

NOISE ABATEMENT.

No. 29 of 1981.

AN ACT to amend the Noise Abatement Act 1972.

[Assented to 26 May 1981.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Noise Abatement Amendment Act 1981*. Short title and citation.

(2) In this Act the Noise Abatement Act 1972 is referred to as the principal Act. Act No. 100 of 1972.

(3) The principal Act as amended by this Act may be cited as the Noise Abatement Act 1972-1981.

Commence-
ment.

2. Subject to section 7(2) of this Act, the provisions of this Act shall come into operation on such day or days as is or are, respectively, fixed by proclamation.

Section 3
amended.

3. Section 3 of the principal Act is amended by deleting "This" and substituting the following—

“ Subject to section 48, this ”.

Section 4
repealed.

4. Section 4 of the principal Act is repealed.

Section 5
amended.

5. Section 5 of the principal Act is amended in subsection (1) by—

(a) deleting the definition of “inspector” and substituting the following definition—

“ “inspector” means a person appointed as an inspector under section 34(1); ” ;

(b) deleting the comma at the end of the definition of “section” and substituting a semi-colon;

(c) deleting that portion of subsection (1) that follows the definition of “section”; and

(d) inserting, in their appropriate alphabetical positions, the following definitions—

“ “alarm” means burglar alarm or fire alarm, and includes any device, including a bell or siren, that is designed or adapted to give audible warning or audible notice of any act, matter or thing;

“Commissioner” has the meaning given by section 3 of the Health Act 1911;

“district” has the meaning given by section 3 of the Health Act 1911;

“occupier”, save in Part IVA of this Act and in any regulations referred to in section 48(2)(1b), has the meaning given by section 3 of the Health Act 1911;

“owner” has the meaning given by section 3 of the Health Act 1911;

“the Council” means the Noise and Vibration Control Council established by section 10(1);

“the local authority” has the meaning given by section 3 of the Health Act 1911. ” .

6. Section 6 of the principal Act is amended by inserting, after subsection (3), the following subsection—

Section 6 amended.

“ (3a) The Minister, with the approval of the Governor, may by order published in the *Gazette*—

- (a) renew, suspend, cancel or vary a declaration made under subsection (1) of this section; or
- (b) cancel or vary any circumstance or condition subject to which an exemption under this section has been granted. ” .

7. (1) Section 10 of the principal Act is amended—

Section 10 amended.

(a) in subsection (2) (a) by inserting, before the semi-colon at the end of that paragraph, the following—

“ , who shall be the Chairman of the Council ” ;

(b) in subsection (2)(c) by—

(i) deleting subparagraph (ii);

(ii) inserting, after subparagraph (vi), the following subparagraph—

“ (via) one shall be a person so nominated by the body known as the Local Government Association of Western Australia (Incorporated); ” ;

(iii) deleting subparagraph (vii) and substituting the following subparagraph and conjunction—

“ (vii) two shall be persons so nominated by the body known as The Confederation of Western Australian Industry (Incorporated); and ” ;

(iv) deleting “; and” at the end of subparagraph (viii) and substituting a full stop; and

(v) deleting subparagraph (ix);

(c) by inserting, after subsection (3), the following subsections—

“ (3a) The Governor may appoint any member of the Council referred to in paragraphs (b) and (c) of subsection (2) of this section to be the Deputy Chairman of the Council.

(3b) The Chairman of the Council shall preside at all meetings of the Council at which he is present.

(3c) The Deputy Chairman of the Council shall preside at any meeting of the Council from which the Chairman

of the Council is absent and has and may exercise at any such meeting the powers and functions of the Chairman of the Council. ” ; and

- (d) in subsection (4) by inserting, after “the Chairman”, the following—

“ of the Council or the Chairman of the Committee ” .

(2) Subparagraphs (iii), (iv) and (v) of subsection (1)(b) of this section shall, notwithstanding anything in section 2 of this Act, come into operation on 14 April 1981.

8. Section 12 (1) of principal Act is amended Section 12
amended.
by—

- (a) deleting “; and” at the end of paragraph (e) and substituting a semi-colon; and

- (b) inserting, after paragraph (e), the following paragraph and conjunction—

“ (ea) to prepare, publish and disseminate for the guidance of design engineers, persons engaged in town planning or the control of traffic, whether on or off roads as defined by the Road Traffic Act 1974, and other persons concerned with any kind of design, planning or control, the outcome of which affects or is capable of affecting levels of noise or vibration or both in the environment (in this paragraph called collectively “planners”) standards setting out maximum acceptable levels of noise and vibration caused by—

- (i) buildings, structures, equipment, machinery and manufactured goods generally; and

(ii) practices, operations, processes and activities,

or any class thereof, to promote the general adoption of those standards by planners, and from time to time to revise, alter or replace those standards; and ” .

Section 13
amended.

9. Section 13 of the principal Act is amended—

(a) in subsection (2)(b)(i) by deleting “West Australian Chamber of Manufactures” and substituting the following—

“ Confederation of Western Australian Industry ” ; and

(b) in subsection (6) by deleting “, 1904,” and substituting the following—

“ 1978 ” .

Section 27
amended.

10. Section 27(2) of the principal Act is amended by deleting “one hundred dollars” and substituting the following—

“ \$5 000 ” .

Section 28
amended.

11. Section 28(1) of the principal Act is amended by deleting—

(a) “one hundred dollars” and substituting the following—

“ \$5 000 ” ; and

(b) “fifty dollars” and substituting the following—

“ \$500 ” .

12. The principal Act is amended by inserting, after Part IV, the following Part—

Part IVA
inserted.

“ PART IVA.—NOISE ABATEMENT
DIRECTIONS AND INACTIVATION
OF AUDIBLE ALARMS.

33A. (1) In this Part, unless the contrary or other intention appears—

Interpreta-
tion in Part
IVA.

“authorized person” means—

- (a) inspector authorized, or member of a prescribed class of inspectors authorized, under subsection (2); or
- (b) police officer;

“level”, in relation to noise, includes volume or intensity of noise;

“noise” includes sound and vibration;

“noise abatement direction” means direction given under section 33B(1);

“occupier”, in relation to any premises, means person in occupation or control of the premises and, in relation to any premises where different parts thereof are occupied or controlled by different persons, means, in respect of any such part, person in occupation or control of that part;

“offensive noise” means noise that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances, is likely—

- (a) to be harmful to;
- (b) to be offensive to; or
- (c) to interfere unreasonably with the comfort or repose of,

persons who are—

- (d) if the noise is made in premises that are not a public place, outside those premises; or
- (e) if the noise is made in premises that are a public place, within or outside those premises;

“paragraph” means paragraph of the section or subsection wherein the term occurs;

“place” includes public place;

“premises” includes place, vehicle and vessel;

“public place” includes—

- (a) street, way, public place and public reserve as respectively defined in section 4 of the Local Government Act 1960; and
- (b) place that is open to the public or is used by the public, whether or not on payment of money or other consideration, whether or not that place is ordinarily so open or used and whether or not the public to whom that place is so open, or by whom that place is so used, consists only of a limited class of persons;

“subparagraph” means subparagraph of the paragraph in which the term occurs;

“subsection” means subsection of the section wherein the term occurs;

“vehicle” includes motor vehicle, omnibus, coach, locomotive, aircraft or other means of conveyance or transit that uses combustible material for its operation;

“vessel” means ship, lighter, barge, boat, craft or vessel of whatever description and however navigated.

(2) The Commissioner may by notice in the *Gazette*—

- (a) authorize an inspector or a prescribed class of inspectors, as the case requires, for the purpose of the definition of “authorized person” in subsection (1); or
- (b) revoke an authorization made under this subsection.

(3) In this Part, a reference, however expressed, to making or emitting noise includes a reference to causing, permitting or allowing the making or emission of noise.

33B. (1) If it appears to an authorized person that—

Giving and revocation of noise abatement directions.

- (a) a noise is being, or has at any time during the preceding 30 minutes been, emitted from any premises; and
- (b) the noise referred to in paragraph (a) is an offensive noise,

the authorized person may direct—

- (c) the person whom he believes to be the occupier of the premises referred to in paragraph (a) to cause the emission from those premises of the noise referred to in that paragraph to cease; or
- (d) any person whom he believes to be making or contributing to the making of the noise referred to in paragraph (a) to cease making or contributing to the making of that noise,

or may give directions under both paragraphs (c) and (d).

(2) A noise abatement direction may be revoked by—

- (a) the authorized person who gave it; or
- (b) a person prescribed for the purposes of this paragraph.

Contra-
ven-
tion of noise
abatement
directions
an offence.

33C. (1) Subject to subsection (2), while a noise abatement direction given under—

- (a) section 33B (1) (c) remains in force, the person to whom that noise abatement direction has been given shall not, without reasonable excuse—
 - (i) fail to cause the emission from the premises concerned of the noise to which that noise abatement direction relates to cease promptly; or
 - (ii) cause, permit or allow noise to be emitted from the premises concerned;

or

- (b) section 33B (1) (d) remains in force, the person to whom that noise abatement direction has been given shall not, without reasonable excuse—
 - (i) fail promptly to cease making or contributing to the making of the noise to which that noise abatement direction relates; or
 - (ii) make or contribute to the making of noise that is emitted from the premises concerned.

Penalty: \$1 000.

(2) A person is not guilty of an offence against subsection (1) unless it is established that the noise to which the alleged offence relates was an offensive noise.

33D. (1) For the purpose of enabling an authorized person to whom a complaint has been made by a complainant whose identity has been recorded—

Powers of
authorized
persons.

- (a) to give a noise abatement direction in relation to a noise emitted from any premises; or
- (b) to ascertain whether or not an offence against section 33C (1) has been committed in or on any premises from which noise has been emitted,

the authorized person may—

- (c) subject to subsection (2), enter the premises from which noise has been emitted, with the aid of such other authorized persons as he considers necessary and with the use of reasonable force, at any time when he believes on reasonable grounds that an offensive noise—
 - (i) is being emitted from those premises; or
 - (ii) has, within the preceding 30 minutes, been emitted from those premises;

and

- (d) whether or not he enters the premises referred to in paragraph (c), require any person—

(i) who is or was present in or on those premises at any time during the emission of noise referred to in paragraph (c); and

(ii) to whom he has given an oral or written warning of the obligation of that person to furnish him with the names and address of that person and with the names and address of the occupier of those premises,

to furnish him with the names and addresses referred to in subparagraph (ii).

(2) An authorized person shall not, if he exercises the power referred to in subsection (1) (c) between 9 p.m. on one day and 6 a.m. on the following day, use force in so doing unless he is a police officer or is accompanied by a police officer.

(3) A person to whom a requirement referred to in subsection (1)(d) is made shall comply with that requirement.

Penalty: \$1 000.

(4) A person shall not, in purported compliance with a requirement referred to in subsection (1)(d), knowingly furnish information that is false or misleading in a material particular.

Penalty: \$1 000.

(5) A person is not guilty of an offence against subsection (2) if he proves that, in so far as he did not comply with the requirement concerned, he was not capable of complying therewith.

33E. (1) A noise abatement direction is invalid in so far as it—

Restrictions
on noise
abatement
directions.

- (a) is directed to a person or body prescribed for the purposes of this paragraph; or
- (b) would have the result of affecting any activity of a class or description prescribed for the purposes of this paragraph.

(2) A noise abatement direction given between 6 a.m. on one day and 9 p.m. on the same day by an authorized person who is a police officer is invalid.

(3) Unless sooner revoked under subsection (2) of section 33B, a noise abatement direction shall be deemed to be revoked—

- (a) in the case of a noise abatement direction given by an authorized person who is not a police officer, on the expiry of the period of 24 hours commencing at; or
- (b) in the case of a noise abatement direction given by an authorized person who is a police officer, at 6 a.m. next following,

the time at which it was given.

33F. The occupier of any premises and any person in charge or apparently in charge of any premises shall furnish to an authorized person all reasonable assistance and all information that—

Occupiers
and persons
in charge of
premises to
co-operate
with
authorized
persons.

- (a) the authorized person requires of him; and
- (b) he is capable of furnishing, with respect to the exercise of the powers, and the discharge of the duties, of the authorized person under this Part.

Delaying or
obstructing.

33G. A person shall not delay or obstruct an authorized person in the exercise of his powers under this Part.

Penalty: \$500.

Inactivation
of audible
alarms.

33H. (1) If a police officer is satisfied that an alarm has been sounding in or on any premises for a period of not less than 30 minutes and that offensive noise is thereby being emitted from those premises, he may—

- (a) enter those premises; and
- (b) take all such steps as appear to him to be reasonably necessary for or in connection with stopping the alarm from sounding,

with the aid of such assistants as he considers necessary and with the use of reasonable force.

(2) A police officer who has exercised the powers conferred on him by subsection (1) shall cause such persons or authorities as appear to him to be appropriate in the circumstances to be informed promptly of the exercise of those powers.

(3) The Commissioner shall pay to an assistant referred to in subsection (1) the amount of any reasonable fee charged by that assistant in respect of aid rendered by that assistant under that subsection.

(4) The amount of a fee paid by the Commissioner under subsection (3) constitutes a debt due to the Crown by the owner of the premises in respect of which the aid to which that fee relates was rendered and may be recovered by the Commissioner from that owner in a court of competent jurisdiction.

(5) This section does not apply to or in relation to premises which are a vehicle or vessel. " .

13. Section 34 of the principal Act is amended— Section 34 amended.

(a) in subsection (1) by—

(i) deleting “under this Act any person who has passed the prescribed examination” and substituting the following—

“ of a prescribed class a person who has passed the appropriate prescribed examination ” ; and

(ii) inserting, after “the duties of an inspector”, the following—

“ of that class ” ;

(b) in subsection (2) by deleting “an inspector under this Act” and substituting the following—

“ an inspector of a prescribed class ” ;
and

(c) in subsection (3) by deleting “appointed under this Act” and substituting the following—

“ of the prescribed class concerned ”.

14. Section 37 of the principal Act is amended by deleting “Two hundred and fifty dollars” and substituting the following— Section 37 amended.

“ \$2 000 ”.

15. Section 39 of the principal Act is amended by deleting “Five hundred dollars” and substituting the following— Section 39 amended.

“ \$2 000 ”.

Section 41
amended.

16. Section 41(1) of the principal Act is amended by deleting “Two hundred and fifty dollars” and substituting the following—

“ \$2 000 ”.

Section 44
amended.

17. Section 44(2) of the principal Act is repealed and the following subsection is substituted—

“ (2) A person who is guilty of or commits an offence against this Act (in this subsection called “the principal offence”) is, if a penalty is not expressly provided for that offence elsewhere than in this subsection, liable on conviction to a fine not exceeding \$5 000 and, if that offence is continued after that conviction, that person is guilty of a further offence and is liable on conviction of the further offence to a fine not exceeding \$500 for every day or part of a day during which the principal offence is so continued. ” .

Section 48
amended.

18. Section 48 of the principal Act is amended—

(a) in subsection (1) by inserting, after “by this Act”, the following—

“ to be prescribed, or necessary or convenient to be prescribed, ” ;

(b) in subsection (2) by—

(i) deleting “section 8” in paragraph (g) and substituting the following—

“ sections 8 and 12 ”;

(ii) inserting, after paragraph (1), the following paragraphs—

“ (1a) prohibiting, restricting or regulating the use in specified premises (as defined in section 33A) of alarms which do not

conform to specified standards or possess specified characteristics;

(lb) the conservation of the hearing of persons in specified workplaces and for that purpose to prescribe—

(i) the persons who shall comply with those regulations and their responsibilities thereunder;

(ii) the surveillance and control of activities in those workplaces necessary to prevent the occurrence and progression of noise induced hearing loss by persons therein;

(iii) the manner in which and the persons by whom noise is to be measured and evaluated, noise levels are to be controlled and reduced, noise hazards are to be identified, precautions to be taken, information is to be given to persons in those workplaces, noise exposure is to be reduced, hearing tests and

medical examinations are to be conducted, medical certificates are to be provided and records generally are to be kept;
and

- (iv) the degree of progression in hearing loss in persons in workplaces which makes it necessary for action to be taken to reduce their exposure to noise hazards; ” ;

and

- (iii) inserting, after paragraph (m), the following paragraph—

“ (ma) prescribing and providing for the recovery of fees to be paid in respect of matters or things to be done under or for the purpose of this Act; ” ;

- (c) by inserting, after subsection (2), the following subsections—

“ (2a) Any regulations made under this section may adopt, either wholly or in part or with modifications and either specifically or by reference, any rules, regulations, codes, instructions or other subordinate legislation made, determined or issued under any other Act or under any Act of the Parliament of the Commonwealth or the United Kingdom, or any of the standards, rules, codes or specifications of the bodies known as the

Standards Association of Australia, the British Standards Institution, or other like body specified in the regulations.

(2b) The provisions of regulations referred to in paragraph (1b) of subsection (2) of this section are in addition to and not in substitution for those provisions of any other law of the State which relate to the health, safety or welfare of employed persons.

(2c) Subject to any law of the State which applies to a workplace to which regulations referred to in paragraph (1b) of subsection (2) of this section apply, those regulations bind the Crown.

(2d) A person who in good faith carries out the measurement and evaluation of any noise levels or any noise survey in accordance with regulations referred to in paragraph (1b) of subsection (2) of this section, relies in so doing on facilities and information supplied by the person deemed by those regulations to be the occupier of the workplace in respect of which that measurement and evaluation or noise survey, as the case requires, is carried out, and reports in accordance with those regulations on that measurement and evaluation or noise survey is not liable in civil proceedings, and the Crown in right of the State is not liable, in respect of that measurement, evaluation, noise survey or report.

(2e) In subsections (2b) and (2c) of this section—

“law of the State” means—

- (a) an Act or any other law in force in the State;

- (b) an instrument, including a regulation, rule or by-law, having effect by virtue of an Act or any other law in force in the State; or
 - (c) an instrument having effect by virtue of an instrument referred to in paragraph (b) of this definition. ” ;
- (d) by inserting, after subsection (4), the following subsection—
- “ (4a) Any regulations made under this Act may provide that, notwithstanding anything in section 36 of the Interpretation Act 1918, different provisions of those regulations shall take effect and have the force of law on and from different dates and those provisions shall take effect and have the force of law accordingly. ” ; and
- (e) in subsection (5) by deleting “subsection (4) of ” .
-