

1975

VICTORIA.



ANNO VICESIMO QUARTO

ELIZABETHÆ SECUNDÆ REGINÆ

No. 8823.

An Act to amend the *Environment Protection Act 1970* in relation to the Control of Noise and other matters, and for other purposes.

[9th December, 1975.]

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 Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

1. (1) This Act may be cited as the *Environment Protection (Noise Control) Act 1975*. Short title.

(2) In this Act the *Environment Protection Act 1970* is called the Principal Act. Principal Act
No. 8056.
Reprinted to
No. 8560.

(3) This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*. Commence-
ment.

2. (1) The Principal Act shall be amended as follows:—

(a) In sub-section (1) of section 4 at the end of the interpretation of "Beneficial use" there shall be inserted the words "or of the emission of noise";

Amendment of
No. 8056
ss. 4 and 17.

(b) In

- (b) In paragraph (b) of sub-section (1) of section 13—
- (i) after the word “environment” (where first occurring) there shall be inserted the words “and the emission of noise”; and
 - (ii) after the word “pollution” there shall be inserted the words “and noise”;
- (c) At the end of paragraph (d) of sub-section (1) of section 13 there shall be inserted the words “and to control the volume intensity and quality of noise”;
- (d) At the end of sub-section (4) of section 13 there shall be inserted the words “and the emissions of noise”; and
- (e) In paragraph (b) of sub-section (1) of section 17 after the word “wastes” there shall be inserted the words “or the emission of noise”.

Principal Act deemed to have been enacted as amended.

(2) The Principal Act shall be deemed to have been enacted as amended by this section.

New sections 48A to 48D inserted in No. 8056.

3. (1) After section 48 of the Principal Act there shall be inserted the following sections :—

Using vehicle appliances &c. upon residential premises to create unreasonable noise an offence.

48A. (1) A person who upon any residential premises uses any vehicle appliance equipment or musical instrument so as to cause or suffer it to emit unreasonable noise shall be guilty of an offence.

(2) For the purposes of sub-section (1), noise shall be taken to be unreasonable if it is unreasonable having regard to the time place and other circumstances of the use of the vehicle appliance equipment or musical instrument emitting the noise.

Schedule.

(3) Without affecting the generality of sub-section (1), any noise emitted by any vehicle appliance equipment or musical instrument shall be deemed to be unreasonable within the meaning of sub-section (1) if it results from the use of the vehicle appliance equipment or musical instrument upon any urban residential premises otherwise than—

(a) at the times prescribed in respect thereof by the Schedule ;
or

(b) in case of emergency—

and is audible in any other residential premises.

(4) In this section—

“Residential premises” means premises used as or for the purposes of a private dwelling-house or residential flat.

“Urban

“Urban residential premises” means residential premises fronting on adjoining or abutting on a portion of a street or road on which there is provision for lighting by means of street lamps.

(5) A person who is guilty of an offence against this section shall be liable to a penalty of not more than \$400 and, in the case of a continuing offence, to a daily penalty of not more than \$100 for each day during which the offence continues after conviction.

(6) Notwithstanding anything to the contrary in sub-section (1) of section 63, proceedings for an offence against this section may be taken by any of the following persons and only by them:—

- (a) A person claiming to be directly affected by the alleged offence;
- (b) A member of the police force; or
- (c) An officer of a municipality.

(7) Where proceedings for an offence against this section are taken by an officer of a municipality, any moneys recovered by way of penalty imposed upon any person for the offence shall, notwithstanding anything to the contrary in any Act, be paid into the municipal fund of the municipality.

48B. (1) A person who is the owner of a motor car which—

- (a) is used on a public highway; and
- (b) is at the time of use capable of emitting noise that does not comply with any standard prescribed for the purposes of this section—

Special provision concerning motor cars.

shall be guilty of an offence.

(2) In any proceedings for an offence against this section, evidence that a motor car was found upon measurement or test made by an authorized officer not more than one month after the date of the alleged offence to be capable of emitting noise that did not comply with any standard prescribed for the purposes of this section shall be *prima facie* evidence that the motor car was so capable on the said date.

(3) The provisions of section 58 shall with any necessary modifications apply to and in relation to any proceedings for an offence against this section in which it is sought to rely upon the findings of any such measurement or test.

(4) In

(4) In any proceedings for an offence against this section evidence that a person was on the date of the alleged offence registered under the *Motor Car Act 1958* as the owner of any car shall be *prima facie* evidence that he was the owner thereof on that day.

(5) It is hereby declared that section 92 of the *Motor Car Act 1958* applies to and in relation to proceedings for an offence against this section.

(6) In this section “motor car” and “owner” in respect of a motor car have the meanings assigned to them by the *Motor Car Act 1958*.

Penalty : \$400.

Special
provision
concerning
motor boats.

48c. (1) A person who is the owner of a motor boat which—

(a) is used in any Victorian waters ; and

(b) is at the time of use capable of emitting noise that does not comply with any standard prescribed for the purposes of this section—

shall be guilty of an offence.

(2) In any proceedings for an offence against this section, evidence that a motor boat was found upon measurement or test made by an authorized officer not more than one month after the date of the alleged offence to be capable of emitting noise that did not comply with any standard prescribed for the purposes of this section shall be *prima facie* evidence that the motor boat was so capable on the said date.

(3) The provisions of section 58 shall with any necessary modifications apply to and in relation to any proceedings for an offence against this section in which it is sought to rely upon the findings of any such measurement or test.

(4) In any proceedings for an offence against this section, evidence that a person was on the date of the alleged offence registered under the *Motor Boating Act 1961* shall be *prima facie* evidence that he was the owner thereof on that day.

(5) Section 34 of the *Motor Boating Act 1961* shall with any necessary modifications apply to and in relation to any proceedings for an offence against this section.

(6) In this section “motor boat” and “owner” in respect of a motor boat have the meanings assigned to them by the *Motor Boating Act 1961*.

Penalty : \$400.’

Consequential
amendment of
No. 8056 s. 1.

(2) In sub-section (3) of section 1 of the Principal Act for the expression—

“Part VIII.—Control of Noise ss. 46–48.”—there shall be substituted the expression—

“Part VIII.—Control of Noise ss. 46–48c.”

4. Section 55 of the Principal Act shall be amended as follows :—

Amendment of
No. 8056 s. 55.

(a) In sub-section (1) after the word “pollutants” (where first occurring) there shall be inserted the words “or emit noise” ;

(b) At the end of paragraph (a) of sub-section (1) there shall be inserted the words “or from which noise is emitted” ;

(c) In paragraph (c) of sub-section (1) after the words “of this Act” there shall be inserted the words “or the regulations” ;

(d) At the end of sub-section (1) there shall be inserted the following expression :—

“and

(d) make such measurements and tests and such examination and inquiry in relation to the emission of noise from the premises as he considers necessary to ascertain whether any of the provisions of this Act or the regulations or of any requirement made under this Act or the conditions limitations or restrictions to which any licence or approval is subject is or are being complied with.” ;

(e) In paragraph (a) of sub-section (3)—

(i) after the word “discharged” there shall be inserted the words “or from which noise is being or usually is or is reasonably expected to be emitted” ;

(ii) after the word “pollutants” there shall be inserted the words “or the emission from the premises of noise” ;

(iii) after the word “deposits” there shall be inserted the words “or the emission of noise” ;

(f) In paragraph (b) of sub-section (3) after the word “wastes” there shall be inserted the words “or from which noise is emitted” ; and

(g) At the end of sub-section (5) there shall be inserted the words “or finds that noise of an exceptional volume intensity or quality is being emitted therefrom”.

5. After section 55 of the Principal Act there shall be inserted the following section :—

New section
55A inserted
in No. 8056.

“55A. (1) The Authority may by notice in writing served upon or sent by post to any person being the owner of or apparently in lawful possession of any vehicle or ship require him to make the vehicle or ship available as required by the notice for the

Authority may
require vehicle
or ship to be
made available
for testing.

making

making of any inspection measurement or test by an authorized officer in order to determine whether the vehicle or ship complies with any provision of this Act.

(2) Any such notice shall state the time (being not less than fourteen days after the time at which the notice is served or sent) and the place (being, in the case of a vehicle not more than 50 kilometres from the place at which the vehicle is ordinarily kept in the case of a ship ordinarily kept afloat at some place, that place, and in the case of any other ship, not more than 50 kilometres from the place at which the ship is ordinarily kept travelling by a convenient route and using suitable means) at which the vehicle or ship is to be made available and the period (being not more than one hour in the case of a vehicle and three hours in the case of a ship) for which it is to be required.

(3) The Authority may upon the request of the person upon whom the notice is served or to whom the notice is sent vary in writing the requirements of the notice as to the time or place at which the vehicle or ship is to be made available or the period for which it is to be required, but not so as to require anything to be done by the person without his consent which the notice might not have required originally.

(4) A person who refuses or fails to comply with any such notice shall be guilty of an offence against this Act and liable to a penalty of not more than \$200 and to a daily penalty of not more than \$50 for each day during which the offence continues after conviction or after service by the Authority or a protection agency on the defendant of notice of contravention of the provisions of this section (whichever is the earlier)."

Amendment of
No. 8056 s. 57.

6. Section 57 of the Principal Act shall be amended as follows :—

(a) In paragraph (b) of sub-section (1)—

(i) after the word "control" there shall be inserted the words "and noise control"; and

(ii) after the word "environment" there shall be inserted the words "and the presence and the volume intensity or quality of noise"; and

(b) In sub-section (3) after the word "control" there shall be inserted the words "or noise control".

Amendment of
No. 8056 s. 58.

7. Section 58 of the Principal Act shall be amended as follows :—

(a) After the word "control" (wherever occurring) there shall be inserted the words "or noise control"; and

(b) In sub-section (2) after the words "the analyst's certificate" there shall be inserted the words "or pollution or noise control officer's report".

8. In

8. In sub-paragraph (ii) of paragraph (a) of section 59A of the Principal Act after the word "pollutants" there shall be inserted the words "or any emission or suspected emission of noise".

Amendment of
No. 8056
s. 59A.

9. Section 62 of the Principal Act shall be amended as follows :—

Amendment of
No. 8056 s. 62.

(a) After the word "arise" there shall be inserted the words "or from which any substantial noise is being emitted";

(b) After the words "abate the pollution" there shall be inserted the words "or noise"; and

(c) After the words "abating such pollution" there shall be inserted the words "or noise".

10. In sub-section (2) of section 63 of the Principal Act after the word "pollutants" there shall be inserted the words "or the emission of noise".

Amendment of
No. 8056 s. 63.

11. In section 64 of the Principal Act after the word "pollution" there shall be inserted the words "or an offence relating to the emission of noise".

Amendment of
No. 8056 s. 64.

12. (1) In sub-section (1) of section 65 of the Principal Act after the word "environment" there shall be inserted the words "or the emission of noise".

Amendment of
No. 8056 s. 65.

(2) The Principal Act shall be deemed to have been enacted as amended by this section.

13. Section 71 of the Principal Act shall be amended as follows :—

Amendment of
No. 8056 s. 71.

(a) After paragraph (f) of sub-section (1) there shall be inserted the following paragraph :—

"(fa) prescribing noise emission standards for different kinds of equipment, facilities, instruments, devices, vehicles and ships ;"

(b) After paragraph (g) of sub-section (1) there shall be inserted the following paragraph :—

"(ga) prohibiting the use of any equipment, facility, instrument, device, vehicle or ship capable of emitting noise that does not meet any prescribed noise emission standards in any respect or regulating the construction, installation or operation thereof so as to prevent or minimize the emission of noise ;"

(c) In

(c) In paragraph (n) of sub-section (1) after the word "pollution" there shall be inserted the words "and noise";

(d) After paragraph (m) of sub-section (1) there shall be inserted the following paragraphs :—

“(ma) prescribing the method by which any measurement or test shall be made for any of the purposes of this Act ;

(mb) prescribing the facts by which and the manner in which it may be proved that any noise emitted from any source does not comply with any standard prescribed in respect thereof by or under this Act ;” ;
and

(e) At the end of the section there shall be inserted the following sub-sections :—

“(3) Any such regulation made for the purpose of prescribing the method by which any measurement or test shall be made for any of the purposes of this Act may incorporate or adopt by reference any standard prescribed or published by any authority or body either as in force at the time the regulation is made or as prescribed or published or in force from time to time.

(4) Any such regulation to be made for the purpose of controlling noise shall not be made unless—

(a) copies of the proposed regulation have lain on the table of the Legislative Council and of the Legislative Assembly for fourteen sitting days ; and

(b) neither the Legislative Council nor the Legislative Assembly has during that period passed a resolution disapproving of the proposed regulation.

(5) Sub-section (4) shall be in aid of and not in derogation from any Act or law providing for the disallowance of regulations when made.”

14. At the end of the Principal Act there shall be inserted the following Schedule :—

Schedule
inserted in
No. 8056.

“ SCHEDULE.

Section 48n.

Description of vehicle, appliance, equipment or musical instrument from which noise emitted.	Day.	Hours for use.
1. Lawnmower having an internal combustion engine	Monday to Friday Saturday and Sunday	7 a.m. to 8 p.m. 9 a.m. to 8 p.m.
2. Motor vehicle (except when entering or leaving premises)	Monday to Friday Saturday and Sunday	7 a.m. to 10 p.m. 9 a.m. to 10 p.m.
3. Electric power tool (not falling within paragraph 4)	Monday to Friday Saturday and Sunday	7 a.m. to 10 p.m. 9 a.m. to 10 p.m.
4. Chain or circular saw, gas or air compressor, pneumatic power tool or any grinding equipment	Monday to Friday Saturday and Sunday	7 a.m. to 8 p.m. 9 a.m. to 8 p.m.
5. Electrically amplified musical instrument	Monday to Friday Saturday and Sunday	7 a.m. to 11 p.m., 9 a.m. to 11 p.m.”