

Luna Park Site Act 1990 No 59

[1990-59]



New South Wales

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Luna Park Site Act 1990 No 59



New South Wales

An Act to return the Luna Park site to the people of New South Wales and to provide for its future management; to deal with the payment of any compensation which may be payable to the lessee of the site; to repeal the *Luna Park Site Act 1981*; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Luna Park Site Act 1990*.

2 Commencement

- (1) This Act commences on the date of assent, except as provided by this section.
- (2) A provision of Part 2, Part 3 or Schedule 1 commences or is to be taken to have commenced on a day or days to be appointed by proclamation.
- (3) Such a proclamation may appoint 6 June 1990 or any later day as the date of commencement of a provision of Part 2, Part 3 or Schedule 1.

3 Object of this Act

The object of this Act is to return the Luna Park site to the people of New South Wales and to ensure that Luna Park and the associated harbour foreshore remain available and accessible for the enjoyment of the people of New South Wales.

4 Definitions

- (1) In this Act:

arbitrator means the arbitrator appointed under section 12.

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 as referred to in section 5A (1).

improvement means an improvement that was on the Luna Park site immediately before 6 June 1990.

Luna Park lease means the sub-lease registered number S 830396 dated 27 May 1981 between the Minister for Lands for and on behalf of Her Majesty Queen Elizabeth II and Harbourside Amusement Park Pty. Limited, as varied by:

- (a) the deed made 14 December 1983 between those persons, and
- (b) the deed made 18 March 1988 between the Minister for Lands for and on behalf of Her Majesty Queen Elizabeth II and Prome Investments Pty. Limited.

Luna Park Reserve means the land comprising the Luna Park site.

Luna Park Reserve Trust means the Luna Park Reserve Trust as reconstituted by section 5B.

Luna Park site means the land described in Schedule 1.

the lessee means:

- (a) the lessee under the Luna Park lease and includes any person to whom the estate or interest of the lessee under that lease has been lawfully assigned, or
- (b) if the Luna Park lease is determined (by forfeiture or otherwise), the person who, immediately before the determination of the lease, was the lessee under the lease.

(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).

(2) If a provision of Part 2 or Part 3 is to be taken to have commenced before the date of assent to this Act, this section is, to the necessary extent, to be taken to have commenced on the commencement of the provision.

Part 2 Dedication and management of Luna Park site

5 Definitions

In this Part:

Crown land Minister means the Minister administering the [Crown Land Management Act 2016](#).

repeal day means the day on which the [Crown Lands Act 1989](#) is repealed by the [Crown Land Management Act 2016](#).

5A Dedication of Luna Park site

(1) The Luna Park site continues, on and from the repeal day, to be Crown land that is dedicated under the [Crown Land Management Act 2016](#) for the purposes of public

recreation, public amusement and public entertainment.

- (2) However, the dedication of the Luna Park site for any of these purposes cannot be revoked under the [Crown Land Management Act 2016](#).

5B Luna Park Reserve Trust is Crown land manager of Luna Park Reserve

- (1) On and from the repeal day:
- (a) the Luna Park Reserve Trust in existence immediately before the repeal day (the **existing Luna Park Reserve Trust**) is taken to have been reconstituted as a statutory land manager under the [Crown Land Management Act 2016](#) with the same name (the **reconstituted Luna Park Reserve Trust**), and
 - (b) each member of the trust board of the existing Luna Park Reserve Trust immediately before the repeal day is taken to have been appointed as a member of the board of the reconstituted Luna Park Reserve Trust for the balance of their terms of office, and
 - (c) the reconstituted Luna Park Reserve Trust is taken to have been appointed as the sole Crown land manager under the [Crown Land Management Act 2016](#) of the Luna Park Reserve, and
 - (d) the reconstituted Luna Park Reserve Trust is taken for all purposes (including the rules of private international law) to be a continuation of, and the same legal entity as, the existing Luna Park Reserve Trust.

Note—

As a result of paragraph (d), the reconstituted Luna Park Reserve Trust retains all the assets, rights and liabilities of the existing Luna Park Reserve Trust, subject to subsection (2) (d).

- (2) The [Crown Land Management Act 2016](#) applies in relation to the Luna Park Reserve and to the reconstituted Luna Park Reserve Trust in its capacity as its Crown land manager, subject to section 5A (2) and the following modifications:
- (a) the Trust's appointment as the Crown land manager of the Luna Park Reserve cannot be revoked under the [Crown Land Management Act 2016](#),
 - (b) no other person can be appointed under the [Crown Land Management Act 2016](#) as a Crown land manager of the Luna Park Reserve,
 - (c) the Trust is taken to have been assigned as a category 2 non-council manager of the Luna Park Reserve for the purposes of Division 3.5 of the [Crown Land Management Act 2016](#),
 - (d) clause 7 (1) of Schedule 7 to the [Crown Land Management Act 2016](#) is taken to apply to any estate in fee simple in the Luna Park Reserve vested in the existing Luna Park Reserve Trust by section 100 of the [Crown Lands Act 1989](#),

- (e) if the Minister is not also the Crown land Minister, the Minister can:
 - (i) exercise the functions of the Crown land Minister under Part 2 of the *Crown Land Management Act 2016* instead of the Crown land Minister in relation to the Luna Park Reserve, except a function under any of the provisions referred to in paragraph (f), and
 - (ii) grant written consent for the purposes of Division 3.5 of the *Crown Land Management Act 2016*,
 - (f) the regulations under this Act may prescribe kinds of functions for the purposes of section 3.27 (2) (c) of the *Crown Land Management Act 2016* in addition to any functions prescribed by the regulations under that Act and, consequently, written Ministerial consent is not required for the exercise of such a function by the Trust,
 - (g) the *Crown Land Management Act 2016* does not apply in relation to the Luna Park Reserve or the Trust to the extent provided by other provisions of this Act or the regulations.
- (3) If the Minister exercises any function of the Crown land Minister permitted by this section, the exercise of the function has the same effect as if it had been duly exercised by the Crown land Minister.

6 Plan of management

- (1) Any plan of management for the Luna Park Reserve in force immediately before the repeal day continues in force on or after that day as a plan of management for the purposes of Division 3.6 of the *Crown Land Management Act 2016*, and can be altered or cancelled under that Division accordingly.
- (2) The plan of management (or a replacement plan of management) is required to include provision for the following matters:
 - (a) there must be public access to the boardwalk/foreshore area (within the meaning of Part 2A) at all times,
 - (b) the use of the Luna Park Reserve must be limited to purposes which are sympathetic to the historic and community significance of the land comprising the Luna Park site,
 - (c) the following uses of the Luna Park Reserve are to be prohibited:
 - (i) dwellings and other buildings used or designed or intended for use for the purpose of permanent residential accommodation, hotels, motels, hostels, tourist or other holiday accommodation, caravan parks and other facilities providing for temporary or overnight accommodation,
 - (ii) the erection of any permanent structure (not including structure in the nature

of landscaping) on the land comprised in Lot 1186 in Deposited Plan 48335 is to be prohibited.

- (3) This section does not prevent the plan of management including provisions for other matters that are not inconsistent with the matters referred to in subsection (2).

Part 2A Expanded range of uses for Luna Park site

6A Description of the boardwalk/foreshore and cliff top areas

- (1) For the purposes of this Part:
- (a) **the boardwalk/foreshore area** is the part of the land comprising the Luna Park site that is shown as the boardwalk/foreshore area in the Plan described in this section, and
 - (b) **the cliff top area** is the part of the land comprising the Luna Park site that is shown as the cliff top area in the Plan described in this section.
- (2) The **Plan** is the plan marked “Luna Park Site Boardwalk/foreshore and Cliff Top Areas”, and presented to the Speaker of the Legislative Assembly (by or on behalf of the Member of the Assembly who introduced the Bill for the [Luna Park Site Amendment Act 1997](#)) when the Bill was introduced into the Assembly.
- (3) Within 3 months after the commencement of this section:
- (a) the Director-General of the Department of Land and Water Conservation is to cause to be prepared, as accurately as is reasonably possible, metes and bounds or other appropriate descriptions of land shown in the Plan as the boardwalk/foreshore area and the cliff top area, and
 - (b) the Minister is to cause to be published in the Gazette a notification containing those descriptions together with a certificate of a registered surveyor to the effect that the land in the descriptions substantially accords with the land shown in the Plan.
- (4) On publication of that notification, the boardwalk/foreshore area and the cliff top area are, for the purposes of this Part, those areas as described in the notification.

6B Use of Luna Park site for entertainment uses

From the commencement of this section, the following uses are authorised uses for the land comprising the Luna Park site, other than the boardwalk/foreshore area:

- (a) restaurants and cafes,
- (b) functions, exhibitions, conventions, meetings and markets,
- (c) theatres,

- (d) such other uses related to the provision of entertainment as may be declared by the regulations to be authorised uses for the purposes of this section.

6C Additional authorised uses for cliff top area

From the commencement of this section, the following uses are authorised uses for the cliff top area (in addition to the uses authorised by section 6B), but only if they do not threaten or damage any heritage listed fig trees in that area:

- (a) hotels,
- (b) shops,
- (c) office accommodation,
- (d) car parking,
- (e) such other commercial uses as may be declared by the regulations to be authorised uses for the cliff top area.

6D Crown Lands dedication does not prevent uses authorised by Act

To avoid doubt, the use of the Luna Park Reserve for the purposes of any use that is authorised under this Act is an authorised purpose for section 2.12 (c) of the [Crown Land Management Act 2016](#) in its application to the Reserve.

Note—

Section 2.12 of the [Crown Land Management Act 2016](#) provides that dedicated or reserved Crown land may be used only for the following purposes:

- (a) the purposes for which it is dedicated or reserved,
- (b) any purpose incidental or ancillary to a purpose for which it is dedicated or reserved,
- (c) any other purposes authorised by or under this Act or another Act.

6E Grant of lease over cliff top area

- (1) The provisions of a plan of management for the Luna Park Reserve do not prevent the grant of a lease that permits or otherwise provides for the use of any part of the cliff top area for any use that is an authorised use for it under this Part.
- (2) If a lease permits the use of any part of the cliff top area for a use that is an authorised use for it under this Part, the provisions of a plan of management for the Luna Park Reserve do not apply to that part of the cliff top area while the lease is in force.

6F Planning Act not affected

This Part does not limit or otherwise affect the operation of the [Environmental Planning and Assessment Act 1979](#) or any instrument under that Act in its application to land

comprising any part of the Luna Park site.

6G Control of access to Luna Park

- (1) The Trust is entitled to control and restrict access to or within any part of the Luna Park site, except the boardwalk/foreshore area. A lessee of land within the Luna Park site is (subject to the terms and conditions of the lease) entitled to control and restrict access to or within the land leased.
- (2) Measures to control and restrict access can include the erection of fences and gates and the charging of a fee for access.
- (3) Measures to control and restrict access must not interfere with the right of public access to the boardwalk/foreshore area at all times.
- (4) Neither this section nor the requirements of section 6 for a plan of management affect the power of the Trust or a lessee to control or restrict access to any part of the Luna Park site (including the boardwalk/foreshore area) on grounds of health or safety.

6H Uses authorised by this Part do not limit other uses

The authorised uses provided for by this Part are in addition to and do not limit any other uses to which any part of the Luna Park site can be put.

6I Part not limited by object of Act

Section 3 (Object of this Act) is not to be read as limiting the operation of this Part.

Part 3

7, 8 (Repealed)

Part 4 Compensation

9 Claims and demands against the Crown

- (1) Except as provided by this Part, no person is entitled to make or to proceed with any claim or demand against the Crown arising before 6 June 1990 in respect of any matter relating to the Luna Park site or the Luna Park lease and any such claim or demand is extinguished by this Act.
- (2) This section extends to a claim or demand which has been made but not finally determined before the commencement of this section.
- (3) In this section, **the Crown** means the Crown in right of New South Wales and includes:
 - (a) the Government of New South Wales, and
 - (b) a Minister of the Crown in right of New South Wales, and

- (c) a statutory corporation, or other body, representing the Crown in right of New South Wales, and
- (d) a person employed by or acting under the direction of the Crown, the Government, a Minister, a statutory corporation or other body.

10 Claim for compensation by the lessee

- (1) The lessee may claim compensation from the Crown in relation to the determination of the Luna Park lease, whether under this Act or otherwise, or the vesting of the land comprising the Luna Park site in the Crown, as the case may be.
- (2) Any such claim is to be made and determined solely under and in accordance with this Act.
- (3) This section does not entitle the lessee to claim compensation from the Crown if, before the commencement of this section, a court has found that the Luna Park lease has been determined (by forfeiture or otherwise) and a court has found that the lessee is not entitled to relief against determination of the lease.

11 Assessment of compensation

- (1) The maximum amount of compensation that the lessee is entitled to receive (apart from any compensation determined under section 14) is the market value, immediately before 6 June 1990, of the estate or interest under the Luna Park lease of the lessee.
- (2) In assessing the amount of any such compensation, the arbitrator is required to have regard to the following matters in relation to the Luna Park lease:
 - (a) whether or not the lease had been determined (by forfeiture or otherwise) before, on or after 6 June 1990,
 - (b) if the lease had been so determined, whether there was any entitlement of the lessee to relief against the determination of the lease,
 - (c) if the lease had not been so determined, whether or not the lease was capable of being determined (by forfeiture or otherwise) at any time before, on or after 6 June 1990,
 - (d) any outstanding liability under the lease of the lessee to the lessor,
 - (e) any liability in damages in relation to the lease of the lessee to the lessor,
 - (f) the cost of carrying out any work which the lessee may, had the lessee continued to occupy the land comprising the Luna Park site for the balance of the term of the lease, have been required to carry out under the lease or any law,
 - (g) any reduction required to be made under section 14 (5) to the amount of any

compensation,

(h) any other matter the arbitrator considers relevant.

- (3) If the arbitrator finds that the Luna Park lease had been or was capable of being determined (by forfeiture or otherwise) before, on or after 6 June 1990 and that the lessee had no entitlement to relief against determination of the lease, no compensation is payable under this Act to the lessee.

12 Appointment of arbitrator

(1) As soon as practicable after the sooner of:

- (a) the date of publication in the Gazette of a proclamation which commences section 5 (1), whether or not the proclamation commences any other provision of this Act, or
- (b) the date on which a request made in writing to the Minister by the lessee for the appointment of an arbitrator for the purposes of this Act is received by the Minister,

the Governor is required to appoint an arbitrator for the purposes of this Act.

- (2) A person may not be appointed as the arbitrator unless the Minister certifies to the Governor that the person has appropriate qualifications and experience in commercial dispute resolution.
- (3) The Minister is required to give the lessee notice of the appointment as soon as practicable after it is made and to specify the place at which any arbitration proceedings are to be conducted.

13 Making of claim for compensation

- (1) A claim for compensation under this Act is to be made in writing to the arbitrator at the place specified under section 12 (3).
- (2) Any such claim constitutes a dispute between the lessee and the Minister.
- (3) Any such claim is required to specify the amount of compensation claimed and the particulars in accordance with which that amount has been assessed.
- (4) Any such claim must be made within 3 months after the date on which notice of the appointment of the arbitrator is given by the Minister to the lessee.

14 Removal of improvements at the request of the lessee

- (1) The lessee may remove any improvements made by the lessee from the Luna Park site, but only with the approval in writing of the Minister.

- (2) An application for an approval under this section may not be made by the lessee later than 3 months after such date as the Minister may, for the purposes of this subsection, notify in writing to the lessee.
- (3) If an approval under this section to the removal of an improvement is not granted within 1 month after it is applied for by the lessee, the lessee may submit the matter to the arbitrator to determine:
 - (a) whether or not the lessee should be entitled to remove the improvement, and
 - (b) if the arbitrator determines that the improvement is not to be removed, whether or not any compensation should be paid to the lessee in respect of the improvement and, if compensation should be paid, the amount of the compensation.
- (4) If an improvement which may be removed under this section is not removed by the lessee within 3 months after approval to remove the improvement is given by the Minister or the arbitrator, the improvement (in so far as it is not vested in the Crown) is forfeited to the Crown and no compensation is payable to any person in respect of its forfeiture.
- (5) If, before, on or after 6 June 1990, an improvement is improperly removed from the Luna Park site by the lessee, the amount of any compensation to which the lessee may be entitled under this Act is to be reduced by an amount equal to the value of the improvement as determined by the arbitrator.

15 Removal of improvements at the direction of the Minister

- (1) The lessee is required to remove from the Luna Park site any improvement made by the lessee that the Minister directs the lessee, in writing, to remove.
- (2) If an improvement that is the subject of such a direction is not removed within 3 months after the date on which the direction is given to the lessee, the improvement (in so far as it is not vested in the Crown) is forfeited to the Crown and no compensation is payable to any person in respect of its forfeiture.

16 Fees and expenses of the arbitrator

The lessee is not required to pay or to make any contribution towards the fees and expenses of the arbitrator, but is otherwise subject to any order for costs that may be made under the [Commercial Arbitration Act 2010](#) by the arbitral tribunal.

17 Application of the [Commercial Arbitration Act 2010](#)

- (1) Except as provided by this Act or the regulations, the [Commercial Arbitration Act 2010](#) applies to and in respect of any arbitration under this Act as if the lessee and the Minister were parties to an arbitration agreement.

- (2) Part 3 (except section 15) of the *Commercial Arbitration Act 2010* and sections 27C and 33A of that Act do not apply to or in respect of any arbitration under this Act.

Part 5 Miscellaneous

18, 19 (Repealed)

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 Division 3 of Part 5 of the *Liquor Act 2007*, or
- (d) any other action of a kind prescribed by the regulations.

20 Proceedings for offences

Proceedings for an offence against this Act or the regulations are required to be dealt with summarily before the Local Court.

21 (Repealed)

22 Repeal of the [Luna Park Site Act 1981 No 29](#)

The [Luna Park Site Act 1981](#) is repealed.

22A Savings, transitional and other provisions

Schedule 2 has effect.

23 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule 1 Luna Park site

(Section 4 (1))

- 1 The whole of the land comprised in Certificate of Title Folio Identifier 103/82409.
- 2 That part of the land comprised in Certificate of Title Folio Identifier 102/574070 which excludes the land shown as “To be vested in the Municipal Council of North Sydney for the purpose of a public road and highway” in Deposited Plan 109128.
- 3 The whole of the land comprised in Certificate of Title Volume 4811 Folio 180 being Lots 1 and 2 in

Deposited Plan 82531.

- 4 The whole of the land comprised in Certificate of Title Folio Identifier 2/219097 (formerly Certificate of Title Volume 9750 Folio 79).
- 5 The whole of the land comprised in Certificate of Title Folio Identifier 4/219097 (formerly Certificate of Title Volume 14074 Folio 208).
- 6 The whole of the land comprised in Certificate of Title Volume 12419 Folio 204 and part of the land comprised in Certificate of Title Volume 5018 Folio 1 which comprise areas of 2600 square metres and 60 square metres and the sites of a 3 pile dolphin and 2 mooring piles shown on plan RP 1047B catalogued at the Maritime Services Board of New South Wales.
- 7 The whole of the land comprised in former Lot 11 in Deposited Plan 841533 (now comprising part of Lot 10 in Deposited Plan 847338), being the land added to the Luna Park site by notification in Gazette No 174 on 23 December 1994 at page 7622.
- 8 The whole of the land comprised in Lot 1186 in Deposited Plan 48335, being the land formerly comprised in Lot 121 in Deposited Plan 870371 and being the land reserved for the purposes of public recreation by notification in Gazette No 93 of 22 August 1997 at page 6545.

Schedule 2 Savings, transitional and other provisions

(Section 22A)

Part 1 Preliminary

1 Regulations

- (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Luna Park Site Amendment Act 1997

Luna Park Site Amendment (Noise Control) Act 2005

- (2) A provision of a regulation authorised by this clause may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.
- (3) To the extent to which a provision of a regulation authorised by this clause takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State), in respect of anything done or omitted to be done before the date of its publication.

Part 2 Luna Park Site Amendment Act 1997

2 Addition of land to the Luna Park site

- (1) The addition of land to the Luna Park site by the insertion of items 7 and 8 in Schedule 1 has effect for the purposes of this Act on and from the relevant operative date for the land and not before. The relevant operative date for the land to which item 7 applies is 23 December 1994 and the relevant operative date for the land to which item 8 applies is 22 August 1997.
- (2) Accordingly, sections 5, 6 and 8 apply in respect of that land as if references in those sections to “the commencement of this section” were references to the relevant operative date for the land under this clause.

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).

(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.