

# NOISE CONTROL BILL

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## EXPLANATORY NOTE

THIS Bill is in the nature of a composite Bill, based on the Community Noise Control Bill introduced by the Hon. Mr Gair (referred to in this note as the original Bill), but incorporating many of the features of the Neighbourhood Noise Control Bill introduced by Dr Bassett M.P. It follows the consideration of those Bills by the Health and Welfare Select Committee.

*Clause 1* relates to the Short Title and commencement. The Committee agreed that a specific commencement date should be inserted in the Bill to facilitate a publicity programme. Accordingly, *subclause (2)* fixes 1 June 1983 as the commencement date.

*Clause 2* defines certain terms used in the Bill.

The definition of the term "abatement notice" is drawn from the original Bill without amendment, and that of the term "constable" comes from Dr Bassett's Bill.

The definition of the term "excessive noise" is also drawn from Dr Bassett's Bill, but has been amended in form although not in substance. An attempt has been made in *paragraph (c)* to distinguish between "traffic" noise which is the responsibility of traffic officers, and noisy vehicles that are not on the road, which may fall within the purview of this legislation.

The definition of the term "noise" to include vibration is new. It is simply a drafting device to obviate the need for constant reference in the Bill to "noise or vibration".

The term "noise control officer" is redefined, consequent upon the new *clause 4* relating to the appointment of such officers by local authorities.

The term "occupier" is drawn from the original Bill, but the reference to a tenant is new.

The definitions of the terms "practicable" and "practicable means" have been separated, and the latter extended by the inclusion of the matters appearing in *paragraph (a)*.

*Clause 3* is new. It provides that the legislation will bind the Crown. However, an exemption is provided for the business of the Armed Forces.

*Clause 4* makes explicit what was implicit in the original Bill. It empowers a local authority to appoint any of its officers to be a noise control officer and provides that, in the absence of any such appointment, the Health Inspector and the Engineer will be deemed to be noise control officers. It also allows 2 or more local authorities to combine to appoint noise control officers.

### *General Obligation of Occupiers*

*Clause 5* broadly follows *clause 3* of the original Bill. However, the general duty of the occupier of premises is now expressed in terms of keeping noise at a reasonable level, rather than of minimising it.

*Clause 6* broadly follows clause 4 of the original Bill relating to the issue of abatement notices. However, the requirement that a notice be in the prescribed form has been dropped. Instead, *subclause (2)* specifies the matters to be dealt with in the notice.

Further, the reference to the immediate abatement of noise is omitted. Instead, the notice must be complied with within 7 days, or such longer or shorter period as the noise control officer may consider appropriate.

*Clause 7*, relating to the enforcement of abatement notices, broadly follows subclauses (1), (4), and (5) of clause 5 of the original Bill. Subclause (2) (relating to powers of entry) of that clause has been dropped: appropriate powers of entry are now conferred by *clause 15* of this Bill. Similarly, subclause (3) relating to the provision of Police assistants has been dropped: see now *clause 8*.

*Clause 8* empowers the Police to assist noise control officers in the service and enforcement of abatement notices. Under clause 5 (3) of the original Bill, this was limited to the enforcement (not service) of such notices.

#### *Excessive Noise*

*Clause 9*, in effect, modifies clause 3, and subclauses (1) and (2) of clause 4, of Dr Bassett's Bill. That clause required a constable to investigate an allegation of excessive noise where complaints are received from at least 2 separate residences.

Under this clause, any person may complain to a noise control officer about excessive noise emitted from any premises. The noise control officer must investigate the matter and either deal with the case himself or, if he is satisfied that Police involvement is necessary, refer the matter to the Police. If the noise control officer or a constable is satisfied that the noise is excessive, he shall direct the occupier of the premises, or any other person responsible for causing the noise, to abate it to a reasonable level forthwith.

*Clause 10* incorporates, in amended form, clauses 4 (3) and 5 (2) of Dr Bassett's Bill. It makes it clear that a direction to abate excessive noise extends to the vicinity of the premises as well as the premises themselves. This is to deal with the case where the noisy party spills out of the premises and continues the revelry in the street.

*Clause 11* broadly follows clause 6 (1) of Dr Bassett's Bill, but the powers are now conferred on noise control officers (when accompanied by police officers) as well as the Police.

*Clause 12* incorporates clauses 8 (1) and 5 (3) of Dr Bassett's Bill. However, the maximum penalty is increased from \$500 to \$2,000, with a corresponding increase in the daily rate for continuing offences.

*Subclause (3)* is new, but seen as necessary to enable the Police to deal with a recalcitrant offender against *subclause (1)*.

*Subclause (4)* is also new, but consequential upon *clause 11*.

#### *General Provisions*

*Clause 13* broadly follows clause 7 of the original Bill, but also incorporates clause 6 (3) of Dr Bassett's Bill. *Subclause (4)* is new, and is seen as a necessary safeguard where nobody bothers to seek the return of the property.

*Clause 14* broadly follows clause 8 of the original Bill. However, *subclauses (8) and (9)* are new. They provide that the decision of the District Court is final, except that an appeal may be brought to the High Court on a question of law.

*Clause 15* replaces and amplifies clause 5 (2) of the original Bill, and confers similar powers of entry on the Police. The requirement that a noise control officer identify himself on demand is retained, and extended to a police officer who is not in uniform.

*Clause 16* incorporates clause 7 of Dr Bassett's Bill, and also makes it clear that the Police may use reasonable force in the exercise of their powers under this Act.

*Clause 17* replaces clause 9 of the original Bill. However, paragraph (c) of that clause has been dropped, consequent upon the decision that the form of abatement notices need not be prescribed. *Paragraph (b)* is new. It empowers the prescribing of standards in respect of burglar alarms, etc., to ensure that they do not emit noise unnecessarily.

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*Hon. Mr Malcolm*

## NOISE CONTROL

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### A BILL INTITULED

#### **An Act to provide for the abatement of unreasonable or excessive noise**

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 Noise Control Act 1982, and shall be read together with and deemed part of the Health Act 1956\*  
10 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of June 1983.

\*Reprinted 1972, Vol. 2, p. 1449

Amendments: 1973, No. 111; 1975, No. 78; 1976, No. 91; 1978, No. 96, No. 64; 1980, No. 79

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

“Abatement notice” means a notice issued under section 6 of this Act for the abatement of any noise to a reasonable level: 5

“Constable” includes any member of the Police:

“Excessive noise” means any noise emitted by—

(a) Any musical instrument; or

(b) Any electrical appliance; or

(c) Any vehicle, except while being operated on— 10

(i) Any road within the meaning of section 2 (1) of the Transport Act 1962; or

(ii) Any motorway within the meaning of section 2 of the Public Works Act 1981; or

(d) Any machine, however powered, while being 15 operated in or at any residential premises; or

(e) Any person or persons, while attending any gathering or meeting in or at any residential premises or place of assembly,—

where the noise is of such nature as to unreasonably 20 interfere with the peace, comfort, and convenience of any person (other than a person in or at the premises from which the noise is being emitted):

“Noise” includes vibration:

“Noise control officer”, in relation to a local authority, 25 means the officer or each of the officers of that local authority who is appointed as or deemed to be a noise control officer under or by section 4 of this Act:

“Occupier”, in relation to any premises, includes any tenant, agent, manager, foreman, or other person 30 acting or apparently acting in the general management or control of the premises, or of any plant or machinery on those premises:

“Practicable” means reasonably practicable having regard, among other things, to local conditions and to 35 the current state of technical knowledge:

“Practicable means” include—

(a) The design, construction, and maintenance of buildings and acoustic structures; and

(b) The design, installation, and maintenance, and 40 the manner, periods, and proper supervision of the operation of plant, equipment, and machinery.

**3. Crown bound**—(1) Except as provided in subsection (2) of this section, this Act binds the Crown.

(2) Nothing in this Act shall apply to any member of the Armed Forces, or any other person employed by or in the service of the Armed Forces, while engaged on military business.

**4. Noise control officers**—(1) A local authority may designate any of its officers as noise control officers for the purposes of this Act.

10 (2) In any case where no officer is so designated, the local authority's Health Inspector or (if it has more than 1 Health Inspector) each of the Health Inspectors, and its Engineer, shall be deemed to be noise control officers for the purposes of this Act.

15 (3) Notwithstanding the foregoing provisions of this section, any 2 or more local authorities may combine to appoint one or more noise control officers upon and subject to such terms and conditions as to payment of the salary and expenses of any such officer, and as to the apportionment of his duties among the local authorities, as may be agreed upon  
20 between the local authorities.

(4) Every noise control officer appointed pursuant to subsection (3) of this section shall be deemed for the purposes of this Act to be a noise control officer for each of the districts  
25 of the local authorities by whom he is appointed.

*General Obligation of Occupiers*

**5. Occupiers to avoid unreasonable noise**—(1) It shall be the duty of the occupier of any premises to adopt the best practicable means of ensuring that the emission of noise from  
30 those premises does not exceed a reasonable level.

(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, to a further fine not exceeding \$200 for each  
35 day on which the offence has continued.

(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.

(4) Subject to subsection (6) of this section, it shall be a  
40 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

(b) That the failure could not reasonably have been provided against; and

(c) That the non-compliance could not reasonably have been prevented by action taken after the failure occurred.

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(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 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 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 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 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 defence under subsection (4) or (as the case may require) subsection (5) of this section.

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

(a) The occupier of any premises is failing to comply with section 5 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 being emitted from any premises is such as to constitute a nuisance for the purposes of section 29 (ka) of the principal Act—

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may, with such assistants as he considers necessary, give to the occupier of the premises a notice in writing requiring him to abate the noise described in the notice to a reasonable level within 7 days after the date of the notice, or within such shorter or longer period as the officer may consider appropriate, having regard to the special circumstances of the case.

(2) Every abatement notice shall fairly inform the occupier of—

- (a) The manner in which the notice may be enforced under section 7 of this Act; and
- 5 (b) The occupier's rights to seek the restitution of any property under section 13 of this Act; and
- (c) The occupier's rights of appeal under section 14 of this Act.

10 (3) The failure to comply with the terms of an abatement notice within the period required shall be prima facie evidence of an offence against section 5 of this Act by the occupier of the premises.

**7. Enforcement of abatement notice**—(1) Where the terms of an abatement notice are not complied with within 15 the period required, the noise control officer shall, with such assistants as he considers necessary, take all such reasonable steps as he considers necessary to cause the noise described in the notice to be abated to a reasonable level.

20 (2) Without limiting his discretion under subsection (1) of this section, the noise control officer may seize and impound the noise source.

(3) Notwithstanding the foregoing provisions of this section, a noise control officer shall not be entitled to exercise his powers under subsection (2) of this section unless 25 accompanied by a constable.

(4) All expenses incurred in the abatement of a noise under this section shall be recoverable from the occupier of the premises as a debt due to the local authority.

**8. Police may provide assistants**—For the purposes of 30 sections 6 and 7 of this Act, 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 *Excessive Noise*

**9. Complaints of excessive noise**—(1) Any person who considers that excessive noise is being emitted from any premises may complain to a noise control officer or, if no such officer is available, to the principal administrative officer or 40 any other officer nominated for the purpose by the principal administrative officer.

(2) On receipt of any such complaint, the noise control officer, after making all such inquiries as he considers necessary, shall either—



- (a) Deal with the matter in accordance with subsection (3) of this section; or
- (b) If he is satisfied that there is a real risk of violence or that for any other special reason the case appears to require the involvement of the Police, refer the 5 complaint to the Police.

(3) If, upon investigating any complaint under this section, the noise control officer or a constable is of the opinion that the noise is excessive, he shall direct the occupier of the premises from which the sound is being emitted, or such other 10 person as appears to him to be responsible for causing the excessive noise, to forthwith abate the noise to a reasonable level.

**10. Effect of direction—**(1) Every direction given under section 9 (3) of this Act shall have the effect of prohibiting the 15 person to whom it is given, and every other person who is (by virtue of subsection (2) of this section) bound by the direction, from causing or contributing to the emission of excessive noise from or within the vicinity of the premises at any time during the period of 12 hours commencing with the 20 time at which the direction is given, or such shorter period as the noise control officer or constable may specify on giving the direction.

(2) Every person who knows or ought to know that a direction under section 9 (3) of this Act has been given in 25 respect of particular premises is, while on or in the vicinity of those premises, bound by that direction as if he were the recipient of it.

**11. Powers of officers and constables where non-compliance—**(1) Where a direction given under section 30 9 (3) of this Act is not complied with, the noise control officer or constable may—

- (a) Seize and remove from the premises; or
- (b) Render inoperable by the removal of any part from; or
- (c) Lock or seal so as to make unusable,— 35

any instrument, appliance, vehicle, or machine that is producing or contributing to the excessive noise.

(2) Notwithstanding the foregoing provisions of this section, a noise control officer shall not be entitled to exercise his powers under this section on the premises unless 40 accompanied by a constable.

**12. Offences—**(1) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 and, where the offence is a continuing one, to a further fine

not exceeding \$200 for each day on which the offence has continued who, being bound by a direction given under section 9 (3) of this Act,—

- 5 (a) Fails to forthwith abate the noise to a reasonable level;  
or  
(b) Causes or contributes to the emission of excessive noise from or within the vicinity of the premises at any time during the period referred to in section 10 (1) of this Act.
- 10 (2) For the purposes of subsection (1) (b) of this section, it is immaterial that the excessive noise is of a different kind from that which gave rise to the issuing of the direction.
- (3) Any constable, and all persons whom he calls to his assistance, may arrest and take into custody without a  
15 warrant any person whom he has good cause to suspect of having committed an offence against subsection (1) of this section.
- (4) Every person commits an offence and is liable to a fine not exceeding \$500 who—
- 20 (a) Renders operable; or  
(b) Unlocks or unseals so as to make usable—  
any instrument, appliance, vehicle, or machine within 12 hours after it has been rendered inoperable or (as the case may require) locked or sealed by a noise control officer or  
25 constable acting under paragraph (b) or paragraph (c) of section 11 of this Act.

#### *General Provisions*

- 13. Restitution of property**—(1) Where under section 7 or section 11 of this Act any property has been seized and  
30 impounded by a noise control officer, the occupier of the premises may at any time apply to the local authority for the property to be returned to him.
- (2) On receipt of an application under subsection (1) of this section, the local authority shall arrange for the restitution of  
35 the property upon being satisfied that the return of the property is not likely to lead to the resumption of the emission of noise from the premises beyond a reasonable level.
- (3) Any property seized and impounded under section 11 of this Act by any constable shall be taken to the nearest police  
40 station, and may be recovered by the owner or the person from whom it was seized at any time after the expiration of the period of 72 hours commencing with the time of its seizure, upon payment of all costs incurred by the Police in seizing, impounding, transporting, and storing the property.
- 45 (4) Nothing in this section shall prevent the local authority or the Police from handing back any property to which this section applies without awaiting a request to do so.

**14. Appeals**—(1) Any person who is aggrieved by the issue of an abatement notice under section 6 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 under section 13 of this Act may appeal to a District Court on the ground that the refusal is unreasonable.

(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 15 thinks fit.

(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 in such terms as it thinks fit.

(5) On any appeal under this section, the Court may make 20 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. 25

(7) Every appeal under this section shall be made and dealt with by way of originating application, on notice, under the rules and procedures for the time being in force under the District Courts Act 1947, and the provisions of those rules shall apply accordingly. 30

(8) Except as provided in subsection (9) of this section, the decision of a District Court under this section (other than an interim order made under subsection (3) (a)) shall be final.

(9) Any party to proceedings before a District Court under this section who is dissatisfied with the decision or order of the 35 Court as being erroneous in point of law may appeal to the High Court on a question of law only.

**15. Powers of entry**—(1) Subject to subsection (2) of this section, for the purposes of sections 6, 7, 9, and 11 of this Act a 40 noise control officer, or any constable, may enter the premises to which the abatement notice relates or, as the case may require, from which the noise is being or has been emitted.

(2) A noise control officer shall not be entitled to enter any dwellinghouse for the purposes of section 6 or section 9 of this 45 Act unless accompanied by a constable.

(3) On entering any such premises a noise control officer, or a constable who is not in uniform, shall, if requested to do so by the occupier of the premises, produce his warrant of appointment or other evidence of his identity and  
5 appointment.

**16. Other Police powers not affected**—(1) The powers conferred on a constable by this Act are in addition to, and not in derogation from, any other powers that a constable may exercise.

10 (2) Without limiting subsection (1) of this section, any constable exercising his powers under this Act may use such reasonable force as may be necessary in the circumstances.

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

- (a) Specifying the limits of permitted emissions of noise from particular premises, activities, appliances, vehicles, machinery, or articles, and requiring any such appliances, vehicles, machinery, or articles to  
20 be labelled to show the specified limits:
- (b) Prescribing standards in respect of alarms and other devices designed to emit noise in certain specific circumstances to ensure that such devices do not emit noise in other circumstances or at a level or for  
25 a period beyond that necessary to achieve the purpose for which such devices are used:
- (c) Specifying the times at which specified noises may, or may not, be emitted from particular premises, activities, appliances, vehicles, machinery, or  
30 articles:
- (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, not exceeding \$500 in respect of any offence and, if  
35 the offence is a continuing one, to a further fine not exceeding \$50 for every day on which the offence has continued:
- (e) Providing for such other matters as are contemplated by or necessary for giving full effect to the provisions  
40 of this Act and for its due administration.

