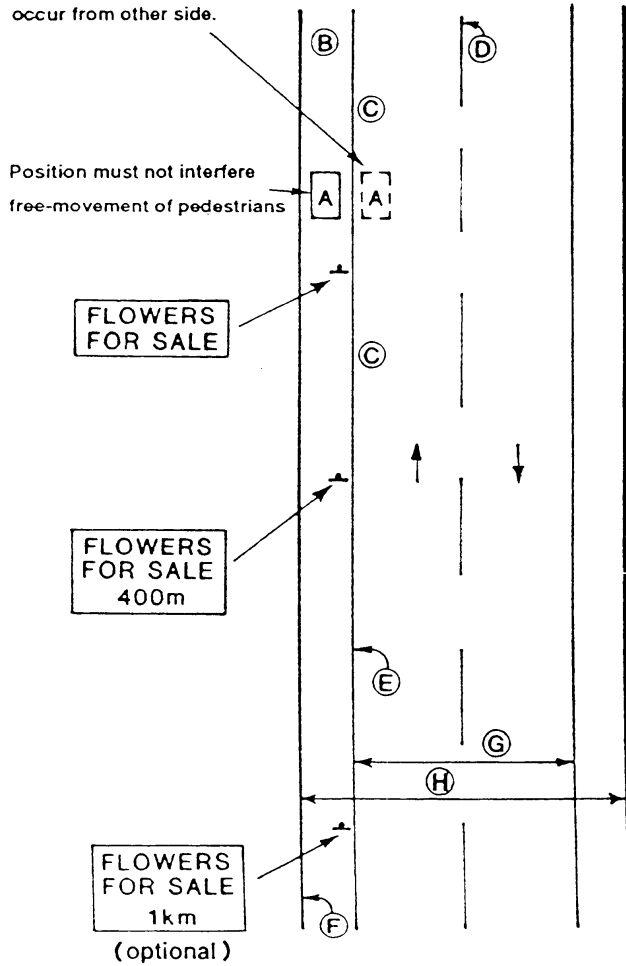
A site specific approval applies to a specified roadside location for the approved street vending facility. Under this type of approval, the operator may only set up the street vending facility in the specified location. Failure to comply with this condition may result in the cancellation of the approval and the banning of the operator from conducting other street vending activities for a period determined by Council.

The approval in writing should include the following:

- i) the permitted location for the street vending facility (either general area or site specific);
- ii) the approved times and days of operation;
- iii) the types of goods permitted to be sold;
- iv) detailed sketch of signposting permitted;
- v) health and hygiene conditions of operation; and
- vi) other conditions as may be deemed appropriate or necessary by Council.

An approval may be revoked if the operator does not comply with the written conditions.

Note: Vending must occur from footpath side; Vendor must ensure that vending does not occur from other side.



NOTES:

- A** Stall, stand or stationary vehicle (on footpath **A** or kerbside lane **[A]**)
- B** Footpath
- C** Customer parking
- D** Separation line
- E** Edge line or edge of carriageway (kerb & gutter)
- F** Property line
- G** Carriageway
- H** Road reserve

STREET VENDING

(in unrestricted kerbside parking lane or on footpath)

SIGNPOSTING

EXAMPLE: FLOWERS FOR SALE

Figure 1

(NOT TO SCALE)

APPENDIX A

Extract from:

Traffic Authority's: "Policies, Guidelines and Procedures for Traffic Generating Developments - Part A; Section 3 - Design Guidelines"

3.8.5 Roadside Stalls

a) Definition

- i) A roadside stall means a building or place not exceeding 20²m in floor space or area respectively, where only primary products produced on the property on which the building or place is situated are exposed or offered for sale or sold by retail.
- ii) A larger building, or a stall selling goods not produced on the property, would be defined as a 'shop' and thus subject to the requirements as specified in Section 3.8.1.
- iii) The policy of the Department of Environment and Planning on roadside stalls as set out in the Planning and Environment Commission's Circular No 39 of 10th January 1980, can be summarised as follows:-
 - A 'shop' not covered by the definition of roadside stall should not be permitted in a rural zone;
 - Existing use provisions do not grant any automatic rights to extend premises or to convert them into a shop or to increase the range of goods sold
 - Roadside stalls, as defined, may be permitted with consent in rural zones, except on most major roads.

b) Parking

Where roadside stalls are permitted a minimum of four off-street parking spaces is recommended.

c) Driveways

Recommended driveway widths are as follows:

- i) Where permitted on a major road separate entry/exit driveways each of 4 metres minimum width are recommended. However, in certain circumstances a combined entry/exit driveway of minimum width 6 metres may be acceptable.
- ii) On a minor road a combined entry/exit driveway of minimum width 3 metres is recommended.

d) Site Design

- i) A continuous separation between site activities and the road frontage excluding drive-ways should be provided. A separation of minimum depth 3 metres from the site boundary, with no advertising material or displays, is desirable.
- ii) On major roads, particularly on isolated and/or high speed sections, motorists should be discouraged from parking on the opposite side of the road to a development and crossing the road to the site. The use of physical pedestrian barriers to prevent such practice may be necessary.

APPENDIX B

ATTACHMENT C

Extract from:

Traffic Authority's "Guidelines for the Safer Operation of Mobile Vending Vehicles".

**GUIDELINES
FOR THE SAFER
OPERATION OF
MOBILE VENDING
VEHICLES**

Direct Enquiries to:

THE SECRETARY

TRAFFIC AUTHORITY OF N.S.W.

P.O. BOX 110

ROSEBERY 2018

Ph. 663 8222

TRAFFIC AUTHORITY OF NEW SOUTH WALES

JANUARY. 1983

FOREWORD

Children are at great risk on the roads, particularly when they are unsupervised. The younger the child, the greater the risk of being run down. It is known that the attraction of mobile vending vehicles poses a significant hazard to small children. When children are excited or anxious, any road sense they may have can be overshadowed by their eagerness.

This leaflet has been prepared to provide Councils and vending operators with details of the measures introduced by the Traffic Authority of New South Wales to increase safety near these vehicles.

It is expected that Councils and vendors will respond appropriately to the counter-measures outlined and help rectify what is by and large a preventable problem.

Director,
Traffic Authority of
New South Wales

THE PROBLEM

Death and injury is occurring on New South Wales roads as a direct result of the activities of mobile vending vehicles, such as ice cream vans. In particular, children attracted to these vehicles incur a serious risk from passing traffic. Accident research has established that in recent years, on average, one child has been injured each month and one killed each year from accidents associated with such vehicles. Ideally the problem could be minimised by parental control, though in practice many children approach vendor's vehicles without driver proper supervision. The problem is compounded off

THE COUNTERMEASURES

It is felt that the best countermeasure to the problem is to make the vending vehicle more conspicuous to motorists, thereby alerting them to the likely presence of young pedestrians. To this end the Motor Traffic Regulations have been amended to require that vendor's vehicles be fitted with a flashing warning lamp mounted on the roof, to be actuated when the vehicle is stopped to serve customers. Further, it has been recommended that signs be mounted on the vehicle, warning traffic approaching from the front or rear of the possible presence of children' and that vending activity be limited to quiet roads - those that are not heavily trafficked. Details of these countermeasures are given below.

In accordance with the amended Motor Traffic Regulations, any motor vehicle used for the vending of ice cream, chocolates, sweets, confectionery or any of the products referred to in Regulation 46 of the Pure Food Regulations must be fitted with a warning lamp, mounted on the roof of the vehicle, which shall

- * emit amber coloured light;
 - * commence to emit light within 1 second of being switched on;
 - * when switched on, flash by rotation regularly at a rate of not less than 60 times per minute;
 - * be connected to an indicator which will inform the driver, by visible and audible means, that the lamp is flashing; and
 - * emit light which is visible in normal sunlight from a distance of at least 200 metres to a driver approaching from any direction
- The light must be switched on when the stops for customers, but is to be switched

by the fact that younger children do not have a fully developed traffic awareness

at all other times

WARNING SIGNS

These signs should alert motorists to the likelihood of child pedestrians, and to the need for caution. One sign should face motorists approaching from the front of the vending vehicle and one sign should face motorists approaching from behind.

Design

The signs should

- contain the words CAUTION CHILDREN;
- the lettering should be narrow spaced, styled to accord with AS 1744-1975 Series B; have a minimum height of 120mm;
- feature white lettering and border on a red background. Colours to accord with AS 1743-1975.

Figure 1 shows the design and dimensions of the recommended sign.

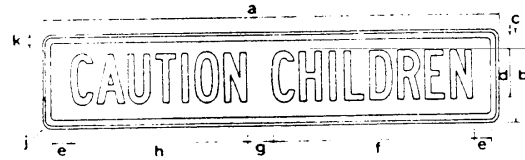
Position

- They are mounted as high as practical on the vehicle: if possible the front facing sign should be mounted above the windscreen level;
- the rear facing sign is at a similar elevation to the front sign;
- no part of either sign impedes the operation of mirrors, indicator, warning or illumination lamps, or interferes with the driver's visibility.

"It is expected that Councils and vendors will respond appropriately to the counter-measures outlined and help rectify what is by and large a preventable problem."

The signs should be secured to the vehicle such that

FIGURE 1: Recommended Sign



White letters and border on red background

DIMENSIONS (min)

a	b	c	d	e
1093	190	5	120	40
f	g	h	j	k
489	68	426	20	10

STREET-RESTRICTIONS

Vending should only take place on quieter residential streets such as cul-de-sacs or short streets carrying only light traffic. Vendors should not trade on arterial, sub-arterial or collector roads, or in any street deemed by the local Council as being unsuited, by virtue of its location or traffic conditions.

COUNCIL RESPONSIBILITIES

Permit

Councils that regulate the operation of mobile vendors in their areas through the use of a permit should amend the conditions for permit issue to include paragraphs which

- require vending vans to display front and rear facing signs warning motorists of the possible presence of children; these signs should conform to the specifications listed above, or if at variance to the above be submitted to Council for approval;
- require that vending be restricted to streets which are lightly trafficked; this might be best achieved by listing streets on which vending should not take place, or preparing a map showing these restrictions; and
- inform the vendor of his obligation under the Motor Traffic Regulations to fit the flashing light (as above), its specification, and operation whilst vending.

Vendors operating under existing permits should be notified of the changes in conditions of permit issue and requested to acknowledge **compliance**.

Councils which have no permit system associated with the operation of these vehicles should consider the introduction of such a system.

Enforcement

It is expected that vendors will comply with these requirements in the interests of community safety. However Councils should exercise the right to cancel the operating permit of any vendor who repeatedly operates contrary to Council direction.

It is a Police responsibility to enforce the requirement for the fitting and correct operation of the flashing amber light.

VENDOR RESPONSIBILITIES

All vendors should comply with the safety initiatives outlined in these guidelines in the interests of community safety. The first step is for a vendor to apply to the local Council for

details of the streets approved for mobile vending operations. The largest possible warning signs -- as described in the above "WARNING SIGNS" section - should be mounted onto the vehicle, as described above. Vendors are required by law to fit flashing amber lights onto the vehicle's roof, as described in the above "FLASHING LIGHT" section.

The vendor can also contribute toward public safety in other important ways. First, the vendor should select a **safe vending site**, where approaching traffic can see the vending vehicle in time to slow down and exercise caution. For instance the vendor should not stop close to blind corners, or park in front of large vehicles which obscure a driver's view of the vendor.

Secondly, where goods are being purchased by young children, the vendor should alert the

children about traffic, particularly if he is aware of approaching vehicles. Finally **vending vehicles should not be operated at night because of the increased danger to pedestrians**.

APPENDIX C

TRAFFIC ACT 1909 - REGULATION

Subsection 9 of Section 6 - General Traffic Regulations

No person shall, upon any public street -

Set up or use any basket, box, stall, barrow, stand or vehicle (other than a street vending vehicle) for the purpose of offering for sale any goods or for the pursuit of any business, calling or employment or any charitable purpose unless:

- a) the person has been issued with an approval under Clause 12 of Ordinance No 30 under the Local Government Act 1919 to set up or use the basket, box, stall, barrow, stand or vehicle; and
- b) the person is acting in compliance with any conditions attached to the approval.

In this subsection, "**street vending** vehicle" means a motor vehicle from which only ice cream, ice confection, chocolate or confectionery is sold.

LOCAL GOVERNMENT ACT 1919 - ORDINANCE

Clause 12 of Ordinance 30

Street vending facilities

- 1) A person who is not the holder of a written approval for the time being in force under this clause must not in any public road set up or use any basket, box, barrow, stall, stand or standing vehicle (other than a street vending vehicle) for the purpose of offering for sale any article or for the pursuit of any business, calling or employment or any charitable purpose.
- 2) The Council may grant approval to a person to set up a basket, box, barrow, stall, stand or standing vehicle at a specified place in a public road, on such conditions as may be set out in the approval.
- 3) The approval must:
 - a) state the location in which the person is authorised to set up and use the relevant facility; and
 - b) state the period or periods during which the approval is in force; and
 - c) state any conditions to which the approval is subject.
- 4) An approval remains in force for the period specified in the approval unless it is sooner suspended or revoked by a notice from the Council.

- 5) Before granting an approval, the Council must take into consideration:
 - a) the need to avoid the obstruction of the footpath or the carriageway of the public road; and
 - b) any guidelines relating to street vending facilities that are notified to the Council by the Roads and Traffic Authority or by the Department of Local Government and Co-operatives.
- 6) Nothing in this clause requires a person to hold an approval in order to use a vehicle to deliver any article in accordance with a sale or arrangement already made.
- 7) Nothing in this clause prohibits the use of a street vending vehicle for the purpose of offering for sale only ice cream, ice confection, chocolate or confectionery.
- 8) Nothing in this clause applies to the sale of a motor vehicle.

**SUBMISSIONS RECEIVED RELATING TO ITINERANT COMMERCIAL ACTIVITIES
ON OR ALONGSIDE THE ROADWAY**

To date, over three hundred submissions have been received relating to STAYSAFE's inquiry into pedestrian safety. The field of pedestrian safety is very broad, and very few of these submissions have addressed issues associated with itinerant commercial activities on or alongside roadways.

The following list identifies those submissions which have addressed issues associated with itinerant commercial activities on or alongside roadways. As well, witnesses before the public hearing Tabled a number of documents. Most of these documents are included in this report.

PED 142	New South Wales Police Service
PED 289	The Honourable ET. Page MP, Member for Coogee
PED 299	Mr P. Zahra
PED 300	Mr D. Loveridge

WITNESSES

**LIST OF WITNESSES WHO APPEARED
BEFORE STAYSAFE**

20 November 1995

Terence Earl Lester, New South Wales Police Service

Ian David Whatson, New South Wales Police Service

Ian Murry Ross Duncan, New South Wales Police Service

Christopher Patrick Ford, Roads and Traffic Authority of New South Wales

Robert Weston Reece, Roads and Traffic Authority of New South Wales

Sam Swaminathan, Roads and Traffic Authority of New South Wales

Marziano De Santi, Parramatta City Council

Sydney Joseph Cooke, Parramatta City Council,

Joseph Clayton Pereira, Parramatta City Council

WITNESSES