

(Reprint No. 1)

SOUTH AUSTRALIA

NOISE CONTROL ACT, 1977

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 March 1993.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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NOISE CONTROL ACT, 1977

being

Noise Control Act, 1977, No. 14 of 1977 [Assented to 5 May 1977]¹

as amended by

Statutes Amendment (Expiation of Offences) Act 1992 No. 71 of 1992 [Assented to 19 November 1992]²

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Noise Control Act, 1977*.

Commencement

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

(2) Notwithstanding the provisions of subsection (1) of this section, the Governor may in the proclamation made for the purposes of that subsection suspend the operation of any specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by a subsequent proclamation.

Arrangement of Act

3. This Act is arranged as follows:—

PART I—PRELIMINARY
PART II—ADMINISTRATION
PART III—INDUSTRIAL AND OTHER NON-DOMESTIC NOISE
PART IV—NOISE EMITTED BY MACHINES
PART V—DOMESTIC NOISE
PART VI—MISCELLANEOUS

¹Came into operation (except Parts III and IV) 18 August 1977: *Gaz.* 18 August 1977, p. 415; remainder of Act came into operation 6 July 1978: *Gaz.* 6 July 1978, p. 5.

²Came into operation 1 March 1993: *Gaz.* 18 February 1993, p. 600.

Note: 1. Asterisks indicate repeal or deletion of text.

2. For the legislative history of the Act see Appendix 1. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

Liability of Crown

4. This Act binds the Crown.

Saving of other remedies

5. (1) The provisions of this Act shall be in addition to and shall not derogate from the provisions of any other Act.

(2) The provisions of this Act shall not limit or affect any civil remedy at law or in equity.

Interpretation

6. (1) In this Act, unless the contrary intention appears—

“the Chief Inspector of Industrial Safety” means the person for the time being holding, or acting in, the office of Chief Inspector of Industrial Safety under the *Industrial Safety, Health and Welfare Act, 1972-1976*:

“the Chief Inspector of Mines” means the person for the time being holding, or acting in, the office of Chief Inspector of Mines under the *Mines and Works Inspection Act, 1920-1974*:

“decibels” means decibels on the A-weighting scale:

“designated officer” means—

(a) in relation to an employer of a class prescribed for the purposes of this paragraph, the Chief Inspector of Industrial Safety;

or

(b) in relation to an employer of a class prescribed for the purposes of this paragraph, the Chief Inspector of Mines:

“domestic premises” means any premises, or premises of a class, for the time being declared by proclamation to be domestic premises for the purposes of this Act:

“employee” means a person who is, or is deemed under the *Workmen’s Compensation Act, 1971-1974*, to be, a workman as defined in that Act:

“employer” means an employer within the meaning of the *Workmen’s Compensation Act, 1971-1974*:

“Inspector” means a person appointed to be an Inspector under this Act:

“machine” includes any contrivance that when operated is capable of emitting noise:

“motor vehicle” means a vehicle, tractor or mobile machine propelled, or ordinarily capable of being propelled, by a steam engine, internal combustion engine, electricity or any other power, not being human or animal power, but does not include a mobile machine controlled and guided by a person walking, or a vehicle run upon a railway or tramway:

“noise” means vibration of a frequency within the range of 0-20 000 Hertz:

“noise level” in relation to noise of a prescribed class means the intensity of the noise expressed in decibels ascertained in the manner prescribed in relation to that class of noise:

“non-domestic premises” means—

- (a) any premises required to be registered as industrial premises under the *Industrial Safety, Health and Welfare Act, 1972-1976*;
- (b) any premises on which any construction work is carried on in respect of which notice is required to be given under the *Industrial Safety, Health and Welfare Act, 1972-1976*;
- (c) any mine within the meaning of the *Mines and Works Inspection Act, 1920-1974*;
- (d) any premises required to be licensed under the *Licensing Act, 1967-1976*;
- (e) any premises required to be licensed as a place of public entertainment under the *Places of Public Entertainment Act, 1913-1972*;

or

- (f) any premises, or premises of a class, for the time being declared by proclamation to be non-domestic premises for the purposes of this Act:

“occupier” in relation to premises, means a person who has, or is entitled to, possession or control of the premises:

“premises” includes any land or vessel:

“sell” means—

- (a) sell, barter, exchange or let out on hire;
- (b) agree or offer to sell, barter, exchange or let out on hire;

or

- (c) receive, expose, store, have in possession, send, consign or deliver for or on sale, barter, exchange or hire.

(2) The Governor may by proclamation declare any premises, or premises of a class, to be domestic premises for the purposes of this Act.

(3) The Governor may by proclamation declare any premises, or premises of a class, to be non-domestic premises for the purposes of this Act.

(4) The Governor may by proclamation amend, vary or revoke a declaration made under subsection (2) or (3) of this section.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

PART II
ADMINISTRATION

Appointment of Inspectors

7. The Minister may, by notice published in the *Gazette*, appoint a person, who has, in the opinion of the Minister, appropriate qualifications and experience, to be an Inspector under this Act.

Certificate of appointment

8. An Inspector shall be furnished by the Minister with a certificate in the prescribed form evidencing his appointment as such and shall produce the 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.

Power of inspection

9. (1) Subject to this Act, an Inspector may—

- (a) enter into or upon any premises, machine or thing;
- (b) inspect, examine and test any premises, machine or thing;
- (c) perform measurements of noise levels in relation to any premises, employee or machine;
- (d) give any direction necessary to make possible or facilitate the measurement of noise levels;
- (e) require any person to answer a question put to him, whether that question is put to him directly or through an interpreter;

and

- (f) give any other direction to any person that is reasonably necessary,

for the purpose of ascertaining whether a noise is excessive under this Act or whether a provision of this Act has been complied with or contravened or for any purpose relating to an exemption under this Act.

(2) In the exercise of his powers under subsection (1) of this section an Inspector may be accompanied by such other persons as he considers necessary or desirable in the circumstances.

(3) A person shall not hinder or obstruct an Inspector, or a person accompanying an Inspector, in the exercise by that Inspector, or person, of the powers conferred by this section.

Penalty: One thousand dollars.

(4) A person given any direction pursuant to subsection (1) of this section shall not fail to comply with the direction.

Penalty: One thousand dollars.

(5) It shall be a defence to a charge of an offence against subsection (4) of this section if the person charged proves—

- (a) that compliance with the direction would have caused an unreasonable interruption of an industrial or commercial activity;

and

(b) that the purpose for which the direction was given could have been achieved at some other time or in some other manner that was reasonable in the circumstances.

(6) A person to whom a question is put pursuant to paragraph (e) of subsection (1) of this section shall not refuse or fail to answer that question to the best of his knowledge, information or belief.

Penalty: One thousand dollars.

(7) A person is not excused from answering a question put to him pursuant to paragraph (e) of subsection (1) of this section on the grounds that the answer might tend to incriminate him but the answer shall not be admissible against him in any proceedings other than proceedings for an offence against this section.

PART III

INDUSTRIAL AND OTHER NON-DOMESTIC NOISE

Excessive noise from non-domestic premises

10. (1) If any noise emitted from non-domestic premises is excessive, an Inspector may give a notice to the occupier of those premises requiring him to ensure that excessive noise is not emitted from the premises after the expiration of the period specified in the notice.

(2) Noise emitted from non-domestic premises is excessive, if the noise level at the measurement place for a period during which noise is emitted from the premises—

(a) exceeds by more than 5 decibels the background noise level at that place;

and

(b) exceeds the maximum permissible noise level prescribed for that time of the day and the area in which the premises are situated.

(3) For the purposes of subsection (2) of this section "measurement place" in relation to non-domestic premises means any place outside the non-domestic premises at which any person resides or is regularly engaged in any remunerative activity.

(4) For the purposes of subsection (2) of this section the background noise level is the noise level for a period during which the noise emitted from the premises has been reduced.

(5) Where application is made to the Minister by a person given a notice under this section, the Minister may, if he considers it reasonable in the circumstances, extend the period specified in the notice and the notice shall have effect accordingly.

(6) Subject to this Act, a person given a notice under subsection (1) of this section shall not fail, without reasonable excuse, to comply with the notice.

Penalty: Five thousand dollars.

Exemptions for certain non-domestic premises

11. (1) The Minister may, upon application by the occupier of any non-domestic premises, by notice published in the *Gazette*, exempt from the application of section 10 of this Act any non-domestic premises, or non-domestic premises of any class, specified in the notice.

(2) Where the Minister refuses an application under subsection (1) of this section he shall forthwith publish notice of that refusal in the *Gazette*.

(3) An exemption granted under this section shall have effect for such period and subject to such conditions as the Minister may specify in the notice.

(4) The Minister shall, in determining whether or not to grant an exemption under this section, have regard to—

(a) the technical feasibility of reducing the noise emitted from the non-domestic premises;

(b) the economic cost incidental to reducing the noise;

(c) any effect of the noise on the health or safety of any persons;

(d) the number of persons affected by the noise;

(e) the levels of the noise;

(f) the times at which the noise is emitted;

- (g) the frequency of the noise;
 - (h) the frequency of occurrence of the noise;
- and
- (i) any other matter the Minister considers relevant.

(5) The Minister may, by notice published in the *Gazette*, amend, vary or revoke an exemption granted under this section.

(6) The occupier of any non-domestic premises exempted under this section shall not fail, without reasonable excuse, to comply with any condition specified in the exemption.

Penalty: Five thousand dollars.

Exposure of employees to excessive noise

12. (1) Subject to this Act, a person shall not, without reasonable excuse, cause, suffer or permit any employee employed by him to be exposed to excessive noise during that employment.

Penalty: Five thousand dollars.

(2) An employee is exposed to excessive noise if—

- (a) a noise level ascertained in respect of the employee's place of employment and in respect of any period while the employee is at work in the employment exceeds one hundred and fifteen decibels;

or

- (b) the noise level ascertained in respect of the employee's place of employment and in respect of the period for which the employee is at work in the employment during any day exceeds the prescribed maximum permissible noise level.

Conditional exemptions relating to excessive noise exposure

13. (1) Where application is made to the designated officer by an employer and the designated officer is satisfied that it is not reasonably practicable in the circumstances for the employer to comply with section 12 of this Act, he may, by notice published in the *Gazette*, exempt the employer from compliance with that section.

(2) Where the designated officer grants an exemption under this section, he shall specify in the notice, as conditions to which the exemption is subject, such measures as he considers should be taken by the employer for protection of the hearing of any employees of that employer.

(3) An exemption granted under this section shall have effect for such period and subject to such conditions as the designated officer may specify in the notice.

(4) If the designated officer is satisfied that the circumstances, upon the basis of which he granted an exemption under this section, are altered, he may, by notice published in the *Gazette*, amend, vary or revoke the exemption.

(5) An employer exempted under this section shall not fail, without reasonable excuse, to comply with any condition specified in the exemption.

Penalty: Five thousand dollars.

Duty of employees in respect of exposure to noise

14. An employee shall not, by any act or omission, render less effective any action taken by his employer for the purposes of complying with section 12 or 13 of this Act.

Penalty: Twenty-five dollars.

Inquiries by the Minister or designated officer

15. (1) The Minister may, by notice in writing, require the occupier of any non-domestic premises to furnish, within the period specified in the notice, information specified in the notice relating to noise emitted from the premises.

(2) The designated officer may, by notice in writing, require an employer to furnish, within the period specified in the notice, information specified in the notice relating to noise to which any employee of that employer is exposed during his employment.

(3) A person given a notice under this section—

(a) shall not fail, without reasonable excuse, to furnish information in accordance with the requirements of the notice;

or

(b) shall not furnish information that is false or misleading in any material particular.

Penalty: One thousand dollars.

PART IV

NOISE EMITTED BY MACHINES

Excessive noise from machines

16. (1) Subject to this section, a person shall not, without reasonable excuse, operate, or cause, suffer or permit to be operated, any machine that emits excessive noise.

Penalty: Five hundred dollars.

Expiation fee: Division 9 fee.

(2) Noise emitted by a machine is excessive if the noise level exceeds the maximum permissible noise level prescribed in relation to that machine, or machines of the relevant class.

(3) In proceedings in respect of an offence against this section, evidence by an Inspector that he ascertained the noise level in relation to the machine before the expiration of the period of fourteen days from the day of the alleged offence and found that the machine emitted excessive noise shall be accepted, in the absence of proof to the contrary, as proof that the machine was, at the time of the alleged offence, a machine that emitted excessive noise.

(4) Notwithstanding the provisions of this section, a machine that emits excessive noise may be operated at such times and in such circumstances as may be prescribed.

(5) This section does not apply to the operation of a motor vehicle, but does apply to the operation of a machine forming part of, or attached to, a motor vehicle, where the operation is for a purpose not connected with the propulsion of the vehicle.

Offence to sell certain machines

17. (1) A person shall not sell a machine which does not conform to the specifications prescribed for the purpose of controlling the noise emitted by that machine or machines of the relevant class.

Penalty: Five hundred dollars.

(2) In this section "machine" does not include a motor vehicle.

PART V
DOMESTIC NOISE**Excessive noise from domestic premises**

18. (1) The occupier of any domestic premises, shall not, without reasonable excuse, cause, suffer or permit excessive noise to be emitted from the premises.

Penalty: Five hundred dollars.

Expiation fee: Division 9 fee.

(2) Excessive noise is emitted from domestic premises, if—

(a) the noise emitted from the domestic premises is of such a nature that it unreasonably interferes with the peace, comfort or convenience of any person in any other premises;

or

(b) during the period prescribed for the day of the week at a place outside the domestic premises—

(i) the noise emitted from the domestic premises is the loudest audible noise;

and

(ii) the noise level exceeds the maximum permissible noise level prescribed for the area in which the premises are situated.

(3) Where a member of the police force has reasonable cause to believe that excessive noise is being emitted from domestic premises, he may—

(a) enter into or upon the premises;

and

(b) require any person in the premises to answer a question put to him,

for the purpose of identifying the occupier of the premises.

(4) In the exercise of his powers referred to in subsection (3) of this section a member of the police force may be accompanied by such other persons as he considers necessary or desirable in the circumstances.

(5) A person shall not hinder or obstruct a member of the police force, or a person accompanying a member of the police force, in the exercise by that member, or person, of the powers referred to in subsection (3) of this section.

Penalty: Two hundred dollars.

(6) A person to whom a question is put pursuant to subsection (3) of this section shall not refuse or fail to answer that question to the best of his knowledge, information or belief.

Penalty: Two hundred dollars.

(7) Without limiting the generality of the powers conferred upon an Inspector under section 9 of this Act, an Inspector may exercise the powers conferred upon a member of the police force under this section.

PART VI
MISCELLANEOUS

Duty of non-disclosure

19. Any person exercising, or who has exercised, any power or function under this Act shall not, otherwise than in the course of his official duties, disclose any information that comes, or has come, to his knowledge in the exercise of his powers and functions.

Penalty: Five hundred dollars.

Evidentiary provisions

20. (1) In proceedings in respect of an offence against this Act, an allegation in the complaint that—

- (a) a person is the occupier of any premises;
 - (b) any premises are situated within a prescribed area;
 - (c) any premises are non-domestic premises or are domestic premises;
 - (d) any place is a measurement place;
 - (e) any person is the employee of another person;
- or
- (f) a person is an Inspector,

shall, in the absence of proof to the contrary, be deemed to be proved.

(2) In proceedings in respect of an offence against this Act, evidence by an Inspector or a member of the police force that he ascertained a noise level in the relevant manner prescribed shall, in the absence of proof to the contrary, be accepted as proof of that matter.

Offences by bodies corporate

21. Where a person convicted of an offence against this Act is a body corporate, every person concerned in the management of the body corporate with whose knowledge and consent the offence was committed shall be liable to be convicted of the same offence.

Summary proceedings

22. (1) Proceedings for an offence against this Act shall be disposed of summarily.

(2) Proceedings for an offence against this Act shall not be commenced except upon the complaint of an Inspector or a member of the police force.

Moneys for the purposes of this Act

23. The moneys required for the purposes of this Act shall be paid out of moneys provided by the Parliament for those purposes.

Regulations

24. (1) The Governor may make such regulations as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1) of this section, those regulations may—

- (a) prescribe the form of notices authorized to be given under this Act;

- (b) prescribe the manner in which noise levels are ascertained for the purposes of this Act;
 - (c) prescribe specifications for the noise protection rating of hearing protection devices;
 - (d) provide for the use of hearing protection devices and prescribe the specifications to which those devices must conform;
 - (e) provide for the periodic examination of persons for the purpose of ascertaining whether they are suffering from any noise-induced hearing loss and, if so, the extent of that loss;
 - (f) provide for the carrying out of audiometric and other tests and records to be maintained by employers;
 - (g) prescribe specifications for audiometers, the calibration of audiometers and the procedures for audiometric testing;
 - (h) provide for the licensing of persons who may carry out audiometric tests under this Act;
 - (i) prescribe the manner and form of applications for exemptions under this Act;
 - (j) provide for and prescribe penalties not exceeding, in each case, two hundred dollars for breach of, or non-compliance with, any regulations.
- (3) Any regulations made under this Act may—
- (a) be of general or limited application according to the provisions of this Act, the source of noise, the time, place or circumstance to which they are expressed to apply;
 - (b) provide that a power conferred by the regulations may be exercised at, or in a manner determined at, the discretion of the holder, for the time being, of any office specified in the regulations;
 - (c) provide that, in cases or classes of cases specified in the regulations persons, premises or machines, or a class of persons, premises or machines may be exempted from a provision of the regulations, whether on conditions specified in the regulations or unconditionally;
- and
- (d) refer to or incorporate a standard or code of practice, as from time to time in force, of the Standards Association of Australia or the National Health and Medical Research Council.

APPENDIX 1

LEGISLATIVE HISTORY

Section 16(1):
Section 18(1):

amended by 71, 1992, s. 3(1) (Sched.)
amended by 71, 1992, s. 3(1) (Sched.)

APPENDIX 2

DIVISIONAL PENALTIES AND EXPIATION FEES

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28a of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	—	\$500	\$100
10	—	\$200	\$75
11	—	\$100	\$50
12	—	\$50	\$25

Note: This appendix is provided for convenience of reference only.