



New South Wales

Luna Park Site Amendment (Noise Control) Bill 2005

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Luna Park Site Act 1990* (*the principal Act*), in relation to noise emissions from the Luna Park site, so as:

- (a) to set a maximum permissible noise level for future noise emissions, and
- (b) to protect both past noise emissions, and future noise emissions not exceeding the maximum permissible noise level, from legal proceedings and other noise abatement action, and
- (c) to provide that neither past noise emissions, nor future noise emissions not exceeding the maximum permissible noise level, are to be taken to constitute a public or private nuisance.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date on which it is assented to.

Clause 3 is a formal provision that gives effect to the amendments to the *Luna Park Site Act 1990* set out in Schedule 1.

Schedule 1 Amendments

Future noise emissions

Schedule 1 [3] inserts a new section 19A into the principal Act. The proposed section protects future noise emissions from legal proceedings and other noise abatement action. It also provides that noise emissions from the Luna Park site do not constitute a public or private nuisance. The proposed section will not give protection to noise emissions that exceed the maximum permissible noise level, in which regard the maximum permissible noise level is to be 85 decibels or, if the regulations under the principal Act prescribe some other noise level, that other noise level. The proposed section will not generally limit or otherwise affect the operation of the *Environmental Planning and Assessment Act 1979* or any instrument under that Act. Consequently, maximum noise levels imposed by the conditions of any development consent for land within the Luna Park site will still be effective and enforceable under that Act.

Schedule 1 [1] and [2] make consequential amendments to section 4 (Definitions).

Past noise emissions

Schedule 1 [5] inserts a new Part 3 into Schedule 2 (Savings, transitional and other provisions). The new Part consists of a single clause, proposed clause 3, which protects past noise emissions from legal proceedings and other noise abatement action, regardless of the noise level of those emissions, and provides that any such emission is not to be taken to have constituted a public or private nuisance. The proposed clause will not affect any existing final determination of any court or tribunal, except to the extent to which it would otherwise limit or restrict the use of land within the Luna Park site after the commencement of the proposed Act.

Schedule 1 [4] amends clause 1 of Schedule 2 to enable the regulations under the principal Act to make provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

First print



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New South Wales

Luna Park Site Amendment (Noise Control) Bill 2005

No. , 2005

A Bill for

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

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Luna Park Site Amendment (Noise Control) Act 2005</i> .	3
2 Commencement	4
This Act commences on the date of assent.	5
3 Amendment of Luna Park Site Act 1990 No 59	6
The <i>Luna Park Site Act 1990</i> is amended as set out in Schedule 1.	7

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 4 Definitions	3
	Insert in alphabetical order in section 4 (1):	4
	<i>authorised use</i> means any use that is authorised under Part 2A.	5
	<i>dedicated use</i> means any use for a purpose for which the land comprising the Luna Park site is dedicated pursuant to section 5 (1) (b).	6 7 8
[2]	Section 4 (1A)	9
	Insert after section 4 (1):	10
	(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).	11 12 13 14
[3]	Section 19A	15
	Insert after section 19:	16
19A	Legal proceedings and other noise abatement action	17
	(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.	18 19 20 21
	(2) The emission of noise from the Luna Park site does not constitute a public or private nuisance.	22 23
	(3) This section does not apply to or in respect of noise that exceeds the maximum permissible noise level at the closest residential facade.	24 25 26
	(4) This section does not limit or otherwise affect the operation of the <i>Environmental Planning and Assessment Act 1979</i> (other than section 121B) or any instrument under that Act in its application to land comprising any part of the Luna Park site.	27 28 29 30
	(5) For the purposes of this section:	31
	<i>closest residential facade</i> , in relation to noise, means:	32
	(a) the residential facade closest to the source of the noise, or	33

(b)	if there is more than one source of noise, the residential facade closest to where the noise is loudest,	1
	where a reference to a residential facade is a reference to an outside wall of a building containing residential accommodation.	2
	maximum permissible noise level means:	3
	(a) a noise level of 85dB (A) ($L_{A10, 15mins}$), or	4
	(b) if some other noise level is prescribed by the regulations, that other level,	5
	being, in either case, a noise level determined in accordance with:	6
	(c) Australian Standard AS 1055.1—1997, <i>Acoustics—Description and measurement of environmental noise</i> , Part 1: <i>General procedures</i> , as in force from time to time, or	7
	(d) Australian Standard AS 1259.1—1990, <i>Acoustics—Sound level meters</i> , Part 1: <i>Non-integrating</i> , as in force from time to time, or	8
	(e) Australian Standard AS 2659.1—1988, <i>Guide to the use of sound-measuring equipment</i> , Part 1: <i>Portable sound level meters</i> , as in force from time to time.	9
	noise abatement action means:	10
	(a) the issuing of a noise control notice, noise abatement order or noise abatement direction under section 264, 268 or 276 of the <i>Protection of the Environment Operations Act 1997</i> , or	11
	(b) the issuing of an order with respect to noise under section 121B of the <i>Environmental Planning and Assessment Act 1979</i> , or	12
	(c) action of the kind that may be taken following a complaint under section 104 of the <i>Liquor Act 1982</i> or section 17AA of the <i>Registered Clubs Act 1976</i> , or	13
	(d) any other action of a kind prescribed by the regulations.	14
[4]	Schedule 2 Savings, transitional and other provisions	15
	Insert at the end of clause 1 (1):	16
	<i>Luna Park Site Amendment (Noise Control) Act 2005</i>	17

[5] Schedule 2, Part 3	1
Insert after Part 2:	2
Part 3 Luna Park Site Amendment (Noise Control) Act 2005	3
	4
3 Past noise emissions from use of land within Luna Park site	5
(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:	6
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(a) regardless of the noise arising from the use, or the combined noise arising from all or any such uses, at that time, and	9
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(b) regardless of any maximum noise level to which the use was subject, pursuant to the conditions of any development consent, at that time.	12
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(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.	15
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(3) Without limiting their operation apart from this subclause, subclauses (1) and (2) have effect for the purposes of:	18
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(a) any legal proceedings commenced during or after the relevant period, and	20
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(b) any noise abatement action (within the meaning of section 19A) commenced during or after the relevant period,	22
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with respect to noise emitted from the Luna Park site during that period.	25
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(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.	27
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(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.	31
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(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).	34
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Schedule 1 Amendments

- (7) In this clause:
- development consent* has the same meaning as it has in the
Environmental Planning and Assessment Act 1979. 1
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- the relevant period* means the period beginning on 30 March
2004 and ending on the commencement of section 19A. 4
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