

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE HOUSE]

House of Representatives, 8 July 1981.

This Bill was clauses 7 and 7A of the Occupational Noise Bill.

CONSTRUCTION AMENDMENT

ANALYSIS

Title	2. Protection from harmful noise
1. Short Title and commencement	3. Duties of workmen

An Act to amend the Construction Act 1959

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 Construction Amendment Act 1981, and shall be read together with and deemed part of the Construction Act 1959 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the commencement of the Factories and Commercial Premises Act 1981.

2. Protection from harmful noise—(1) The principal Act is hereby amended by repealing section 17A (as inserted by section 2 of the Construction Amendment Act 1972), and substituting the following section:

“17A. (1) The employer of a workman carrying out construction work shall take all practicable steps, by either—

“(a) Controlling at source the noise arising from that work; or

“(b) Isolating or insulating the processes and activities concerned,—

to ensure that workman is not exposed to any noise so arising that would be likely to impair his hearing if he were not using a hearing-protection device.

“(2) Where any workman carrying out construction work is exposed to any noise arising from that work that would be

likely to impair his hearing if he were not using a hearing-protection device, his employer shall provide him with an individual hearing-protection device of a type approved by the Director-General of Health in respect of noise of that kind.

“(3) The employer of a workman carrying out construction work who is provided with an individual hearing-protection device shall ensure that that workman is not exposed to any noise arising from that work that is likely to impair that workman’s hearing notwithstanding that he may be using that device.

“(4) For the purposes of subsection (5) of this section,—

“‘Equivalent level’, in relation to any particular period or periods of exposure to noise of any particular level or levels, means the level (ascertained in a manner approved by regulations made under the Factories and Commercial Premises Act 1981) of the continuous noise, exposure to which for 40 hours is equivalent to that period or those periods of exposure to noise:

“‘Maximum continuous level’ means the level for the time being declared by regulations made under the Factories and Commercial Premises Act 1981 to be the maximum level of continuous noise to which any person can be exposed for periods amounting in total to 40 hours during any continuous period of 7 days without risk to that person’s hearing.

“(5) Without limiting the generality of subsection (1) or subsection (2) of this section, where, in any proceedings under this Act, it is proved that any person was, during any continuous period of 7 days, exposed to any period or periods of noise whose equivalent level exceeded the maximum continuous level, that person shall be deemed to have been exposed to noise that would be likely to impair his hearing if he were not using a hearing-protection device.”

(2) Section 2 of the principal Act is hereby amended by inserting, after the definition of the term “Minister”, the following definition:

“‘Noise’ includes sound energy of any frequency, whether or not capable of being perceived by the unaided human ear:”.

(3) Section 3 (2) of the principal Act is hereby amended by inserting, before the word “relating”, the words “(other than subsection (2) or subsection (3) of section 17A of this Act)”.

(4) Section 2 of the Construction Amendment Act 1972 is hereby consequentially repealed.

3. Duties of workmen—(1) The principal Act is hereby amended by repealing section 23, and substituting the following section:

“23. Every workman employed by an employer commits an offence against this Act who—

- “(a) Fails to comply with any requirement under this Act, or any regulations made under this Act, relating to the performance of any act by him; or
- “(b) Without reasonable cause does any act or thing likely to endanger himself or any other person; or
- “(c) Wilfully or negligently disregards any instructions given to him by an authorised person for the purpose of securing the observance of this Act or any regulations made under this Act; or
- “(d) Without reasonable cause interferes with or misuses any appliance, apparatus, clothing, convenience, device, equipment, guard, or other thing whatsoever, provided for securing the health, safety, or welfare of any person; or
- “(e) At any time when the circumstances for which it is provided arise, fails or neglects to use any appliance, apparatus, clothing, device, equipment, guard, or thing, provided as aforesaid.”