

Passed by both Houses



New South Wales

Luna Park Site Amendment (Noise Control) Bill 2005

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Luna Park Site Act 1990 No 59	2
Schedule 1 Amendments	3

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2005*



New South Wales

Luna Park Site Amendment (Noise Control) Bill 2005

Act No , 2005

An Act to amend the *Luna Park Site Act 1990* with respect to noise emissions from the Luna Park site.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Luna Park Site Amendment (Noise Control) Act 2005*.

2 Commencement

This Act commences on the date of assent.

3 Amendment of Luna Park Site Act 1990 No 59

The *Luna Park Site Act 1990* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

authorised use means any use that is authorised under Part 2A.

dedicated use means any use for a purpose for which the land comprising the Luna Park site is dedicated pursuant to section 5 (1) (b).

[2] Section 4 (1A)

Insert after section 4 (1):

- (1A) In this Act, a reference to the noise from an authorised use or dedicated use includes a reference to noise arising from all persons involved in the use (such as, in the case of a use for public entertainment, the patrons of the entertainment).

[3] Section 19A

Insert after section 19:

19A Legal proceedings and other noise abatement action

- (1) No criminal proceedings, no civil proceedings (whether at law or in equity) and no noise abatement action may be taken against any person with respect to the emission of noise from the Luna Park site.
- (2) The emission of noise from the Luna Park site does not constitute a public or private nuisance.
- (3) This section does not apply to or in respect of noise that exceeds the maximum permissible noise level at the closest residential facade.
- (4) This section does not limit or otherwise affect the operation of the *Environmental Planning and Assessment Act 1979* (other than section 121B) or any instrument under that Act in its application to land comprising any part of the Luna Park site.
- (5) For the purposes of this section:
closest residential facade, in relation to noise, means:
 - (a) the residential facade closest to the source of the noise, or

- (b) if there is more than one source of noise, the residential facade closest to where the noise is loudest,

where a reference to a residential facade is a reference to an outside wall of a building containing residential accommodation.

maximum permissible noise level means:

- (a) a noise level of 85dB (A) ($L_{A10, 15mins}$), or
(b) if some other noise level is prescribed by the regulations, that other level,

being, in either case, a noise level determined in accordance with:

- (c) Australian Standard AS 1055.1—1997, *Acoustics—Description and measurement of environmental noise*, Part 1: *General procedures*, as in force from time to time, or
(d) Australian Standard AS 1259.1—1990, *Acoustics—Sound level meters*, Part 1: *Non-integrating*, as in force from time to time, or
(e) Australian Standard AS 2659.1—1988, *Guide to the use of sound-measuring equipment*, Part 1: *Portable sound level meters*, as in force from time to time.

noise abatement action means:

- (a) the issuing of a noise control notice, noise abatement order or noise abatement direction under section 264, 268 or 276 of the *Protection of the Environment Operations Act 1997*, or
(b) the issuing of an order with respect to noise under section 121B of the *Environmental Planning and Assessment Act 1979*, or
(c) action of the kind that may be taken following a complaint under section 104 of the *Liquor Act 1982* or section 17AA of the *Registered Clubs Act 1976*, or
(d) any other action of a kind prescribed by the regulations.

[4] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Luna Park Site Amendment (Noise Control) Act 2005

[5] Schedule 2, Part 3

Insert after Part 2:

**Part 3 Luna Park Site Amendment (Noise Control)
Act 2005**

3 Past noise emissions from use of land within Luna Park site

- (1) Any use of land within the Luna Park site that was an authorised use or dedicated use at any time during the relevant period is taken to have been such a use:
 - (a) regardless of the noise arising from the use, or the combined noise arising from all or any such uses, at that time, and
 - (b) regardless of any maximum noise level to which the use was subject, pursuant to the conditions of any development consent, at that time.
- (2) The emission of noise from the Luna Park site at any time during the relevant period is not to be taken to have constituted a public or private nuisance.
- (3) Without limiting their operation apart from this subclause, subclauses (1) and (2) have effect for the purposes of:
 - (a) any legal proceedings commenced during or after the relevant period, and
 - (b) any noise abatement action (within the meaning of section 19A) commenced during or after the relevant period,with respect to noise emitted from the Luna Park site during that period.
- (4) This clause does not affect any final determination that, before the commencement of this clause, had been made by a court or tribunal in relation to legal proceedings with respect to noise emitted from the Luna Park site during the relevant period.
- (5) Despite subclause (4), any such final determination is not to be construed as limiting or restricting the use of land within the Luna Park site after the commencement of this clause.
- (6) Subclause (5) does not permit noise emitted from the Luna Park site to exceed the maximum permissible noise level at the closest residential facade (within the meaning of section 19A).

Luna Park Site Amendment (Noise Control) Bill 2005

Schedule 1 Amendments

- (7) In this clause:
- development consent*** has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*.
- the relevant period*** means the period beginning on 30 March 2004 and ending on the commencement of section 19A.