

ADVISORY NOTICE LEGISLATION

02/17

Advisory Notices are issued to assist in the interpretation of the Development Act 1993

February 2017

On 27 January 2017, the *Development (Low Impact Entertainment) Variation Regulations 2017* were made. These regulations, which vary the Development Regulations 2008 under the *Development Act 1993* (the Act), commenced operation from this date.

The regulations have amended Clause 5(2) of Schedule 3 (acts and activities that are not development) to ensure that the carrying on of low impact entertainment in premises (licensed or non-licensed) other than residential premises is not development for the purposes of the Act in the circumstances that have now been prescribed.

Those circumstances relate to live entertainment if it is carried on—

- (a) inside a building; and
- (b) in accordance with the lawful use and occupation of the premises; and
- (c) in compliance with the *Environment Protection Act 1993*,
but does not include—
 - (d) prescribed entertainment within the meaning of section 105 of the *Liquor Licensing Act 1997*; or
 - (e) entertainment that is to be carried on in connection with a proposed change of use of the premises.

These measures emanated from the *Streamlining Live Music Regulation 90 Day project* announced by the Premier in 2016. This collaborative project was an industry-led red tape reduction review involving the South Australian State Government, the Adelaide City Council, the Australian Hotels Association of South Australia, the music industry and the community.

The objective of the project was to examine the regulatory barriers facing bricks and mortar live music venues and to recommend and implement where feasible, reforms aimed at reducing the regulatory burden for live music venues and aimed at supporting Adelaide's live music venues.

Environmental Protection Authority Requirements – Clause 5(2)(e)

This clause requires any noise emanating from the premises to comply with the *Environment Protection Act 1993* and the *Environment Protection (Noise) Policy 2017*.

Noise emanating from licensed premises is required to comply with the *General Code of Practice* issued by the Liquor Licensing Commissioner and mandated pursuant to Section 42 of the *Liquor Licensing Act 1997*.

Clause 12 (1)(a) of the Code creates a duty on the licensee:

- (1) A licensee must take reasonable steps -

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(a) to prevent undue offence, annoyance, disturbance, noise or inconvenience to people who reside, work or worship in the vicinity of the licensed premises, resulting from entertainment or activities on the licensed premises or the conduct of people making their way to or from the licensed premises.

Change of Use

The regulations have been made to remove any doubt that the provision of low impact entertainment complying the above criteria is not development for the purposes of the Act.

However, even if one or more of the above criteria are not met it then becomes a question whether the new activity constitutes a 'change in use' of the land. There is a significant body of case law available which provides guidance on the issue and is essentially a matter of fact and degree.

For example the provision of live music could enliven a change in use of land in situations where the entertainment component triggers an upgrade to meet higher building safety requirements under the Building Code of Australia or where the activity could no longer be considered ancillary to the existing use of the building.

If there is any doubt, councils and business owners should seek independent planning or legal advice on this issue.

Useful Links

[Development Act](#)

[Development Regulations](#)

[Government gazette](#)

Further information

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