

South Australia

Local Nuisance and Litter Control (Amendment of Act, Schedule 1) Regulations 2017

under the *Local Nuisance and Litter Control Act 2016*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Local Nuisance and Litter Control (Amendment of Act, Schedule 1) Regulations 2017*.

2—Commencement

These regulations will come into operation on the day on which the *Local Nuisance and Litter Control Act 2016* comes into operation.

3—Amendment provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Amendment of *Local Nuisance and Litter Control Act 2016*

4—Amendment of Schedule 1—Meaning of local nuisance (section 17)

- (1) Schedule 1—before its present contents (now to be redesignated as clause 5) insert:

Part 1—Interpretation

1—Interpretation

In this Schedule, unless the contrary intention appears—

authorised graffiti, in relation to premises, means—

- (a) graffiti commissioned for the premises by a public authority as public art; or
- (b) graffiti that is on the premises with the consent of the owner or occupier of the premises (other than offensive graffiti or graffiti comprised only or principally of words, symbols or tags);

bird scaring device means a device designed, adapted or used to scare birds by the emission of noise;

construction activity includes—

- (a) demolition work, site preparation work and building maintenance or repair work; and
- (b) the operation of vehicles within, or entering or leaving, a construction site; and
- (c) any activities, at or within the immediate vicinity of a construction site, of persons who perform work at the site, or work connected with work at the site;

construction noise means noise from any construction activity;

fixed machine means a machine that is installed as a fixture on premises for operation and use in that position;

fixed machine noise means noise from a fixed machine;

machine includes a device or equipment;

machine noise means noise from a machine;

offensive graffiti means graffiti that a reasonable person would consider to be obscene or offensive;

promotional image means an image conveying a promotional message, (whether consisting of words, numbers or other symbols, or other images);

street or tree maintenance machines includes—

- (a) sweeping or cleaning machines, blowers or similar machines when part of an organised program of such activity undertaken by or on behalf of a council or business; and
- (b) chainsaws, power saws or mulching or chipping machines when part of a program of works related to public street trees;

solid fuel heater has the same meaning as in the *Environment Protection (Air Quality) Policy 2016*;

waste has the same meaning as in the *Environment Protection Act 1993*;

waste collection noise means noise from waste collection, and includes noise generated by—

- (a) the intermittent stopping, starting and movement on a road of a waste transport vehicle in the course of collecting waste for a council kerbside waste collection service; or
- (b) the setting down or picking up of a skip bin; or
- (c) the gathering or collection of waste by a vehicle from the site at which the waste was generated; or
- (d) the depositing of waste into a receptacle in which it is to be transported;

waste transport vehicle means a vehicle used for or in connection with a waste transport business (category A) or a waste transport business (category B), each within the meaning of the *Environment Protection Act 1993* Schedule 1 Part A.

Part 2—Things that are local nuisance

2—Declared agents (section 17(1)(a))

Vibration is a declared agent for the purposes of section 17(1)(a).

3—Unsightly conditions on premises (section 17(1)(c))

For the purposes of section 17(1)(c), the following unsightly conditions are declared:

- (a) conditions on premises involving—
 - (i) excessive or unconstrained rubbish, waste or vegetation; or
 - (ii) stockpiled, excessive or unconstrained disused or derelict items or material that a reasonable person would consider to be rubbish or waste in the circumstances; or
 - (iii) graffiti (other than authorised graffiti) that has been left on the premises—

- (A) in the case of offensive graffiti—for more than 7 days; or
 - (B) in any other case—for more than 28 days, where, in the opinion of an authorised officer, the conditions have had an adverse effect on the amenity value of the area or caused the premises to be significantly out of conformity with the general appearance of neighbouring premises; or
- (b) conditions involving a building on the premises having been left partially demolished or in a state of disrepair, dilapidation or damage where, in the opinion of an authorised officer, the conditions have had an adverse effect on the amenity value of the area or caused the premises to be significantly out of conformity with the general appearance of neighbouring premises.

4—Things declared to constitute local nuisance (section 17(1)(e))

The following are declared to constitute local nuisance for the purposes of section 17(1)(e):

- (a) noise generated on premises, if an authorised officer forms the opinion—
 - (i) that—
 - (A) in the case of fixed machine noise generated on domestic premises—the noise has travelled from the domestic premises to a habitable room, or an outdoor courtyard or entertainment area, on neighbouring premises; or
 - (B) in the case of noise other than fixed machine noise generated on domestic premises—the noise has travelled from the domestic premises to neighbouring premises between the hours of—
 - 8pm and midnight on any day; or
 - midnight and 9am on Sunday; or
 - midnight and 8am on any other day; or
 - (C) in the case of construction noise—the noise has travelled from the location of the construction activity to neighbouring premises—
 - on any Sunday or public holiday; or
 - after 7pm or before 7am on any other day; or

- (D) in the case of waste collection noise—the noise has travelled from the place at which it was generated to neighbouring premises—
 - before 9am or after 7pm on any Sunday or public holiday; or
 - after 7pm or before 7am on any other day; or
- (E) in the case of noise from a street or tree maintenance machine being used in a public place—the noise has travelled from the public place to neighbouring premises—
 - before 9am or after 7pm on any Sunday or public holiday; or
 - after 7pm or before 7am on any other day; and
- (ii) that the level, nature or extent of the noise (including its volume, pitch, vibrational frequency, prevalence or frequency of occurrence) is such as to constitute an unreasonable interference with the enjoyment of the neighbouring premises by persons occupying those premises;
- (b) odour generated on premises, if an authorised officer forms the opinion that—
 - (i) the odour has travelled to neighbouring premises; and
 - (ii) the nature, intensity or extent of the odour is such as to constitute an unreasonable interference with the enjoyment of the neighbouring premises by persons occupying those premises;
- (c) dust generated on premises, if an authorised officer forms the opinion that—
 - (i) the dust has travelled to neighbouring premises; and
 - (ii) the nature, extent, smell, density or texture of the dust is such as to constitute an unreasonable interference with the enjoyment of the neighbouring premises by persons occupying those premises;
- (d) smoke generated on premises, if—
 - (i) an authorised officer forms the opinion that—
 - (A) the smoke has travelled to neighbouring premises; and

- (B) the nature, extent, colour, smell or density of the smoke is such as to constitute an unreasonable interference with the enjoyment of the neighbouring premises by persons occupying those premises; or
- (ii) without limiting the generality of subparagraph (i), in the case of smoke from a solid fuel heater—
 - (A) a visible plume of smoke extends into the air above neighbouring premises from the flue or chimney of the heater more than 15 minutes after the heater is lit; and
 - (B) an authorised officer forms the opinion that the nature, extent, colour, smell or density of the smoke is such as to constitute an unreasonable interference with the enjoyment of the neighbouring premises by persons occupying those premises;
- (e) vibration generated on premises, if an authorised officer forms the opinion that—
 - (i) the vibration has travelled to neighbouring premises; and
 - (ii) the nature, intensity or extent of the vibration is such as to constitute an unreasonable interference with the enjoyment of the neighbouring premises by persons occupying those premises;
- (f) installation of a fixed machine on domestic premises that, in the opinion of an authorised officer, when operated or used in accordance with the manufacturer's instructions, generates noise of a kind referred to in paragraph (a)(i)(A), the level, nature or extent of which is of a kind referred to in paragraph (a)(ii);
- (g) projection of a promotional, obscene or offensive image onto property without the consent of the owner or occupier of the property;
- (h) using an audible bird scaring device otherwise than in accordance with the *Audible Bird Scaring Devices Environmental Noise Guidelines 2007* prepared by the Environment Protection Authority.

Part 3—Things that are not local nuisance

- (2) Schedule 1 clause 5 (as redesignated under these regulations)—after paragraph (c) insert:
 - (ca) noise, odour or waste from animals living in their natural habitat (other than such animals that have been actively encouraged, by feeding, to gather in a particular area);

- (3) Schedule 1 clause 5(d) (as redesignated under these regulations)—delete paragraph (d) and substitute:
- (d) noise or other nuisance from any other activity carried on in accordance with an authorisation (including an approval, consent, licence, permit, exemption or entitlement) granted under any other Act (other than this Act), provided that—
 - (i) the authorisation imposes requirements to control, minimise or eliminate (as far as reasonably practicable) any noise or other forms of nuisance likely to result from the activity; and
 - (ii) those requirements are complied with;
- (4) Schedule 1 clause 5(f) (as redesignated under these regulations)—after "nuisance from" insert:
- sporting or associated activities at
- (5) Schedule 1 clause 5(h) (as redesignated under these regulations)—delete "or other nuisance"
- (6) Schedule 1 clause 5(i) (as redesignated under these regulations)—delete "noise or other nuisance" and substitute:
- subject to Part 2 clause 4(1)(a)(i)(D), noise
- (7) Schedule 1 clause 5(m) (as redesignated under these regulations)—delete "unamplified"

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 19 January 2017

No 1 of 2017

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