

COMMUNITY NOISE CONTROL BILL

EXPLANATORY NOTE

THIS Bill seeks to create a new remedy where excessive noise or vibration is emitted from any premises. In essence, the Bill allows a local authority officer (termed a noise control officer) to issue an abatement notice, requiring the occupier of the offending premises to reduce the noise or vibration to a reasonable level. If the occupier fails to do so, the noise control officer may take the necessary steps to reduce the noise or vibration to a reasonable level.

Clause 1 relates to the Short Title and commencement.

Clause 2 is an interpretative provision.

Clause 3 imposes a general obligation on the occupier of premises to minimise the emission of noise or vibration from the premises.

Clause 4 provides for the issue of abatement notices, requiring the noise or vibration to be abated either forthwith or within a specified period. In the latter case, failure to comply is prima facie evidence of a breach of *clause 3*.

Clause 5 provides for the enforcement of an abatement notice by the noise control officer of the local authority, who may call for assistants from the Police.

Clause 6 provides for the disconnection of the electricity supply to the premises if other practicable steps are not available and immediate abatement is necessary. In such a case, the noise control officer may ask the Electrical Supply Authority to disconnect the supply and, if it does so, the Authority may recover its costs from the occupier of the offending premises.

Clause 7 provides for the case where any property has been impounded or power disconnected pursuant to an abatement notice. The property must be returned or the power supply reconnected unless the local authority is satisfied that to return the property or reconnect the power would lead to a resumption of the noise or vibration at an unreasonable level.

Clause 8 provides for appeals to District Courts against the issue of an abatement notice or the refusal to return property or reconnect the power supply.

Clause 9 empowers the making of regulations.

Hon. Mr Gair

COMMUNITY NOISE CONTROL

ANALYSIS

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A BILL INTITULED

An Act to provide for the abatement of excessive noise and vibration

BE IT ENACTED by the General Assembly of New Zealand
5 in Parliament assembled, and by the authority of the same,
as follows:

1. Short Title and commencement—(1) This Act may be cited as the Community Noise Control Act 1981, and shall be read together with and deemed part of the Health Act
10 1956* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

*Reprinted 1972, Vol. 2, p. 1449
Amendments: 1973, No. 111; 1975, No. 78; 1976, No. 91; 1978, No. 96;
1979, No. 64; 1980, No. 79

2. Interpretation—In this Act, unless the context otherwise requires,—

“Abatement notice” means a notice issued under section 4 of this Act for the abatement of any noise or vibration to a reasonable level: 5

“Noise control officer”, in relation to a local authority, means the Engineer or Inspector of the local authority, or any other officer so designated by the local authority for the purposes of this Act:

“Occupier”, in relation to any premises, includes any agent, manager, foreman, or other person acting or apparently acting in the general management or control of the premises, or of any plant or machinery on those premises: 10

“Practicable” means reasonably practicable having regard, among other things, to local conditions and to the current state of technical knowledge; and “practicable means” include the maintenance, proper use, manner of operation, and proper supervision of operation of equipment, plant, and machinery: 15 20

3. General obligation of occupiers of premises—(1) It shall be the duty of the occupier of any premises to adopt the best practicable means to minimise, by the selection of the most appropriate plant, equipment, or machinery and the provision of control equipment or sound barrier installations or otherwise, the emission of noise or vibration from those premises. 25

(2) Every occupier of any premises who fails to comply with subsection (1) of this section commits an offence and is liable to a fine not exceeding \$2,000 and, where the offence is a continuing one, a further fine not exceeding \$100 for each day during which the offence has continued. 30

(3) In any prosecution for an offence against this section it shall not be necessary for the prosecution to prove that the defendant intended to commit an offence. 35

(4) Subject to subsection (6) of this section, it shall be a good defence in any such prosecution if the defendant proves—

(a) That the non-compliance complained of was solely due to some mechanical failure; and 40

- (b) That that failure could not reasonably have been foreseen, or, if foreseen, could not reasonably have been provided against; and
- 5 (c) That the non-compliance could not reasonably have been prevented by action taken after the failure occurred.
- (5) Without limiting subsection (4) of this section but subject to subsection (6) of this section, it shall be a good defence in any prosecution for an offence against this section
- 10 if the defendant proves—
- (a) That he did not intend to commit an offence against this section; and
- (b) That he took all reasonable steps to comply with the duty imposed on him by subsection (1) of this
- 15 section.
- (6) Except as provided in subsection (7) of this section, subsections (4) and (5) of this section shall not apply unless, within 7 days after the service of the summons, or within such further time as the Court may allow, the defendant has
- 20 delivered to the prosecutor a written notice—
- (a) Stating that he intends to rely on subsection (4) or (as the case may require) subsection (5) of this section; and
- (b) Specifying the reasonable steps that he will claim to
- 25 have taken.
- (7) In any such prosecution, evidence that the defendant took a step not specified in the written notice required by subsection (6) of this section shall not, except with the leave of the Court, be admissible for the purpose of supporting a
- 30 defence under subsection (4) or (as the case may require) subsection (5) of this section.

4. Abatement notices—(1) Any noise control officer who believes on reasonable grounds that—

- 35 (a) The occupier of any premises is failing to comply with section 3 of this Act; or
- (b) The occupier of the premises is contravening the provisions of any regulations made under this Act; or
- (c) Any noise or vibration being emitted from any premises is such as to constitute a nuisance for the purposes of
- 40 section 29 (ka) of the principal Act—

may give to the occupier of the premises from which the noise or vibration is emitted a notice in the prescribed form requiring him to abate the noise or vibration described in the notice to a reasonable level either forthwith or within such period, being not less than 21 days, as may be specified in the notice. 5

(2) In any case where a notice has been issued under subsection (1) of this section requiring any noise or vibration to be abated within a specified period, and the noise or vibration described in the notice has not been abated to a reasonable level within the time specified in the notice, the failure to comply with the notice shall be prima facie evidence of an offence by the occupier of the premises against section 3 of this Act. 10

5. Enforcement of abatement notice—(1) In any case where— 15

(a) A notice has been issued under section 4 of this Act; and

(b) The noise or vibration described in the notice has not been abated to a reasonable level forthwith or within the time specified in the notice; and 20

(c) In the opinion of the noise control officer immediate abatement is necessary,—

the noise control officer, with such assistants as may be necessary, may take all necessary steps to cause the noise or vibration to be abated to a reasonable level. 25

(2) For the purposes of this section, the noise control officer may, on identifying himself in accordance with subsection (2) of section 710 of the Local Government Act 1974 and notwithstanding anything in subsection (4) of that section, enter the premises. 30

(3) For the purposes of this section, the Police may, on request by a noise control officer, supply to that officer such assistants as they may reasonably be able to supply in all the circumstances of the case, having regard to the personnel and resources available at the time. 35

(4) Without limiting the discretion of the noise control officer under subsection (1) of this section to take whatever practicable steps that may be necessary to cause the noise or vibration to be abated to a reasonable level, the noise control officer may— 40

(a) Turn off or turn down the volume of any noise source on the premises:

(b) Seize and impound a noise source.

(5) All expenses incurred in the abatement of a noise or vibration under this section shall be recoverable from the occupier of the premises in respect of which they are incurred as a debt due to the local authority or the Crown, as the case may require.

6. Disconnection of electricity supply—(1) In any case where—

- (a) A notice has been issued under section 4 of this Act requiring any noise or vibration to be abated forthwith; and
- (b) That noise or vibration has not been abated to a reasonable level; and
- (c) The occupier of the premises has refused to permit a noise control officer to enter the premises and to take whatever steps he considers necessary under section 5 of this Act; and
- (d) The noise control officer is satisfied on reasonable grounds that no other practicable means of ensuring the immediate abatement of the noise or vibration is available,—

the noise control officer may request the Electrical Supply Authority to disconnect the electricity supply to the premises.

(2) On receiving a request under this section, the Electrical Supply Authority may disconnect the electricity supply to the premises, notwithstanding any obligation to supply imposed by the Electricity Act 1968 or any regulations made under that Act.

(3) All expenses incurred in the disconnection of the electricity supply under this section shall be recoverable from the occupier of the premises in respect of which they are incurred as a debt due to the Electrical Supply Authority.

7. Restitution of property—(1) Where, under section 5 of this Act, any property has been seized and impounded or, under section 6 of this Act, any power supply has been disconnected, the occupier of the premises may at any time apply to the local authority for the property to be returned to him or, as the case may require, the power supply to be reconnected.

(2) The local authority shall arrange for the restitution of the property or the reconnection of the power supply unless it is satisfied that to do so is likely to lead to the resumption of an emission from the premises concerned of noise or vibration beyond a reasonable level.

8. Appeals—(1) Any person who is aggrieved by the issue of an abatement notice under section 4 of this Act may appeal to a District Court on the ground that the notice is unreasonable.

(2) Any person who is aggrieved by the refusal of an application for the restitution of any property or the reconnection of the power supply under section 7 of this Act may appeal to a District Court on the ground that the refusal is unreasonable. 5

(3) On any appeal under subsection (1) of this section, the Court may— 10

(a) By interim order, suspend the operation of the abatement notice to which the appeal relates until the final determination of the proceedings:

(b) Dismiss the appeal, or quash the abatement notice, or modify the notice in such manner as the Court thinks fit. 15

(4) On any appeal under subsection (2) of this section, the Court may dismiss the appeal or make an order for the restitution of any property or the reconnection of the power supply in such terms as it thinks fit. 20

(5) On any appeal under this section, the Court may make such order as to costs (if any) as it thinks fit.

(6) Every appeal under this section shall be commenced within 21 days after the issue of the abatement notice or (as the case may require) the refusal of an application for the restitution of any property or the reconnection of the power supply. 25

9. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes: 30

(a) Specifying the limits of permitted emissions of noise or vibration from particular premises, activities, machinery, or articles, and requiring any such machinery or articles to be labelled to show the specified limits: 35

(b) Specifying the times at which specified noises or vibrations may, or may not, be emitted from particular premises, activities, machinery, or articles:

(c) Prescribing the form of abatement notices to be given under section 4 of this Act: 40

(d) Prescribing offences in respect of the contravention of or non-compliance with any regulations made for the purposes of this Act, and the amounts of fines

that may be imposed in respect of any such offences, which fines shall be an amount not exceeding \$500 and, if the offence is a continuing one, to a further fine not exceeding \$50 for every day on which the offence has continued:

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- (e) Providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.