

NOISE ABATEMENT.

No. 100 of 1972.

AN ACT to control excessive noise and vibration and to provide for their abatement, and for incidental purposes.

[Assented to 6th December, 1972.]

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:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Noise Abatement Act, 1972.* Short title.

2. The several provisions of this Act shall come into operation on such dates respectively as may be fixed by proclamation in relation to each of those provisions. Commence-
ment.

Application
to the
Crown.

3. This Act binds the Crown.

Arrange-
ment.

4. The arrangement of this Act is as follows—

PART I.—PRELIMINARY, ss. 1-6.

PART II.—OFFENCES AND REMEDIES, ss. 7-8.

PART III.—ADMINISTRATION, ss. 9-25.

PART IV.—NOISE ON PREMISES, ss. 26-33.

PART V.—INSPECTION AND ENFORCEMENT, ss.
34-44.

PART VI.—MISCELLANEOUS, ss. 45-48.

Interpre-
tation.

5. (1) In this Act, unless the contrary or other intention appears—

“abatement notice” means a notice served by a local authority in accordance with the provisions of section 26;

“Committee” means the Noise Abatement Advisory Committee established in accordance with the provisions of section 13;

“Department” means the Public Health Department;

“inspector” means a person appointed as an inspector under the provisions of section 34;

“nuisance order” means an order made by the Local Court under subsection (2) or subsection (4) of section 27;

“section” means section of this Act,

and each of the expressions “Commissioner”, “district”, “occupier”, “owner” and “the local authority” has the same meaning as is given to the expression by section 3 of the Health Act, 1911.

(2) Where a meaning is assigned to any expression by this section cognate expressions used in this Act, unless a contrary or other intention appears, have a corresponding meaning.

6. (1) The Minister, with the approval of the Governor, may by order published in the *Gazette*, declare that all or any of the provisions of this Act do not apply according to the order, in respect of—

Power of
Minister to
exempt from
Act.

- (a) any area or areas of the State;
- (b) any premises, act or thing specified in the order;
- (c) all premises, acts or things comprised in a class thereof so specified or situated in a part of the State so specified; or
- (d) all or any premises, acts or things in the circumstances so specified.

(2) The Minister may subject any exemption granted under this section to such circumstances or conditions or both as he may so specify and, notwithstanding anything contained in this Act, but subject to the provisions of subsections (4) and (5) of this section, any declaration made under subsection (1) of this section has effect according to its tenor.

(3) When the circumstances and conditions subject to which an exemption has been granted under this section cease to exist or are breached, the exemption ceases to operate.

(4) The Minister shall cause a copy of any order made under this section to be laid on the Table of each House of Parliament within the first nine sitting days of the House after the publication of the order in the *Gazette*.

(5) If either House of Parliament passes a resolution of which notice has been given within the first fourteen sitting days of that House after the copy of an order under this section has been laid on the Table of that House that the order be

disallowed, the order thereupon ceases to have effect, but the disallowance of the order does not affect or invalidate anything done in good faith by the Minister or any officer exercising any powers or performing any duties under this Act, before the passing of the resolution.

PART II.—OFFENCES AND REMEDIES.

Noise
nuisance to
be an
offence.

7. (1) A noise or vibration which is injurious or dangerous to health, or which occurs or continues to such a degree and extent that it has a disturbing effect on the state of reasonable physical, mental or social well-being of a person, is a nuisance for the purposes of this Act.

(2) Any person by whose act, default, or sufferance a nuisance arises or continues, whether that person is or is not the owner, occupier or user of the premises or thing in respect of which the nuisance arises or continues, or from which the nuisance emanates, commits an offence against this Act.

(3) In proceedings brought in respect of a nuisance caused or permitted to continue in the course of a trade or business, it shall be a defence for the defendant to prove that the level of sound or vibration produced did not exceed the level, if any prescribed in relation to that trade or business or those premises or that the sound or vibration was unavoidable.

(4) The provisions of this Act relating to a nuisance do not limit or affect any right, remedy, or proceeding under any other Act or at law.

(5) No proceedings taken under this Act against any person shall in any way interfere with or lessen any right or remedy by civil process of any party aggrieved by any offence against this Act.

8. (1) In any proceedings, including proceedings for the recovery of compensation under the provisions of the Workers' Compensation Act, 1912, in which a person seeks to establish that a noise was at a level which—

Evidentiary provisions as to noise levels.

- (a) was, or was not, capable of being injurious or dangerous to health;
- (b) was, or was not, capable of causing a specified injury or effect, or a specified class of injury or effect,

or that a noise or vibration was, or was not, capable of having a disturbing effect on the state of reasonable physical, mental or social well-being of a person, the Commissioner may, after such investigation or consultation as he thinks requisite, give a certificate in writing and signed by him under this Act for the purpose of those proceedings and any such certificate is evidence of the matters therein set out.

(2) In any proceeding such as is mentioned in subsection (1) of this section, evidence by an inspector that—

- (a) the apparatus used by him was apparatus of a kind prescribed for the purposes of this Act;
- (b) the apparatus was, on the occasion of its use, in proper working order and was operated by him in a proper and efficient manner; or
- (c) at the material time, all regulations relating to the use of apparatus for the purposes of this Act were complied with,

is evidence of that fact.

(3) Where evidence of the measurement of the level of a noise or vibration is accepted by the court or any person exercising judicial functions and the calculation or finding is that the level—

- (a) did not exceed any relevant level prescribed in relation to the circumstances of the case by more than such excess as is prescribed in

relation thereto, the calculation or finding is evidence to be considered by the court or that person, together with such other relevant and admissible evidence as may be given in that proceeding, but does not of itself give rise to any presumption as to whether or not, at that time, a nuisance was being committed;

- (b) exceeded any relevant level prescribed in relation to the circumstances of the case by more than such excess as is prescribed in relation thereto, the calculation or finding is evidence, at that time, of the commission of a nuisance.

(4) Nothing in this section shall be construed as excluding or restricting the introduction of any competent evidence, whether in addition to, or independent of, any evidence for which provision is made by this section, bearing on the question of whether a person was or was not guilty of an offence against this or any other Act.

(5) Judicial notice shall be taken of a certificate purporting to be given by the Commissioner under the provisions of subsection (1) of this section by all courts and persons exercising judicial functions.

(6) In subsection (1) of this section "specified" means specified in the certificate.

PART III.—ADMINISTRATION.

Cost of
administra-
tion.

9. The costs and expenses incurred in the administration of this Act shall be defrayed out of moneys to be provided by Parliament for that purpose.

Noise and
Vibration
Control
Council.

10. (1) There is hereby established, for the purposes of this Act, a body by the name of the Noise and Vibration Control Council.

(2) The Council consists of—

- (a) the Commissioner of Public Health;

- (b) the person who is for the time being the Chairman of the Committee; and
- (c) nine persons, in this Act referred to as the *ex officio* members of the Council, appointed by the Governor of whom—
 - (i) one shall be an officer of the department known as the Department of Development and Decentralisation nominated in writing by the Minister administering that department;
 - (ii) one shall be an officer of the department known as the Local Government Department so nominated by the Minister administering that department;
 - (iii) one shall be an officer of the department known as the Department of Labour employed in the Factories Branch of that department so nominated by the Minister administering that department;
 - (iv) one shall be an officer of the department known as the Department of Environmental Protection so nominated by the Minister administering that department;
 - (v) one shall be an officer of the department known as the Department of Mines so nominated by the Minister administering that department;
 - (vi) one shall be a member of the Police Force so nominated by the Minister administering the Police Act, 1892;
 - (vii) one shall be a person so nominated by the body known as The West Australian Chamber of Manufactures (Incorporated);

- (viii) one shall be a person so nominated by the body known as the Trades and Labor Council of Western Australia; and
- (ix) one shall be a person so nominated by the body known as the Western Australian Employers' Federation (Incorporated).

(3) If a Minister or a body referred to in subsection (2) of this section authorised to nominate an officer or person for appointment to the Council fails to do so within thirty days after the receipt by him of a written request from the Minister so to do, the Minister may nominate for appointment as member an officer or person having a like qualification to the officer or person who should have been nominated by the Minister or body in default, and the officer or person shall, subject to this Act, be appointed as if he had been duly nominated by the Minister or body first entitled to make the nomination.

(4) A person, other than the Chairman, is not eligible to hold at the same time, both the office of member of the Council and member of the Committee.

Application
of
subsequent
provisions.

11. The following provisions of this Act, namely—
- (a) subsections (3) to (7), inclusive, of section 13;
 - (b) sections 15 and 16;
 - (c) section 17, except that portion of paragraph (a) which refers to the termination of an appointment because of an interest; and
 - (d) sections 18 and 19,

apply to the Council and in so applying those provisions any reference therein to the Advisory Committee shall be read as a reference to the Council.

12. (1) The functions of the Council are—

Functions
of the
Council.

- (a) to carry out investigations into the problems of noise and vibration and their abatement;
- (b) to consider and initiate the means of preventing, abating or mitigating the nuisance arising from noise and vibration;
- (c) to keep under review the progress made in preventing, abating or mitigating the nuisance arising from noise and vibration;
- (d) to obtain the advice of persons having special knowledge, experience or responsibility in regard to the prevention of noise and vibration;
- (e) to encourage and conduct studies, investigation and research into the problems arising from excessive noise and vibration; and
- (f) subject to the Minister, to administer this Act.

(2) For the purposes of this Act the Council has all such powers, rights and privileges as may be reasonably necessary to enable it to carry out its function.

13. (1) For the purpose of giving advice and assistance in connection with the discharge by the Council of its functions under this Act there is hereby established a body by the name of the Noise Abatement Advisory Committee.

Noise
Abatement
Advisory
Committee.

(2) The Advisory Committee consists of—

- (a) five persons, in this Act referred to as the *ex officio* members of the Committee, appointed by the Governor on the recommendation of the Minister of whom—
 - (i) one shall be a person who is a legally qualified medical practitioner recognised as an expert in the field of

occupational health, who shall be chairman of the Committee;

- (ii) one shall be a person who is a legally qualified medical practitioner recognised as a consultant in relation to conditions of the ear, nose and throat;
- (iii) one shall be a person who is recognised as an expert on matters relating to the design and construction of buildings and the problems of noise control in buildings;
- (iv) one shall be a person who is recognised as an expert in the physics of sound; and
- (v) one shall be a person who is recognised as an expert in relation to the effect of noise on the mental and social well-being of persons;

and

- (b) two persons appointed by the Governor, of whom—
 - (i) one shall be a person with experience relevant to sound control, nominated in writing by the body known as The West Australian Chamber of Manufactures (Incorporated); and
 - (ii) one shall be a person with experience relevant to sound control, nominated in writing by the body known as The Chamber of Mines of Western Australia (Incorporated).

(3) In respect of each member of the Advisory Committee, a person representative of the same interests as that member may be appointed in like manner to be the deputy of the member, and any reference in this Act to a member shall be construed as including a reference to a deputy taking the place of that member.

(4) If a body referred to in paragraph (b) of subsection (2) of this section authorised to nominate a person for appointment to the Committee fails to do so within thirty days after the receipt by that body of a written request from the Minister so to do, the Minister may nominate a person for appointment as a member in default, and that person shall, subject to this Act, be appointed as if he had been duly nominated by the body first entitled to make the nomination.

(5) The Governor, on the recommendation of the Minister, may appoint an officer of the Department to be the Secretary and principal executive officer of the Advisory Committee, who shall be directly responsible to the Chairman.

(6) Acceptance of or acting in the office of member of the Advisory Committee by any person does not of itself render the provisions of the Public Service Act, 1904, or any other Act applying to persons as officers of the Public Service of the State, applicable to that member, or affect or prejudice the application to him of those provisions if they applied to him at the time of the acceptance of or acting in that office.

(7) Each of the appointed members shall, subject to this Act, hold office for two years and is eligible for reappointment.

14. It shall be the duty of the Minister to satisfy himself, with respect to any person whom he proposes to recommend for appointment as a member of the Advisory Committee, or who is a member of the Advisory Committee, that that person does not have an interest in any instrumentality or commercial undertaking of a nature that is likely to affect him in the discharge of his functions as a member of the Advisory Committee; and any such person shall, whenever requested by the Minister so to do, furnish to the Minister such information as the Minister considers necessary for the performance of his duty under this section.

Duties not
to conflict.

Conduct of
proceedings.

15. (1) Subject to this Act, and to any direction which may be given by the Minister, the Advisory Committee may regulate its procedure in such manner as it thinks fit.

(2) At any meeting all members present who have not declared an interest shall vote on any question submitted.

(3) All questions shall be decided by a majority.

(4) Each member, including the member presiding, shall have a deliberative vote only.

(5) In the case of an equality of votes the question shall be declared to be negatived.

(6) A record of the proceedings of every meeting shall be kept in such manner as the Minister may direct or approve, and shall be certified as correct by the member presiding at that or the next succeeding meeting.

(7) The Minister or the Chairman may at any time convene a meeting, and a meeting shall be convened by the Chairman within seven days of the receipt by him of a written request signed by two or more members specifying the business in respect of which the meeting is to be convened.

(8) In all cases of dispute, doubt or difficulty respecting or arising out of matters of procedure or order, or as to the determination of an interest, then, subject to the Minister, the decision of the Chairman shall be final and conclusive.

Quorum.

16. To constitute a meeting of the Advisory Committee there must be not less than one-half of the members present.

Disqualifica-
tion of
members.

17. If a member of the Advisory Committee—

(a) has his appointment terminated by the Governor for inability, inefficiency, or misbehaviour;

(b) is an incapable person within the meaning of section five of the Mental Health Act, 1962;

(c) is an undischarged bankrupt or has his affairs under liquidation by arrangement with his creditors; or

(d) is convicted of an indictable offence, his office becomes vacant and he shall not be eligible for re-appointment.

18. A member of the Advisory Committee is entitled to such allowances and remuneration for his services as the Governor determines.

Allowances and remuneration.

19. (1) All acts done at any meeting of the Advisory Committee shall notwithstanding that it is afterwards discovered that there was some defect in the appointment or qualification of a person purporting to be a member, be as valid as if that defect had not existed.

Validity of proceedings.

(2) Subject to the requirements as to a quorum, the Advisory Committee has power to act notwithstanding any vacancy among the members.

20. The Advisory Committee may—

(a) establish committees of such persons as the Advisory Committee may determine, and whether of members or of persons who are not members, but so that in every case the chairman of the committee shall be appointed from amongst the *ex-officio* members of the Advisory Committee; and

Committees and Co-option.

(b) invite any person, subject to the approval of the Minister and on such terms and conditions as the Minister may determine, to act in an advisory capacity to the Advisory Committee in relation to all or any aspects of the functions of the Advisory Committee.

Collaboration.

21. (1) For the purposes of this Act the Advisory Committee may, with the consent of the Minister having the administration of the Act relating to a department of the Public Service of the State or an instrumentality or agency of the Crown, make use of the services of any officer of that department, instrumentality or agency.

(2) The Advisory Committee shall, on matters relevant to the purposes of this Act, confer and collaborate with Departments of the Commonwealth and the States of the Commonwealth and other bodies, instrumentalities or agencies of the Commonwealth or States of the Commonwealth having to do with noise nuisance and the abatement of noise.

Functions of the Committee.

22. (1) The function of the Advisory Committee is to take into consideration and advise the Council on any matters and questions relating to the prevention, abatement and mitigation of the nuisance arising from noise and vibration that are referred to it by the Council.

(2) For the purposes of this Act the Advisory Committee has all such powers, rights and privileges as may be reasonably necessary to enable it to carry out its function.

Indemnity.

23. No action, claim or demand lies, or shall be commenced or allowed, by or in favour of any person against—

- (a) Her Majesty;
- (b) the State;
- (c) the Minister;
- (d) the Council;
- (e) any member of the Council;

- (f) the Advisory Committee;
- (g) any members, whether appointed or co-opted, of the Advisory Committee;
- (h) the Commissioner;
- (i) a local authority; or
- (j) any officer or other person acting under the direction of any of them,

with respect to anything properly done for the purpose of carrying out or giving effect to the provisions or objects of this Act.

24. The Commissioner may—

Powers of
the Com-
missioner.

- (a) consult with such persons, bodies and associations as he thinks fit for the purpose of obtaining information with respect to, and developing methods of, controlling and abating the emission of noise or vibration; and
- (b) give advice and assistance to the occupier of any premises or to any person operating any vehicle or vessel for the purpose of assisting the occupier or person in preventing or minimising a nuisance arising from the premises, vehicle or vessel.

25. (1) Before the first day of October, in each year the Commissioner shall make a written report to the Minister as to the operation of this Act up to the last preceding thirtieth day of June.

Annual
Report.

(2) The Minister shall lay the report of the Commissioner before each House of Parliament within six sitting days of that House after the receipt of the report by him.

PART IV.—NOISE ON PREMISES.

Service of
abatement
notice.

26. (1) Subject to subsection (2) of this section where the local authority is satisfied of the existence of a nuisance on any premises and a request to abate the nuisance is ineffective, it shall serve a notice on the person by whose act, default or sufferance the nuisance arises or continues, or, if that person cannot be found, on the owner or occupier of the premises on which the nuisance arises or continues, requiring him within such time as is specified in the notice to abate the nuisance by whatever means are necessary for that purpose.

(2) Notwithstanding the provisions of subsection (1) of this section, where—

- (a) the nuisance arises from any defect of a structural character in the premises on which the nuisance arises, the abatement notice shall be served on the owner of the premises;
- (b) the person causing the nuisance cannot be found and it is clear that the nuisance does not arise or continue by the act, default or sufferance of the owner or the occupier of the premises, the local authority may itself do whatever it considers necessary to abate the nuisance and to prevent a recurrence.

Power of
Court to
make
nuisance
order.

27. (1) Where the person on whom the abatement notice has been served makes default in complying with any of the requirements of the abatement notice, or if the nuisance, although abated since the service of the abatement notice is, in the opinion of the local authority, likely to recur on the same premises, the local authority shall cause a complaint to be made to the Local Court held nearest to the place where the alleged nuisance

arises and the Local Court shall thereupon issue a summons requiring the person on whom the abatement notice was served to appear before it.

(2) If on the hearing of the complaint it is proved that the alleged nuisance exists, or that although abated it is likely to recur on the same premises, then the Local Court shall make an order for either or both of the following purposes—

- (a) requiring the defendant to comply with all or any of the requirements of the abatement notice, or otherwise to abate the nuisance, within a time specified in the order, and to execute any works necessary for that purpose;
- (b) prohibiting a recurrence of the nuisance, and requiring the defendant, within a time specified in the order, to execute any works necessary to prevent a recurrence,

and may also impose on the defendant a fine not exceeding one hundred dollars.

(3) Where on the hearing of a complaint under this section it is proved that the alleged nuisance existed at the date of the service of the abatement notice and that at the date of the making of the complaint it either still existed or was likely to recur, then, whether or not at the date of the hearing it still exists or is likely to recur, the Local Court shall order the defendant to pay to the local authority such reasonable sum as the Local Court may determine in respect of the expenses incurred by the local authority in or in connection with, the making of the complaint and the proceedings before the Local Court.

(4) If it appears to the Local Court that the person by whose act or default the nuisance arises, or the owner or occupier of the premises, cannot be found, the nuisance order may be addressed to, and executed by, the local authority.

Pensity.

28. (1) Any person who fails without reasonable excuse to comply with, or knowingly contravenes, a nuisance order shall be liable to a fine not exceeding one hundred dollars and to a further fine not exceeding fifty dollars for each day on which the offence continues.

(2) Without affecting the provisions of subsection (1) of this section, where a nuisance order has not been complied with, the local authority may abate the nuisance, and do whatever may be necessary in execution of the order.

Costs of local authority.

29. (1) Any expenses reasonably incurred by the local authority under this Act in abating, or preventing the recurrence of, a nuisance in respect of which a nuisance order has been made may be recovered by the local authority—

- (a) where the nuisance order was made on some person other than the local authority, from that person;
- (b) where the nuisance order was made on the local authority, from the person by whose act or default the nuisance was caused or permitted to continue,

and, in either case, if the person in question is the owner of the premises, from any person who is for the time being the owner thereof.

(2) In proceedings to recover any expenses referred to in subsection (1) of this section the Local Court may apportion those expenses between persons by whose acts or defaults the nuisance is caused or permitted to continue in such manner as it considers fit.

Proceedings where nuisance caused by more than one person.

30. (1) Where a nuisance appears to be wholly or partly caused by the acts or defaults of two or more persons—

- (a) proceedings may be instituted under the provisions of this Act against any one of them, or against any two or more of them in the same proceedings; and

- (b) subject to those provisions, any one or more of the persons proceeded against may be ordered to abate the nuisance, so far as it appears to the Local Court to be caused or permitted to continue by his or their acts or defaults, or may be prohibited from continuing any acts or defaults which, in the opinion of the Local Court, contribute to the nuisance, or may be fined or otherwise punished, notwithstanding that the acts or defaults of any one of those persons would not separately have caused a nuisance or permitted it to continue,

and the costs may be apportioned as the Local Court thinks fit.

(2) Proceedings against several persons included in one complaint shall not abate by reason of the death of any of the persons so included, but may be carried on as if the deceased person had not been so included.

(3) Where some only of the persons by whose acts or defaults a nuisance has been caused or permitted to continue have been proceeded against under this Act, they may, without prejudice to any other remedy, recover in a summary manner from the other persons who were not proceeded against a proportionate part of the costs of, and incidental to, the proceedings and the abatement of the nuisance, and of any fine or costs ordered to be paid in the proceedings.

31. Where a nuisance within, or affecting any part of, the district of the local authority appears to be wholly or partly caused or continues by some act or default committed or taking place outside that district, the local authority may take, or cause to be taken, against any person in respect of that act or default any proceedings in relation to nuisances by this Act authorised in the like cases, and with the like incidents and consequences, as if the act or default were committed or took place wholly within the district of the local authority.

Nuisance
outside
district.

Local
authority
powers
may be
exercised
by Com-
missioner.

32. Any reference in this Part of this Act to the local authority shall be construed as including a reference to the Commissioner of Public Health who, in any district, shall be deemed to have the same powers for the purposes of this Act as are possessed by the local authority within the district.

Complaint
by three
persons.

33. (1) Any complaint of the existence of a nuisance under this Part of this Act may be made by any three or more persons each of whom is the occupier of land or premises and is in that capacity aggrieved by the nuisance, and thereupon the like proceedings shall be had, with the like incidents and consequences as to the making of orders, penalties for disobedience of orders and otherwise, as in the case of a complaint by the local authority, but any order made in the proceedings may, if the Local Court after giving the local authority an opportunity of being heard thinks fit, direct the local authority to abate the nuisance.

(2) A complaint may be made under subsection (1) of this section by less than three persons if a person who is the occupier of land and premises and is in that capacity aggrieved by the nuisance satisfies the Local Court, by way of preliminary application *ex parte*, that the circumstances are such that—

- (a) less than three persons are affected by the nuisance; or
- (b) other persons affected are unable or unwilling to join in the bringing of a complaint for economic or other reasons not related to the question of whether or not the nuisance exists; or
- (c) the enjoyment of land or premises occupied by him is affected in a degree substantially greater than is the case with other land or premises affected; and
- (d) the complaint is not of a frivolous, vexatious or unreasonable nature.

PART V.—INSPECTION AND ENFORCEMENT.

34. (1) The Minister may appoint as an inspector under this Act any person who has passed the prescribed examination, or who otherwise satisfies the Minister that he possesses a professional or technical qualification that necessarily implies a training and experience relevant for the purposes of carrying out the duties of an inspector and that he has a sufficient knowledge of the law relevant for that purpose.

Appointment
of inspectors.

(2) Every person appointed to be an inspector under this Act shall be furnished with a certificate in the prescribed form evidencing his appointment and shall produce such certificate whenever required so to do by any person in respect of whom he has exercised or is about to exercise any of his powers under this Act.

(3) Production of a certificate in the prescribed form shall be conclusive proof in any court of the appointment of the inspector to whom that certificate relates and of his authority to exercise the powers conferred upon an inspector appointed under this Act.

35. (1) Any member of the Council or Advisory Committee or any inspector in addition to such other powers and duties as may from time to time devolve upon him under this Act, or as may be prescribed, may together with any person he may think competent to assist him in making any inspection or examination, enter any premises, and may therein or thereon—

Powers of
members of
Council,
Committee
and
inspectors.

- (a) examine and inspect any equipment, industrial plant, or process; and
- (b) make such examination and inquiry and tests, and ask such questions, and request such information as he considers necessary or desirable,

to ascertain whether the provisions of this Act or any requirement or order made under or pursuant thereto or the conditions attached to exemption granted thereunder are being or have been complied with.

(2) In the exercise of his powers under subsection (1) of this section a person shall conform so far as is practicable to such reasonable requirements of the person owning or using the premises in question as are necessary to prevent the working of the business or the conduct of operations on the premises being obstructed.

(3) Before entering any premises pursuant to this section the member of the Council or Advisory Committee or inspector referred to in subsection (1) of this section shall unless the owner or occupier of such premises shall permit such person to enter such premises obtain a warrant to do so from a Magistrate or Justice of the Peace which warrant the Magistrate or Justice of the Peace is authorised to issue upon being satisfied that the entry is sought in good faith for any purpose permitted under this Act.

Occupier to
allow entry
and
inspection.

36. The occupier of any premises and any person in charge or apparently in charge of any premises shall furnish to any member of the Council or Advisory Committee or any inspector all reasonable assistance and all such information that he is capable of furnishing or as required by that member or inspector with respect to the exercise of his powers and the discharge of his duties under this Act.

Offence.
Obstruction
of
inspector.

37. A person who delays or obstructs an inspector in the exercise of his powers under this Act is guilty of an offence against this Act.

Penalty: Two hundred and fifty dollars.

38. The Commissioner, by notice in writing served on the occupier of any premises, may require the occupier to furnish to him within fourteen days or such longer period as may be specified in the notice, such information as to any equipment, or industrial plant, in or on the premises as he requires by the notice for the purposes of this Act.

Occupier or premises to furnish information.

39. A person who discloses any information relating to any manufacturing process or trade secret used in carrying on or operating any particular undertaking or equipment or plant, that has been furnished to him or obtained by him under this Act, or in connection with the execution of this Act, is, unless the disclosure is made—

Secrecy.

- (a) with the consent of the owner or occupier responsible for the undertaking, equipment or plant;
- (b) in connection with the execution of this Act and with the prior permission of the Minister; or
- (c) subject to the provisions of subsection (3) of section 41, for the purposes of any legal proceedings arising out of this Act or of any report of such proceedings,

guilty of an offence against this Act.

Penalty: Five hundred dollars.

40. (1) Where under the provisions of this Part a person is obliged to supply information to the Commissioner, or to any member of the Council or Advisory Committee or any inspector, and the owner or occupier of the premises concerned is of the opinion that compliance with the obligation will result in the disclosure of a trade secret, the owner or occupier may within seven days declare in writing to the Minister that he objects to the obligation in so far as it relates to that trade secret.

Trade Secrets

(2) On receipt of an objection made under subsection (1) of this section the Minister may after such investigation and inquiry as he thinks fit by notice under his hand exempt the person concerned of the obligation either generally in relation to the trade secret alleged or to such extent as he may therein specify.

(3) Where the Minister refuses to exempt a person, either generally or to such extent as he may specify, under subsection (2) of this section from the obligation to supply information, he shall cause notice in writing of his decision to be served on the person objecting who may within twenty-one days of receiving that notice appeal to a Judge against the decision of the Minister.

(4) An appeal made under subsection (3) of this section to a Judge shall be heard in Chambers, and the Judge may confirm, alter or reverse the decision of the Minister and may make such order as to the costs of, and incidental to, the appeal as the Judge thinks fit.

(5) In determining an appeal under subsection (4) of this section, a Judge may, if declining to reverse the decision of the Minister, make an order—

- (a) prohibiting the Council and every person who is, becomes or has been a member of the Council or the Advisory Committee, officer of the Department or other employee, servant or agent of the Council, from disclosing any information relating to the trade secret supplied in compliance with the obligation, except in the circumstances specified in the order;
- (b) prohibiting, where any information so supplied is subsequently adduced in evidence in any proceedings, the publication of that evidence,

and any order so made shall be complied with notwithstanding anything to the contrary contained in this Act.

41. (1) A person who wilfully obstructs any person acting in the execution of this Act commits an offence against this Act.

Persons obstructing execution of this Act.

Penalty: Two hundred and fifty dollars.

(2) A person who fails to give to any person acting in the execution of this Act any assistance which that person may reasonably request him to give, or any information which that person is expressly authorised by this Act to call for or may reasonably require, or who, when required to give any such information, knowingly makes any false or misleading statement in relation thereto, shall be treated as having wilfully obstructed that person.

(3) Any statement made pursuant to any requirement made pursuant to this section, shall not, if the person making the statement objected, at the time of making it, to doing so on the ground that it might tend to incriminate him, be admissible in evidence in any prosecution against the person for any offence not being the offence of contravening or failing to comply with the provisions of this section.

42. (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer, of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Vicarious liability.

(2) In the case of any prosecution in respect of an offence deemed to have been committed under the provisions of subsection (1) of this section it shall be a defence for any person who would otherwise be liable to the penalties prescribed for that offence to prove that neither he nor any agent or servant of

his did, or knew of the doing of, any act that constituted the offence or can reasonably be regarded as having been the cause or amongst the causes of it, or omitted to do, or knew of an omission to do, any act the omission whereof constituted the offence or the doing whereof can reasonably be regarded as a precaution that would have prevented it.

Recovery of
penalty and
costs.

43. (1) Where on the hearing of any prosecution for an offence under this Act the court records a finding to the effect that the defendant has satisfied the court that—

- (a) being an agent or servant, he had acted without knowledge, and could not reasonably be expected to have known, that any provision of this Act had been contravened or had not been complied with; or
- (b) being a principal or employer, he had used due diligence to enforce the execution of this Act and that without his connivance or consent and in contravention of his orders the provisions of this Act were contravened or not complied with by his agent or servant,

and whether or not any other person has been convicted or punished in relation to the same matter, the defendant may recover in any court of competent jurisdiction from any person directly responsible for that contravention of, or failure to comply with, those provisions, the amount of any pecuniary penalty imposed on his conviction and paid or payable by him, together with the costs, fees, charges, and other expenses ordered to be paid upon his conviction and paid or payable by him in or in relation to his defence to the prosecution.

(2) Where a person satisfies the court in accordance with the provisions of subsection (1) of this section, the court may if it thinks fit suspend the operation of the conviction for any period not exceeding three months to enable the defendant to effect such recovery.

44. (1) A person who—

- (a) fails to comply with any of the requirements of this Act within the time or in the manner thereby provided; or
- (b) contravenes or fails to comply with any other provision of this Act,

Offences and penalties.
 "This Act" includes regulations and by-laws.
 Cf. s.4 Interpretation Act, 1918.

commits an offence.

(2) A person convicted of an offence against this Act is liable on conviction, where no penalty is expressly provided for the offence—

- (a) if he has not been previously convicted of any offence against this Act, to a fine of fifty dollars;
- (b) if he has been previously convicted of an offence against this Act, to a fine of two hundred and fifty dollars; and
- (c) in the case of a continuing offence, whether of commission or of omission, to a daily penalty of twenty-five dollars for every day that the offence continues after the offender is convicted.

(3) Where any offence is committed by a person by reason of his failure to comply with any provision of this Act by or under which he is required or directed to do, or to refrain from doing, anything within a particular period, that offence is deemed to continue so long as the thing so required or directed remains undone, or continues to be done, as the case may be, notwithstanding that the particular period has elapsed.

(4) The court by or before which a person is convicted of an offence against this Act may, whether or not it imposes any other punishment, order that the person convicted pay the reasonable costs of and incidental to any measurement or other matter undertaken by or on behalf of the prosecution towards the investigation of the offence and the giving of evidence relating thereto, and may make such order as the court thinks just as to those costs.

PART VI.—MISCELLANEOUS.

By-laws.

45. (1) A local authority may, of its own motion, and shall, when the Commissioner so requires, make by-laws for carrying into effect the provisions of this Act within its district, and shall repeal, amend, vary or suspend the operation of any by-law if the Commissioner so requires.

(2) The Governor may cause to be prepared and published in the *Gazette* model by-laws for the purpose of carrying into effect the provisions of this Act.

(3) A local authority may, by resolution, adopt the whole or any portion of a model by-law, with or without modification.

(4) Any by-law may be restricted in its operation to any defined portion of a district.

(5) A resolution by a local authority to adopt a model by-law shall be published in the *Gazette* and thereupon operates to extend the by-law, as so adopted, to the district.

(6) A by-law made or adopted pursuant to the provisions of this section shall have the same legal effect and, with the necessary modifications, be subject to the same procedures and requirements as if it had been passed by the local authority and duly brought into effect under the provisions of the Health Act, 1911.

(7) Where a local authority adopts the whole or any part of a model by-law, the by-law so adopted shall in all courts be deemed to be within the powers conferred on the local authority.

(8) Where there is conflict or inconsistency between the provisions of a by-law and the provisions of regulations made under this Act, the provisions of the regulations prevail to the extent of the conflict or inconsistency.

46. (1) Subject to the provisions of Part IV of this Act, prosecution for an offence against this Act may be instituted by an inspector, or by any person authorised by the Minister.

Prosecutions
and
application
of penalties.

(2) All penalties and other moneys recovered on the complaint of a local authority or its officers shall be paid to the local authority within whose district the penalties are incurred to the credit of the local authority revenues, and in all other cases shall be paid into the consolidated revenue.

47. (1) In all proceedings in which any notice, order, or other document required or authorised to be given or served under this Act has to be proved, the defendant is deemed to have received notice to produce it, and, until the contrary is shown, the document and its due service may be sufficiently proved by the production of what purports to be a copy, bearing what purports to be a certificate under the hand of the person authorised to issue the original or of the secretary to the local authority or the secretary to the Commissioner, as the case may be, that the copy is a true copy of the original and that the original was served on the date specified in the certificate.

Proof of
service of
notices.

(2) The validity of any notice, order, or other document or of its service is not affected by any error, misdescription, or irregularity which is not calculated to mislead, or which in fact does not mislead.

48. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters required or permitted by this Act for carrying out or giving effect to the objects of this Act, and any such regulation may confer upon a specified person or body a discretionary authority.

Regulations.

(2) Without limiting the generality of the powers conferred by subsection (1) of this section, the Governor may make regulations for or with respect to—

- (a) the remuneration and allowances that are to be paid to a member of the Council for his services and to a member of the Advisory Committee for his services;
- (b) the forms to be used for the purposes of this Act, and the manner of, and time for, their completion including a requirement that information supplied be verified by statutory declaration;
- (c) the taking of measurements of noise or vibration levels;
- (d) the conduct and methods of testing the levels of sound emission or vibration;
- (e) the apparatus to be used for the purposes of tests;
- (f) the persons who are authorised to use approved apparatus;
- (g) the classification of standards, including standards for the purposes of section 8;
- (h) the matters that may be set out in a certificate given in accordance with the provisions of section 8;
- (i) the level of noise or vibration that is, in the opinion of the Council, reasonable in relation to any area, premises, act or thing;
- (j) the times within which specified levels may be exceeded, or not exceeded;

- (k) the means to be used for the prevention, and for counteracting the effect of noise or vibration, in relation to any premises, act or thing, including the laying down of minimum requirements;
- (l) the provision of protective equipment and measures for the prevention of injury;
- (m) the periodic testing of persons for the purpose of investigating the occurrence or progress of hearing loss or damage;
- (n) the imposition of penalties not exceeding those specified in section 44;
- (o) the application for and the grant, issue, renewal, cancellation, suspension or variation of orders of exemption from the provisions of this Act;
- (p) the conditions, restrictions and limitations to be imposed on any exemption order;
- (q) any other purpose that the Governor deems necessary for safeguarding the public and the public interest in relation to the objects of this Act; and
- (r) such transitional, incidental or supplementary provisions as the Governor deems necessary or expedient for the purposes of this Act.

(3) Any regulations made under this Act may be of general or limited application according to time, place or circumstance, and may require a matter affected by them to be—

- (a) in accordance with a specified standard or specified requirement; or
- (b) as approved by, or to the satisfaction of, a specified person or body or a specified class of person or body.

(4) Any regulations made under this Act may provide that, in specified cases or a specified class of case, whether on specified conditions or unconditionally, persons, acts or things, or a class of persons, acts or things may be exempted from the provisions of the regulations, either wholly or to such extent as is specified.

(5) In subsection (4) of this section "specified" means specified in the regulations.
