

NOISE CONTROL (AMENDMENT) ACT, 1984, No. 60

New South Wales



ANNO TRICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 60, 1984.

An Act to amend the Noise Control Act, 1975, in relation to the enforcement of the provisions of that Act, and in certain other respects. [Assented to, 19th June, 1984.]

Noise Control (Amendment).

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

Short title.

1. This Act may be cited as the "Noise Control (Amendment) Act, 1984".

Principal Act.

2. The Noise Control Act, 1975, is referred to in this Act as the Principal Act.

Schedules.

3. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO PARTS I AND II OF THE PRINCIPAL ACT.

SCHEDULE 2.—AMENDMENTS TO PART V OF THE PRINCIPAL ACT.

SCHEDULE 3.—AMENDMENTS TO PART VII OF THE PRINCIPAL ACT.

SCHEDULE 4.—AMENDMENT TO PART VIII OF THE PRINCIPAL ACT.

SCHEDULE 5.—AMENDMENT TO PART IX OF THE PRINCIPAL ACT.

SCHEDULE 6.—AMENDMENTS TO PART X OF THE PRINCIPAL ACT.

Amendment of Act No. 35, 1975.

4. The Principal Act is amended in the manner set forth in Schedules 1–6.

Noise Control (Amendment).

Saving.

5. The amendment of the Principal Act by this Act does not affect any penalty which may be imposed in respect of an offence against the Principal Act committed before the commencement of this Act.

SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO PARTS I AND II OF THE PRINCIPAL ACT.

(1) (a) Section 4 (1), definition of "motor cycle"—

After the definition of "Maritime Services Board", insert:—

"motor cycle", without limiting the ordinary meaning of that expression, includes a vehicle of a prescribed class or description;

(b) Section 4 (1), definition of "offensive noise"—

Omit "persons who are", insert instead "a person who is".

(2) (a) Section 11 (1)—

Omit "twelve", insert instead "13".

(b) Section 11 (2) (e1)—

After section 11 (2) (e), insert:—

(e1) an officer of the Maritime Services Board nominated by the Minister for Public Works and Ports;

(3) Section 13 (3) (e) (ii)—

Omit "or (e)—ceases to be an officer of the department", insert instead " , (e) or (e1)—ceases to be an officer of the department or body".

Noise Control (Amendment).

SCHEDULE 2.

(Sec. 4.)

AMENDMENTS TO PART V OF THE PRINCIPAL ACT.

(1) Section 31—

Omit the section, insert instead:—

Interpretation.

31. In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

- (a) “specified”, in relation to a noise control notice, means specified or described in the notice;
- (b) a power to specify, in a noise control notice, any act, matter or thing includes a power to specify a class of act, matter or thing; and
- (c) a reference to any act, matter or thing specified in a noise control notice includes, where a class of act, matter or thing is specified in such a notice, a reference to an act, matter or thing of that specified class.

(2) (a) Section 36 (1)—

After “from those premises”, insert “at all times or on specified days, or between specified times on all days or on specified days,”.

(b) Section 36 (1A)—

After section 36 (i), insert:—

(1A) Where, in a notice under subsection (1), there is no reference to the times or days during or on which the prohibition imposed by the notice is to operate, that prohibition shall operate at all times.

(c) Section 36 (2) (d)—

Omit “premises; or”, insert instead “premises;”.

Noise Control (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

(d) Section 36 (2) (e)—

Omit “premises,” insert instead “premises; or”.

(e) Section 36 (2) (f)—

After section 36 (2) (e), insert:—

- (f) to meet any of the requirements referred to in paragraphs (a) to (e), being requirements specified in the notice, so far as is necessary to ensure that the emission of noise from those premises at all times or on specified days, or between specified times on all days or on specified days, is not in excess of the specified level when measured at any specified point (whether within or outside those premises),

(3) Section 39—

Omit the section, insert instead:—

Interpretation.

39. In this Division, “appropriate authority” means—

- (a) except in relation to vessels in navigable waters—a local authority; and
- (b) in relation to vessels in navigable waters—the Maritime Services Board.

(4) (a) Section 40 (1) (a)—

Omit the paragraph, insert instead:—

- (a) that if the occupier causes, permits or allows—
 - (i) any specified step in a trade, industry or process to be carried out in or on those premises;
 - (ii) any specified article to be used or operated in or on those premises;

Noise Control (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

- (iii) any specified activity to be carried on in or on those premises;
- (iv) any specified animal to be kept in or on those premises; or
- (v) the carrying out of any specified step in a trade, industry or process, the use or operation of any specified article, the carrying on of any specified activity or the keeping of any specified animal in or on those premises in contravention of any condition that the appropriate authority may include in the notice pursuant to subsection (2); and

(b) Section 40 (2)—

Omit “The following kinds of conditions may be imposed in a noise control notice under this Division, namely—”, insert instead “For the purposes of subsection (1) (a) (v), the appropriate authority may include one or more of the following kinds of conditions in a noise control notice, being conditions compliance with which that authority is satisfied will prevent or reduce (as the case may require) the making in, or the emission from, the premises to which the notice relates of noise arising from the carrying out of a step in a trade, industry or process, the use or operation of an article, the carrying on of an activity or the keeping of an animal:—”.

(c) Section 40 (2) (e)—

Omit “manner; or”, insert instead “manner;”.

(d) Section 40 (2) (f)—

Omit “specified articles.”, insert instead “any specified article;”.

Noise Control (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

(e) Section 40 (2) (g), (h)—

After section 40 (2) (f), insert:—

- (g) that a specified article or animal is confined to a specified location in or on those premises at all times or on specified days, or between specified times on all days or on specified days;
- (h) conditions of the prescribed kinds.

(f) Section 40 (3)—

After section 40 (2), insert:—

- (3) Where, in the opinion of the Commission, an appropriate authority could have served a notice under subsection (1) on the occupier of any premises (other than scheduled premises) and has not served such a notice—
 - (a) the Commission may serve such a notice on the occupier; and
 - (b) the provisions of this Act (this subsection and section 48 excepted) apply to and in respect of such a notice in the same way as they apply to and in respect of a notice served by an appropriate authority under subsection (1).

(5) Section 41 (1)—

Omit the subsection, insert instead:—

- (1) Where a noise control notice has been served under this Division on the occupier of specified premises, the occupier shall not, while the notice remains in force, cause, permit or allow—
 - (a) where a condition referred to in section 40 (1) (a) (v) has not been included in the notice—
 - (i) the specified step in a trade, industry or process to be carried out in or on those premises;

Noise Control (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

- (ii) the specified article to be used or operated in or on those premises;
- (iii) the specified activity to be carried on in or on those premises; or
- (iv) the specified animal to be kept in or on those premises;
or
- (b) where a condition referred to in section 40 (1) (a) (v) has been included in the notice, the carrying out of the step in the trade, industry or process, the use or operation of the article, the carrying on of the activity or the keeping of the animal in contravention of the condition.

(6) Section 43—

Omit the section, insert instead:—

Restrictions on notices.

43. (1) A noise control notice under this Division served by an appropriate authority has no force in so far as it is issued in relation to premises that are of a prescribed class or description or in or on which an activity of a prescribed class or description is being carried on.

(2) The Commission may issue a notice under section 40 (1) in relation to premises referred to in subsection (1).

(3) For the purposes of subsection (2), references in section 40 (1) and (2) to the appropriate authority shall be read and construed as references to the Commission.

(7) Section 44—

Omit the section, insert instead:—

Interpretation.

44. In this Division, “appropriate authority” means—

- (a) in relation to scheduled premises—the Commission;

Noise Control (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

- (b) except in relation to scheduled premises and to vessels in navigable waters—a local authority; and
- (c) in relation to vessels in navigable waters—the Maritime Services Board.

(8) (a) Section 45 (1) (b)—

After “operated”, insert “, or any specified activity to be carried on,”.

(b) Section 45 (2)—

Omit “or an article”, insert instead “, an article or an activity”.

(c) Section 45 (2)—

Omit “or that article may be used or operated”, insert instead “, that article may be used or operated or that activity may be carried on”.

(d) Section 45 (3)—

After section 45 (2), insert:—

(3) Where, in the opinion of the Commission, an appropriate authority other than the Commission could have served a notice under subsection (1) (a) or (b) on a person and has not served such a notice—

- (a) the Commission may serve such a notice on the person;
and
- (b) the provisions of this Act apply to and in respect of such a notice in the same way as they apply to and in respect of a notice served by the Commission under subsection (1) in relation to scheduled premises.

Noise Control (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

(9) Section 46 (2)—

After “operated”, insert “, or the specified activity to be carried on,”

(10) Section 47—

Omit the section, insert instead:—

Restrictions on notices.

47. (1) Subject to subsection (2), a noise control notice under this Division served by an appropriate authority has no force in so far as it is issued in relation to premises that are of a prescribed class or description or in or on which an activity of a prescribed class or description is being carried on.

(2) The Commission may serve a notice under section 45 (1) in relation to premises referred to in subsection (1) and the provisions of this Act (subsection (1) excepted) apply to and in respect of such a notice in the same way as they apply to and in respect of a notice served by the Commission under section 45 (1) in relation to scheduled premises.

(11) (a) Section 48 (b) (ii)—

After “activity”, insert “(other than an activity involving vessels in navigable waters or the use or operation of motor cycles)”.

(b) Section 48 (2)—

At the end of section 48, insert:—

(2) For the purposes of subsection (1)—

(a) the Commission may issue a notice under Division 4 or 5;
and

(b) references in section 40 (1) and (2) and section 45 (1) to the appropriate authority shall be read and construed as references to the Commission.

Noise Control (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

(12) Section 49—

Omit the section.

SCHEDULE 3.

(Sec. 4.)

AMENDMENTS TO PART VII OF THE PRINCIPAL ACT.

(1) Section 58—

Omit the section, insert instead:—

Interpretation.

58. In this Part, “authorised person” means—

- (a) in any case—an authorised officer;
- (b) except in relation to a lawful sporting activity involving vessels in navigable waters—a member of the police force;
- (c) in relation to a lawful sporting activity involving vessels in navigable waters—an officer employed and authorised in writing by the Maritime Services Board; and
- (d) in relation to the use or operation of motor cycles—an officer employed and authorised in writing by a local authority.

Noise Control (Amendment).

SCHEDULE 3—*continued.*AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

(2) Sections 61, 61A—

Omit section 61, insert instead:—

Powers of entry.

61. (1) In this section—

(a) a reference to—

(i) a telephone includes a reference to a radio or any other communication device; and

(ii) a stipendiary magistrate includes a reference to a Justice who has been nominated as referred to in section 357G (2) of the Crimes Act, 1900, and whose nomination has not been revoked; and

(b) “dwelling-house” means a dwelling-house within the meaning of the Crimes Act, 1900.

(2) Upon complaint made by a member of the police force to a stipendiary magistrate that—

(a) the member of the police force has been denied entry to a specified dwelling-house; and

(b) the member of the police force believes that—

(i) offensive noise is being emitted from the dwelling-house or offensive noise has, within the past 30 minutes, been emitted from the dwelling-house; and

(ii) it is necessary for a member of the police force to enter the dwelling-house immediately in order to give a noise abatement direction in relation to offensive noise emitted from the dwelling-house or to investigate whether an offence arising under section 60 has been committed,

the stipendiary magistrate may, if satisfied that there are reasonable grounds for that belief, by warrant, authorise and require the member of the police force to enter the dwelling-house and to give a noise abatement direction or to investigate whether an offence arising under section 60 has been committed.

Noise Control (Amendment).

SCHEDULE 3—*continued.*AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

(3) A complaint under this section may be made by a member of the police force to a stipendiary magistrate in person or by telephone and may be made directly to the stipendiary magistrate or, where, in all the circumstances, it is impracticable to make the complaint directly, by causing the complaint to be transmitted by another member of the police force by either of those means.

(4) The fact that a complaint is made under this section to a stipendiary magistrate by a member of the police force who causes the complaint to be transmitted by another member of the police force to the stipendiary magistrate does not, if the stipendiary magistrate is of the opinion that it is, in all the circumstances, impracticable to communicate directly with the member of the police force making the complaint, prevent the stipendiary magistrate being satisfied as to the matters referred to in subsection (2).

(5) A stipendiary magistrate grants a warrant under subsection (2) by stating the terms of the warrant.

(6) Where a stipendiary magistrate grants a warrant under subsection (2), the stipendiary magistrate shall cause a record to be made in writing in the prescribed form of—

- (a) the name of the member of the police force who was the complainant;
- (b) where the complaint was transmitted by a member of the police force on behalf of the complainant—the name of the member of the police force who so transmitted the complaint;
- (c) the details of the complaint, including the name of any person who is alleged to have informed the police as to the offensive noise the subject of the warrant and the grounds which the stipendiary magistrate was satisfied were reasonable grounds for the belief by reason of which the warrant was granted;
- (d) the terms of the warrant (which shall include the address of the dwelling-house the subject of the warrant); and
- (e) the date and time the warrant was granted.

Noise Control (Amendment).

SCHEDULE 3—*continued.*

AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

(7) A warrant granted under subsection (2) shall be executed as soon as practicable after the warrant is granted but no later than 24 hours after the time of granting, and may be executed by day or night.

(8) For the purpose of executing a warrant granted under subsection (2), a member of the police force may use force, whether by breaking open doors or otherwise, for the purpose of entering a dwelling-house.

(9) A member of the police force may execute a warrant granted under subsection (2) with the aid of such assistants as the member of the police force deems necessary.

(10) A warrant granted under subsection (2) is not invalidated by any defect, other than a defect which affects the substance of the warrant in a material particular.

(11) Where a warrant has been granted under subsection (2), the member of the police force who was the complainant shall make a record in triplicate in the prescribed form containing the following details:—

- (a) the address of the dwelling-house the subject of the warrant;
- (b) the name of the stipendiary magistrate who granted the warrant;
- (c) the name of the member of the police force;
- (d) the time at which the warrant was granted.

(12) The copies of a record relating to a warrant and made as referred to in subsection (11) shall be dealt with as follows:—

- (a) the first copy shall, upon entry into the dwelling-house the subject of the warrant or as soon as practicable thereafter, if a person who appears to reside in the dwelling-house and to

Noise Control (Amendment).

SCHEDULE 3—*continued.*AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

be of or above the age of 18 years is present, be furnished to such a person together with a statement in the prescribed form and containing a summary of the nature of the warrant and the powers given by the warrant;

- (b) the second and third copies shall be endorsed with—
 - (i) the name of the person (if any) who informed the police as to the offensive noise the subject of the warrant; and
 - (ii) a notation as to whether a dwelling-house was entered pursuant to the warrant and, if so, the time of entry and the action taken in the dwelling-house;
- (c) the second copy shall be forwarded to the Director of the Magistrates Courts Administration or such other officer as may be prescribed for the purposes of this subsection;
- (d) the third copy shall be retained by the member of the police force authorised to enter a dwelling-house pursuant to the warrant to be dealt with in such manner as may be prescribed.

Provisions relating to powers of entry and investigations.

61A. (1) Where a member of the police force enters a dwelling-house in pursuance of a warrant granted under section 61 for the purpose of giving a noise abatement direction or investigating whether an offence arising under section 60 has been committed, the member of the police force shall—

- (a) take only such action in the dwelling-house as is reasonably necessary—
 - (i) to give the noise abatement direction or investigate whether such an offence has been committed; and
 - (ii) to exercise any power under subsection (2) or any lawful power to arrest a person; and

Noise Control (Amendment).

SCHEDULE 3—*continued.*AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

- (b) remain in the dwelling-house only as long as is reasonably necessary to take that action.

(2) Where a member of the police force believes on reasonable grounds that offensive noise is being emitted from a dwelling-house or offensive noise has, within the past 30 minutes, been emitted from a dwelling-house, the member of the police force may require any person—

- (a) whom the member of the police force believes on reasonable grounds to be the occupier of the dwelling-house or to be, or to have been, causing or contributing to the emission of the offensive noise; and
- (b) to whom the member of the police force has given an oral or written warning of that person's obligation to furnish the information under this Act,

to furnish the member of the police force with that person's name and address and with the name and address of the occupier of the dwelling-house if that person is not the occupier.

(3) A person shall not refuse or fail to comply with a requirement under subsection (2).

Penalty: \$500.

(4) A person shall not, in purported compliance with a requirement under subsection (2), knowingly furnish information that is false or misleading in a material particular.

Penalty: \$500.

(5) A person is not guilty of an offence arising under subsection (3) if the person proves that, in so far as the requirement was not complied with, the person was not capable of complying with it.

Noise Control (Amendment).

SCHEDULE 3—*continued.*

AMENDMENTS TO PART VII OF THE PRINCIPAL ACT—*continued.*

(6) Nothing in subsection (1) or in section 61 limits any other power which a member of the police force may have under this or any other Act or at common law to enter or remain in or on premises.

(7) In this section, “dwelling-house” has the meaning ascribed thereto in section 61.

(3) (a) Section 62 (1) (b) (ii)—

After “activity”, insert “(other than an activity involving vessels in navigable waters or the use or operation of motor cycles)”.

(b) Section 62 (2), (3)—

Omit the subsections.

SCHEDULE 4.

(Sec. 4.)

AMENDMENT TO PART VIII OF THE PRINCIPAL ACT.

Section 64 (2) (c1), (c2), (c3), (c4)—

After section 64 (2) (c), insert:—

- (c1) the issue of notices giving directions setting out the conditions with which the owner of or a person in charge of or having possession of, for sale or otherwise, a motor vehicle shall comply before the vehicle may be sold, used or operated;
- (c2) the affixing of notices or labels in the prescribed form to motor vehicles;
- (c3) the imposition of penalties for removing, obliterating or interfering with any notices or labels so affixed;

Noise Control (Amendment).

SCHEDULE 4—*continued.*

AMENDMENT TO PART VIII OF THE PRINCIPAL ACT—*continued.*

- (c4) other matters incidental to or necessary for prohibiting or regulating the sale, use or operation of motor vehicles which do not comply with the requirements of this Act or the regulations;
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SCHEDULE 5.

(Sec. 4.)

AMENDMENT TO PART IX OF THE PRINCIPAL ACT.

Section 68 (2)—

After section 68 (1), insert:—

(2) An appeal under this section may only be made before the expiration of—

- (a) the prescribed period; or
- (b) where the regulations do not prescribe a period—the period prescribed by the rules of the Court,

after the day on which the notice appealed against was served on the appellant or on which notice of the decision appealed against was served on, or received by, the appellant, as the case may require.

SCHEDULE 6.

(Sec. 4.)

AMENDMENTS TO PART X OF THE PRINCIPAL ACT.

(1) (a) Section 74 (1) (b)—

Omit “vessel; or”, insert instead “vessel;”.

Noise Control (Amendment).

SCHEDULE 6—*continued.*AMENDMENTS TO PART X OF THE PRINCIPAL ACT—*continued.*

(b) Section 74 (1) (c)—

Omit “being,”, insert instead “being; or”.

(c) Section 74 (1) (c1)—

After section 74 (1) (c), insert:—

(c1) the manufacturer, assembler, importer or seller of any article,

(d) Section 74 (1) (d)—

Omit the paragraph, insert instead:—

(d) in the case of a person referred to in paragraph (a)—
as to—

(i) any plant or motor vehicle in or on the premises;
or

(ii) the level of noise emitted from the premises;

(e) Section 74 (1) (e)—

Omit “vessel; or”, insert instead “vessel;”.

(f) Section 74 (1) (f)—

Omit “vehicle,”, insert instead “vehicle; or”.

(g) Section 74 (1) (g)—

After section 74 (1) (f), insert:—

(g) in the case of a person referred to in paragraph (c1)—
as to the article,

(h) Section 74 (2) (b), (3)—

Omit “being used or operating” wherever occurring.

Noise Control (Amendment).

SCHEDULE 6—*continued.*

AMENDMENTS TO PART X OF THE PRINCIPAL ACT—*continued.*

(2) Section 76 (2) (b)—

Omit the paragraph, insert instead:—

(b) where the officer suspects on reasonable grounds—

- (i) that a person is offending against this Act;
- (ii) that on premises that are not a public place a person is causing or contributing to the emission of offensive noise from those premises;
- (iii) that on premises that are a public place a person is causing or contributing to offensive noise made in or emitted from those premises; or
- (iv) that a person is the occupier of premises from which offensive noise is being or has within the last 24 hours been emitted,

require that person's full name and place of abode to be given by that person to the officer.

(3) Section 77 (c)—

After "Commission", insert " , the Maritime Services Board or a local authority".

(4) (a) Section 78 (2)—

Omit the subsection, insert instead:—

(2) Any instrument purporting to be an instrument issued, made or given for the purposes of this Act (including subsections (4), (5) and (8)) and to have been signed by—

- (a) the Director or an officer of the Commission authorised generally or specially by the Commission or the Director to do so;

Noise Control (Amendment).

SCHEDULE 6—*continued.*

AMENDMENTS TO PART X OF THE PRINCIPAL ACT—*continued.*

(b) a member or servant of a local authority or an officer or employee of the Maritime Services Board duly authorised to do so; or

(c) a person authorised by this Act to issue, make or give the instrument,

is admissible in any proceedings under this Act and shall, in the absence of evidence to the contrary, be deemed to be such an instrument and to have been so signed.

(b) Section 78 (4) (b)—

After “so”, insert “, or by a person authorised by this Act to issue, make or give the instrument”.

(c) Section 78 (8)—

After section 78 (7), insert:—

(8) A certificate signed by an authorised officer, setting out the result of any test carried out for the purposes of this Act or the regulations and describing the manner in which the test was carried out, is admissible in any proceedings under this Act and shall be prima facie evidence of the matters so set out and described.

(5) (a) Section 80 (a)—

Omit “\$5,000”, insert instead “\$10,000”.

(b) Section 80 (b)—

Omit “\$500”, insert instead “\$5,000”.

Noise Control (Amendment).

SCHEDULE 6—*continued.*

AMENDMENTS TO PART X OF THE PRINCIPAL ACT—*continued.*

(6) (a) Section 82 (3) (a)—

Omit “or officer of the Commission of proceedings”, insert instead “, officer or employee of the Commission of proceedings (in the name of the Commission or otherwise)”.

(b) Section 82 (3) (b) (i), (c) (i)—

Omit “being used or operating” wherever occurring.

(c) Section 82 (3) (b) (ii)—

Omit “paragraph; or”, insert instead “paragraph;”.

(d) Section 82 (3) (c) (ii)—

Omit “paragraph.”, insert instead “paragraph;”.

(e) Section 82 (3) (d), (e)—

After section 82 (3) (c), insert:—

(d) by a member of the police force of proceedings for an offence; or

(e) by any person, in prescribed circumstances, of proceedings for an offence.

(f) Section 82 (7)—

After section 82 (6), insert:—

(7) In any case where a member, officer or employee of the Commission may institute proceedings for an offence against this Act, the member, officer or employee may institute those proceedings in the name of the Commission.
