



## ANALYSIS

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1982, No. 140

**An Act to provide for the abatement of unreasonable or excessive noise** [16 December 1982]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Noise Control Act 1982, and shall be read together with and deemed part of the Health Act 1956 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of June 1983.

**2. Interpretation**—In this Act, unless the context otherwise requires,—

“Abatement notice” means a notice issued under section 6 of this Act for the abatement of any noise to a reasonable level;

“Constable” includes any member of the Police;

“Excessive noise” means any noise emitted by—

- (a) Any musical instrument; or
- (b) Any electrical appliance; or
- (c) Any vehicle, except while being operated on—
  - (i) Any road within the meaning of section 2 (1) of the Transport Act 1962; or
  - (ii) Any motorway within the meaning of section 2 of the Public Works Act 1981; or
- (d) Any machine, however powered, while being operated in or at any residential premises; or

(e) Any person or persons, while attending any gathering or meeting in or at any residential premises or place of assembly,—

where the noise is of such nature as to unreasonably interfere with the peace, comfort, and convenience of any person (other than a person in or at the premises from which the noise is being emitted):

“Noise” includes vibration:

“Noise control officer”, in relation to a local authority, means the officer or each of the officers of that local authority who is appointed as or deemed to be a noise control officer under or by section 4 of this Act:

“Occupier”, in relation to any premises, includes any tenant, agent, manager, foreman, or other person acting or apparently acting in the general management or control of the premises, or of any plant or machinery on those premises:

“Practicable” means reasonably practicable having regard, among other things, to local conditions and to the current state of technical knowledge:

“Practicable means” include—

- (a) The design, construction, and maintenance of buildings and acoustic structures; and
- (b) The design, installation, and maintenance, and the manner, periods, and proper supervision of the operation of plant, equipment, and machinery.

**3. Crown bound**—(1) Except as provided in subsection (2) of this section, this Act binds the Crown.

(2) Nothing in this Act shall apply to any member of the Armed Forces, or any other person employed by or in the service of the Armed Forces, while engaged on military business.

**4. Noise control officers**—(1) A local authority may designate any of its officers as noise control officers for the purposes of this Act.

(2) In any case where no officer is so designated, the local authority's Health Inspector or (if it has more than 1 Health Inspector) each of the Health Inspectors, and its Engineer, shall be deemed to be noise control officers for the purposes of this Act.

(3) Notwithstanding the foregoing provisions of this section, any 2 or more local authorities may combine to appoint one or more noise control officers upon and subject to such terms and conditions as to payment of the salary and expenses of any such officer, and as to the apportionment of his duties among the local authorities, as may be agreed upon between the local authorities.

(4) Every noise control officer appointed pursuant to subsection (3) of this section shall be deemed for the purposes of this Act to be a noise control officer for each of the districts of the local authorities by whom he is appointed.

#### *General Obligation of Occupiers*

**5. Occupiers to avoid unreasonable noise**—(1) It shall be the duty of the occupier of any premises to adopt the best practicable means of ensuring that the emission of noise from those premises does not exceed a reasonable level.

(2) Every occupier of any premises who fails to comply with subsection (1) of this section commits an offence and is liable to a fine not exceeding \$2,000 and, where the offence is a continuing one, to a further fine not exceeding \$200 for each day on which the offence has continued.

(3) In any prosecution for an offence against this section it shall not be necessary for the prosecution to prove that the defendant intended to commit an offence.

(4) Subject to subsection (6) of this section, it shall be a good defence in any such prosecution if the defendant proves—

- (a) That the non-compliance complained of was solely due to some mechanical failure; and
- (b) That the failure could not reasonably have been provided against; and
- (c) That the non-compliance could not reasonably have been prevented by action taken after the failure occurred.

(5) Without limiting subsection (4) of this section but subject to subsection (6) of this section, it shall be a good defence in any prosecution for an offence against this section if the defendant proves—

- (a) That he did not intend to commit an offence against this section; and
  - (b) That he took all reasonable steps to comply with the duty imposed on him by subsection (1) of this section.
- (6) Except as provided in subsection (7) of this section, subsections (4) and (5) of this section shall not apply unless, within 7 days after the service of the summons, or within such further time as the Court may allow, the defendant has delivered to the prosecutor a written notice—
- (a) Stating that he intends to rely on subsection (4) or (as the case may require) subsection (5) of this section; and
  - (b) Specifying the reasonable steps that he will claim to have taken.
- (7) In any such prosecution, evidence that the defendant took a step not specified in the written notice required by subsection (6) of this section shall not, except with the leave of the Court, be admissible for the purpose of supporting a defence under subsection (4) or (as the case may require) subsection (5) of this section.

**6. Abatement notices**—(1) Any noise control officer who believes on reasonable grounds that—

- (a) The occupier of any premises is failing to comply with section 5 of this Act; or
- (b) The occupier of the premises is contravening the provisions of any regulations made under this Act; or
- (c) Any noise being emitted from any premises is such as to constitute a nuisance for the purposes of section 29 (ka) of the principal Act—

may, with such assistants as he considers necessary, give to the occupier of the premises a notice in writing requiring him to abate the noise described in the notice to a reasonable level within 7 days after the date of the notice, or within such shorter or longer period as the officer may consider appropriate, having regard to the special circumstances of the case.

(2) Every abatement notice shall fairly inform the occupier of—

- (a) The manner in which the notice may be enforced under section 7 of this Act; and
- (b) The occupier's rights to seek the restitution of any property under section 13 of this Act; and

(c) The occupier's rights of appeal under section 14 of this Act.

(3) The failure to comply with the terms of an abatement notice within the period required shall be *prima facie* evidence of an offence against section 5 of this Act by the occupier of the premises.

**7. Enforcement of abatement notice**—(1) Where the terms of an abatement notice are not complied with within the period required, the noise control officer shall, with such assistants as he considers necessary, take all such reasonable steps as he considers necessary to cause the noise described in the notice to be abated to a reasonable level.

(2) Without limiting his discretion under subsection (1) of this section, the noise control officer may seize and impound the noise source.

(3) Notwithstanding the foregoing provisions of this section, a noise control officer shall not be entitled to exercise his powers under subsection (2) of this section unless accompanied by a constable.

(4) All expenses incurred in the abatement of a noise under this section shall be recoverable from the occupier of the premises as a debt due to the local authority.

**8. Police may provide assistants**—For the purposes of sections 6 and 7 of this Act, the Police may, on request by a noise control officer, supply to that officer such assistants as they may reasonably be able to supply in all the circumstances of the case, having regard to the personnel and resources available at the time.

#### *Excessive Noise*

**9. Complaints of excessive noise**—(1) Any person who considers that excessive noise is being emitted from any premises may complain to a noise control officer or, if no such officer is available, to the principal administrative officer or any other officer nominated for the purpose by the principal administrative officer.

(2) On receipt of any such complaint, the noise control officer, after making all such inquiries as he considers necessary, shall either—

(a) Deal with the matter in accordance with subsection (3) of this section; or

(b) If he is satisfied that there is a real risk of violence or that for any other special reason the case appears to require the involvement of the Police, refer the complaint to the Police.

(3) If, upon investigating any complaint under this section, the noise control officer or a constable is of the opinion that the noise is excessive, he shall direct the occupier of the premises from which the sound is being emitted, or such other person as appears to him to be responsible for causing the excessive noise, to forthwith abate the noise to a reasonable level.

**10. Effect of direction**—(1) Every direction given under section 9 (3) of this Act shall have the effect of prohibiting the person to whom it is given, and every other person who is (by virtue of subsection (2) of this section) bound by the direction, from causing or contributing to the emission of excessive noise from or within the vicinity of the premises at any time during the period of 12 hours commencing with the time at which the direction is given, or such shorter period as the noise control officer or constable may specify on giving the direction.

(2) Every person who knows or ought to know that a direction under section 9 (3) of this Act has been given in respect of particular premises is, while on or in the vicinity of those premises, bound by that direction as if he were the recipient of it.

**11. Powers of officers and constables where non-compliance**—(1) Where a direction given under section 9 (3) of this Act is not complied with, the noise control officer or constable may—

- (a) Seize and remove from the premises; or
- (b) Render inoperable by the removal of any part from; or
- (c) Lock or seal so as to make unusable,—

any instrument, appliance, vehicle, or machine that is producing or contributing to the excessive noise.

(2) Notwithstanding the foregoing provisions of this section, a noise control officer shall not be entitled to exercise his powers under this section on the premises unless accompanied by a constable.

**12. Offences**—(1) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 and, where the offence is a continuing one, to a further fine not exceeding \$200 for each day on which the offence has continued who, being bound by a direction given under section 9 (3) of this Act,—

- (a) Fails to forthwith abate the noise to a reasonable level;
- or

- (b) Causes or contributes to the emission of excessive noise from or within the vicinity of the premises at any time during the period referred to in section 10 (1) of this Act.
- (2) For the purposes of subsection (1) (b) of this section, it is immaterial that the excessive noise is of a different kind from that which gave rise to the issuing of the direction.
- (3) Any constable, and all persons whom he calls to his assistance, may arrest and take into custody without a warrant any person whom he has good cause to suspect of having committed an offence against subsection (1) of this section.
- (4) Every person commits an offence and is liable to a fine not exceeding \$500 who—
- (a) Renders operable; or
  - (b) Unlocks or unseals so as to make usable—any instrument, appliance, vehicle, or machine within 12 hours after it has been rendered inoperable or (as the case may require) locked or sealed by a noise control officer or constable acting under paragraph (b) or paragraph (c) of section 11 of this Act.

#### *General Provisions*

**13. Restitution of property**—(1) Where under section 7 or section 11 of this Act any property has been seized and impounded by a noise control officer, the occupier of the premises may at any time apply to the local authority for the property to be returned to him.

(2) On receipt of an application under subsection (1) of this section, the local authority shall arrange for the restitution of the property upon being satisfied that the return of the property is not likely to lead to the resumption of the emission of noise from the premises beyond a reasonable level.

(3) Any property seized and impounded under section 11 of this Act by any constable shall be taken to the nearest police station, and may be recovered by the owner or the person from whom it was seized at any time after the expiration of the period of 72 hours commencing with the time of its seizure, upon payment of all costs incurred by the Police in seizing, impounding, transporting, and storing the property.

(4) Nothing in this section shall prevent the local authority or the Police from handing back any property to which this section applies without awaiting a request to do so.

**14. Appeals**—(1) Any person who is aggrieved by the issue of an abatement notice under section 6 of this Act may appeal to a District Court on the ground that the notice is unreasonable.

(2) Any person who is aggrieved by the refusal of an application for the restitution of any property under section 13 of this Act may appeal to a District Court on the ground that the refusal is unreasonable.

(3) On any appeal under subsection (1) of this section, the Court may—

(a) By interim order, suspend the operation of the abatement notice to which the appeal relates until the final determination of the proceedings;

(b) Dismiss the appeal, or quash the abatement notice, or modify the notice in such manner as the Court thinks fit.

(4) On any appeal under subsection (2) of this section, the Court may dismiss the appeal or make an order for the restitution of any property in such terms as it thinks fit.

(5) On any appeal under this section, the Court may make such order as to costs (if any) as it thinks fit.

(6) Every appeal under this section shall be commenced within 21 days after the issue of the abatement notice or (as the case may require) the refusal of an application for the restitution of any property.

(7) Every appeal under this section shall be made and dealt with by way of originating application, on notice, under the rules and procedures for the time being in force under the District Courts Act 1947, and the provisions of those rules shall apply accordingly.

(8) Except as provided in subsection (9) of this section, the decision of a District Court under this section (other than an interim order made under subsection (3) (a)) shall be final.

(9) Any party to proceedings before a District Court under this section who is dissatisfied with the decision or order of the Court as being erroneous in point of law may appeal to the High Court on a question of law only.

**15. Powers of entry**—(1) Subject to subsection (2) of this section, for the purposes of sections 6, 7, 9, and 11 of this Act a noise control officer, or any constable, may enter the premises to which the abatement notice relates or, as the case may require, from which the noise is being or has been emitted.

(2) A noise control officer shall not be entitled to enter any dwellinghouse for the purposes of section 6 or section 9 of this Act unless accompanied by a constable.

(3) On entering any such premises a noise control officer, or a constable who is not in uniform, shall, if requested to do so by the occupier of the premises, produce his warrant of appointment or other evidence of his identity and appointment.

**16. Other Police powers not affected**—(1) The powers conferred on a constable by this Act are in addition to, and not in derogation from, any other powers that a constable may exercise.

(2) Without limiting subsection (1) of this section, any constable exercising his powers under this Act may use such reasonable force as may be necessary in the circumstances.

**17. Regulations**—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Specifying the limits of permitted emissions of noise from particular premises, activities, appliances, vehicles, machinery, or articles, and requiring any such appliances, vehicles, machinery, or articles to be labelled to show the specified limits;
- (b) Prescribing standards in respect of alarms and other devices designed to emit noise in certain specific circumstances to ensure that such devices do not emit noise in other circumstances or at a level or for a period beyond that necessary to achieve the purpose for which such devices are used;
- (c) Specifying the times at which specified noises may, or may not, be emitted from particular premises, activities, appliances, vehicles, machinery, or articles;
- (d) Prescribing offences in respect of the contravention of or non-compliance with any regulations made for the purposes of this Act, and the amounts of fines that may be imposed in respect of any such offences, not exceeding \$500 in respect of any offence and, if the offence is a continuing one, to a further fine not exceeding \$50 for every day on which the offence has continued;
- (e) Providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.