

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 19 March, 1975.*

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

A. W. SAXON,
Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, 20 March, 1975.*

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. , 1975.

An Act relating to the prevention, minimising and abatement of noise and vibrations; to constitute a Noise Advisory Committee; to confer and impose powers, authorities, duties and functions relating to the control of noise and vibrations on the State Pollution Control Commission, the Maritime Services Board of New South Wales, councils and certain other persons; and for purposes connected therewith.

BE

81261 293—A

NOTE.—The words to be *omitted* are ruled through; those to be *inserted* are printed in **black letter**.

Noise Control.

5 **B**E 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:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Noise Control Act, Short title. 1975".

10 2. (1) This section and sections 1 and 3 shall commence Commence-
on the date of assent to this Act. ment.

(2) Except as provided in subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and
15 as may be notified by proclamation published in the Gazette.

3. This Act is divided as follows:— Division of Act.

PART I.—PRELIMINARY—*ss.* 1–10.

PART II.—NOISE ADVISORY COMMITTEE—*ss.* 11–16.

PART III.—SCHEDULED PREMISES—*ss.* 17–27.

20 DIVISION 1.—*Licensing provisions—ss.* 17–24.

DIVISION 2.—*Other provisions—ss.* 25–27.

PART IV.—PROHIBITION OF SALE OF ARTICLES—*ss.*
28–30.

PART

Noise Control.

PART V.—NOISE CONTROL NOTICES—*ss.* 31–50.

DIVISION 1.—*Preliminary—s.* 31.

DIVISION 2.—*Noise control notices relating to articles, irrespective of where used—ss.* 32–35.

5 DIVISION 3.—*Noise control notices relating to scheduled premises—ss.* 36–38.

DIVISION 4.—*Noise control notices relating to premises other than scheduled premises—ss.* 39–43.

10 DIVISION 5.—*Noise control notices relating to times—ss.* 44–47.

DIVISION 6.—*General provisions—ss.* 48–50.

PART VI.—NOISE ABATEMENT ORDERS—*ss.* 51–57.

15 PART VII.—NOISE ABATEMENT DIRECTIONS—*ss.* 58–63.

PART VIII.—REGULATIONS—*ss.* 64–67.

PART IX.—APPEALS AND DISPUTES—*ss.* 68–72.

PART X.—MISCELLANEOUS—*ss.* 73–82.

SCHEDULE.

20 4. (1) In this Act, except in so far as the context or Interpretation.
subject-matter otherwise indicates or requires—

“article” means any plant, motor vehicle, article or thing of any description whatever;

25 “authorised officer” means a person authorised in writing by the Commission;

“Commission” means the State Pollution Control Commission;

“Committee”

Noise Control.

“Committee” means the Noise Advisory Committee constituted under section 11;

“court of petty sessions” means a court of petty sessions held before a stipendiary magistrate sitting alone;

5 “Director” means the Director of the Commission;

“information”, when used in relation to an offence, includes an application referred to in section 4 of the Supreme Court (Summary Jurisdiction) Act, 1967;

10 “level”, in relation to noise, includes the volume or intensity of the noise;

“licence” means a valid and unexpired licence issued under this Act, whether it is an original or a renewed licence;

15 “licensee” means the person to whom a licence is granted or transferred under this Act;

20 “local authority” means the council of a city, municipality or shire, and includes a person appointed under the Public Health Act, 1902, to be a local authority for the purposes of that Act;

“Maritime

Noise Control.

“Maritime Services Board” means the Maritime Services Board of New South Wales;

5 “motor vehicle” means any motor car, motor carriage, motor cycle, motor omnibus, motor lorry or other vehicle propelled wholly or partly by any volatile spirit, steam, electricity, gas, or oil, or by any means other than human or animal power, but does not include a railway locomotive;

10 “navigable waters” means navigable waters within the meaning of the Maritime Services Act, 1935;

“noise” includes sound and vibration;

“noise abatement direction” means a direction under Part VII;

15 “noise abatement order” means an order under section 52;

“noise control equipment” means—

(a) any apparatus or device used for the purposes of preventing or limiting the emission of noise; or

20 (b) any apparatus or device used for indicating or recording the emission of noise or for giving warning of the excessive emission of noise,

25 and includes any apparatus or device which, though not so used, is, or would, if properly maintained and operated, be, capable (without modification) of being so used;

30 “noise control notice” means a notice under Part V, but does not include a notice under section 36 (4) or 50;

“occupier”,

Noise Control.

5 “occupier”, in relation to any premises, means the person in occupation or control of the premises and, in relation to any premises where different parts are occupied or controlled by different persons, means, in relation to any such part, the person in occupation or control of that part;

10 “offensive noise” means noise that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances, is likely—

- (a) to be harmful to;
- (b) to be offensive to; or
- (c) to interfere unreasonably with the comfort or repose of,

15 persons who are—

- (d) if the noise is made in premises that are not a public place—outside those premises; or
 - (e) if the noise is made in premises that are a public place—within or outside those premises;
- 20

“plant” means any plant, equipment, apparatus, device, machine or mechanism, and includes any vessel, dredge, railway locomotive or crane, but does not include a motor vehicle;

25 “premises” includes place (including public place) and vessel;

“public authority” means—

- (a) a public authority constituted by or under any Act;
 - (b) a Government Department; or
 - (c) a person or body prescribed for the purposes of this paragraph,
- 30

but

Noise Control.

but does not include—

- (d) a local authority or a county council; or
- (e) a person or body prescribed for the purposes of this paragraph;

5 “public place” includes—

- (a) a public road or a public reserve, as respectively defined in section 4 of the Local Government Act, 1919; and
- 10 (b) a place that is open to the public, or is used by the public, whether or not on payment of money or other consideration, whether or not the place is ordinarily so open or used, and whether or not the public to whom the place is so open, or by whom the place is so used, consists only of a limited class of persons;

“regulations” means regulations made under this Act;

“scheduled premises” means any premises of a class for the time being described in the Schedule;

20 “sell”, in relation to an article, means sell, exhibit or offer for sale, or conduct negotiations for the sale of, the article;

“this Act” includes the regulations;

“trade” includes commercial undertaking;

25 “vessel” means ship, lighter, barge, boat, craft, or vessel of whatever description and however navigated.

(2) In this Act, a reference (however expressed) to making or emitting noise includes a reference to causing, permitting or allowing the making or emission of noise.

Noise Control.

5. Except as provided by this Act, this Act binds the Act binds Crown.
Crown.

6. (1) Subject to subsection (2), nothing in this Act Effect of this Act on other Acts.
affects any of the provisions of any other Act, or any regu-
5 lations, ordinances or by-laws thereunder, or takes away any
powers vested in any person or body by any other Act, or
any regulations, ordinances or by-laws made under any other
Act.

(2) Where the provisions of this Act (other than the
10 regulations) are inconsistent with any of the provisions of
any other Act or any regulation, ordinance or by-law made
under any other Act (other than the State Pollution Control
Commission Act, 1970, or any regulation thereunder), the
provisions of this Act (other than the regulations) shall
15 prevail.

(3) Where the provisions of any regulation made
under this Act are inconsistent with any of the provisions of
any regulation, ordinance or by-law made under any other
Act (other than a regulation made under the State Pollution
20 Control Commission Act, 1970), the provisions of the
regulation made under this Act shall prevail.

7. (1) The provisions of this Act do not limit or affect Effect of this Act on other rights, etc.
any right, remedy or proceeding under any other Act or
law.

25 (2) No proceedings taken under this Act interfere
with or lessen any right or remedy under any other Act or
law, but no person is, by virtue of this subsection, liable to be
punished twice for the same offence.

Noise Control.

8. The powers, authorities, duties and functions conferred or imposed on a local authority by or under this Act may only be exercised or performed—

Exercise or performance of local authority's powers, etc.

- 5 (a) in relation to a city, municipality or shire—by the council thereof; or
- (b) in relation to a district for which a person is appointed under the Public Health Act, 1902, to be a local authority for the purposes of that Act—by that person.

10 9. Where the authorisation of a person as an authorised officer is given subject to conditions, limitations and restrictions or only for limited purposes, nothing in this Act authorises or requires that person to act as an authorised officer in contravention of those conditions, limitations or

15 restrictions or for purposes other than those purposes, as the case may be.

Exercise or performance of authorised officer's powers, etc.

20 10. (1) The Governor may, by proclamation published in the Gazette, amend this Act by inserting at the end of this Act a Schedule containing matter describing classes of premises.

Insertion, amendment or substitution of Schedule.

(2) The Governor may, by proclamation published in the Gazette, amend the Schedule—

- (a) by omitting therefrom matter describing a class of premises; or
- 25 (b) by inserting therein matter describing a class of premises.

(3) The Governor may, by proclamation published in the Gazette, amend this Act by omitting the Schedule and by inserting instead a Schedule containing matter describing

30 classes of premises.

(4)

Noise Control.

(4) A proclamation published under this section shall be laid before each House of Parliament within fourteen sitting days of that House after the date of publication.

5 (5) If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after a proclamation referred to in subsection (4) has been laid before it, disallowing the proclamation or any part thereof, the proclamation or part thereupon ceases to have effect.

10 (6) For the purposes of subsections (4) and (5), sitting days shall be counted, whether or not they occur during the same session.

(7) In this section, "premises" does not include any vessel.

15

PART II.

NOISE ADVISORY COMMITTEE.

11. (1) For the purposes of this Act there shall be constituted a Noise Advisory Committee which shall consist of twelve members. Constitution of the Committee.

20 (2) The members of the Committee shall be appointed by the Governor and shall consist of—

- (a) two persons, each of whom is a member of the Commission nominated by the Commission or an officer of the Commission so nominated;
- 25 (b) a member of the Health Commission of New South Wales nominated by that Commission or an officer of that Commission so nominated;
- (c) an officer of the Department of Motor Transport nominated by the Minister for Transport;
- (d)

Noise Control.

- (d) an officer of the Department of Mines nominated by the Minister for Mines;
- (e) an officer of the Department of Labour and Industry nominated by the Minister for Labour and Industry;
- 5 (f) a person nominated by the Local Government Association of New South Wales;
- (g) a person nominated by the Shires Association of New South Wales; and
- 10 (h) four persons nominated by the Minister, being persons having such professional and technical qualifications as the Minister considers appropriate.

(3) One of the persons referred to in subsection (2) (a) shall, in and by the instrument of his appointment or a subsequent instrument executed by the Governor, be 15 appointed as the Chairman of the Committee.

(4) Any nomination of a member of the Committee shall be made within the time and in the manner prescribed and in default of any person or body entitled to make any such nomination doing so within that time and in that man- 20 ner the Governor may appoint any person to the Committee as if that person had been duly nominated by the person or body entitled to make the nomination.

(5) Every member of the Committee shall be entitled to receive such travelling and other expenses, and every mem- 25 ber referred to in subsection (2) (f), (g) and (h) shall, if the Minister so approves, be entitled to receive such fees for attending meetings and transacting business of the Committee, and making inspections for the purposes of this Act, as the Minister may from time to time determine in respect of that 30 member.

(6) The office of a member of the Committee shall not, by reason of the member's accepting or receiving any expenses or fees to which he is entitled under subsection (5), be deemed to be an office of profit under the Crown for the 35 purposes of the Constitution Act, 1902.

(7)

Noise Control.

(7) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment of any member of the Committee, and any such member shall not, in his capacity as such a member, be subject to the provisions of that Act during his term of office.

12. The members of the Committee shall, subject to this Part, hold office for a period of three years and shall, if otherwise qualified, be eligible for reappointment.

13. (1) On the occurrence of a vacancy in the office of a member of the Committee otherwise than by the expiration of the term for which he was appointed, the Governor may appoint a person to fill the vacant office so that the Committee is constituted as provided by section 11 (2).

(2) A person appointed under subsection (1) shall, subject to this Part, hold office for the balance of his predecessor's term of office.

(3) A member of the Committee shall be deemed to have vacated his office if he—

- (a) dies;
- 20 (b) resigns his office by writing under his hand addressed to the Minister;
- (c) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- 25 (d) is removed from office under subsection (4); or
- (e) being—
 - 30 (i) a person referred to in section 11 (2) (a) or (b)—ceases to be a member or officer of the body referred to therein; or

(ii)

Noise Control.

(ii) a person referred to in section 11 (2) (c), (d) or (e)—ceases to be an officer of the department referred to therein.

5 (4) The Governor may remove from office, for any cause which appears to him sufficient, any member of the Committee.

14. (1) The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall, subject to the regulations, be as determined by the 10 Committee. ^{Meetings of the Committee.}

(2) The Chairman of the Committee shall preside at all meetings of the Committee at which he is present, and in his absence the members of the Committee present shall appoint one of their number to preside at that meeting during 15 the Chairman's absence.

(3) The person entitled to preside at any meeting of the Committee shall have a deliberative vote, and, in the event of an equality of votes, shall have a second or casting vote.

20 (4) Seven members of the Committee shall form a quorum at any meeting of the Committee and any duly convened meeting of the Committee at which a quorum is present shall be competent to transact any business of the Committee.

25 (5) Questions arising at a meeting of the Committee shall be determined by a majority of votes of the members present and voting.

15. (1) The Committee may establish sub-committees ^{Sub-committees.} for the purpose of advising the Committee upon such matters within the scope of the Committee's functions as may be 30 referred to the sub-committees by the Committee.

(2)

Noise Control.

(2) A person may be appointed to a sub-committee whether or not he is a member of the Committee.

(3) A sub-committee may exercise and discharge such of the Committee's powers, authorities, duties and
5 functions as may be delegated to it by the Committee.

(4) Notwithstanding any such delegation, the Committee may continue to exercise and discharge any of the powers, authorities, duties and functions so delegated.

(5) The Committee may at any time revoke any
10 such delegation, either wholly or in part.

(6) Every member of a sub-committee shall be entitled to receive such travelling and other expenses and, if the Minister so approves, such fees for attending meetings and transacting business of the sub-committee, and making
15 inspections for the purposes of this Act, as the Minister may from time to time determine in respect of that member.

(7) The office of a member of a sub-committee shall not, by reason of the member's accepting or receiving any expenses or fees to which he is entitled under subsection (6), be deemed to be an office of profit under the Crown
20 for the purposes of the Constitution Act, 1902.

16. It is the duty of the Committee to make recommendations to the Commission in respect of matters referred to it by the Commission, and the Committee may initiate and
25 refer to the Commission recommendations, relating to—

- (a) the administration of this Act;
- (b) making, altering or repealing any regulation; and
- (c) the prevention, control or abatement of noise.

PART

Noise Control.

PART III.

SCHEDULED PREMISES.

DIVISION 1.—*Licensing provisions.*

5 17. (1) This Division applies to a part of the State Application
specified in a proclamation under subsection (2). of
Division.

(2) The Governor may, by proclamation published
in the Gazette, declare that this Division applies to any part
of the State specified in the proclamation.

10 18. (1) A person who is the occupier of any scheduled Scheduled
premises in a part of the State to which this Division applies premises
and who is not the holder of a licence issued in respect of to be
those premises is guilty of an offence against this Act. licensed.

(2) Where premises are, at the time when this
Division is applied to the part of the State in which those
15 premises are situated, scheduled premises, subsection (1)
does not apply to the occupier of those premises until—

- (a) the expiration of the prescribed period after this
Division is so applied; or
- 20 (b) the application (if any) made within that period
by the occupier for a licence in respect of those
premises has been finally determined,

whichever is the later.

(3) Where, by reason of the coming into force of a
proclamation under section 10, premises become scheduled
25 premises at the time the proclamation comes into force, sub-
section (1) does not apply to the occupier of those premises
until—

- (a) the expiration of the prescribed period after the
proclamation comes into force; or
- (b)

Noise Control.

- (b) the application (if any) made within that period by the occupier for a licence in respect of those premises has been finally determined,

whichever is the later.

5 (4) Where a person becomes the occupier of scheduled premises and immediately before he became the occupier of the premises they were occupied by a person who was the holder of a licence in respect of those premises, subsection (1) does not apply to that firstmentioned person
10 until—

- (a) the expiration of the prescribed period after he became the occupier of the premises; or

(b) the application (if any) made within that period by him for the transfer to him of the licence has
15 been finally determined,

whichever is the later.

19. (1) An application for a licence or for the renewal Applications
or transfer of a licence shall be made to the Commission in for licences.
or to the effect of the prescribed form, and shall be
20 accompanied by the prescribed fee.

(2) An application for the renewal of a licence shall be made within the prescribed time before the licence would expire if not renewed.

(3) An application for the transfer of a licence shall
25 be made with the consent of the holder of the licence.

20. (1) The Commission—

Licences.

- (a) may grant any application for a licence or for the renewal or transfer of a licence, either subject to conditions or unconditionally; or

30 (b) may refuse any such application.

(2)

Noise Control.

(2) The Commission may, during the currency of a licence, by notice in writing served on the holder of the licence—

- 5 (a) revoke the licence or suspend it for such period expiring not later than the date of expiry of the licence as the Commission thinks fit;
- (b) revoke or vary any condition attached to the licence; or
- (c) attach new conditions to the licence.

10 (3) In exercising its powers under this section, the Commission shall have regard to the level, nature, character and quality of, and the times at which, noise is or is likely to be emitted from the premises to which the application or the licence, as the case may require, relates.

15 (4) The refusal of an application, the revocation or suspension of a licence, the revocation or variation of any condition attached to a licence or the attaching of a condition to a licence, under this section, has no force—

- 20 (a) until the time limited for appealing against the Commission's decision has expired; and
- (b) where within that time an appeal against the decision has been made under this Act, until the District Court confirms the decision.

21. Subject to this Division—

- 25 (a) an original licence remains in force for a period of one year from the date of its issue; and
- (b) a renewed licence remains in force until the expiration of the period of one year specified in the renewal.

Dura-
tion of
licences.

30 **22.** The Commission shall cause to be kept such registers of licences as may be prescribed.

Regis-
ters of
licences.

Noise Control.

23. (1) The fee prescribed for a licence shall not exceed Fees.
\$3,000.

(2) Without affecting the generality of section 67
(1), different fees may be prescribed for the purposes of sub-
5 section (1) according to specified factors or circumstances.

(3) Where the Commission is satisfied that the noise
from any scheduled premises would not be such as to warrant
the payment of the prescribed fee, the Commission may, upon
the application of the occupier of those premises, remit in
10 whole or in part the fee payable under this Division in respect
of the premises.

24. The Commission may, by notice in writing served on
an applicant for a licence, require the applicant to furnish to
the Commission such information and such plans and speci-
15 fications as the Commission considers necessary and relevant
to the application and specifies in the notice. Require-
ment to
furnish
informa-
tion, etc.

DIVISION 2.—Other provisions.

25. This Division applies to and in respect of scheduled
premises, whether or not those premises are within a part of
20 the State to which Division 1 applies. Applica-
tion of
Division.

26. (1) The occupier of any scheduled premises shall
maintain any noise control equipment installed in or on those
premises in an efficient condition and shall operate that
equipment in a proper and efficient manner. Occupiers
to main-
tain and
operate
noise
control
equip-
ment, etc.

25 (2) The occupier of any scheduled premises who
operates any plant (other than noise control equipment) in
or on those premises in such a manner as to cause or increase

the

Noise Control.

the emission of noise from those premises is guilty of an offence if the noise so caused or increased, or any part thereof, is caused by reason of his failure—

- (a) to maintain that plant in an efficient condition; or
- 5 (b) to operate that plant in a proper and efficient manner.

(3) The occupier of any scheduled premises who processes, handles, moves or stores any materials in such a manner as to cause or increase the emission of noise from
10 those premises is guilty of an offence if the noise so caused or increased, or any part thereof, is caused by reason of his failure to process, handle, move or store those materials in a proper and efficient manner.

(4) In subsection (3), "materials" includes raw
15 materials, materials in the process of manufacture, manufactured materials, by-products and waste materials.

27. (1) The occupier of any scheduled premises—

Approval of Commission required for certain work.

(a) shall not—

- 20 (i) alter the method of operation of any trade, industry, process or plant in or on those premises; or
- (ii) install, alter or replace any plant in or on those premises,

25 if by so doing he is likely to cause or increase the emission of noise from those premises; or

(b) shall not carry out any work in or on those premises that constitutes the beginning of, or any subsequent step in, any work of the nature referred to in paragraph (a) (ii), if, were the installation,

alteration

Noise Control.

alteration or replacement completed, it would be likely that it would cause or increase the emission of noise from those premises,

5 except in accordance with an approval in writing given by the Commission or in accordance with a noise control notice.

(2) The occupier of any premises—

(a) shall not—

10 (i) in or on those premises carry out any work that would cause those premises to be scheduled premises; or

(ii) on any land construct any building designed for use for a purpose that would cause the land or building to be scheduled premises; or

15 (b) shall not carry out any work in or on those premises that constitutes the beginning of, or any subsequent step in, any work of the nature referred to in paragraph (a),

20 except in accordance with an approval in writing given by the Commission.

(3) An application for an approval under this section shall be in or to the effect of the prescribed form and accompanied by—

(a) the prescribed fee; and

25 (b) details of the trade, industry or process proposed to be carried on in or on the premises or proposed premises, together with details of the methods intended to be adopted so as to control the emission of noise that may be associated with the
30 subject-matter of the application.

(4)

Noise Control.

(4) Without affecting the generality of section 67 (1), different fees may be prescribed for the purposes of subsection (3) according to specified factors or circumstances.

5 (5) The Commission—

- (a) may grant any application under this section, either subject to conditions or unconditionally; or
- (b) may refuse any such application.

10 (5), the Commission may—

- (a) refuse an application under this section, having regard to the site on which any work that is the subject of the application is to be carried out; or
- 15 (b) attach to an approval under this section a condition that requires, or has the effect of requiring, that any work that is the subject of the approval is to be carried out on a site specified or referred to in the approval.

20 (7) The Commission may revoke any condition attached to an approval under this section.

(8) Where the occupier of any scheduled premises installs or replaces any plant in contravention of subsection (1), the Commission may, by notice in writing, require him to remove the plant within such time as may be specified in 25 the notice.

(9) A notice under subsection (8) has no force—

- (a) until the time limited for appealing against the Commission's decision has expired; and
- 30 (b) where within that time an appeal against the notice has been made under this Act, until the District Court confirms the decision.

(10)

Noise Control.

(10) Proceedings in respect of an offence arising under this section may be commenced at any time within three years after the offence was committed.

5 (11) For the purposes of subsections (1) (b) and (2) (b), it is immaterial whether or not the work referred to therein, being work of the nature referred to in subsection 1 (a) (ii) or (2) (a), was or is completed.

10 (12) In proceedings for an offence arising under subsection (1) or (2), it is not necessary that it be established that the offence was committed on a particular day or on particular days, provided it is established that the offence was committed during a particular period.

15 (13) The Commission may, by notice in writing served on an applicant for an approval under this section, require the applicant to furnish to the Commission such information and such plans and specifications as the Commission considers necessary and relevant to the application and specifies in the notice.

20 (14) An application for an approval under this section shall not be granted unless evidence is produced that any necessary approval required under the Local Government Act, 1919, has been obtained.

PART IV.

PROHIBITION OF SALE OF ARTICLES.

25 28. A person shall not, whether on his own behalf or on behalf of another person, sell any article of a class prescribed for the purposes of this section if, when in use or operation, ^{Sale of articles emitting more than prescribed noise.} the

Noise Control.

the article emits noise that, when measured at any point specified in or determined in accordance with the regulations, is in excess of the level prescribed in respect of the class to which it belongs.

5 **29.** (1) A person shall not, whether on his own behalf or on behalf of another person, sell any article of a class prescribed for the purposes of this subsection unless the article is fitted in the prescribed manner with noise control equipment of a prescribed class. Sale of articles required to be fitted with noise control equipment.

10 (2) A person shall not, whether on his own behalf or on behalf of another person, sell any article of a class prescribed for the purposes of this subsection unless the noise control equipment with which it is fitted is maintained in accordance with the regulations.

15 **30.** It is a sufficient defence to a prosecution for an offence arising under this Part if the defendant proves that the offence was committed by him in the course of his employment by another person or that, upon, or in the event of, the sale of the article to which the offence relates, he received or was to Defence.
20 receive remuneration, by way of commission, from a person other than the owner of the article.

PART V.

NOISE CONTROL NOTICES.

DIVISION 1.—Preliminary.

25 **31.** In this Part, except in so far as the context or subject-matter otherwise indicates or requires, "specified", in relation to a noise control notice, means specified or described in the notice. Interpretation: Part V.

DIVISION

Noise Control.

DIVISION 2.—*Noise control notices relating to articles, irrespective of where used.*

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

Interpretation: Part V, Div. 2.

- 5 (a) in any case—the Commission or an authorised officer; and
- (b) to the extent and in the class of cases specified in the regulations—a person or body specified or described in the regulations.

10 33. The appropriate authority may, by notice in writing served on a person, prohibit him from causing, permitting or allowing any specified article of a class prescribed for the purposes of this section to be used or operated if, when used or operated, it emits noise that, when measured at any point specified in or determined in accordance with the regulations, 15 is in excess of the level prescribed in respect of the class to which it belongs.

34. A person shall not, without reasonable excuse, contravene a noise control notice under this Division.

20 35. It is a sufficient defence to a prosecution for an offence arising under section 34 if the defendant proves—

- 25 (a) that a certificate, relating to the article referred to in the information for the offence, was issued by a person of a prescribed class within the prescribed period before the commission of the offence, certifying that the article had been tested in the prescribed manner on the date which the certificate bears and that that test shows that it had not then emitted at any point referred to in section 33 noise in excess of the level prescribed in respect of the class to which it belongs; and
- 30

(b)

Noise Control.

- (b) that he had not, since the date that the certificate bears, failed to take all reasonable and practicable steps to prevent the commission of the offence.

5 DIVISION 3.—*Noise control notices relating to scheduled premises.*

36. (1) The Commission may, by notice in writing served on the occupier of any scheduled premises, prohibit him from causing, permitting or allowing—

Noise control notices: scheduled premises.

- 10 (a) any specified activity to be carried on in or on those premises; or

- (b) any specified article to be used or operated in or on those premises,

15 in such a manner as to cause the emission from those premises of noise that, when measured at any specified point (whether within or outside those premises), is in excess of the specified level.

(2) Where the Commission is satisfied that any noise is being or is likely to be emitted from any scheduled premises, the Commission may, by notice in writing served on the occupier, require the occupier—

- 20 (a) to install and operate noise control equipment in or on those premises;

- (b) to repair, alter or replace any noise control equipment in or on those premises;

- 25 (c) to erect a noise barrier in or on those premises;

- (d) to install plant of a specified type, where the Commission is satisfied that the use of that plant will result in the prevention or reduction of the emission of noise from those premises; or

(e)

Noise Control.

5 (e) to carry out repairs or adjustments to specified articles, where the Commission is satisfied that the carrying out of those repairs or adjustments will result in the prevention or reduction of the emission of noise from those premises,

within the specified time and in the specified manner.

10 (3) The Commission may, by notice in writing served on the occupier of scheduled premises, require the occupier to operate, in accordance with any directions contained in the notice, any noise control equipment in or on those premises.

15 (4) The Commission may, by notice in writing, vary a noise control notice under subsection (2) by extending any time specified in the noise control notice before the expiry of that time.

(5) Nothing in this section affects the power of the Commission under section 20 (1) or (2) to attach conditions to a licence.

20 **37.** (1) A person shall not, without reasonable excuse, **Offence.** contravene a noise control notice under this Division.

25 (2) A person is not guilty of an offence arising under subsection (1) in relation to a noise control notice under section 36 (1) unless it is established that the alleged offence resulted in the emission, from the premises to which the alleged offence relates, of noise that was able to be detected or perceived outside those premises without the aid of an instrument, machine or device.

38. A noise control notice under this Division has no force—

30 (a) until the time limited for appealing against the notice has expired; and

Postpone-
ment of
operation
of notices.

(b)

Noise Control.

- (b) where within that time an appeal against the notice has been made under this Act, until the District Court confirms the notice.

DIVISION 4.—*Noise control notices relating to premises other than scheduled premises.*

39. In this Division, “appropriate authority” means— Interpretation:
Part V,
Div. 4.

- (a) in any case—the Commission or an authorised officer;
- (b) except in relation to vessels being used or operating in navigable waters—a local authority; and
- (c) in relation to vessels being used or operating in navigable waters—the Maritime Services Board.

40. (1) The appropriate authority may, by notice in writing served on the occupier of any premises (other than scheduled premises), give a warning to the occupier to the effect— Noise control notices:
premises other than scheduled premises.

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

in contravention of such one or more conditions of the kinds referred to in subsection (2), or of the prescribed kinds, as are imposed by the appropriate authority and set out in the notice (being conditions compliance with which the appropriate authority is satisfied will prevent or reduce the emission from those premises of noise arising from the carrying out of that step or the use or operation of that article); and

(b)

Noise Control.

- (b) that if, as a result thereof, offensive noise is—
- (i) if those premises are not a public place—
emitted from those premises; or
 - (ii) if those premises are a public place—made
in or emitted from those premises,

5

he may be proceeded against for an offence arising under this Division.

(2) The following kinds of conditions may be imposed in a noise control notice under this Division,
10 namely—

- (a) that specified noise control equipment is installed in or on the premises in a specified manner;
- (b) that specified noise control equipment in or on the premises is used or operated in a specified manner;
- 15 (c) that specified noise control equipment in or on those premises is repaired, altered or replaced in a specified manner;
- (d) that a specified noise barrier is erected in or on those premises in a specified manner;
- 20 (e) that a specified noise barrier in or on those premises is used or operated in a specified manner; or
- (f) that specified repairs or adjustments are carried out to specified articles.

41. (1) Where a noise control notice has been served Offence.
25 under this Division on the occupier of specified premises, he shall not, while the notice remains in force, cause, permit or allow—

- (a) the specified step to be carried out in or on those premises; or

(b)

Noise Control.

- (b) the specified article to be used or operated in or on those premises,

except in accordance with the conditions set out in the notice.

5 (2) A person is not guilty of an offence arising under subsection (1) unless it is established that the alleged offence resulted in—

- 10 (a) if the premises to which the alleged offence relates were not—at any relevant time, a public place—the emission of offensive noise from those premises ; or

- (b) if those premises were, at any relevant time, a public place—the making of offensive noise in, or the emission of offensive noise from, those premises.

15 **42.** A noise control notice under this Division has no force— Postpone-
ment of
operation
of notices.

- (a) until the time limited for appealing against the notice has expired ; and

- 20 (b) where within that time an appeal against the notice has been made under this Act, until the court confirms the notice.

43. A noise control notice under this Division has no force in so far as it is issued in relation to— Restric-
tion on
notices.

- (a) premises that are a public place ; or

- 25 (b) 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,

unless it is made by the Commission in accordance with this Division.

DIVISION

Noise Control.

DIVISION 5.—*Noise control notices relating to times.*

44. In this Division, “appropriate authority” means— Interpretation: Part V, Div. 5.

(a) in any case—the Commission or an authorised officer;

5 (b) except in relation to scheduled premises and to vessels being used or operating in navigable waters—a local authority; and

(c) in relation to vessels being used or operating in navigable waters—the Maritime Services Board.

10 45. (1) The appropriate authority may, by notice in writing— Noise control notices: times.

15 (a) served on the occupier of any premises, give a warning to him to the effect that if, by reason of his causing, permitting or allowing any specified step in a trade, industry or process to be carried out in or on those premises between specified times on specified days, offensive noise is emitted from those premises; or

20 (b) served on a person, give a warning to him to the effect that if, by reason of his causing, permitting or allowing any specified article to be used or operated in or on any specified premises between specified times on specified days, offensive noise is—

25 (i) if those premises are not a public place—emitted from those premises; or

(ii)

Noise Control.

(ii) if those premises are a public place—made in or emitted from those premises,

he may be proceeded against for an offence arising under this Division.

5 (2) A noise control notice may be issued under this Division in relation to a step in a trade, industry or process or an article notwithstanding that the regulations restrict or have the effect of restricting the times when that step may be carried out or that article may be used or operated.

10 **46.** (1) Where a noise control notice has been served **Offences.** under section 45 (1) (a) on the occupier of specified premises, he shall not, while the notice remains in force, cause, permit or allow the specified step to be carried out in or on those premises at any time between the specified times
15 on the specified days.

(2) Where a noise control notice has been served under section 45 (1) (b) on a person, he shall not, while the notice remains in force, cause, permit or allow the specified article to be used or operated in or on the specified premises
20 at any time between the specified times on the specified days.

(3) A person is not guilty of an offence arising under subsection (1) unless it is established that the alleged offence resulted in the emission of offensive noise from the premises to which the alleged offence relates.

25 (4) A person is not guilty of an offence arising under subsection (2) unless it is established that the alleged offence resulted in—

(a) if the premises to which the alleged offence relates were not, at any relevant time, a public place—the emission of offensive noise from those premises; or

(b)

Noise Control.

(b) if those premises were, at any relevant time, a public place—the making of offensive noise in, or the emission of offensive noise from, those premises.

5 47. (1) A noise control notice under this Division has no force in so far as it is issued in relation to— Restrictions on notices.

- (a) premises that are a public place; or
- (b) 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,

10 unless it is made by the Commission in accordance with this Division.

(2) A noise control notice issued under this Division by a local authority or an authorised officer who is a servant of a local authority has no force in so far as it is 15 made with respect to—

- (a) the carrying out, at any time between 6 a.m. on a day and 9 p.m. on the same day, of any step in a trade, industry or process; or
- (b) the use or operation, at any such time, of any 20 article.

DIVISION 6.—*General provisions.*

48. A noise control notice has no force in so far as it— Restrictions on noise control notices.

- (a) is directed to—
 - (i) the Crown or a person acting on behalf of the Crown;

25

(ii)

Noise Control.

(ii) a public authority or a person in his capacity as a member, officer, employee or servant of a public authority; or

(iii) a prescribed person or body; or

5 (b) would have the result of affecting—

(i) any activity carried on by or for the Crown or a public authority;

(ii) any lawful sporting activity; or

10 (iii) any activity of a prescribed class or description,

unless it is made by the Commission in accordance with this Part.

49. Subject to section 50 and Part IX, a noise control notice ceases to be in force at the expiration of the period of twelve months, or such lesser period as is specified in the notice, from the date of service of the notice. Expiry of noise control notices.

50. (1) A noise control notice issued by the Commission, a local authority or the Maritime Services Board may, by notice in writing, be revoked by the Commission, that authority or that Board, as the case may be. Revocation of noise control notices.

(2) A noise control notice issued by an authorised officer may, by notice in writing, be revoked—

(a) in any case—by the authorised officer or the Commission;

Noise Control.

- (b) if he is a servant of a local authority—by that authority; and
- (c) if he is an officer or employee of the Maritime Services Board—by that Board.

5

PART VI.

NOISE ABATEMENT ORDERS.

51. (1) In this Part, “district” means a district appointed under section 5 of the Justices Act, 1902. Interpre-
tation:
Part VI.

(2) For the purposes of this Part, noise amounts to
10 a nuisance if it is offensive noise.

52. (1) Where the occupier of any premises makes a complaint to a justice of the peace alleging that his occupation of those premises is affected by noise amounting to a nuisance, the justice may summon the person (in this section referred to as “the defendant”) alleged to be making or contributing to the making of the noise or the occupier of the premises from which the noise is alleged to be emitted before a court of petty sessions held for the district in which those premises are situated. Issue of
noise
abatement
orders.

(2)

Noise Control.

(2) If the court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises, the court may make an order—

- 5 (a) directing the defendant to abate the nuisance within the time specified in the order; or
- (b) directing the defendant to prevent a recurrence of the nuisance,

or the court may make an order containing directions under both paragraphs (a) and (b).

10 53. A person shall not, without reasonable excuse, contravene a noise abatement order.

Contraven-
tion of noise
abatement
orders.

Penalty: \$500.

54. A noise abatement order has no force in so far as it—

Restrictions
on noise
abatement
orders.

- (a) is directed to—
 - 15 (i) the Crown or a person acting on behalf of the Crown;
 - (ii) a public authority or a person in his capacity as a member, officer, employee or servant of a public authority; or
 - 20 (iii) a prescribed person or body; or
- (b) would have the result of affecting—
 - (i) any activity carried on by or for the Crown or a public authority;
 - (ii) any lawful sporting activity; or
 - 25 (iii) any activity of a prescribed class or description.

Noise Control.

55. A noise abatement order takes effect from the day on which it is made or a later day specified in the order. Commencement of operation of noise abatement order.

56. A noise abatement order, made pursuant to a complaint alleging that a person's occupation of premises is affected by noise, may be revoked or varied by a court of petty sessions held for the district in which those premises are situated. Revocation or variation of noise abatement orders.

57. In any proceedings under this Part the court may award costs against either party. Costs.

10

PART VII.

NOISE ABATEMENT DIRECTIONS.

58. In this Part, "authorised person" means a member of the police force or an authorised officer. Interpretation: Part VII.

59. Where it appears to an authorised person that offensive noise is being, or has at any time during the preceding thirty minutes been, emitted from any premises, he may— Issue of noise abatement directions.

- (a) direct the person whom he believes to be the occupier of those premises to cause the emission of the noise to cease; or

(b)

Noise Control.

(b) direct any person whom he believes to be making or contributing to the making of the noise to cease making or contributing to the making of the noise, or he may give directions under both paragraphs (a) and (b).

5 **60.** (1) A person to whom a noise abatement direction has been given under section 59 (a) shall not, without reasonable excuse, while the direction remains in force— Contra-
vention
of noise
abatement
directions.

(a) fail to cause the emission of the noise from the premises to cease promptly; or

10 (b) at any time within six hours following the time at which the direction was given, cause, permit or allow noise to be emitted from the premises.

Penalty: \$500.

(2) A person to whom a noise abatement direction
15 has been given under section 59 (b) shall not, without reasonable excuse—

(a) fail to promptly cease making or contributing to the making of the noise; or

20 (b) at any time within six hours following the time at which the direction was given, make or contribute to the making of noise that is emitted from the premises.

Penalty: \$500.

(3) A person is not guilty of an offence arising under
25 this section unless it is established that the noise to which the alleged offence relates was offensive noise.

61.

Noise Control.

61. (1) For the purpose of enabling an authorised person ^{Powers of authorised persons.} to whom a complaint has been made and the identity of the complainant recorded to give a noise abatement direction in relation to noise emitted from premises or to ascertain whether an offence arising under section 60 has been committed in or on those premises, he may—

(a) enter those premises—

- 10 (i) at any time when he believes on reasonable grounds that offensive noise is being emitted from those premises;
- (ii) at any time within thirty minutes after noise has been emitted from those premises, being noise that he believes on reasonable grounds to have been offensive noise; ~~or~~
- 15 ~~(iii) at any reasonable time,~~

with the aid of such authorised persons as he considers necessary and with the use of reasonable force; and

- 20 (b) (whether or not he enters those premises) require any person who is or was present in or on those premises at any time during the emission of noise referred to in paragraph (a), and to whom he has given an oral or written warning of that person's obligation to furnish the information under this
- 25 Act, to furnish him with that person's name and address and with the name and address of the occupier of the premises.

(2) A person shall not refuse or fail to comply with a requirement under subsection (1) (b).

30 Penalty: \$500.

(3) A person shall not, in purported compliance with a requirement under subsection (1) (b), knowingly furnish information that is false or misleading in a material particular.

Penalty: \$500.

(4)

Noise Control.

(4) A person is not guilty of an offence arising under subsection (2) if he proves that in so far as he did not comply with the requirement he was not capable of complying with it.

5 **62.** (1) A noise abatement direction has no force in so far as it—

Restrictions on noise abatement directions.

(a) is directed to—

(i) the Crown or a person acting on behalf of the Crown;

10 (ii) a public authority or a person in his capacity as a member, officer, employee or servant of a public authority; or

(iii) a prescribed person or body; or

(b) would have the result of affecting—

15 (i) any activity carried on by or for the Crown or a public authority;

(ii) any lawful sporting activity; or

(iii) any activity of a prescribed class or description.

20 (2) A noise abatement direction given between 6 a.m. on a day and 9 p.m. on the same day has no force unless it is given by an authorised officer who is a member or officer of the Commission.

(3) Unless sooner revoked, a noise abatement direction shall be deemed to be revoked at 6 a.m. next following the time at which the direction was given, unless it was given by an authorised officer who is a member or officer of the Commission.

Noise Control.

63. A noise abatement direction may be revoked by the person who gave the direction or by a prescribed person.

Revoca-
tion of
noise
abatement
direction.

PART VIII.

REGULATIONS.

5 **64.** (1) The Governor may make regulations, not incon- Regulations.
sistent with this Act, for or with respect to any matter that
by this Act is required or permitted to be prescribed or that
is necessary or convenient to be prescribed for carrying out
or giving effect to this Act.

10 (2) Without affecting the generality of subsection
(1), the regulations may make provision for or with respect
to—

15 (a) prohibiting or regulating the emission of noise
from premises (whether or not those premises are
scheduled premises, and whether or not those
premises are a public place);

 (b) prohibiting or regulating the making or emission
of noise in public places;

20 (c) prohibiting the sale, use or operation of an article
except in accordance with prescribed conditions
relating to the emission of noise from the article
when in use or operation, and in particular prohi-
biting the sale, use or operation of an article unless
it is fitted with prescribed noise control equipment;

(d)

Noise Control.

5 (d) prohibiting the carrying on of any trade, industry or process except in accordance with the prescribed conditions relating to the emission of noise arising in the course of the carrying on of the trade, industry or process;

(e) prohibiting or regulating the use or operation of any article, or the carrying on of any trade, industry or process, at any prescribed times;

10 (f) requiring or empowering the Commission to require the installation, maintenance, use or operation of noise barriers and noise control equipment; and

15 (g) the manner of installing, maintaining, using and operating noise barriers and equipment referred to in paragraph (f).

(3) Without affecting the generality of subsections (1) and (2), the regulations may also make provision for or with respect to—

20 (a) exempting any persons or class of persons, or any premises or class of premises, or any articles or class of articles, from any specified provision or provisions of this Act, in such circumstances, if any, and subject to such conditions, if any, as may be specified in the regulations;

25 (b) the issue, renewal, refusal, revocation, suspension or transfer of licences and the granting or refusal of approvals under section 27;

(c) the keeping of registers under this Act;

(d)

Noise Control.

- 5 (d) the assistance and facilities (including means of access, and the means of making examinations, inspections and tests) to be provided by occupiers of premises to enable authorised officers to exercise their powers under this Act;
 - 10 (e) the inspection of articles, and requiring articles to be tested, for the purpose of determining the level, nature, character or quality of the noise emitted by them or the noise which they are capable of emitting;
 - (f) prescribing standards with respect to the making or emission of noise, and the methods of determining the level, nature, character or quality of noise made or emitted;
 - 15 (g) preventing or controlling noise made by animals (including birds) on any premises, and in particular the giving of notices requiring the prevention or control of any such noise; and
 - (h) appeals under Part IX.
- 20 **65.** (1) Without affecting the generality of the fore- Regulations
going provisions of this Part, the regulations may make respecting
provision for or with respect to prohibiting, or providing for the regis-
the suspension of, the registration under the Motor Traffic Act, 1909, of any motor vehicle that does not comply with the registration of
25 the regulations, and in particular may authorise or require motor
a person or body to suspend the registration under that Act vehicles.
of a motor vehicle that does not so comply.
- (2) While the registration of a motor vehicle is sus-
pended by or under the regulations, the vehicle shall be
30 deemed, for the purposes of this Act, the Motor Traffic Act,
1909, and any other Act, not to be registered under the Motor
Traffic Act, 1909.

(3)

Noise Control.

5 (3) Nothing in this section or the regulations affects any power or duty (conferred or imposed by or under any other Act) of the Commissioner for Motor Transport or any other person or body to cancel or suspend the registration of a motor vehicle, the registration of which is suspended by or under the regulations.

66. The regulations may impose, for an offence against the regulations committed— Offences against the regulations.

10 (a) by a corporation—a penalty not exceeding \$2,500 and, in the case of a continuing offence, a further penalty not exceeding \$500 for each day the offence continues; or

15 (b) by any other person—a penalty not exceeding \$250 and, in the case of a continuing offence, a further penalty not exceeding \$50 for each day the offence continues.

67. (1) A regulation may—

(a) be of general application or limited in its application by reference to time, place or circumstances; Provisions applicable to regulations.

20 (b) be restricted in its application to any specified class of subject-matter or to all subject-matter other than that of a specified class; and

(c) differ in its application according to specified factors or circumstances.

25 (2) A regulation may authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body.

(3)

Noise Control.

(3) The regulations may prescribe standards or tests by reference to standards or tests specified in any work or document that has been published and is referred to in the regulations or by reference to any such standards or tests as amended in any manner specified in any such work or document or specified in the regulations.

PART IX.

APPEALS AND DISPUTES.

68. (1) Any person—

- 10 (a) who is an applicant for a licence or for the renewal or transfer of a licence, or a licensee, and who is aggrieved by any decision of the Commission with respect to his application or licence;
- 15 (b) who is an applicant for the approval of the Commission under section 27 and who is aggrieved by the decision of the Commission with respect to his application;
- (c) on whom—
- 20 (i) a noise control notice under Division 3 of Part V;
- (ii) a noise control notice issued under Division 5 of Part V with respect to scheduled premises or with respect to scheduled premises and other premises; or
- 25 (iii) a notice under section 74, has been served and who is aggrieved by the notice; or

Appeals to District Court: licences, approvals, notices.

(d)

Noise Control.

(d) ~~any person~~ who is aggrieved by a decision that is made under the regulations by a person or body and that is a decision of a class prescribed for the purposes of this paragraph,

5 may, in accordance with the rules of the District Court made in that behalf, appeal to the District Court.

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

(a) the prescribed period; or

10 (b) where the regulations do not prescribe a period—
twenty-one days,

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

15 (3) An appeal under this section shall be in the nature of a rehearing.

(4) The decision of the District Court in an appeal under this section shall be final and is binding on the appellant and person or body who or which made the decision
20 appealed against or issued the notice appealed against.

69. (1) Any person who is aggrieved by a noise abatement order may, in accordance with the rules of the District Court made in that behalf, appeal to the District Court.

Appeals to District Court: noise abatement orders.

(2)

Noise Control.

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

(a) the prescribed period ; or

5 (b) where the regulations do not prescribe a period—
twenty-one days,

after the day on which the order was made.

(3) An appeal under this section shall be in the nature of a rehearing.

10 (4) In an appeal under this section, the District
Court—

(a) may confirm or revoke the order appealed against ;
and

15 (b) if it revokes the order, may make any order that
the court appealed from could have made under
Part VI.

(5) An order made under subsection (4) (b) shall be deemed to be a noise abatement order made under Part VI.

(6) Part V of the Justices Act, 1902, does not apply to or in respect of a noise abatement order.

20 **70.** (1) Any person—

(a) on whom a noise control notice not referred to in section 68 (1) (c) has been served and who is aggrieved by the notice ; or

25 (b) who is aggrieved by a decision that is made under the regulations by a person or body and that is a decision of a class prescribed for the purposes of this paragraph,

may appeal to the court of petty sessions nearest to the place where that person ordinarily resides or carries on business.

(2)

Appeals to
courts of
petty
sessions.

Noise Control.

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

(a) the prescribed period; or

5 (b) where the regulations do not prescribe a period—
twenty-one days,

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.

10 (3) An appeal under this section shall be in the nature of a rehearing.

(4) An appeal under this section shall be heard and determined by a court of petty sessions held before a stipendiary magistrate.

15 (5) The decision of the court in an appeal under this section shall be final and is binding on the appellant and the person or body who or which issued the notice appealed against or made the decision appealed against.

71. In any appeal under this Part the court may award **Costs.**
20 costs against any party.

72. (1) Where a dispute arises between the Commission ^{Disputes} and a public authority or a person acting on behalf of the ^{between} Crown with respect to any matter or thing against which an ^{Commis-} appeal lies under this Part, the Commission or that authority ^{sion and} or person may refer the dispute to the Premier for settlement, ^{public} and the decision of the Premier on the dispute shall be given ^{authorities,} effect to by the Commission and that authority or person. ^{etc.}

(2)

Noise Control.

(2) Where a dispute is settled by the Premier under subsection (1), the authority or person which or who was a party to the dispute is not entitled to appeal under this Part against the matter or thing to which the dispute related.

5

PART X.

MISCELLANEOUS.

73. (1) In this section, "alarm" means a burglar alarm ^{Burglar and other} or fire alarm, and includes any device (including a bell or siren) that is designed to give audible warning or audible ^{alarms.} notice of any act, matter or thing.

(2) Where a member of the police force is satisfied that an alarm has been sounding in or on any premises for a period of at least thirty minutes and that offensive noise is thereby being emitted from those premises, he may—

- 15 (a) enter those premises; and
- (b) take all such steps as appear to him to be reasonably necessary for or in connection with stopping the alarm from sounding,

with the aid of such assistants as he considers necessary and 20 with the use of reasonable force.

(3) It is the duty of a member of the police force who has taken action under subsection (2) to cause such persons or authorities as appear to him to be appropriate in the circumstances to be promptly informed of the action so 25 taken.

(4)

Noise Control.

(4) Nothing in this section applies with respect to an alarm in a motor vehicle.

74. (1) The Commission may, by notice in writing served on any person, being— Power to require information.

- 5 (a) the occupier of any premises, other than a vessel;
- (b) the occupier or owner of any vessel; or
- (c) the owner of any plant or motor vehicle or any person in whose care, custody or control the plant or vehicle is for the time being,

10 require that person to furnish, in such manner as is specified in the notice, to it within fourteen days or such longer period as is specified in the notice, such information (including plans and specifications where appropriate)—

- 15 (d) in the case of a person referred to in paragraph (a) —as to any plant or motor vehicle in or on the premises;
- (e) in the case of a person referred to in paragraph (b) —as to any plant in or on the vessel; or
- 20 (f) in the case of a person referred to in paragraph (c) —as to the plant or motor vehicle,

as it requires by the notice.

(2) A local authority may, by notice in writing served on any person, being—

- 25 (a) the occupier of any premises, other than scheduled premises or vessels;

Noise Control.

(b) the occupier or owner of any vessel, other than a vessel being used or operating in navigable waters; or

5 (c) the owner of any plant or any person in whose care, custody or control the plant is for the time being,

require that person to furnish, in such manner as is specified in the notice, to it within fourteen days or such longer period as is specified in the notice, such information (including plans and specifications where appropriate)—

10 (d) in the case of a person referred to in paragraph (a) —as to any plant in or on the premises;

(e) in the case of a person referred to in paragraph (b) —as to any plant in or on the vessel; or

15 (f) in the case of a person referred to in paragraph (c) —as to the plant,

as it requires by the notice.

(3) The Maritime Services Board may, by notice in writing served on any person, being the occupier or owner of any vessel being used or operating in navigable waters, require
20 that person to furnish, in such manner as is specified in the notice, such information (including plans and specifications where appropriate) as to any plant in or on the vessel as it requires by the notice.

(4) A person shall not, without reasonable excuse,
25 neglect or fail to comply with any requirement made pursuant to this section.

Penalty: \$1,000.

(5)

Noise Control.

5 (5) Any statement made to the Commission, a local authority or the Maritime Services Board pursuant to any requirement made pursuant to this section shall not, if the person making the statement objected, at the time of making it, to doing so on the ground that it might tend to incriminate him, be admissible in evidence in any prosecution against him for any offence, not being the offence of neglecting or failing to comply with any requirement made pursuant to this section.

10 (2) or (3) on the Crown, a person acting on behalf of the Crown, a public authority or a prescribed person or body.

75. A person shall not disclose any information obtained by him in connection with the administration or execution of this Act, unless the disclosure is made— Disclosure of information.

15 (a) with the consent of the person from whom the information was obtained, or where the information relates to a manufacturing, industrial or trade process carried on in or on any premises, with the consent of the occupier of those premises;

20 (b) in connection with the administration or execution of this Act; or

(c) subject to section 74, for the purpose of any legal proceedings arising out of this Act or of any report of any such proceedings.

25 Penalty: \$1,000.

76. (1) An authorised officer may enter— Powers of authorised officers.

30 (a) any premises used as a factory or any premises in which an industry or trade is being carried on, at any time during which any manufacturing, industrial or trade process is being carried on therein;

b)

Noise Control.

- (b) any premises, not being a dwelling-house or land used in connection therewith, from which he reasonably suspects that offensive noise is being or is likely to be emitted, at any time; and
- 5 (c) any other premises, at any reasonable time,
with the aid of such authorised officers or members of the police force as he considers necessary and with the use of reasonable force, and may therein—
- 10 (d) examine any noise control equipment or any plant or motor vehicles emitting or likely to emit noise;
- 15 (e) make such examination and inquiry and such tests as he considers necessary to ascertain whether the provisions of this Act or of any requirement, direction, order or notice made or given under or pursuant to this Act or the conditions in force and attached to any licence or approval under this Act are being or have been complied with; and
- (f) take such photographs as he considers necessary in connection with the administration of this Act.
- 20 (2) An authorised officer may—
- (a) by notice in writing, require—
- 25 (i) the occupier of any premises from which noise is being or is usually emitted to produce to that authorised officer any reports, books, plans, maps or documents relating to the emission from those premises of noise or relating to any manufacturing, industrial or trade process carried on in or on those premises; or
- (ii)

Noise Control.

5 (ii) any local authority or public authority to produce to that authorised officer any reports, books, plans, maps or documents in the custody or possession of the local authority or public authority relating to any noise control equipment or any plant or motor vehicle that emits or may emit noise,

and may take copies of any such reports, books, plans, maps or documents; and

10 (b) require a person whom he suspects on reasonable grounds to be offending against this Act to state his full name and place of abode.

(3) Subsection (2) (a) (ii) only applies to an authorised officer who is a member or officer of the
15 Commission.

(4) Every authorised officer shall be provided with a certificate of his appointment, and on applying for admission to any premises which he is empowered by this Act to enter, shall, if requested to do so, produce the certificate to the
20 occupier of the premises.

(5) The Commission may, by notice in writing served on the occupier of any premises, require the occupier to provide such assistance and facilities (whether of the same kind as, or of a different kind from, those prescribed pursuant to
25 section 64 (3) (d)) as are specified in the notice within such time and in such manner as are specified therein, for the purpose of enabling an authorised officer to exercise his powers under this Act.

(6)

Noise Control.

(6) Any person—

- 5 (a) who wilfully delays or obstructs an authorised officer, or fails to comply with any requirement made under this section by an authorised officer, in the exercise of his powers under this Act;
- (b) who, in purported compliance with a requirement under subsection (2) (b), states a name that is not his name or a place of abode that is not his place of abode; or
- 10 (c) who, being the occupier of any premises—
 - 15 (i) refuses to permit or to assist an authorised officer to do, perform or carry out the matters or things, or any of the matters or things, which he is authorised to do, perform or carry out;
 - (ii) refuses to provide such assistance and facilities as may be prescribed for the purpose of enabling an authorised officer to exercise his powers under this Act; or
 - 20 (iii) refuses to comply with a requirement under subsection (5),

is guilty of an offence against this Act and liable to a penalty not exceeding \$1,000.

(7) Nothing in this section affects section 61.

25 77. Any notice or other instrument issued, made or given for the purposes of this Act may be served— Service of instruments.

- (a) by delivering it personally to the person to whom it is addressed;

(b)

Noise Control.

- (b) by delivering it to the place of abode or business of the person to whom it is addressed and by leaving it there with some person for him; or
- 5 (c) by posting it duly stamped and addressed to the person to whom it is addressed at the place last shown in the records of the Commission as his place of abode or business.

78. (1) In this section, "instrument" includes a notice. Evidence.

(2) Any instrument purporting to be an instrument
10 issued, made or given for the purposes of this Act (including subsection (4) or (5)) and to have been signed by the Director, an officer of the Commission authorised generally or specially by the Commission or the Director to do so, or a member or servant of a local authority or an officer or
15 employee of the Maritime Services Board duly authorised to do so, 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.

(3) Proof shall not, in the absence of evidence to the
20 contrary, be required of the appointment of the Director, any officer of the Commission, any servant of a local authority or any officer or employee of the Maritime Services Board.

(4) A document certified by the Director or by an officer of the Commission authorised generally or specially by
25 the Commission or the Director to do so to be a true copy of an instrument, being an instrument purporting—

(a) to be issued, made or given for the purposes of this Act; and

(b)

Noise Control.

- (b) to have been signed by the Director or an officer of the Commission authorised generally or specially by the Commission or the Director to do so,

is admissible in any proceedings under this Act as if it were
5 the original document of which it purports to be a copy.

(5) A certificate signed by the Director or by an officer of the Commission authorised generally or specially by the Commission or the Director to do so certifying any one or more of the following matters, that is to say—

- 10 (a) that an instrument, a copy of which is set out in the certificate, being an instrument purporting—

(i) to be issued, made or given for the purposes of this Act; and

- 15 (ii) to have been signed by the Director or an officer of the Commission authorised generally or specially by the Commission or the Director to do so,

was issued, made or given on a day specified in the certificate;

- 20 (b) that premises are within a part of the State to which a proclamation under section 17 relates, a copy of which proclamation is set out in the certificate;

- (c) that a person was, or was not, at a time or during a period so specified, the holder of a licence in
25 respect of premises so specified;

- (d) that a licence was, or was not, at a time or during a period so specified, subject to conditions so specified;

(e)

Noise Control.

- (e) that a licence was, at a time so specified, revoked, or suspended for a period so specified;
- (f) that a condition attached to a licence was, at a time so specified, revoked or varied;
- 5 (g) that a new condition was, at a time so specified, attached to a licence;
- (h) that an approval was, or was not, given under section 27 in relation to any matter so specified;
- 10 (i) that an approval under section 27 was, or was not, subject to conditions so specified;
- (j) that a register kept under this Act shows that premises so specified were, at a time or during a period so specified, within a classification referred to in the regulations and so specified;
- 15 (k) that a person was, or was not, at a time or during a period so specified, an authorised officer; or
- (l) that a person was, or was not, at a time or during a period so specified, an officer of the Commission,
- 20 is admissible in any proceedings under this Act and shall be prima facie evidence of the matters so certified.

(6) In proceedings for an offence against this Act, a certificate under subsection (5) that is admitted in evidence and that certifies that a person was, at a time or during a period specified in the certificate, the holder of a licence in
25 respect of premises so specified shall be accepted by the court as evidence of the truth of an allegation, in the information in respect of the offence, that—

- (a) that person was, at that time or during that period, the occupier of those premises; and

(b)

Noise Control.

(b) those premises were, at that time or during that period, scheduled premises,

unless the contrary is proved or unless it is proved that that person was not, at that time or during that period, the holder
5 of a licence in respect of those premises.

(7) In proceedings for an offence against this Act, evidence that a register kept under this Act shows that premises were, at a time or during a period, within a classification referred to in the regulations and specified in the register shall
10 be accepted by the court as evidence of the truth of an allegation, in the information in respect of the offence, that those premises were, at that time or during that period, within that classification, unless the contrary is proved.

79. Any person who—

Offences.

- 15 (a) fails to comply with any of the provisions of this Act, other than the regulations;
- (b) being a licensee, does not comply with any condition or prohibition in force and attached to the licence held by him under this Act;
- 20 (c) fails to comply with any condition subject to which an approval is granted by the Commission; or
- (d) neglects or fails to comply with any requirement made under or pursuant to this Act,

is guilty of an offence against this Act.

Noise Control.

80. Any person guilty of an offence against this Act, other than the regulations, shall, where no other penalty is expressly provided, be liable— Penalties.

5 (a) where the offence was committed by a corporation —to a penalty not exceeding \$5,000 and, in the case of a continuing offence, to a further penalty not exceeding \$1,000 for each day the offence continues; or

10 (b) where the offence was committed by any other person—to a penalty not exceeding \$500 and, in the case of a continuing offence, to a further penalty not exceeding \$100 for each day the offence continues.

81. Where any person has been convicted of an offence against this Act, the court by which he is convicted— Power to order contravention to be remedied.

15 (a) in addition to imposing a penalty for the offence, may order that person to take such steps within such time as may be specified in the order to prevent the continuance or recurrence of the offence; and

(b) may enlarge the time so specified,

20 and if, upon the expiration of the time originally specified or so enlarged, the order has not been complied with, the person so convicted is guilty of an offence against this Act.

82. (1) Proceedings for an offence against this Act may be taken before a court of petty sessions or before the Supreme Court in its summary jurisdiction. Proceedings for offences.

(2)

Noise Control.

(2) Subject to subsection (3), proceedings for an offence against this Act (other than an offence arising under Part VI or VII) shall not be instituted without the written consent of the Minister or of such member or officer of the Commission as may be authorised by the Minister for the purposes of this subsection.

(3) Subsection (2) does not apply to the institution—

10 (a) by a member or officer of the Commission of proceedings for an offence if the proceedings are instituted with the consent of the Commission or with the written consent of such member or officer of the Commission as may be authorised by the Commission for the purposes of this paragraph;

15 (b) by a servant of a local authority of proceedings for an offence if—

20 (i) the offence was not committed in respect of or in relation to scheduled premises or vessels being used or operating in navigable waters; and

25 (ii) the proceedings are instituted with the consent of the local authority or with the written consent of such member or servant of the local authority as may be authorised by the local authority for the purposes of this paragraph; or

(c) by an officer or employee of the Maritime Services Board of proceedings for an offence if—

30 (i) the offence was committed in respect of or in relation to a vessel being used or operating in navigable waters; and

(ii)

Noise Control.

5 (ii) the proceedings are instituted with the consent of that Board or with the written consent of such member or officer or employee of that Board as may be authorised by that Board for the purposes of this paragraph.

(4) If proceedings in respect of an offence against this Act are brought in a court of petty sessions, the maximum penalty that the court may impose in respect of the offence is, 10 notwithstanding any other provision of this Act, \$2,000 (including any daily penalty) or the maximum penalty provided by this Act in respect of the offence, whichever is the lesser.

(5) If proceedings in respect of an offence against this Act are brought in the Supreme Court in its summary 15 jurisdiction, the Supreme Court may impose a penalty not exceeding the maximum penalty provided by this Act in respect of the offence.

(6) Proceedings in the Supreme Court in its summary jurisdiction in respect of an offence against this Act 20 may, except as provided in section 27, only be commenced within six months after the offence was committed.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1975
[64c]

(1) The first...

(2) The second...

(3) The third...

(4) The fourth...

No. , 1975.

A BILL

Relating to the prevention, minimising and abatement of noise and vibrations; to constitute a Noise Advisory Committee; to confer and impose powers, authorities, duties and functions relating to the control of noise and vibrations on the State Pollution Control Commission, the Maritime Services Board of New South Wales, councils and certain other persons; and for purposes connected therewith.

[MR WILLIS *on behalf of* SIR CHARLES CUTLER—
13 March, 1975.]

BE

Noise Control.

5 **B**E 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:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Noise Control Act, Short title. 1975".

10 2. (1) This section and sections 1 and 3 shall commence Commence-
on the date of assent to this Act. ment.

(2) Except as provided in subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and 15 as may be notified by proclamation published in the Gazette.

3. This Act is divided as follows:— Division of Act.

PART I.—PRELIMINARY—ss. 1–10.

PART II.—NOISE ADVISORY COMMITTEE—ss. 11–16.

PART III.—SCHEDULED PREMISES—ss. 17–27.

20 DIVISION 1.—*Licensing provisions*—ss. 17–24.

DIVISION 2.—*Other provisions*—ss. 25–27.

PART IV.—PROHIBITION OF SALE OF ARTICLES—ss. 28–30.

PART

Noise Control.

PART V.—NOISE CONTROL NOTICES—*ss.* 31–50.

DIVISION 1.—*Preliminary—s.* 31.

DIVISION 2.—*Noise control notices relating to articles, irrespective of where used—ss.* 32–35.

5 DIVISION 3.—*Noise control notices relating to scheduled premises—ss.* 36–38.

DIVISION 4.—*Noise control notices relating to premises other than scheduled premises—ss.* 39–43.

10 DIVISION 5.—*Noise control notices relating to times—ss.* 44–47.

DIVISION 6.—*General provisions—ss.* 48–50.

PART VI.—NOISE ABATEMENT ORDERS—*ss.* 51–57.

15 PART VII.—NOISE ABATEMENT DIRECTIONS—*ss.* 58–63.

PART VIII.—REGULATIONS—*ss.* 64–67.

PART IX.—APPEALS AND DISPUTES—*ss.* 68–72.

PART X.—MISCELLANEOUS—*ss.* 73–82.

SCHEDULE.

20 4. (1) In this Act, except in so far as the context or Interpretation.
subject-matter otherwise indicates or requires—

“article” means any plant, motor vehicle, article or thing of any description whatever;

25 “authorised officer” means a person authorised in writing by the Commission;

“Commission” means the State Pollution Control Commission;

“Committee”

Noise Control.

- “Committee” means the Noise Advisory Committee constituted under section 11;
- “court of petty sessions” means a court of petty sessions held before a stipendiary magistrate sitting alone;
- 5 “Director” means the Director of the Commission;
- “information”, when used in relation to an offence, includes an application referred to in section 4 of the Supreme Court (Summary Jurisdiction) Act, 1967;
- 10 “level”, in relation to noise, includes the volume or intensity of the noise;
- “licence” means a valid and unexpired licence issued under this Act, whether it is an original or a renewed licence;
- 15 “licensee” means the person to whom a licence is granted or transferred under this Act;
- “local authority” means the council of a city, municipality or shire, and includes a person appointed under the Public Health Act, 1902, to be a local authority for the purposes of that Act;
- 20

“Maritime

Noise Control.

“Maritime Services Board” means the Maritime Services Board of New South Wales;

5 “motor vehicle” means any motor car, motor carriage, motor cycle, motor omnibus, motor lorry or other vehicle propelled wholly or partly by any volatile spirit, steam, electricity, gas, or oil, or by any means other than human or animal power, but does not include a railway locomotive;

10 “navigable waters” means navigable waters within the meaning of the Maritime Services Act, 1935;

“noise” includes sound and vibration;

“noise abatement direction” means a direction under Part VII;

15 “noise abatement order” means an order under section 52;

“noise control equipment” means—

(a) any apparatus or device used for the purposes of preventing or limiting the emission of noise; or

20 (b) any apparatus or device used for indicating or recording the emission of noise or for giving warning of the excessive emission of noise,

25 and includes any apparatus or device which, though not so used, is, or would, if properly maintained and operated, be, capable (without modification) of being so used;

30 “noise control notice” means a notice under Part V, but does not include a notice under section 36 (4) or 50;

“occupier”,

Noise Control.

3
5
“occupier”, in relation to any premises, means the person in occupation or control of the premises and, in relation to any premises where different parts are occupied or controlled by different persons, means, in relation to any such part, the person in occupation or control of that part;

10
“offensive noise” means noise that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances, is likely—

- 10 (a) to be harmful to;
- (b) to be offensive to; or
- (c) to interfere unreasonably with the comfort or repose of,

persons who are—

- 15 (d) if the noise is made in premises that are not a public place—outside those premises; or
 - (e) if the noise is made in premises that are a public place—within or outside those premises;
- 20

“plant” means any plant, equipment, apparatus, device, machine or mechanism, and includes any vessel, dredge, railway locomotive or crane, but does not include a motor vehicle;

25 “premises” includes place (including public place) and vessel;

“public authority” means—

- (a) a public authority constituted by or under any Act;
- 30 (b) a Government Department; or
- (c) a person or body prescribed for the purposes of this paragraph,

but

Noise Control.

but does not include—

- (d) a local authority or a county council; or
- (e) a person or body prescribed for the purposes of this paragraph;

5 “public place” includes—

(a) a public road or a public reserve, as respectively defined in section 4 of the Local Government Act, 1919; and

10 (b) a place that is open to the public, or is used by the public, whether or not on payment of money or other consideration, whether or not the place is ordinarily so open or used, and whether or not the public to whom the place is so open, or by whom the place is so used, consists only of a limited class of persons;

“regulations” means regulations made under this Act;

“scheduled premises” means any premises of a class for the time being described in the Schedule;

20 “sell”, in relation to an article, means sell, exhibit or offer for sale, or conduct negotiations for the sale of, the article;

“this Act” includes the regulations;

“trade” includes commercial undertaking;

25 “vessel” means ship, lighter, barge, boat, craft, or vessel of whatever description and however navigated.

(2) In this Act, a reference (however expressed) to making or emitting noise includes a reference to causing, permitting or allowing the making or emission of noise.

Noise Control.

5. Except as provided by this Act, this Act binds the Act binds Crown.
Crown.

6. (1) Subject to subsection (2), nothing in this Act Effect of this Act on other Acts.
5 affects any of the provisions of any other Act, or any regu-
lations, ordinances or by-laws thereunder, or takes away any
powers vested in any person or body by any other Act, or
any regulations, ordinances or by-laws made under any other
Act.

10 (2) Where the provisions of this Act (other than the
regulations) are inconsistent with any of the provisions of
any other Act or any regulation, ordinance or by-law made
under any other Act (other than the State Pollution Control
Commission Act, 1970, or any regulation thereunder), the
15 provisions of this Act (other than the regulations) shall
prevail.

(3) Where the provisions of any regulation made
under this Act are inconsistent with any of the provisions of
any regulation, ordinance or by-law made under any other
Act (other than a regulation made under the State Pollution
20 Control Commission Act, 1970), the provisions of the
regulation made under this Act shall prevail.

7. (1) The provisions of this Act do not limit or affect Effect of this Act on other rights, etc.
any right, remedy or proceeding under any other Act or
law.

25 (2) No proceedings taken under this Act interfere
with or lessen any right or remedy under any other Act or
law, but no person is, by virtue of this subsection, liable to be
punished twice for the same offence.

Noise Control.

8. The powers, authorities, duties and functions conferred or imposed on a local authority by or under this Act may only be exercised or performed—

Exercise or performance of local authority's powers, etc.

5 (a) in relation to a city, municipality or shire—by the council thereof; or

(b) in relation to a district for which a person is appointed under the Public Health Act, 1902, to be a local authority for the purposes of that Act—by that person.

10 9. Where the authorisation of a person as an authorised officer is given subject to conditions, limitations and restrictions or only for limited purposes, nothing in this Act authorises or requires that person to act as an authorised officer in contravention of those conditions, limitations or
15 restrictions or for purposes other than those purposes, as the case may be.

Exercise or performance of authorised officer's powers, etc.

10. (1) The Governor may, by proclamation published in the Gazette, amend this Act by inserting at the end of this Act a Schedule containing matter describing classes of
20 premises.

Insertion, amendment or substitution of Schedule.

(2) The Governor may, by proclamation published in the Gazette, amend the Schedule—

(a) by omitting therefrom matter describing a class of premises; or

25 (b) by inserting therein matter describing a class of premises.

(3) The Governor may, by proclamation published in the Gazette, amend this Act by omitting the Schedule and by inserting instead a Schedule containing matter describing
30 classes of premises.

(4)

Noise Control.

(4) A proclamation published under this section shall be laid before each House of Parliament within fourteen sitting days of that House after the date of publication.

5 (5) If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after a proclamation referred to in subsection (4) has been laid before it, disallowing the proclamation or any part thereof, the proclamation or part thereupon ceases to have effect.

10 (6) For the purposes of subsections (4) and (5), sitting days shall be counted, whether or not they occur during the same session.

(7) In this section, "premises" does not include any vessel.

15

PART II.

NOISE ADVISORY COMMITTEE.

11. (1) For the purposes of this Act there shall be constituted a Noise Advisory Committee which shall consist of twelve members. Constitution of the Committee.

20 (2) The members of the Committee shall be appointed by the Governor and shall consist of—

- (a) two persons, each of whom is a member of the Commission nominated by the Commission or an officer of the Commission so nominated;
- 25 (b) a member of the Health Commission of New South Wales nominated by that Commission or an officer of that Commission so nominated;
- (c) an officer of the Department of Motor Transport nominated by the Minister for Transport;

(d)

Noise Control.

- (d) an officer of the Department of Mines nominated by the Minister for Mines ;
- (e) an officer of the Department of Labour and Industry nominated by the Minister for Labour and Industry ;
- 5 (f) a person nominated by the Local Government Association of New South Wales ;
- (g) a person nominated by the Shires Association of New South Wales ; and
- 10 (h) four persons nominated by the Minister, being persons having such professional and technical qualifications as the Minister considers appropriate.

(3) One of the persons referred to in subsection (2) (a) shall, in and by the instrument of his appointment or a subsequent instrument executed by the Governor, be
15 appointed as the Chairman of the Committee.

(4) Any nomination of a member of the Committee shall be made within the time and in the manner prescribed and in default of any person or body entitled to make any such nomination doing so within that time and in that man-
20 ner the Governor may appoint any person to the Committee as if that person had been duly nominated by the person or body entitled to make the nomination.

(5) Every member of the Committee shall be entitled to receive such travelling and other expenses, and every mem-
25 ber referred to in subsection (2) (f), (g) and (h) shall, if the Minister so approves, be entitled to receive such fees for attending meetings and transacting business of the Committee, and making inspections for the purposes of this Act, as the Minister may from time to time determine in respect of that
30 member.

(6) The office of a member of the Committee shall not, by reason of the member's accepting or receiving any expenses or fees to which he is entitled under subsection (5), be deemed to be an office of profit under the Crown for the
35 purposes of the Constitution Act, 1902.

(7)

Noise Control.

(7) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment of any member of the Committee, and any such member shall not, in his capacity as such a member, be subject to the provisions of that Act during his term of office.

12. The members of the Committee shall, subject to this Part, hold office for a period of three years and shall, if otherwise qualified, be eligible for reappointment.

13. (1) On the occurrence of a vacancy in the office of a member of the Committee otherwise than by the expiration of the term for which he was appointed, the Governor may appoint a person to fill the vacant office so that the Committee is constituted as provided by section 11 (2).

(2) A person appointed under subsection (1) shall, subject to this Part, hold office for the balance of his predecessor's term of office.

(3) A member of the Committee shall be deemed to have vacated his office if he—

- (a) dies;
- (b) resigns his office by writing under his hand addressed to the Minister;
- (c) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- (d) is removed from office under subsection (4); or
- (e) being—
 - (i) a person referred to in section 11 (2) (a) or (b)—ceases to be a member or officer of the body referred to therein; or

(ii)

Noise Control.

(ii) a person referred to in section 11 (2) (c), (d) or (e)—ceases to be an officer of the department referred to therein.

5 (4) The Governor may remove from office, for any cause which appears to him sufficient, any member of the Committee.

10 **14.** (1) The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall, subject to the regulations, be as determined by the Committee. ^{Meetings of the Committee.}

15 (2) The Chairman of the Committee shall preside at all meetings of the Committee at which he is present, and in his absence the members of the Committee present shall appoint one of their number to preside at that meeting during the Chairman's absence.

(3) The person entitled to preside at any meeting of the Committee shall have a deliberative vote, and, in the event of an equality of votes, shall have a second or casting vote.

20 (4) Seven members of the Committee shall form a quorum at any meeting of the Committee and any duly convened meeting of the Committee at which a quorum is present shall be competent to transact any business of the Committee.

25 (5) Questions arising at a meeting of the Committee shall be determined by a majority of votes of the members present and voting.

30 **15.** (1) The Committee may establish sub-committees for the purpose of advising the Committee upon such matters within the scope of the Committee's functions as may be referred to the sub-committees by the Committee. ^{Sub-committees.}

(2)

Noise Control.

(2) A person may be appointed to a sub-committee whether or not he is a member of the Committee.

(3) A sub-committee may exercise and discharge such of the Committee's powers, authorities, duties and
5 functions as may be delegated to it by the Committee.

(4) Notwithstanding any such delegation, the Committee may continue to exercise and discharge any of the powers, authorities, duties and functions so delegated.

(5) The Committee may at any time revoke any
10 such delegation, either wholly or in part.

(6) Every member of a sub-committee shall be entitled to receive such travelling and other expenses and, if the Minister so approves, such fees for attending meetings and transacting business of the sub-committee, and making
15 inspections for the purposes of this Act, as the Minister may from time to time determine in respect of that member.

(7) The office of a member of a sub-committee shall not, by reason of the member's accepting or receiving any expenses or fees to which he is entitled under subsection (6), be deemed to be an office of profit under the Crown
20 for the purposes of the Constitution Act, 1902.

16. It is the duty of the Committee to make recommendations to the Commission in respect of matters referred to it by the Commission, and the Committee may initiate and
25 refer to the Commission recommendations, relating to—

- (a) the administration of this Act;
- (b) making, altering or repealing any regulation; and
- (c) the prevention, control or abatement of noise.

Functions
of the
Committee.

Noise Control.

PART III.

SCHEDULED PREMISES.

DIVISION 1.—*Licensing provisions.*

17. (1) This Division applies to a part of the State specified in a proclamation under subsection (2). Application of Division.

(2) The Governor may, by proclamation published in the Gazette, declare that this Division applies to any part of the State specified in the proclamation.

18. (1) A person who is the occupier of any scheduled premises in a part of the State to which this Division applies and who is not the holder of a licence issued in respect of those premises is guilty of an offence against this Act. Scheduled premises to be licensed.

(2) Where premises are, at the time when this Division is applied to the part of the State in which those premises are situated, scheduled premises, subsection (1) does not apply to the occupier of those premises until—

- (a) the expiration of the prescribed period after this Division is so applied; or
- (b) the application (if any) made within that period by the occupier for a licence in respect of those premises has been finally determined,

whichever is the later.

(3) Where, by reason of the coming into force of a proclamation under section 10, premises become scheduled premises at the time the proclamation comes into force, subsection (1) does not apply to the occupier of those premises until—

- (a) the expiration of the prescribed period after the proclamation comes into force; or

(b)

Noise Control.

- (b) the application (if any) made within that period by the occupier for a licence in respect of those premises has been finally determined,

whichever is the later.

- 5 (4) Where a person becomes the occupier of scheduled premises and immediately before he became the occupier of the premises they were occupied by a person who was the holder of a licence in respect of those premises, subsection (1) does not apply to that firstmentioned person
10 until—

- (a) the expiration of the prescribed period after he became the occupier of the premises; or

- (b) the application (if any) made within that period by him for the transfer to him of the licence has
15 been finally determined,

whichever is the later.

- 19.** (1) An application for a licence or for the renewal Applications
or transfer of a licence shall be made to the Commission in for licences.
or to the effect of the prescribed form, and shall be
20 accompanied by the prescribed fee.

(2) An application for the renewal of a licence shall be made within the prescribed time before the licence would expire if not renewed.

- (3) An application for the transfer of a licence shall
25 be made with the consent of the holder of the licence.

- 20.** (1) The Commission—

Licences. 22

- (a) may grant any application for a licence or for the renewal or transfer of a licence, either subject to conditions or unconditionally; or

- 30 (b) may refuse any such application.

(2)

Noise Control.

(2) The Commission may, during the currency of a licence, by notice in writing served on the holder of the licence—

- 5 (a) revoke the licence or suspend it for such period expiring not later than the date of expiry of the licence as the Commission thinks fit;
- (b) revoke or vary any condition attached to the licence; or
- (c) attach new conditions to the licence.

10 (3) In exercising its powers under this section, the Commission shall have regard to the level, nature, character and quality of, and the times at which, noise is or is likely to be emitted from the premises to which the application or the licence, as the case may require, relates.

15 (4) The refusal of an application, the revocation or suspension of a licence, the revocation or variation of any condition attached to a licence or the attaching of a condition to a licence, under this section, has no force—

- 20 (a) until the time limited for appealing against the Commission's decision has expired; and
- (b) where within that time an appeal against the decision has been made under this Act, until the District Court confirms the decision.

21. Subject to this Division—

- 25 (a) an original licence remains in force for a period of one year from the date of its issue; and
- (b) a renewed licence remains in force until the expiration of the period of one year specified in the renewal.

Dura-
tion of
licences.

30 **22.** The Commission shall cause to be kept such registers of licences as may be prescribed.

Regis-
ters of
licences.

Noise Control.

23. (1) The fee prescribed for a licence shall not exceed Fees.
\$3,000.

(2) Without affecting the generality of section 67
(1), different fees may be prescribed for the purposes of sub-
5 section (1) according to specified factors or circumstances.

(3) Where the Commission is satisfied that the noise
from any scheduled premises would not be such as to warrant
the payment of the prescribed fee, the Commission may, upon
the application of the occupier of those premises, remit in
10 whole or in part the fee payable under this Division in respect
of the premises.

24. The Commission may, by notice in writing served on
an applicant for a licence, require the applicant to furnish to
the Commission such information and such plans and speci-
15 fications as the Commission considers necessary and relevant
to the application and specifies in the notice. Require-
ment to
furnish
informa-
tion, etc.

DIVISION 2.—*Other provisions.*

25. This Division applies to and in respect of scheduled
premises, whether or not those premises are within a part of
20 the State to which Division 1 applies. Applica-
tion of
Division.

26. (1) The occupier of any scheduled premises shall
maintain any noise control equipment installed in or on those
premises in an efficient condition and shall operate that
equipment in a proper and efficient manner. Occupiers
to main-
tain and
operate
noise
control
equip-
ment, etc.

25 (2) The occupier of any scheduled premises who
operates any plant (other than noise control equipment) in
or on those premises in such a manner as to cause or increase

the

Noise Control.

the emission of noise from those premises is guilty of an offence if the noise so caused or increased, or any part thereof, is caused by reason of his failure—

- (a) to maintain that plant in an efficient condition; or
- 5 (b) to operate that plant in a proper and efficient manner.

(3) The occupier of any scheduled premises who processes, handles, moves or stores any materials in such a manner as to cause or increase the emission of noise from
10 those premises is guilty of an offence if the noise so caused or increased, or any part thereof, is caused by reason of his failure to process, handle, move or store those materials in a proper and efficient manner.

(4) In subsection (3), "materials" includes raw
15 materials, materials in the process of manufacture, manufactured materials, by-products and waste materials.

27. (1) The occupier of any scheduled premises—

(a) shall not—

- 20 (i) alter the method of operation of any trade, industry, process or plant in or on those premises; or
- (ii) install, alter or replace any plant in or on those premises,

25 if by so doing he is likely to cause or increase the emission of noise from those premises; or

(b) shall not carry out any work in or on those premises that constitutes the beginning of, or any subsequent step in, any work of the nature referred to in paragraph (a) (ii), if, were the installation,

alteration

Approval of
Commission
required for
certain
work.

Noise Control.

alteration or replacement completed, it would be likely that it would cause or increase the emission of noise from those premises,

5 except in accordance with an approval in writing given by the Commission or in accordance with a noise control notice.

(2) The occupier of any premises—

(a) shall not—

10 (i) in or on those premises carry out any work that would cause those premises to be scheduled premises; or

(ii) on any land construct any building designed for use for a purpose that would cause the land or building to be scheduled premises; or

15 (b) shall not carry out any work in or on those premises that constitutes the beginning of, or any subsequent step in, any work of the nature referred to in paragraph (a),

20 except in accordance with an approval in writing given by the Commission.

(3) An application for an approval under this section shall be in or to the effect of the prescribed form and accompanied by—

(a) the prescribed fee; and

25 (b) details of the trade, industry or process proposed to be carried on in or on the premises or proposed premises, together with details of the methods intended to be adopted so as to control the emission of noise that may be associated with the
30 subject-matter of the application.

(4)

Noise Control.

(4) Without affecting the generality of section 67 (1), different fees may be prescribed for the purposes of subsection (3) according to specified factors or circumstances.

5 (5) The Commission—

- (a) may grant any application under this section, either subject to conditions or unconditionally; or
- (b) may refuse any such application.

10 (6) Without affecting the generality of subsection (5), the Commission may—

- (a) refuse an application under this section, having regard to the site on which any work that is the subject of the application is to be carried out; or
- 15 (b) attach to an approval under this section a condition that requires, or has the effect of requiring, that any work that is the subject of the approval is to be carried out on a site specified or referred to in the approval.

20 (7) The Commission may revoke any condition attached to an approval under this section.

(8) Where the occupier of any scheduled premises installs or replaces any plant in contravention of subsection (1), the Commission may, by notice in writing, require him to remove the plant within such time as may be specified in 25 the notice.

(9) A notice under subsection (8) has no force—

- (a) until the time limited for appealing against the Commission's decision has expired; and
- 30 (b) where within that time an appeal against the notice has been made under this Act, until the District Court confirms the decision.

Noise Control.

(10) Proceedings in respect of an offence arising under this section may be commenced at any time within three years after the offence was committed.

5 (11) For the purposes of subsections (1) (b) and (2) (b), it is immaterial whether or not the work referred to therein, being work of the nature referred to in subsection 1 (a) (ii) or (2) (a), was or is completed.

10 (12) In proceedings for an offence arising under subsection (1) or (2), it is not necessary that it be established that the offence was committed on a particular day or on particular days, provided it is established that the offence was committed during a particular period.

15 (13) The Commission may, by notice in writing served on an applicant for an approval under this section, require the applicant to furnish to the Commission such information and such plans and specifications as the Commission considers necessary and relevant to the application and specifies in the notice.

20 (14) An application for an approval under this section shall not be granted unless evidence is produced that any necessary approval required under the Local Government Act, 1919, has been obtained.

PART IV.

PROHIBITION OF SALE OF ARTICLES.

25 **28.** A person shall not, whether on his own behalf or on behalf of another person, sell any article of a class prescribed for the purposes of this section if, when in use or operation, ^{Sale of articles emitting more than prescribed noise.} the

Noise Control.

the article emits noise that, when measured at any point specified in or determined in accordance with the regulations, is in excess of the level prescribed in respect of the class to which it belongs.

5 **29.** (1) A person shall not, whether on his own behalf or on behalf of another person, sell any article of a class prescribed for the purposes of this subsection unless the article is fitted in the prescribed manner with noise control equipment of a prescribed class. Sale of articles required to be fitted with noise control equipment.

10 (2) A person shall not, whether on his own behalf or on behalf of another person, sell any article of a class prescribed for the purposes of this subsection unless the noise control equipment with which it is fitted is maintained in accordance with the regulations.

15 **30.** It is a sufficient defence to a prosecution for an offence arising under this Part if the defendant proves that the offence was committed by him in the course of his employment by another person or that, upon, or in the event of, the sale of the article to which the offence relates, he received or was to Defence.

20 receive remuneration, by way of commission, from a person other than the owner of the article.

PART V.

NOISE CONTROL NOTICES.

DIVISION 1.—Preliminary.

25 **31.** In this Part, except in so far as the context or subject-matter otherwise indicates or requires, "specified", in relation to a noise control notice, means specified or described in the notice. Interpretation: Part V.

DIVISION

Noise Control.

DIVISION 2.—*Noise control notices relating to articles, irrespective of where used.*

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

Interpretation: Part V, Div. 2.

5 (a) in any case—the Commission or an authorised officer; and

(b) to the extent and in the class of cases specified in the regulations—a person or body specified or described in the regulations.

10 33. The appropriate authority may, by notice in writing served on a person, prohibit him from causing, permitting or allowing any specified article of a class prescribed for the purposes of this section to be used or operated if, when used or operated, it emits noise that, when measured at any point specified in or determined in accordance with the regulations, 15 is in excess of the level prescribed in respect of the class to which it belongs.

Noise control notices: articles.

34. A person shall not, without reasonable excuse, 20 contravene a noise control notice under this Division. Offence.

35. It is a sufficient defence to a prosecution for an 20 offence arising under section 34 if the defendant proves— Defence.

25 (a) that a certificate, relating to the article referred to in the information for the offence, was issued by a person of a prescribed class within the prescribed period before the commission of the offence, certifying that the article had been tested in the prescribed manner on the date which the certificate bears and that that test shows that it had not then emitted at any point referred to in section 33 noise in excess of the level prescribed in respect of the class to which it belongs; and 30

(b)

Noise Control.

- (b) that he had not, since the date that the certificate bears, failed to take all reasonable and practicable steps to prevent the commission of the offence.

5 DIVISION 3.—*Noise control notices relating to scheduled premises.*

36. (1) The Commission may, by notice in writing served on the occupier of any scheduled premises, prohibit him from causing, permitting or allowing—

Noise control notices: scheduled premises.

- 10 (a) any specified activity to be carried on in or on those premises ; or
- (b) any specified article to be used or operated in or on those premises,

15 in such a manner as to cause the emission from those premises of noise that, when measured at any specified point (whether within or outside those premises), is in excess of the specified level.

(2) Where the Commission is satisfied that any noise is being or is likely to be emitted from any scheduled premises, the Commission may, by notice in writing served on the occupier, require the occupier—

- 20 (a) to install and operate noise control equipment in or on those premises ;
- (b) to repair, alter or replace any noise control equipment in or on those premises ;
- 25 (c) to erect a noise barrier in or on those premises ;
- (d) to install plant of a specified type, where the Commission is satisfied that the use of that plant will result in the prevention or reduction of the emission of noise from those premises ; or

(e)

Noise Control.

(e) to carry out repairs or adjustments to specified articles, where the Commission is satisfied that the carrying out of those repairs or adjustments will result in the prevention or reduction of the emission of noise from those premises,
5 within the specified time and in the specified manner.

(3) The Commission may, by notice in writing served on the occupier of scheduled premises, require the occupier to operate, in accordance with any directions contained in the notice, any noise control equipment in or on
10 those premises.

(4) The Commission may, by notice in writing, vary a noise control notice under subsection (2) by extending any time specified in the noise control notice before the expiry
15 of that time.

(5) Nothing in this section affects the power of the Commission under section 20 (1) or (2) to attach conditions to a licence.

37. (1) A person shall not, without reasonable excuse, **Offence.**
20 contravene a noise control notice under this Division.

(2) A person is not guilty of an offence arising under subsection (1) in relation to a noise control notice under section 36 (1) unless it is established that the alleged offence resulted in the emission, from the premises to which the
25 alleged offence relates, of noise that was able to be detected or perceived outside those premises without the aid of an instrument, machine or device.

38. A noise control notice under this Division has no force—

30 (a) until the time limited for appealing against the notice has expired; and

(b)

Postpone-
ment of
operation
of notices.

Noise Control.

(b) where within that time an appeal against the notice has been made under this Act, until the District Court confirms the notice.

5 DIVISION 4.—*Noise control notices relating to premises other than scheduled premises.*

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

Interpretation:
Part V,
Div. 4.

- (a) in any case—the Commission or an authorised officer;
- 10 (b) except in relation to vessels being used or operating in navigable waters—a local authority; and
- (c) in relation to vessels being used or operating in navigable waters—the Maritime Services Board.

15 40. (1) The appropriate authority may, by notice in writing served on the occupier of any premises (other than scheduled premises), give a warning to the occupier to the effect—

Noise control notices: premises other than scheduled premises.

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

25 in contravention of such one or more conditions of the kinds referred to in subsection (2), or of the prescribed kinds, as are imposed by the appropriate authority and set out in the notice (being conditions compliance with which the appropriate authority is satisfied will prevent or reduce the emission from those premises of noise arising from the carrying out of that step or the use or operation of that article); and

(b)

Noise Control.

- (b) that if, as a result thereof, offensive noise is—
- (i) if those premises are not a public place—
emitted from those premises; or
 - (ii) if those premises are a public place—made
in or emitted from those premises,

5

he may be proceeded against for an offence arising under this Division.

(2) The following kinds of conditions may be imposed in a noise control notice under this Division,
10 namely—

- (a) that specified noise control equipment is installed in or on the premises in a specified manner;
- (b) that specified noise control equipment in or on the premises is used or operated in a specified manner;
- 15 (c) that specified noise control equipment in or on those premises is repaired, altered or replaced in a specified manner;
- (d) that a specified noise barrier is erected in or on those premises in a specified manner;
- 20 (e) that a specified noise barrier in or on those premises is used or operated in a specified manner; or
- (f) that specified repairs or adjustments are carried out to specified articles.

41. (1) Where a noise control notice has been served Offence.
25 under this Division on the occupier of specified premises, he shall not, while the notice remains in force, cause, permit or allow—

- (a) the specified step to be carried out in or on those premises; or

(b)

Noise Control.

- (b) the specified article to be used or operated in or on those premises,

except in accordance with the conditions set out in the notice.

5 (2) A person is not guilty of an offence arising under subsection (1) unless it is established that the alleged offence resulted in—

- 10 (a) if the premises to which the alleged offence relates were not—at any relevant time, a public place—the emission of offensive noise from those premises; or

- (b) if those premises were, at any relevant time, a public place—the making of offensive noise in, or the emission of offensive noise from, those premises.

15 **42.** A noise control notice under this Division has no force— Postponement of operation of notices.

- (a) until the time limited for appealing against the notice has expired; and

- 20 (b) where within that time an appeal against the notice has been made under this Act, until the court confirms the notice.

43. A noise control notice under this Division has no force in so far as it is issued in relation to— Restriction on notices.

- (a) premises that are a public place; or

- 25 (b) 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,

unless it is made by the Commission in accordance with this Division.

DIVISION

Noise Control.

DIVISION 5.—Noise control notices relating to times.

44. In this Division, “appropriate authority” means—
Interpretation: Part V, Div. 5.

- (a) in any case—the Commission or an authorised officer;
- 5 (b) except in relation to scheduled premises and to vessels being used or operating in navigable waters—a local authority; and
- (c) in relation to vessels being used or operating in navigable waters—the Maritime Services Board.

10 45. (1) The appropriate authority may, by notice in writing—
Noise control notices: times.

- 15 (a) served on the occupier of any premises, give a warning to him to the effect that if, by reason of his causing, permitting or allowing any specified step in a trade, industry or process to be carried out in or on those premises between specified times on specified days, offensive noise is emitted from those premises; or
- 20 (b) served on a person, give a warning to him to the effect that if, by reason of his causing, permitting or allowing any specified article to be used or operated in or on any specified premises between specified times on specified days, offensive noise is—
 - 25 (i) if those premises are not a public place—emitted from those premises; or

(ii)

Noise Control.

- (ii) if those premises are a public place—made in or emitted from those premises,

he may be proceeded against for an offence arising under this Division.

- 5 (2) A noise control notice may be issued under this Division in relation to a step in a trade, industry or process or an article notwithstanding that the regulations restrict or have the effect of restricting the times when that step may be carried out or that article may be used or operated.

- 10 **46.** (1) Where a noise control notice has been served **Offences.** under section 45 (1) (a) on the occupier of specified premises, he shall not, while the notice remains in force, cause, permit or allow the specified step to be carried out in or on those premises at any time between the specified times
15 on the specified days.

- (2) Where a noise control notice has been served under section 45 (1) (b) on a person, he shall not, while the notice remains in force, cause, permit or allow the specified article to be used or operated in or on the specified premises
20 at any time between the specified times on the specified days.

(3) A person is not guilty of an offence arising under subsection (1) unless it is established that the alleged offence resulted in the emission of offensive noise from the premises to which the alleged offence relates.

- 25 (4) A person is not guilty of an offence arising under subsection (2) unless it is established that the alleged offence resulted in—

- (a) if the premises to which the alleged offence relates were not, at any relevant time, a public place—the emission of offensive noise from those premises; or

(b)

Noise Control.

- (b) if those premises were, at any relevant time, a public place—the making of offensive noise in, or the emission of offensive noise from, those premises.

5 **47.** (1) A noise control notice under this Division has no force in so far as it is issued in relation to— Restrictions on notices.

- (a) premises that are a public place; or
- (b) 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,

10 unless it is made by the Commission in accordance with this Division.

(2) A noise control notice issued under this Division by a local authority or an authorised officer who is a servant of a local authority has no force in so far as it is 15 made with respect to—

- (a) the carrying out, at any time between 6 a.m. on a day and 9 p.m. on the same day, of any step in a trade, industry or process; or
- (b) the use or operation, at any such time, of any 20 article.

DIVISION 6.—General provisions.

48. A noise control notice has no force in so far as it— Restrictions on noise control notices.

- (a) is directed to—

25 (i) the Crown or a person acting on behalf of the Crown;

(ii)

Noise Control.

(ii) a public authority or a person in his capacity as a member, officer, employee or servant of a public authority; or

(iii) a prescribed person or body; or

5 (b) would have the result of affecting—

(i) any activity carried on by or for the Crown or a public authority;

(ii) any lawful sporting activity; or

10 (iii) any activity of a prescribed class or description,

unless it is made by the Commission in accordance with this Part.

15 **49.** Subject to section 50 and Part IX, a noise control notice ceases to be in force at the expiration of the period of twelve months, or such lesser period as is specified in the notice, from the date of service of the notice. Expiry of noise control notices.

20 **50.** (1) A noise control notice issued by the Commission, a local authority or the Maritime Services Board may, by notice in writing, be revoked by the Commission, that authority or that Board, as the case may be. Revocation of noise control notices.

(2) A noise control notice issued by an authorised officer may, by notice in writing, be revoked—

(a) in any case—by the authorised officer or the Commission;

Noise Control.

- (b) if he is a servant of a local authority—by that authority; and
- (c) if he is an officer or employee of the Maritime Services Board—by that Board.

5

PART VI.

NOISE ABATEMENT ORDERS.

51. (1) In this Part, “district” means a district appointed under section 5 of the Justices Act, 1902. Interpretation: Part VI.

(2) For the purposes of this Part, noise amounts to a nuisance if it is offensive noise.

52. (1) Where the occupier of any premises makes a complaint to a justice of the peace alleging that his occupation of those premises is affected by noise amounting to a nuisance, the justice may summon the person (in this section referred to as “the defendant”) alleged to be making or contributing to the making of the noise or the occupier of the premises from which the noise is alleged to be emitted before a court of petty sessions held for the district in which those premises are situated. Issue of noise abatement orders.

(2)

Noise Control.

(2) If the court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises, the court may make an order—

- 5 (a) directing the defendant to abate the nuisance within the time specified in the order; or
- (b) directing the defendant to prevent a recurrence of the nuisance,

or the court may make an order containing directions under both paragraphs (a) and (b).

- 10 **53.** A person shall not, without reasonable excuse, contravene a noise abatement order. Contravention of noise abatement orders.
- Penalty: \$500.

- 54.** A noise abatement order has no force in so far as it— Restrictions on noise abatement orders.
- (a) is directed to—

- 15 (i) the Crown or a person acting on behalf of the Crown;
- (ii) a public authority or a person in his capacity as a member, officer, employee or servant of a public authority; or
- 20 (iii) a prescribed person or body; or

(b) would have the result of affecting—

- (i) any activity carried on by or for the Crown or a public authority;
- (ii) any lawful sporting activity; or
- 25 (iii) any activity of a prescribed class or description.

Noise Control.

55. A noise abatement order takes effect from the day on which it is made or a later day specified in the order. Commencement of operation of noise abatement order.

56. A noise abatement order, made pursuant to a complaint alleging that a person's occupation of premises is affected by noise, may be revoked or varied by a court of petty sessions held for the district in which those premises are situated. Revocation or variation of noise abatement orders.

57. In any proceedings under this Part the court may award costs against either party. Costs.

PART VII.

NOISE ABATEMENT DIRECTIONS.

58. In this Part, "authorised person" means a member of the police force or an authorised officer. Interpretation: Part VII.

59. Where it appears to an authorised person that offensive noise is being, or has at any time during the preceding thirty minutes been, emitted from any premises, he may— Issue of noise abatement directions.

(a) direct the person whom he believes to be the occupier of those premises to cause the emission of the noise to cease; or

(b)

Noise Control.

(b) direct any person whom he believes to be making or contributing to the making of the noise to cease making or contributing to the making of the noise, or he may give directions under both paragraphs (a) and (b).

5 **60.** (1) A person to whom a noise abatement direction has been given under section 59 (a) shall not, without reasonable excuse, while the direction remains in force— Contra-
vention
of noise
abatement
directions.

(a) fail to cause the emission of the noise from the premises to cease promptly; or

10 (b) at any time within six hours following the time at which the direction was given, cause, permit or allow noise to be emitted from the premises.

Penalty: \$500.

(2) A person to whom a noise abatement direction has been given under section 59 (b) shall not, without reasonable excuse—

(a) fail to promptly cease making or contributing to the making of the noise; or

20 (b) at any time within six hours following the time at which the direction was given, make or contribute to the making of noise that is emitted from the premises.

Penalty: \$500.

(3) A person is not guilty of an offence arising under this section unless it is established that the noise to which the alleged offence relates was offensive noise.

Noise Control.

5 **61.** (1) For the purpose of enabling an authorised person to give a noise abatement direction in relation to noise emitted from premises or to ascertain whether an offence arising under section 60 has been committed in or on those premises, he may—

Powers of authorised persons.

(a) enter those premises—

- (i) at any time when he believes on reasonable grounds that offensive noise is being emitted from those premises ;
- 10 (ii) at any time within thirty minutes after noise has been emitted from those premises, being noise that he believes on reasonable grounds to have been offensive noise ; or
- (iii) at any reasonable time,

15 with the aid of such authorised persons as he considers necessary and with the use of reasonable force ; and

20 (b) (whether or not he enters those premises) require any person who is or was present in or on those premises at any time during the emission of noise referred to in paragraph (a), and to whom he has given an oral or written warning of that person's obligation to furnish the information under this Act, to furnish him with that person's name and address and with the name and address of the occupier of the premises.

(2) A person shall not refuse or fail to comply with a requirement under subsection (1) (b).

Penalty: \$500.

30 (3) A person shall not, in purported compliance with a requirement under subsection (1) (b), knowingly furnish information that is false or misleading in a material particular.

Penalty: \$500.

(4)

Noise Control.

(4) A person is not guilty of an offence arising under subsection (2) if he proves that in so far as he did not comply with the requirement he was not capable of complying with it.

5 **62.** (1) A noise abatement direction has no force in so far as it— Restrictions on noise abatement directions.

(a) is directed to—

- (i) the Crown or a person acting on behalf of the Crown;
- 10 (ii) a public authority or a person in his capacity as a member, officer, employee or servant of a public authority; or
- (iii) a prescribed person or body; or

(b) would have the result of affecting—

- 15 (i) any activity carried on by or for the Crown or a public authority;
- (ii) any lawful sporting activity; or
- (iii) any activity of a prescribed class or description.

20 (2) A noise abatement direction given between 6 a.m. on a day and 9 p.m. on the same day has no force unless it is given by an authorised officer who is a member or officer of the Commission.

(3) Unless sooner revoked, a noise abatement direction shall be deemed to be revoked at 6 a.m. next following the time at which the direction was given, unless it was given by an authorised officer who is a member or officer of the Commission.

63.

Noise Control.

63. A noise abatement direction may be revoked by the person who gave the direction or by a prescribed person.

Revoca-
tion of
noise
abatement
direction.

PART VIII.

REGULATIONS.

5 **64.** (1) The Governor may make regulations, not incon- Regulations.
sistent with this Act, for or with respect to any matter that
by this Act is required or permitted to be prescribed or that
is necessary or convenient to be prescribed for carrying out
or giving effect to this Act.

10 (2) Without affecting the generality of subsection
(1), the regulations may make provision for or with respect
to—

15 (a) prohibiting or regulating the emission of noise
from premises (whether or not those premises are
scheduled premises, and whether or not those
premises are a public place);

(b) prohibiting or regulating the making or emission
of noise in public places;

20 (c) prohibiting the sale, use or operation of an article
except in accordance with prescribed conditions
relating to the emission of noise from the article
when in use or operation, and in particular prohi-
biting the sale, use or operation of an article unless
it is fitted with prescribed noise control equipment;

(d)

Noise Control.

- 5 (d) prohibiting the carrying on of any trade, industry or process except in accordance with the prescribed conditions relating to the emission of noise arising in the course of the carrying on of the trade, industry or process;
- (e) prohibiting or regulating the use or operation of any article, or the carrying on of any trade, industry or process, at any prescribed times;
- 10 (f) requiring or empowering the Commission to require the installation, maintenance, use or operation of noise barriers and noise control equipment; and
- 15 (g) the manner of installing, maintaining, using and operating noise barriers and equipment referred to in paragraph (f).

(3) Without affecting the generality of subsections (1) and (2), the regulations may also make provision for or with respect to—

- 20 (a) exempting any persons or class of persons, or any premises or class of premises, or any articles or class of articles, from any specified provision or provisions of this Act, in such circumstances, if any, and subject to such conditions, if any, as may be specified in the regulations;
- 25 (b) the issue, renewal, refusal, revocation, suspension or transfer of licences and the granting or refusal of approvals under section 27;
- (c) the keeping of registers under this Act;

(d)

Noise Control.

- 5 (d) the assistance and facilities (including means of access, and the means of making examinations, inspections and tests) to be provided by occupiers of premises to enable authorised officers to exercise their powers under this Act;
- 10 (e) the inspection of articles, and requiring articles to be tested, for the purpose of determining the level, nature, character or quality of the noise emitted by them or the noise which they are capable of emitting;
- (f) prescribing standards with respect to the making or emission of noise, and the methods of determining the level, nature, character or quality of noise made or emitted;
- 15 (g) preventing or controlling noise made by animals (including birds) on any premises, and in particular the giving of notices requiring the prevention or control of any such noise; and
- (h) appeals under Part IX.

20 **65.** (1) Without affecting the generality of the foregoing provisions of this Part, the regulations may make provision for or with respect to prohibiting, or providing for the suspension of, the registration under the Motor Traffic Act, 1909, of any motor vehicle that does not comply with
25 the regulations, and in particular may authorise or require a person or body to suspend the registration under that Act of a motor vehicle that does not so comply.

Regulations respecting the registration of motor vehicles.

(2) While the registration of a motor vehicle is suspended by or under the regulations, the vehicle shall be
30 deemed, for the purposes of this Act, the Motor Traffic Act, 1909, and any other Act, not to be registered under the Motor Traffic Act, 1909.

(3)

Noise Control.

5 (3) Nothing in this section or the regulations affects any power or duty (conferred or imposed by or under any other Act) of the Commissioner for Motor Transport or any other person or body to cancel or suspend the registration of a motor vehicle, the registration of which is suspended by or under the regulations.

66. The regulations may impose, for an offence against the regulations committed— Offences against the regulations.

10 (a) by a corporation—a penalty not exceeding \$2,500 and, in the case of a continuing offence, a further penalty not exceeding \$500 for each day the offence continues; or

15 (b) by any other person—a penalty not exceeding \$250 and, in the case of a continuing offence, a further penalty not exceeding \$50 for each day the offence continues.

67. (1) A regulation may— Provisions applicable to regulations.

(a) be of general application or limited in its application by reference to time, place or circumstances;

20 (b) be restricted in its application to any specified class of subject-matter or to all subject-matter other than that of a specified class; and

(c) differ in its application according to specified factors or circumstances.

25 (2) A regulation may authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body.

(3)

Noise Control.

(3) The regulations may prescribe standards or tests by reference to standards or tests specified in any work or document that has been published and is referred to in the regulations or by reference to any such standards or tests as amended in any manner specified in any such work or document or specified in the regulations.

PART IX.

APPEALS AND DISPUTES.

68. (1) Any person—

10 (a) who is an applicant for a licence or for the renewal or transfer of a licence, or a licensee, and who is aggrieved by any decision of the Commission with respect to his application or licence;

Appeals to
District
Court:
licences,
approvals,
notices.

15 (b) who is an applicant for the approval of the Commission under section 27 and who is aggrieved by the decision of the Commission with respect to his application;

(c) on whom—

20 (i) a noise control notice under Division 3 of Part V;

(ii) a noise control notice issued under Division 5 of Part V with respect to scheduled premises or with respect to scheduled premises and other premises; or

25 (iii) a notice under section 74,
has been served and who is aggrieved by the notice;
or

(d)

Noise Control.

(d) any person who is aggrieved by a decision that is made under the regulations by a person or body and that is a decision of a class prescribed for the purposes of this paragraph,

5 may, in accordance with the rules of the District Court made in that behalf, appeal to the District Court.

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

(a) the prescribed period ; or

10 (b) where the regulations do not prescribe a period—
twenty-one days,

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

15 (3) An appeal under this section shall be in the nature of a rehearing.

(4) The decision of the District Court in an appeal under this section shall be final and is binding on the appellant and person or body who or which made the decision
20 appealed against or issued the notice appealed against.

69. (1) Any person who is aggrieved by a noise abatement order may, in accordance with the rules of the District Court made in that behalf, appeal to the District Court.

Appeals to District Court: noise abatement orders.

(2)

Noise Control.

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

(a) the prescribed period ; or

5 (b) where the regulations do not prescribe a period—
twenty-one days,

after the day on which the order was made.

(3) An appeal under this section shall be in the nature of a rehearing.

10 (4) In an appeal under this section, the District
Court—

(a) may confirm or revoke the order appealed against ;
and

15 (b) if it revokes the order, may make any order that
the court appealed from could have made under
Part VI.

(5) An order made under subsection (4) (b) shall be deemed to be a noise abatement order made under Part VI.

(6) Part V of the Justices Act, 1902, does not apply to or in respect of a noise abatement order.

20 70. (1) Any person—

(a) on whom a noise control notice not referred to in section 68 (1) (c) has been served and who is aggrieved by the notice ; or

25 (b) who is aggrieved by a decision that is made under the regulations by a person or body and that is a decision of a class prescribed for the purposes of this paragraph,

may appeal to the court of petty sessions nearest to the place where that person ordinarily resides or carries on business.

Appeals to
courts of
petty
sessions.

(2)

Noise Control.

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

(a) the prescribed period ; or

5 (b) where the regulations do not prescribe a period—
twenty-one days,

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.

10 (3) An appeal under this section shall be in the nature of a rehearing.

(4) An appeal under this section shall be heard and determined by a court of petty sessions held before a stipendiary magistrate.

15 (5) The decision of the court in an appeal under this section shall be final and is binding on the appellant and the person or body who or which issued the notice appealed against or made the decision appealed against.

71. In any appeal under this Part the court may award **Costs.**
20 costs against any party.

72. (1) Where a dispute arises between the Commission **Disputes**
and a public authority or a person acting on behalf of the **between**
Crown with respect to any matter or thing against which an **Commis-**
appeal lies under this Part, the Commission or that authority **sion and**
or person may refer the dispute to the Premier for settlement, **public**
25 and the decision of the Premier on the dispute shall be given **authorities,**
effect to by the Commission and that authority or person. **etc.**

(2)

Noise Control.

(2) Where a dispute is settled by the Premier under subsection (1), the authority or person which or who was a party to the dispute is not entitled to appeal under this Part against the matter or thing to which the dispute related.

5

PART X.

MISCELLANEOUS.

73. (1) In this section, "alarm" means a burglar alarm ^{Burglar and other} or fire alarm, and includes any device (including a bell or siren) that is designed to give audible warning or audible ^{alarms.} notice of any act, matter or thing.

(2) Where a member of the police force is satisfied that an alarm has been sounding in or on any premises for a period of at least thirty minutes and that offensive noise is thereby being emitted from those premises, he may—

15 (a) enter those premises; and

(b) take all such steps as appear to him to be reasonably necessary for or in connection with stopping the alarm from sounding,

with the aid of such assistants as he considers necessary and 20 with the use of reasonable force.

(3) It is the duty of a member of the police force who has taken action under subsection (2) to cause such persons or authorities as appear to him to be appropriate in the circumstances to be promptly informed of the action so 25 taken.

(4)

Noise Control.

(4) Nothing in this section applies with respect to an alarm in a motor vehicle.

74. (1) The Commission may, by notice in writing served on any person, being— Power to require information.

- 5 (a) the occupier of any premises, other than a vessel;
- (b) the occupier or owner of any vessel; or
- (c) the owner of any plant or motor vehicle or any person in whose care, custody or control the plant or vehicle is for the time being,
- 10 require that person to furnish, in such manner as is specified in the notice, to it within fourteen days or such longer period as is specified in the notice, such information (including plans and specifications where appropriate)—
- 15 (d) in the case of a person referred to in paragraph (a) —as to any plant or motor vehicle in or on the premises;
- (e) in the case of a person referred to in paragraph (b) —as to any plant in or on the vessel; or
- 20 (f) in the case of a person referred to in paragraph (c) —as to the plant or motor vehicle,

as it requires by the notice.

(2) A local authority may, by notice in writing served on any person, being—

- 25 (a) the occupier of any premises, other than scheduled premises or vessels;

Noise Control.

(b) the occupier or owner of any vessel, other than a vessel being used or operating in navigable waters; or

5 (c) the owner of any plant or any person in whose care, custody or control the plant is for the time being,

require that person to furnish, in such manner as is specified in the notice, to it within fourteen days or such longer period as is specified in the notice, such information (including plans and specifications where appropriate)—

10 (d) in the case of a person referred to in paragraph (a) —as to any plant in or on the premises;

(e) in the case of a person referred to in paragraph (b) —as to any plant in or on the vessel; or

15 (f) in the case of a person referred to in paragraph (c) —as to the plant,

as it requires by the notice.

(3) The Maritime Services Board may, by notice in writing served on any person, being the occupier or owner of any vessel being used or operating in navigable waters, require
20 that person to furnish, in such manner as is specified in the notice, such information (including plans and specifications where appropriate) as to any plant in or on the vessel as it requires by the notice.

(4) A person shall not, without reasonable excuse,
25 neglect or fail to comply with any requirement made pursuant to this section.

Penalty: \$1,000.

(5)

Noise Control.

5 (5) Any statement made to the Commission, a local authority or the Maritime Services Board pursuant to any requirement made pursuant to this section shall not, if the person making the statement objected, at the time of making it, to doing so on the ground that it might tend to incriminate him, be admissible in evidence in any prosecution against him for any offence, not being the offence of neglecting or failing to comply with any requirement made pursuant to this section.

10 (6) A notice shall not be served under subsection (2) or (3) on the Crown, a person acting on behalf of the Crown, a public authority or a prescribed person or body.

75. A person shall not disclose any information obtained by him in connection with the administration or execution of this Act, unless the disclosure is made—

Disclosure of information.

15 (a) with the consent of the person from whom the information was obtained, or where the information relates to a manufacturing, industrial or trade process carried on in or on any premises, with the consent of the occupier of those premises;

20 (b) in connection with the administration or execution of this Act; or

(c) subject to section 74, for the purpose of any legal proceedings arising out of this Act or of any report of any such proceedings.

25 Penalty: \$1,000.

76. (1) An authorised officer may enter—

Powers of authorised officers.

30 (a) any premises used as a factory or any premises in which an industry or trade is being carried on, at any time during which any manufacturing, industrial or trade process is being carried on therein;

(b)

Noise Control.

(b) any premises, not being a dwelling-house or land used in connection therewith, from which he reasonably suspects that offensive noise is being or is likely to be emitted, at any time; and

5 (c) any other premises, at any reasonable time,

with the aid of such authorised officers or members of the police force as he considers necessary and with the use of reasonable force, and may therein—

10 (d) examine any noise control equipment or any plant or motor vehicles emitting or likely to emit noise;

15 (e) make such examination and inquiry and such tests as he considers necessary to ascertain whether the provisions of this Act or of any requirement, direction, order or notice made or given under or pursuant to this Act or the conditions in force and attached to any licence or approval under this Act are being or have been complied with; and

(f) take such photographs as he considers necessary in connection with the administration of this Act.

20 (2) An authorised officer may—

(a) by notice in writing, require—

25 (i) the occupier of any premises from which noise is being or is usually emitted to produce to that authorised officer any reports, books, plans, maps or documents relating to the emission from those premises of noise or relating to any manufacturing, industrial or trade process carried on in or on those premises; or

(ii)

Noise Control.

5 (ii) any local authority or public authority to produce to that authorised officer any reports, books, plans, maps or documents in the custody or possession of the local authority or public authority relating to any noise control equipment or any plant or motor vehicle that emits or may emit noise,

and may take copies of any such reports, books, plans, maps or documents; and

10 (b) require a person whom he suspects on reasonable grounds to be offending against this Act to state his full name and place of abode.

(3) Subsection (2) (a) (ii) only applies to an authorised officer who is a member or officer of the
15 Commission.

(4) Every authorised officer shall be provided with a certificate of his appointment, and on applying for admission to any premises which he is empowered by this Act to enter, shall, if requested to do so, produce the certificate to the
20 occupier of the premises.

(5) The Commission may, by notice in writing served on the occupier of any premises, require the occupier to provide such assistance and facilities (whether of the same kind as, or of a different kind from, those prescribed pursuant to section 64 (3) (d)) as are specified in the notice within such
25 time and in such manner as are specified therein, for the purpose of enabling an authorised officer to exercise his powers under this Act.

(6)

Noise Control.

(6) Any person—

- 5 (a) who wilfully delays or obstructs an authorised officer, or fails to comply with any requirement made under this section by an authorised officer, in the exercise of his powers under this Act;
- (b) who, in purported compliance with a requirement under subsection (2) (b), states a name that is not his name or a place of abode that is not his place of abode; or
- 10 (c) who, being the occupier of any premises—
- (i) refuses to permit or to assist an authorised officer to do, perform or carry out the matters or things, or any of the matters or things, which he is authorised to do, perform or carry out;
- 15 (ii) refuses to provide such assistance and facilities as may be prescribed for the purpose of enabling an authorised officer to exercise his powers under this Act; or
- 20 (iii) refuses to comply with a requirement under subsection (5),

is guilty of an offence against this Act and liable to a penalty not exceeding \$1,000.

(7) Nothing in this section affects section 61.

25 **77.** Any notice or other instrument issued, made or given Service of instruments. for the purposes of this Act may be served—

(a) by delivering it personally to the person to whom it is addressed;

(b)

Noise Control.

- (b) by delivering it to the place of abode or business of the person to whom it is addressed and by leaving it there with some person for him; or
- 5 (c) by posting it duly stamped and addressed to the person to whom it is addressed at the place last shown in the records of the Commission as his place of abode or business.

78. (1) In this section, "instrument" includes a notice. Evidence.

(2) Any instrument purporting to be an instrument
10 issued, made or given for the purposes of this Act (including subsection (4) or (5)) and to have been signed by the Director, an officer of the Commission authorised generally or specially by the Commission or the Director to do so, or a member or servant of a local authority or an officer or
15 employee of the Maritime Services Board duly authorised to do so, 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.

(3) Proof shall not, in the absence of evidence to the
20 contrary, be required of the appointment of the Director, any officer of the Commission, any servant of a local authority or any officer or employee of the Maritime Services Board.

(4) A document certified by the Director or by an officer of the Commission authorised generally or specially by
25 the Commission or the Director to do so to be a true copy of an instrument, being an instrument purporting—

(a) to be issued, made or given for the purposes of this Act; and

(b)

Noise Control.

- (b) to have been signed by the Director or an officer of the Commission authorised generally or specially by the Commission or the Director to do so,

is admissible in any proceedings under this Act as if it were
5 the original document of which it purports to be a copy.

(5) A certificate signed by the Director or by an officer of the Commission authorised generally or specially by the Commission or the Director to do so certifying any one or more of the following matters, that is to say—

- 10 (a) that an instrument, a copy of which is set out in the certificate, being an instrument purporting—

(i) to be issued, made or given for the purposes of this Act; and

- 15 (ii) to have been signed by the Director or an officer of the Commission authorised generally or specially by the Commission or the Director to do so,

was issued, made or given on a day specified in the certificate;

- 20 (b) that premises are within a part of the State to which a proclamation under section 17 relates, a copy of which proclamation is set out in the certificate;

- (c) that a person was, or was not, at a time or during a period so specified, the holder of a licence in
25 respect of premises so specified;

- (d) that a licence was, or was not, at a time or during a period so specified, subject to conditions so specified;

(e)

Noise Control.

- (e) that a licence was, at a time so specified, revoked, or suspended for a period so specified;
- (f) that a condition attached to a licence was, at a time so specified, revoked or varied;
- 5 (g) that a new condition was, at a time so specified, attached to a licence;
- (h) that an approval was, or was not, given under section 27 in relation to any matter so specified;
- 10 (i) that an approval under section 27 was, or was not, subject to conditions so specified;
- (j) that a register kept under this Act shows that premises so specified were, at a time or during a period so specified, within a classification referred to in the regulations and so specified;
- 15 (k) that a person was, or was not, at a time or during a period so specified, an authorised officer; or
- (l) that a person was, or was not, at a time or during a period so specified, an officer of the Commission,
- 20 is admissible in any proceedings under this Act and shall be prima facie evidence of the matters so certified.

(6) In proceedings for an offence against this Act, a certificate under subsection (5) that is admitted in evidence and that certifies that a person was, at a time or during a period specified in the certificate, the holder of a licence in
25 respect of premises so specified shall be accepted by the court as evidence of the truth of an allegation, in the information in respect of the offence, that—

- (a) that person was, at that time or during that period, the occupier of those premises; and

(b)

Noise Control.

- (b) those premises were, at that time or during that period, scheduled premises,

unless the contrary is proved or unless it is proved that that person was not, at that time or during that period, the holder
5 of a licence in respect of those premises.

(7) In proceedings for an offence against this Act, evidence that a register kept under this Act shows that premises were, at a time or during a period, within a classification referred to in the regulations and specified in the register shall
10 be accepted by the court as evidence of the truth of an allegation, in the information in respect of the offence, that those premises were, at that time or during that period, within that classification, unless the contrary is proved.

79. Any person who—**Offences.**

- 15 (a) fails to comply with any of the provisions of this Act, other than the regulations;
- (b) being a licensee, does not comply with any condition or prohibition in force and attached to the licence held by him under this Act;
- 20 (c) fails to comply with any condition subject to which an approval is granted by the Commission; or
- (d) neglects or fails to comply with any requirement made under or pursuant to this Act,

is guilty of an offence against this Act.

80.

Noise Control.

80. Any person guilty of an offence against this Act, other than the regulations, shall, where no other penalty is expressly provided, be liable—

- 5 (a) where the offence was committed by a corporation —to a penalty not exceeding \$5,000 and, in the case of a continuing offence, to a further penalty not exceeding \$1,000 for each day the offence continues; or
- 10 (b) where the offence was committed by any other person—to a penalty not exceeding \$500 and, in the case of a continuing offence, to a further penalty not exceeding \$100 for each day the offence continues.

81. Where any person has been convicted of an offence against this Act, the court by which he is convicted—

Power to order contravention to be remedied.

- 15 (a) in addition to imposing a penalty for the offence, may order that person to take such steps within such time as may be specified in the order to prevent the continuance or recurrence of the offence; and
- (b) may enlarge the time so specified,
- 20 and if, upon the expiration of the time originally specified or so enlarged, the order has not been complied with, the person so convicted is guilty of an offence against this Act.

82. (1) Proceedings for an offence against this Act may be taken before a court of petty sessions or before the Supreme Court in its summary jurisdiction.

Proceedings for offences.

(2)

Noise Control.

(2) Subject to subsection (3), proceedings for an offence against this Act (other than an offence arising under Part VI or VII) shall not be instituted without the written consent of the Minister or of such member or officer of the Commission as may be authorised by the Minister for the purposes of this subsection.

(3) Subsection (2) does not apply to the institution—

10 (a) by a member or officer of the Commission of proceedings for an offence if the proceedings are instituted with the consent of the Commission or with the written consent of such member or officer of the Commission as may be authorised by the Commission for the purposes of this paragraph;

15 (b) by a servant of a local authority of proceedings for an offence if—

20 (i) the offence was not committed in respect of or in relation to scheduled premises or vessels being used or operating in navigable waters; and

25 (ii) the proceedings are instituted with the consent of the local authority or with the written consent of such member or servant of the local authority as may be authorised by the local authority for the purposes of this paragraph; or

(c) by an officer or employee of the Maritime Services Board of proceedings for an offence if—

30 (i) the offence was committed in respect of or in relation to a vessel being used or operating in navigable waters; and

(ii)

Noise Control.

5 (ii) the proceedings are instituted with the consent of that Board or with the written consent of such member or officer or employee of that Board as may be authorised by that Board for the purposes of this paragraph.

(4) If proceedings in respect of an offence against this Act are brought in a court of petty sessions, the maximum penalty that the court may impose in respect of the offence is, 10 notwithstanding any other provision of this Act, \$2,000 (including any daily penalty) or the maximum penalty provided by this Act in respect of the offence, whichever is the lesser.

(5) If proceedings in respect of an offence against this Act are brought in the Supreme Court in its summary 15 jurisdiction, the Supreme Court may impose a penalty not exceeding the maximum penalty provided by this Act in respect of the offence.

(6) Proceedings in the Supreme Court in its summary jurisdiction in respect of an offence against this Act 20 may, except as provided in section 27, only be commenced within six months after the offence was committed.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1975
[64c]

Section 10

(1) The purpose of this section is to ensure that the Commission is satisfied that the person concerned is fit to hold the position in the public service.

2

(2) If the Commission is satisfied that the person concerned is fit to hold the position in the public service, it may, subject to the provisions of this section, recommend the person for appointment to the position.

(3) The Commission may, if it is satisfied that the person concerned is fit to hold the position in the public service, recommend the person for appointment to the position on a temporary basis.

(4) Any recommendation made by the Commission under this section shall be subject to the approval of the Minister.

NOISE CONTROL BILL, 1975

EXPLANATORY NOTE

THE object of this Bill is to prevent, regulate or minimise, and to provide means of preventing, regulating or minimising, the emission of noise in various circumstances.

The Bill contains the following provisions :—

I. Part I of the Bill deals with preliminary matters, as follows :—

1. Clause 1 specifies the short title.
2. Clause 2 provides for the commencement of the proposed Act.
3. Clause 3 sets out the Parts and Divisions of the Bill.
4. Clause 4 is an interpretation provision and, in particular, defines "noise" so as to include vibration and "offensive noise" as noise that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances, is likely to be harmful, to be offensive or to interfere unreasonably with comfort or repose.
5. Clause 5 provides that the Crown is bound by the proposed Act, except as otherwise provided.
6. Clause 6 provides that the provisions of the proposed Act prevail in the event of an inconsistency with the provisions of any other Act other than the State Pollution Control Commission Act, 1970.
7. Clause 7 preserves other remedies.
8. Clause 8 provides that the powers conferred on a local authority (which is principally the council of a city, municipality or shire) are not exercisable by it outside its area.
9. Clause 9 provides that the powers of an authorised officer appointed under the proposed Act may be limited by the terms of his appointment.
10. Clause 10 provides for the insertion, amendment or substitution of a schedule to the proposed Act by proclamation published in the Gazette. Such a proclamation is to be laid before both Houses of Parliament and is disallowable by either House. The schedule is to contain descriptions of classes of premises; premises of such a class are "scheduled premises" for the purposes of the proposed Act.

II. Part II of the Bill deals with the constitution of a Noise Advisory Committee, as follows :—

1. Clause 11 provides for the Committee, which is to consist of 12 members appointed by the Governor.
2. Clause 12 provides that the members of the Committee hold office for 3 years.
3. Clause 13 deals with casual vacancies.
4. Clause 14 deals with meetings of the Committee.
5. Clause 15 authorises the appointment of sub-committees.
6. Clause 16 specifies the functions of the Committee, which are to make (either of its own initiative or pursuant to a request) recommendations to the State Pollution Control Commission (hereafter referred to as "the Commission").

III. Part III of the Bill contains special provisions relating to scheduled premises, as follows:—

1. Clause 17 provides for the proclamation of parts of the State for the purposes of Part III.
2. Clause 18 requires scheduled premises in proclaimed parts of the State to be licensed.
3. Clause 19 provides for applications for licences.
4. Clause 20 enables the Commission to grant licences for scheduled premises or to refuse licences and empowers the Commission to attach conditions to licences.
5. Clause 21 specifies that a licence or renewal remains in force for one year.
6. Clause 22 requires the Commission to keep registers of licences.
7. Clause 23 provides for licence fees.
8. Clause 24 empowers the Commission to require applicants for licences to furnish information.
9. Clause 25 provides that clauses 26 and 27 apply to scheduled premises whether or not those premises are in a proclaimed part of the State.
10. Clause 26 requires the occupier of scheduled premises to maintain noise control equipment efficiently and to operate it properly and efficiently, and also requires him to process, handle, move or store materials properly and efficiently.
11. Clause 27 requires certain works to be carried out in scheduled premises only with the approval of the Commission, and forbids work to be carried out without such an approval on other premises if the carrying out of the work would convert the premises into scheduled premises.

IV. Part IV of the Bill prohibits the sale of certain articles, as follows :—

1. Clause 28 prohibits the sale of a prescribed article if, when in use, it emits noise in excess of the prescribed level.
2. Clause 29 forbids the sale of a prescribed article unless fitted with prescribed noise control equipment.
3. Clause 30 provides that it is a defence for an offence under Part IV if the defendant proves that he sold the article in the course of his employment.

V. Part V of the Bill provides for the issue of various noise control notices, as follows :—

1. Clauses 31 and 32 are interpretation provisions.
2. Clause 33 empowers the Commission, an authorised officer or a prescribed person to issue a noise control notice to a person prohibiting the use of articles emitting more than the prescribed level of noise.
3. Clause 34 requires compliance with a noise control notice under clause 33.
4. Clause 35 provides for the issue of certificates of compliance, which provide a defence for an offence for failure to comply with a noise control notice under clause 33
5. Clause 36 empowers the Commission to issue a noise control notice to the occupier of scheduled premises—
 - (a) prohibiting him from carrying on any specified activity, or using any specified article, so as to cause the emission of more than the prescribed level of noise;
 - (b) requiring him to carry out certain work on the premises; and
 - (c) requiring him to operate noise control equipment in accordance with specified directions.
6. Clause 37 requires compliance with a noise control notice under clause 36.
7. Clause 38 provides that the operation of a noise control notice under clause 36 is suspended pending appeal action.
8. Clause 39 is an interpretation provision.
9. Clause 40 empowers the Commission, an authorised officer, a local authority (except in relation to vessels) and the Maritime Services Board (in relation to vessels) to issue a noise control notice warning the occupier of premises (other than scheduled premises) against carrying on a trade, industry or process, or using an article, if he does so in contravention of specified conditions and if thereby he causes offensive noise.
10. Clause 41 makes it an offence to emit an offensive noise from premises in contravention of conditions referred to in clause 40.
11. Clause 42 provides that the operation of a noise control notice under clause 40 is suspended pending appeal action.

12. Clause 43 permits only the Commission to issue a noise control notice under clause 40 in relation to a public place or prescribed premises.

13. Clause 44 is an interpretation provision.

14. Clause 45 empowers the Commission, an authorised officer, a local authority (except in relation to scheduled premises and vessels) or the Maritime Services Board (in relation to vessels) to issue a noise control notice warning a person against carrying on a trade, industry or process, or using an article, at specified times if thereby he causes offensive noise.

15. Clause 46 makes it an offence to fail to comply with a noise control notice under clause 45 if offensive noise is thereby emitted.

16. Clause 47 permits only the Commission to issue a noise control notice under clause 45 in relation to a public place or prescribed premises and provides that a notice issued by a local authority or its servant has no force between 6 a.m. and 9 p.m. on any day.

17. Clause 48 permits only the Commission to issue a noise control notice under Part V in so far as it applies to the Crown or a public authority or affects any sporting activity or prescribed activity.

18. Clause 49 provides for the expiry of noise control notices.

19. Clause 50 provides for the revocation of noise control notices.

VI. Part VI of the Bill deals with noise abatement orders, as follows:—

1. Clause 51 is an interpretation provision.

2. Clause 52 empowers a court of petty sessions, on complaint by a person alleging that the occupation of his premises is affected by offensive noise, to make a noise abatement order directing the abatement of the noise or forbidding a recurrence of the noise.

3. Clause 53 imposes a maximum penalty of \$500 for non-compliance with a noise abatement order.

4. Clause 54 provides that a noise abatement order has no force in so far as it applies to the Crown or a public authority or affects any sporting activity or prescribed activity.

5. Clause 55 provides for the coming into operation of a noise abatement order.

6. Clause 56 provides for the revocation of a noise abatement order.

7. Clause 57 enables costs to be awarded in proceedings for a noise abatement order.

VII. Part VII of the Bill provides for the giving of noise abatement directions, as follows:—

1. Clause 58 is an interpretation provision.

2. Clause 59 empowers an authorised officer or member of the police force to give a noise abatement direction—

- (a) directing a person whom he believes to be the occupier of premises to cause the emission of offensive noise to cease; or
- (b) directing any person to cease making, or contributing to the making of, offensive noise emitted from any premises.

3. Clause 60 provides a maximum penalty of \$500 if a person fails to comply with a noise abatement direction, or causes, or makes or contributes to, the emission of offensive noise within 6 hours after the giving of the direction.

4. Clause 61 empowers an authorised officer or member of the police force to enter premises and require a person to give his name and address, and the name and address of the occupier of the premises, for the purpose of enabling him to give a noise abatement direction.

5. Clause 62 provides that a noise abatement direction has no force in so far as it applies to the Crown or a public authority or affects any sporting activity or prescribed activity and also provides that a direction has no force between 6 a.m. and 9 p.m. on any day unless given by a member or officer of the Commission.

6. Clause 63 provides for the revocation of a noise abatement direction.

VIII. Part VIII of the Bill deals with the making of regulations, as follows :—

1. Clause 64 empowers the Governor to make regulations, in particular for prohibiting or regulating the making or emission of noise in certain respects.

2. Clause 65 authorises regulations to be made prohibiting or suspending the registration of a motor vehicle under the Motor Traffic Act, 1909.

3. Clause 66 authorises the prescribing of penalties for breaches of the regulations, not exceeding \$2,500 (and \$500 per day) if committed by a corporation or \$250 (and \$50 per day) if committed by any other person.

4. Clause 67 empowers regulations to be made applying differentially, authorising matters to be determined by specified persons and adopting published standards.

IX. Part IX of the Bill provides for appeals and disputes, as follows:—

1. Clause 68 provides for appeals to the District Court against decisions relating to licences, approvals and certain noise control notices.

2. Clause 69 provides for appeals to the District Court against noise abatement orders.

3. Clause 70 provides for appeals to courts of petty sessions against noise control notices in respect of which appeals may not be made to the District Court.

4. Clause 71 empowers the court to award costs in an appeal.

5. Clause 72 deals with disputes arising between the Commission and a public authority or a person acting on behalf of the Crown.

X. Part X of the Bill contains miscellaneous provisions, as follows:—

1. Clause 73 empowers a member of the police force who is satisfied that a burglar alarm, fire alarm or other alarm has been sounding in any premises (but not in a motor vehicle) for at least 30 minutes, and that offensive noise is thereby being emitted, to enter those premises and stop the alarm from sounding.

2. Clause 74 empowers the Commission, a local authority or the Maritime Services Board to require a person to furnish information in relation to plant, motor vehicles and vessels.

3. Clause 75 prohibits disclosure of information obtained in connection with the administration of the proposed Act, except in certain circumstances.

4. Clause 76 relates to the powers of authorised officers, and in particular empowers an authorised officer to enter premises.

5. Clause 77 relates to the service of instruments for the purposes of the proposed Act.

6. Clause 78 is an evidentiary provision.

7. Clause 79 creates certain general offences.

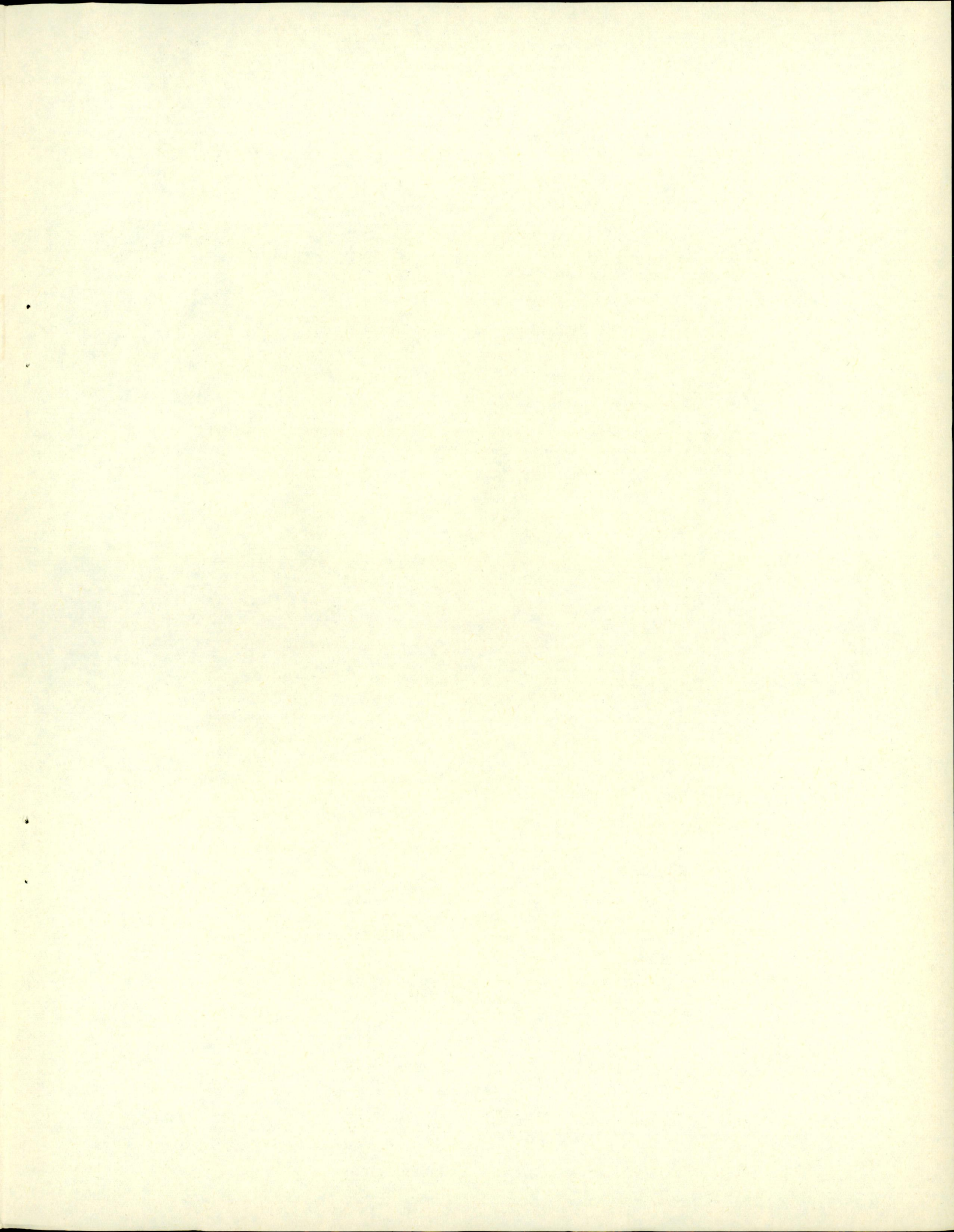
8. Clause 80 provides that a person guilty of an offence against the proposed Act is, where no other penalty is provided, liable—

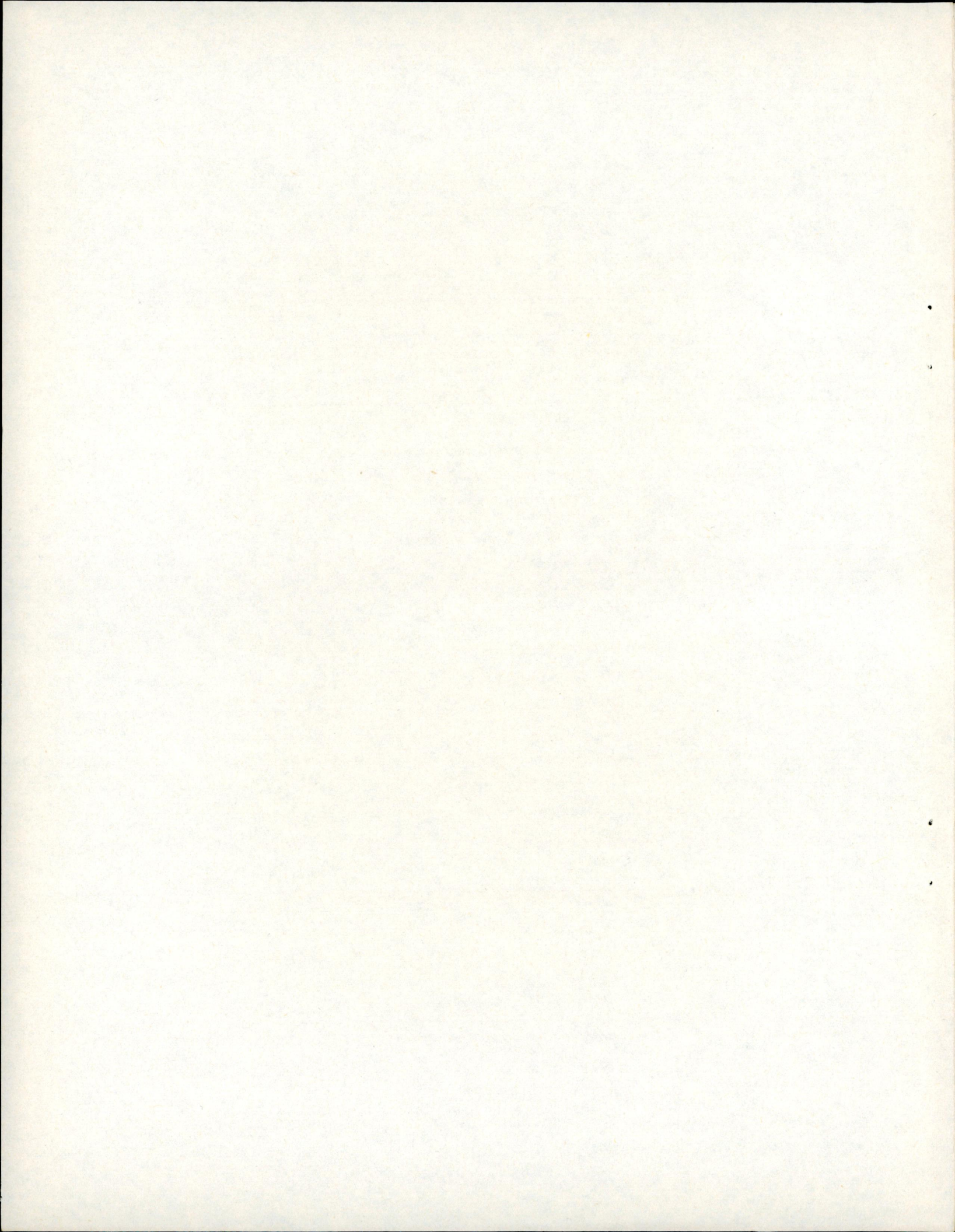
(a) if committed by a corporation—to a penalty not exceeding \$5,000 and a daily penalty not exceeding \$1,000; or

(b) if committed by any other person—to a penalty not exceeding \$500 and a daily penalty not exceeding \$100.

9. Clause 81 empowers a court convicting a person of an offence against the proposed Act to order him to take steps to prevent the continuance or recurrence of the offence.

10. Clause 82 enables proceedings for offences to be taken before a court of petty sessions or before the Supreme Court in its summary jurisdiction, and limits to \$2,000 the maximum penalty that may be recovered in a court of petty sessions.





No. , 1975.

A BILL

Relating to the prevention, minimising and abatement of noise and vibrations; to constitute a Noise Advisory Committee; to confer and impose powers, authorities, duties and functions relating to the control of noise and vibrations on the State Pollution Control Commission, the Maritime Services Board of New South Wales, councils and certain other persons; and for purposes connected therewith.

[MR WILLIS *on behalf of* SIR CHARLES CUTLER—
13 March, 1975.]

BE

Noise Control.

5 **B**E 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:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Noise Control Act, Short title. 1975".

10 2. (1) This section and sections 1 and 3 shall commence Commence-
on the date of assent to this Act. ment.

(2) Except as provided in subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and
15 as may be notified by proclamation published in the Gazette.

3. This Act is divided as follows:— Division
of Act.

PART I.—PRELIMINARY—*ss.* 1–10.

PART II.—NOISE ADVISORY COMMITTEE—*ss.* 11–16.

PART III.—SCHEDULED PREMISES—*ss.* 17–27.

20 DIVISION 1.—*Licensing provisions*—*ss.* 17–24.

DIVISION 2.—*Other provisions*—*ss.* 25–27.

PART IV.—PROHIBITION OF SALE OF ARTICLES—*ss.*
28–30.

PART

Noise Control.

PART V.—NOISE CONTROL NOTICES—*ss.* 31–50.

DIVISION 1.—*Preliminary—s.* 31.

DIVISION 2.—*Noise control notices relating to articles, irrespective of where used—ss.* 32–35.

5 DIVISION 3.—*Noise control notices relating to scheduled premises—ss.* 36–38.

DIVISION 4.—*Noise control notices relating to premises other than scheduled premises—ss.* 39–43.

10 DIVISION 5.—*Noise control notices relating to times—ss.* 44–47.

DIVISION 6.—*General provisions—ss.* 48–50.

PART VI.—NOISE ABATEMENT ORDERS—*ss.* 51–57.

15 PART VII.—NOISE ABATEMENT DIRECTIONS—*ss.* 58–63.

PART VIII.—REGULATIONS—*ss.* 64–67.

PART IX.—APPEALS AND DISPUTES—*ss.* 68–72.

PART X.—MISCELLANEOUS—*ss.* 73–82.

SCHEDULE.

20 4. (1) In this Act, except in so far as the context or Interpretation.
subject-matter otherwise indicates or requires—

“article” means any plant, motor vehicle, article or thing of any description whatever;

25 “authorised officer” means a person authorised in writing by the Commission;

“Commission” means the State Pollution Control Commission;

“Committee”

Noise Control.

“Committee” means the Noise Advisory Committee constituted under section 11;

“court of petty sessions” means a court of petty sessions held before a stipendiary magistrate sitting alone;

5 “Director” means the Director of the Commission;

“information”, when used in relation to an offence, includes an application referred to in section 4 of the Supreme Court (Summary Jurisdiction) Act, 1967;

10 “level”, in relation to noise, includes the volume or intensity of the noise;

“licence” means a valid and unexpired licence issued under this Act, whether it is an original or a renewed licence;

15 “licensee” means the person to whom a licence is granted or transferred under this Act;

20 “local authority” means the council of a city, municipality or shire, and includes a person appointed under the Public Health Act, 1902, to be a local authority for the purposes of that Act;

“Maritime

Noise Control.

“Maritime Services Board” means the Maritime Services Board of New South Wales;

5 “motor vehicle” means any motor car, motor carriage, motor cycle, motor omnibus, motor lorry or other vehicle propelled wholly or partly by any volatile spirit, steam, electricity, gas, or oil, or by any means other than human or animal power, but does not include a railway locomotive;

10 “navigable waters” means navigable waters within the meaning of the Maritime Services Act, 1935;

“noise” includes sound and vibration;

“noise abatement direction” means a direction under Part VII;

15 “noise abatement order” means an order under section 52;

“noise control equipment” means—

(a) any apparatus or device used for the purposes of preventing or limiting the emission of noise; or

20 (b) any apparatus or device used for indicating or recording the emission of noise or for giving warning of the excessive emission of noise,

25 and includes any apparatus or device which, though not so used, is, or would, if properly maintained and operated, be, capable (without modification) of being so used;

30 “noise control notice” means a notice under Part V, but does not include a notice under section 36 (4) or 50;

“occupier”,

Noise Control.

5 “occupier”, in relation to any premises, means the person in occupation or control of the premises and, in relation to any premises where different parts are occupied or controlled by different persons, means, in relation to any such part, the person in occupation or control of that part;

10 “offensive noise” means noise that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances, is likely—

- 10 (a) to be harmful to;
- (b) to be offensive to; or
- (c) to interfere unreasonably with the comfort or repose of,

persons who are—

- 15 (d) if the noise is made in premises that are not a public place—outside those premises; or
 - (e) if the noise is made in premises that are a public place—within or outside those
- 20 premises;

“plant” means any plant, equipment, apparatus, device, machine or mechanism, and includes any vessel, dredge, railway locomotive or crane, but does not include a motor vehicle;

25 “premises” includes place (including public place) and vessel;

“public authority” means—

- (a) a public authority constituted by or under any Act;
- 30 (b) a Government Department; or
- (c) a person or body prescribed for the purposes of this paragraph,

but

Noise Control.

but does not include—

- (d) a local authority or a county council; or
- (e) a person or body prescribed for the purposes of this paragraph;

5 “public place” includes—

(a) a public road or a public reserve, as respectively defined in section 4 of the Local Government Act, 1919; and

10 (b) a place that is open to the public, or is used by the public, whether or not on payment of money or other consideration, whether or not the place is ordinarily so open or used, and whether or not the public to whom the place is so open, or by whom the place is so used, consists only of a limited class of persons;

“regulations” means regulations made under this Act;

“scheduled premises” means any premises of a class for the time being described in the Schedule;

20 “sell”, in relation to an article, means sell, exhibit or offer for sale, or conduct negotiations for the sale of, the article;

“this Act” includes the regulations;

“trade” includes commercial undertaking;

25 “vessel” means ship, lighter, barge, boat, craft, or vessel of whatever description and however navigated.

(2) In this Act, a reference (however expressed) to making or emitting noise includes a reference to causing, permitting or allowing the making or emission of noise.

Noise Control.

5. Except as provided by this Act, this Act binds the Act binds Crown.
Crown.

6. (1) Subject to subsection (2), nothing in this Act Effect of this Act on other Acts.
affects any of the provisions of any other Act, or any regu-
5 lations, ordinances or by-laws thereunder, or takes away any
powers vested in any person or body by any other Act, or
any regulations, ordinances or by-laws made under any other
Act.

(2) Where the provisions of this Act (other than the
10 regulations) are inconsistent with any of the provisions of
any other Act or any regulation, ordinance or by-law made
under any other Act (other than the State Pollution Control
Commission Act, 1970, or any regulation thereunder), the
provisions of this Act (other than the regulations) shall
15 prevail.

(3) Where the provisions of any regulation made
under this Act are inconsistent with any of the provisions of
any regulation, ordinance or by-law made under any other
Act (other than a regulation made under the State Pollution
20 Control Commission Act, 1970), the provisions of the
regulation made under this Act shall prevail.

7. (1) The provisions of this Act do not limit or affect Effect of this Act on other rights, etc.
any right, remedy or proceeding under any other Act or
law.

25 (2) No proceedings taken under this Act interfere
with or lessen any right or remedy under any other Act or
law, but no person is, by virtue of this subsection, liable to be
punished twice for the same offence.

Noise Control.

8. The powers, authorities, duties and functions conferred or imposed on a local authority by or under this Act may only be exercised or performed—

Exercise or performance of local authority's powers, etc.

- 5 (a) in relation to a city, municipality or shire—by the council thereof; or
- (b) in relation to a district for which a person is appointed under the Public Health Act, 1902, to be a local authority for the purposes of that Act—by that person.

10 9. Where the authorisation of a person as an authorised officer is given subject to conditions, limitations and restrictions or only for limited purposes, nothing in this Act authorises or requires that person to act as an authorised officer in contravention of those conditions, limitations or

15 restrictions or for purposes other than those purposes, as the case may be.

Exercise or performance of authorised officer's powers, etc.

10. (1) The Governor may, by proclamation published in the Gazette, amend this Act by inserting at the end of this Act a Schedule containing matter describing classes of

20 premises.

Insertion, amendment or substitution of Schedule.

(2) The Governor may, by proclamation published in the Gazette, amend the Schedule—

- (a) by omitting therefrom matter describing a class of premises; or
- 25 (b) by inserting therein matter describing a class of premises.

(3) The Governor may, by proclamation published in the Gazette, amend this Act by omitting the Schedule and by inserting instead a Schedule containing matter describing

30 classes of premises.

(4)

Noise Control.

(4) A proclamation published under this section shall be laid before each House of Parliament within fourteen sitting days of that House after the date of publication.

5 (5) If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after a proclamation referred to in subsection (4) has been laid before it, disallowing the proclamation or any part thereof, the proclamation or part thereupon ceases to have effect.

10 (6) For the purposes of subsections (4) and (5), sitting days shall be counted, whether or not they occur during the same session.

(7) In this section, "premises" does not include any vessel.

15

PART II.

NOISE ADVISORY COMMITTEE.

11. (1) For the purposes of this Act there shall be constituted a Noise Advisory Committee which shall consist of twelve members. Constitution of the Committee.

20 (2) The members of the Committee shall be appointed by the Governor and shall consist of—

- (a) two persons, each of whom is a member of the Commission nominated by the Commission or an officer of the Commission so nominated;
- 25 (b) a member of the Health Commission of New South Wales nominated by that Commission or an officer of that Commission so nominated;
- (c) an officer of the Department of Motor Transport nominated by the Minister for Transport;

(d)

Noise Control.

- (d) an officer of the Department of Mines nominated by the Minister for Mines;
- (e) an officer of the Department of Labour and Industry nominated by the Minister for Labour and Industry;
- 5 (f) a person nominated by the Local Government Association of New South Wales;
- (g) a person nominated by the Shires Association of New South Wales; and
- 10 (h) four persons nominated by the Minister, being persons having such professional and technical qualifications as the Minister considers appropriate.

(3) One of the persons referred to in subsection (2) (a) shall, in and by the instrument of his appointment or a subsequent instrument executed by the Governor, be 15 appointed as the Chairman of the Committee.

(4) Any nomination of a member of the Committee shall be made within the time and in the manner prescribed and in default of any person or body entitled to make any such nomination doing so within that time and in that man- 20 ner the Governor may appoint any person to the Committee as if that person had been duly nominated by the person or body entitled to make the nomination.

(5) Every member of the Committee shall be entitled to receive such travelling and other expenses, and every mem- 25 ber referred to in subsection (2) (f), (g) and (h) shall, if the Minister so approves, be entitled to receive such fees for attending meetings and transacting business of the Committee, and making inspections for the purposes of this Act, as the Minister may from time to time determine in respect of that 30 member.

(6) The office of a member of the Committee shall not, by reason of the member's accepting or receiving any expenses or fees to which he is entitled under subsection (5), be deemed to be an office of profit under the Crown for the 35 purposes of the Constitution Act, 1902.

(7)

Noise Control.

(7) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment of any member of the Committee, and any such member shall not, in his capacity as such a member, be subject to the provisions of that Act during his term of office.

12. The members of the Committee shall, subject to this Part, hold office for a period of three years and shall, if otherwise qualified, be eligible for reappointment.

13. (1) On the occurrence of a vacancy in the office of a member of the Committee otherwise than by the expiration of the term for which he was appointed, the Governor may appoint a person to fill the vacant office so that the Committee is constituted as provided by section 11 (2).

(2) A person appointed under subsection (1) shall, subject to this Part, hold office for the balance of his predecessor's term of office.

(3) A member of the Committee shall be deemed to have vacated his office if he—

(a) dies;

(b) resigns his office by writing under his hand addressed to the Minister;

(c) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;

(d) is removed from office under subsection (4); or

(e) being—

(i) a person referred to in section 11 (2) (a) or (b)—ceases to be a member or officer of the body referred to therein; or

(ii)

Noise Control.

(ii) a person referred to in section 11 (2) (c), (d) or (e)—ceases to be an officer of the department referred to therein.

5 (4) The Governor may remove from office, for any cause which appears to him sufficient, any member of the Committee.

14. (1) The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall, subject to the regulations, be as determined by the 10 Committee. Meetings of the Committee.

(2) The Chairman of the Committee shall preside at all meetings of the Committee at which he is present, and in his absence the members of the Committee present shall appoint one of their number to preside at that meeting during 15 the Chairman's absence.

(3) The person entitled to preside at any meeting of the Committee shall have a deliberative vote, and, in the event of an equality of votes, shall have a second or casting vote.

20 (4) Seven members of the Committee shall form a quorum at any meeting of the Committee and any duly convened meeting of the Committee at which a quorum is present shall be competent to transact any business of the Committee.

25 (5) Questions arising at a meeting of the Committee shall be determined by a majority of votes of the members present and voting.

15. (1) The Committee may establish sub-committees Sub-committees. for the purpose of advising the Committee upon such matters within the scope of the Committee's functions as may be 30 referred to the sub-committees by the Committee.

(2)

Noise Control.

(2) A person may be appointed to a sub-committee whether or not he is a member of the Committee.

(3) A sub-committee may exercise and discharge such of the Committee's powers, authorities, duties and
5 functions as may be delegated to it by the Committee.

(4) Notwithstanding any such delegation, the Committee may continue to exercise and discharge any of the powers, authorities, duties and functions so delegated.

(5) The Committee may at any time revoke any
10 such delegation, either wholly or in part.

(6) Every member of a sub-committee shall be entitled to receive such travelling and other expenses and, if the Minister so approves, such fees for attending meetings and transacting business of the sub-committee, and making
15 inspections for the purposes of this Act, as the Minister may from time to time determine in respect of that member.

(7) The office of a member of a sub-committee shall not, by reason of the member's accepting or receiving any expenses or fees to which he is entitled under subsection (6), be deemed to be an office of profit under the Crown
20 for the purposes of the Constitution Act, 1902.

16. It is the duty of the Committee to make recommendations to the Commission in respect of matters referred to it by the Commission, and the Committee may initiate and
25 refer to the Commission recommendations, relating to—

- (a) the administration of this Act;
- (b) making, altering or repealing any regulation; and
- (c) the prevention, control or abatement of noise.

PART

Noise Control.

PART III.

SCHEDULED PREMISES.

DIVISION 1.—*Licensing provisions.*

17. (1) This Division applies to a part of the State specified in a proclamation under subsection (2). Application of Division.

(2) The Governor may, by proclamation published in the Gazette, declare that this Division applies to any part of the State specified in the proclamation.

18. (1) A person who is the occupier of any scheduled premises in a part of the State to which this Division applies and who is not the holder of a licence issued in respect of those premises is guilty of an offence against this Act. Scheduled premises to be licensed.

(2) Where premises are, at the time when this Division is applied to the part of the State in which those premises are situated, scheduled premises, subsection (1) does not apply to the occupier of those premises until—

- (a) the expiration of the prescribed period after this Division is so applied; or
- (b) the application (if any) made within that period by the occupier for a licence in respect of those premises has been finally determined,

whichever is the later.

(3) Where, by reason of the coming into force of a proclamation under section 10, premises become scheduled premises at the time the proclamation comes into force, subsection (1) does not apply to the occupier of those premises until—

- (a) the expiration of the prescribed period after the proclamation comes into force; or

(b)

Noise Control.

- (b) the application (if any) made within that period by the occupier for a licence in respect of those premises has been finally determined,

whichever is the later.

5 (4) Where a person becomes the occupier of scheduled premises and immediately before he became the occupier of the premises they were occupied by a person who was the holder of a licence in respect of those premises, subsection (1) does not apply to that firstmentioned person
10 until—

- (a) the expiration of the prescribed period after he became the occupier of the premises; or

(b) the application (if any) made within that period by him for the transfer to him of the licence has
15 been finally determined,

whichever is the later.

19. (1) An application for a licence or for the renewal or transfer of a licence shall be made to the Commission in or to the effect of the prescribed form, and shall be
20 accompanied by the prescribed fee. Applications for licences.

(2) An application for the renewal of a licence shall be made within the prescribed time before the licence would expire if not renewed.

(3) An application for the transfer of a licence shall
25 be made with the consent of the holder of the licence.

20. (1) The Commission— Licences.

- (a) may grant any application for a licence or for the renewal or transfer of a licence, either subject to conditions or unconditionally; or

30 (b) may refuse any such application.

(2)

Noise Control.

(2) The Commission may, during the currency of a licence, by notice in writing served on the holder of the licence—

- 5 (a) revoke the licence or suspend it for such period expiring not later than the date of expiry of the licence as the Commission thinks fit;
- (b) revoke or vary any condition attached to the licence; or
- (c) attach new conditions to the licence.

10 (3) In exercising its powers under this section, the Commission shall have regard to the level, nature, character and quality of, and the times at which, noise is or is likely to be emitted from the premises to which the application or the licence, as the case may require, relates.

15 (4) The refusal of an application, the revocation or suspension of a licence, the revocation or variation of any condition attached to a licence or the attaching of a condition to a licence, under this section, has no force—

- 20 (a) until the time limited for appealing against the Commission's decision has expired; and
- (b) where within that time an appeal against the decision has been made under this Act, until the District Court confirms the decision.

21. Subject to this Division—

- 25 (a) an original licence remains in force for a period of one year from the date of its issue; and
- (b) a renewed licence remains in force until the expiration of the period of one year specified in the renewal.

Dura-
tion of
licences.

30 **22.** The Commission shall cause to be kept such registers of licences as may be prescribed.

Regis-
ters of
licences.

Noise Control.

23. (1) The fee prescribed for a licence shall not exceed Fees.
\$3,000.

(2) Without affecting the generality of section 67
(1), different fees may be prescribed for the purposes of sub-
5 section (1) according to specified factors or circumstances.

(3) Where the Commission is satisfied that the noise
from any scheduled premises would not be such as to warrant
the payment of the prescribed fee, the Commission may, upon
the application of the occupier of those premises, remit in
10 whole or in part the fee payable under this Division in respect
of the premises.

24. The Commission may, by notice in writing served on
an applicant for a licence, require the applicant to furnish to
the Commission such information and such plans and speci-
15 fications as the Commission considers necessary and relevant
to the application and specifies in the notice. Require-
ment to
furnish
informa-
tion, etc.

DIVISION 2.—*Other provisions.*

25. This Division applies to and in respect of scheduled
premises, whether or not those premises are within a part of
20 the State to which Division 1 applies. Applica-
tion of
Division.

26. (1) The occupier of any scheduled premises shall
maintain any noise control equipment installed in or on those
premises in an efficient condition and shall operate that
equipment in a proper and efficient manner. Occupiers
to main-
tain and
operate
noise
control
equip-
ment, etc.

25 (2) The occupier of any scheduled premises who
operates any plant (other than noise control equipment) in
or on those premises in such a manner as to cause or increase

the

Noise Control.

the emission of noise from those premises is guilty of an offence if the noise so caused or increased, or any part thereof, is caused by reason of his failure—

- (a) to maintain that plant in an efficient condition; or
- 5 (b) to operate that plant in a proper and efficient manner.

(3) The occupier of any scheduled premises who processes, handles, moves or stores any materials in such a manner as to cause or increase the emission of noise from
10 those premises is guilty of an offence if the noise so caused or increased, or any part thereof, is caused by reason of his failure to process, handle, move or store those materials in a proper and efficient manner.

(4) In subsection (3), "materials" includes raw
15 materials, materials in the process of manufacture, manufactured materials, by-products and waste materials.

27. (1) The occupier of any scheduled premises—

Approval of
Commission
required for
certain
work.

(a) shall not—

20 (i) alter the method of operation of any trade, industry, process or plant in or on those premises; or

(ii) install, alter or replace any plant in or on those premises,

25 if by so doing he is likely to cause or increase the emission of noise from those premises; or

(b) shall not carry out any work in or on those premises that constitutes the beginning of, or any subsequent step in, any work of the nature referred to in paragraph (a) (ii), if, were the installation,

alteration

Noise Control.

alteration or replacement completed, it would be likely that it would cause or increase the emission of noise from those premises,

except in accordance with an approval in writing given by
5 the Commission or in accordance with a noise control notice.

(2) The occupier of any premises—

(a) shall not—

10 (i) in or on those premises carry out any work that would cause those premises to be scheduled premises; or

(ii) on any land construct any building designed for use for a purpose that would cause the land or building to be scheduled premises; or

15 (b) shall not carry out any work in or on those premises that constitutes the beginning of, or any subsequent step in, any work of the nature referred to in paragraph (a),

except in accordance with an approval in writing given by
20 the Commission.

(3) An application for an approval under this section shall be in or to the effect of the prescribed form and accompanied by—

(a) the prescribed fee; and

25 (b) details of the trade, industry or process proposed to be carried on in or on the premises or proposed premises, together with details of the methods intended to be adopted so as to control the emission of noise that may be associated with the
30 subject-matter of the application.

(4)

Noise Control.

(4) Without affecting the generality of section 67 (1), different fees may be prescribed for the purposes of subsection (3) according to specified factors or circumstances.

- 5 (5) The Commission—
- (a) may grant any application under this section, either subject to conditions or unconditionally; or
 - (b) may refuse any such application.

10 (5), the Commission may—

- (a) refuse an application under this section, having regard to the site on which any work that is the subject of the application is to be carried out; or
- 15 (b) attach to an approval under this section a condition that requires, or has the effect of requiring, that any work that is the subject of the approval is to be carried out on a site specified or referred to in the approval.

20 (7) The Commission may revoke any condition attached to an approval under this section.

(8) Where the occupier of any scheduled premises installs or replaces any plant in contravention of subsection (1), the Commission may, by notice in writing, require him to remove the plant within such time as may be specified in
25 the notice.

- (9) A notice under subsection (8) has no force—
- (a) until the time limited for appealing against the Commission's decision has expired; and
 - 30 (b) where within that time an appeal against the notice has been made under this Act, until the District Court confirms the decision.

(10)

Noise Control.

(10) Proceedings in respect of an offence arising under this section may be commenced at any time within three years after the offence was committed.

(11) For the purposes of subsections (1) (b) and 5 (2) (b), it is immaterial whether or not the work referred to therein, being work of the nature referred to in subsection 1 (a) (ii) or (2) (a), was or is completed.

(12) In proceedings for an offence arising under sub- 10 section (1) or (2), it is not necessary that it be established that the offence was committed on a particular day or on particular days, provided it is established that the offence was committed during a particular period.

(13) The Commission may, by notice in writing 15 served on an applicant for an approval under this section, require the applicant to furnish to the Commission such information and such plans and specifications as the Commission considers necessary and relevant to the application and specifies in the notice.

(14) An application for an approval under this 20 section shall not be granted unless evidence is produced that any necessary approval required under the Local Government Act, 1919, has been obtained.

PART IV.

PROHIBITION OF SALE OF ARTICLES.

25 28. A person shall not, whether on his own behalf or on behalf of another person, sell any article of a class prescribed for the purposes of this section if, when in use or operation, the Sale of articles emitting more than prescribed noise.

Noise Control.

the article emits noise that, when measured at any point specified in or determined in accordance with the regulations, is in excess of the level prescribed in respect of the class to which it belongs.

5 **29.** (1) A person shall not, whether on his own behalf or on behalf of another person, sell any article of a class prescribed for the purposes of this subsection unless the article is fitted in the prescribed manner with noise control equipment of a prescribed class. Sale of articles required to be fitted with noise control equipment.

10 (2) A person shall not, whether on his own behalf or on behalf of another person, sell any article of a class prescribed for the purposes of this subsection unless the noise control equipment with which it is fitted is maintained in accordance with the regulations.

15 **30.** It is a sufficient defence to a prosecution for an offence arising under this Part if the defendant proves that the offence was committed by him in the course of his employment by another person or that, upon, or in the event of, the sale of the article to which the offence relates, he received or was to receive remuneration, by way of commission, from a person other than the owner of the article. Defence.

20

PART V.

NOISE CONTROL NOTICES.

DIVISION 1.—Preliminary.

25 **31.** In this Part, except in so far as the context or subject-matter otherwise indicates or requires, "specified", in relation to a noise control notice, means specified or described in the notice. Interpretation: Part V.

DIVISION

Noise Control.

DIVISION 2.—*Noise control notices relating to articles, irrespective of where used.*

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

Interpretation: Part V, Div. 2.

- 5 (a) in any case—the Commission or an authorised officer; and
- (b) to the extent and in the class of cases specified in the regulations—a person or body specified or described in the regulations.

33. The appropriate authority may, by notice in writing
10 served on a person, prohibit him from causing, permitting or allowing any specified article of a class prescribed for the purposes of this section to be used or operated if, when used or operated, it emits noise that, when measured at any point
15 is in excess of the level prescribed in respect of the class to which it belongs.

Noise control notices: articles.

34. A person shall not, without reasonable excuse,
contravene a noise control notice under this Division.

Offence.

35. It is a sufficient defence to a prosecution for an
20 offence arising under section 34 if the defendant proves—

Defence.

- 25 (a) that a certificate, relating to the article referred to in the information for the offence, was issued by a person of a prescribed class within the prescribed period before the commission of the offence, certifying that the article had been tested in the prescribed manner on the date which the certificate bears and that that test shows that it had not then emitted at any point referred to in section 33 noise in excess of the level prescribed in respect of the class to
30 which it belongs; and

(b)

Noise Control.

- (b) that he had not, since the date that the certificate bears, failed to take all reasonable and practicable steps to prevent the commission of the offence.

5 DIVISION 3.—*Noise control notices relating to scheduled premises.*

36. (1) The Commission may, by notice in writing served on the occupier of any scheduled premises, prohibit him from causing, permitting or allowing—

Noise control notices: scheduled premises.

- 10 (a) any specified activity to be carried on in or on those premises; or
- (b) any specified article to be used or operated in or on those premises,

15 in such a manner as to cause the emission from those premises of noise that, when measured at any specified point (whether within or outside those premises), is in excess of the specified level.

(2) Where the Commission is satisfied that any noise is being or is likely to be emitted from any scheduled premises, the Commission may, by notice in writing served on the occupier, require the occupier—

- 20 (a) to install and operate noise control equipment in or on those premises;
- (b) to repair, alter or replace any noise control equipment in or on those premises;
- 25 (c) to erect a noise barrier in or on those premises;
- (d) to install plant of a specified type, where the Commission is satisfied that the use of that plant will result in the prevention or reduction of the emission of noise from those premises; or

(e)

Noise Control.

(e) to carry out repairs or adjustments to specified articles, where the Commission is satisfied that the carrying out of those repairs or adjustments will result in the prevention or reduction of the emission of noise from those premises,

5

within the specified time and in the specified manner.

(3) The Commission may, by notice in writing served on the occupier of scheduled premises, require the occupier to operate, in accordance with any directions contained in the notice, any noise control equipment in or on those premises.

10

(4) The Commission may, by notice in writing, vary a noise control notice under subsection (2) by extending any time specified in the noise control notice before the expiry of that time.

15

(5) Nothing in this section affects the power of the Commission under section 20 (1) or (2) to attach conditions to a licence.

37. (1) A person shall not, without reasonable excuse, **Offence.** contravene a noise control notice under this Division.

20

(2) A person is not guilty of an offence arising under subsection (1) in relation to a noise control notice under section 36 (1) unless it is established that the alleged offence resulted in the emission, from the premises to which the alleged offence relates, of noise that was able to be detected or perceived outside those premises without the aid of an instrument, machine or device.

25

38. A noise control notice under this Division has no force—

(a) until the time limited for appealing against the notice has expired; and

30

Postpone-
ment of
operation
of notices.

(b)

Noise Control.

(b) where within that time an appeal against the notice has been made under this Act, until the District Court confirms the notice.

5 DIVISION 4.—Noise control notices relating to premises other than scheduled premises.

39. In this Division, "appropriate authority" means—

Interpretation: Part V, Div. 4.

- (a) in any case—the Commission or an authorised officer;
- 10 (b) except in relation to vessels being used or operating in navigable waters—a local authority; and
- (c) in relation to vessels being used or operating in navigable waters—the Maritime Services Board.

15 40. (1) The appropriate authority may, by notice in writing served on the occupier of any premises (other than scheduled premises), give a warning to the occupier to the effect—

Noise control notices: premises other than scheduled premises.

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

25 in contravention of such one or more conditions of the kinds referred to in subsection (2), or of the prescribed kinds, as are imposed by the appropriate authority and set out in the notice (being conditions compliance with which the appropriate authority is satisfied will prevent or reduce the emission from those premises of noise arising from the carrying out of that step or the use or operation of that article); and

(b)

Noise Control.

- (b) that if, as a result thereof, offensive noise is—
- (i) if those premises are not a public place—
emitted from those premises; or
 - (ii) if those premises are a public place—made
in or emitted from those premises,

5

he may be proceeded against for an offence arising under this Division.

(2) The following kinds of conditions may be imposed in a noise control notice under this Division,
10 namely—

- (a) that specified noise control equipment is installed in or on the premises in a specified manner;
- (b) that specified noise control equipment in or on the premises is used or operated in a specified manner;
- 15 (c) that specified noise control equipment in or on those premises is repaired, altered or replaced in a specified manner;
- (d) that a specified noise barrier is erected in or on those premises in a specified manner;
- 20 (e) that a specified noise barrier in or on those premises is used or operated in a specified manner; or
- (f) that specified repairs or adjustments are carried out to specified articles.

41. (1) Where a noise control notice has been served Offence.
25 under this Division on the occupier of specified premises, he shall not, while the notice remains in force, cause, permit or allow—

- (a) the specified step to be carried out in or on those premises; or
- (b)

Noise Control.

(b) the specified article to be used or operated in or on those premises,

except in accordance with the conditions set out in the notice.

5 (2) A person is not guilty of an offence arising under subsection (1) unless it is established that the alleged offence resulted in—

10 (a) if the premises to which the alleged offence relates were not—at any relevant time, a public place—the emission of offensive noise from those premises; or

(b) if those premises were, at any relevant time, a public place—the making of offensive noise in, or the emission of offensive noise from, those premises.

15 42. A noise control notice under this Division has no force—

Postpone-
ment of
operation
of notices.

(a) until the time limited for appealing against the notice has expired; and

20 (b) where within that time an appeal against the notice has been made under this Act, until the court confirms the notice.

43. A noise control notice under this Division has no force in so far as it is issued in relation to—

Restriction on
notices.

(a) premises that are a public place; or

25 (b) 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,

unless it is made by the Commission in accordance with this Division.

DIVISION

Noise Control.

DIVISION 5.—*Noise control notices relating to times.*

44. In this Division, “appropriate authority” means—
Interpretation: Part V, Div. 5.

- (a) in any case—the Commission or an authorised officer;
- 5 (b) except in relation to scheduled premises and to vessels being used or operating in navigable waters—a local authority; and
- (c) in relation to vessels being used or operating in navigable waters—the Maritime Services Board.

10 45. (1) The appropriate authority may, by notice in writing—
Noise control notices: times.

- 15 (a) served on the occupier of any premises, give a warning to him to the effect that if, by reason of his causing, permitting or allowing any specified step in a trade, industry or process to be carried out in or on those premises between specified times on specified days, offensive noise is emitted from those premises; or
- 20 (b) served on a person, give a warning to him to the effect that if, by reason of his causing, permitting or allowing any specified article to be used or operated in or on any specified premises between specified times on specified days, offensive noise is—
 - 25 (i) if those premises are not a public place—emitted from those premises; or

(ii)

Noise Control.

(ii) if those premises are a public place—made in or emitted from those premises,

he may be proceeded against for an offence arising under this Division.

5 (2) A noise control notice may be issued under this Division in relation to a step in a trade, industry or process or an article notwithstanding that the regulations restrict or have the effect of restricting the times when that step may be carried out or that article may be used or operated.

10 **46.** (1) Where a noise control notice has been served **Offences.** under section 45 (1) (a) on the occupier of specified premises, he shall not, while the notice remains in force, cause, permit or allow the specified step to be carried out in or on those premises at any time between the specified times
15 on the specified days.

(2) Where a noise control notice has been served under section 45 (1) (b) on a person, he shall not, while the notice remains in force, cause, permit or allow the specified article to be used or operated in or on the specified premises
20 at any time between the specified times on the specified days.

(3) A person is not guilty of an offence arising under subsection (1) unless it is established that the alleged offence resulted in the emission of offensive noise from the premises to which the alleged offence relates.

25 (4) A person is not guilty of an offence arising under subsection (2) unless it is established that the alleged offence resulted in—

(a) if the premises to which the alleged offence relates were not, at any relevant time, a public place—the emission of offensive noise from those premises; or

(b)

Noise Control.

- (b) if those premises were, at any relevant time, a public place—the making of offensive noise in, or the emission of offensive noise from, those premises.

5 **47.** (1) A noise control notice under this Division has no force in so far as it is issued in relation to— Restrictions on notices.

- (a) premises that are a public place; or
- (b) 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,

10 unless it is made by the Commission in accordance with this Division.

(2) A noise control notice issued under this Division by a local authority or an authorised officer who is a servant of a local authority has no force in so far as it is
15 made with respect to—

- (a) the carrying out, at any time between 6 a.m. on a day and 9 p.m. on the same day, of any step in a trade, industry or process; or
- 20 (b) the use or operation, at any such time, of any article.

DIVISION 6.—General provisions.

48. A noise control notice has no force in so far as it— Restrictions on noise control notices.

- (a) is directed to—

25 (i) the Crown or a person acting on behalf of the Crown;

(ii)

Noise Control.

- (ii) a public authority or a person in his capacity as a member, officer, employee or servant of a public authority; or
 - (iii) a prescribed person or body; or
- 5 (b) would have the result of affecting—
- (i) any activity carried on by or for the Crown or a public authority;
 - (ii) any lawful sporting activity; or
 - 10 (iii) any activity of a prescribed class or description,
- unless it is made by the Commission in accordance with this Part.

49. Subject to section 50 and Part IX, a noise control notice ceases to be in force at the expiration of the period of twelve months, or such lesser period as is specified in the notice, from the date of service of the notice. Expiry of noise control notices.

50. (1) A noise control notice issued by the Commission, a local authority or the Maritime Services Board may, by notice in writing, be revoked by the Commission, that authority or that Board, as the case may be. Revocation of noise control notices.

(2) A noise control notice issued by an authorised officer may, by notice in writing, be revoked—

- (a) in any case—by the authorised officer or the Commission;

Noise Control.

- (b) if he is a servant of a local authority—by that authority; and
- (c) if he is an officer or employee of the Maritime Services Board—by that Board.

5

PART VI.

NOISE ABATEMENT ORDERS.

51. (1) In this Part, “district” means a district appointed under section 5 of the Justices Act, 1902. Interpretation: Part VI.

(2) For the purposes of this Part, noise amounts to a nuisance if it is offensive noise.

52. (1) Where the occupier of any premises makes a complaint to a justice of the peace alleging that his occupation of those premises is affected by noise amounting to a nuisance, the justice may summon the person (in this section referred to as “the defendant”) alleged to be making or contributing to the making of the noise or the occupier of the premises from which the noise is alleged to be emitted before a court of petty sessions held for the district in which those premises are situated. Issue of noise abatement orders.

(2)

Noise Control.

(2) If the court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises, the court may make an order—

- 5 (a) directing the defendant to abate the nuisance within the time specified in the order; or
- (b) directing the defendant to prevent a recurrence of the nuisance,

or the court may make an order containing directions under both paragraphs (a) and (b).

- 10 **53.** A person shall not, without reasonable excuse, contravene a noise abatement order. Contra-
ven-
tion of noise
abatement
orders.
- Penalty: \$500.

54. A noise abatement order has no force in so far as it— Restrictions
on noise
abatement
orders.

- (a) is directed to—
- 15 (i) the Crown or a person acting on behalf of the Crown;
- (ii) a public authority or a person in his capacity as a member, officer, employee or servant of a public authority; or
- 20 (iii) a prescribed person or body; or
- (b) would have the result of affecting—
- (i) any activity carried on by or for the Crown or a public authority;
- (ii) any lawful sporting activity; or
- 25 (iii) any activity of a prescribed class or description.

Noise Control.

55. A noise abatement order takes effect from the day on which it is made or a later day specified in the order. Commencement of operation of noise abatement order.

56. A noise abatement order, made pursuant to a complaint alleging that a person's occupation of premises is affected by noise, may be revoked or varied by a court of petty sessions held for the district in which those premises are situated. Revocation or variation of noise abatement orders.

57. In any proceedings under this Part the court may award costs against either party. Costs.

PART VII.

NOISE ABATEMENT DIRECTIONS.

58. In this Part, "authorised person" means a member of the police force or an authorised officer. Interpretation: Part VII.

59. Where it appears to an authorised person that offensive noise is being, or has at any time during the preceding thirty minutes been, emitted from any premises, he may— Issue of noise abatement directions.

- (a) direct the person whom he believes to be the occupier of those premises to cause the emission of the noise to cease; or

(b)

Noise Control.

(b) direct any person whom he believes to be making or contributing to the making of the noise to cease making or contributing to the making of the noise, or he may give directions under both paragraphs (a) and (b).

5 **60.** (1) A person to whom a noise abatement direction has been given under section 59 (a) shall not, without reasonable excuse, while the direction remains in force— Contra-
vention
of noise
abatement
directions.

(a) fail to cause the emission of the noise from the premises to cease promptly; or

10 (b) at any time within six hours following the time at which the direction was given, cause, permit or allow noise to be emitted from the premises.

Penalty: \$500.

(2) A person to whom a noise abatement direction 15 has been given under section 59 (b) shall not, without reasonable excuse—

(a) fail to promptly cease making or contributing to the making of the noise; or

20 (b) at any time within six hours following the time at which the direction was given, make or contribute to the making of noise that is emitted from the premises.

Penalty: \$500.

(3) A person is not guilty of an offence arising under 25 this section unless it is established that the noise to which the alleged offence relates was offensive noise.

Noise Control.

5 **61.** (1) For the purpose of enabling an authorised person to give a noise abatement direction in relation to noise emitted from premises or to ascertain whether an offence arising under section 60 has been committed in or on those premises, he may—

Powers of authorised persons.

(a) enter those premises—

- 10 (i) at any time when he believes on reasonable grounds that offensive noise is being emitted from those premises ;
- (ii) at any time within thirty minutes after noise has been emitted from those premises, being noise that he believes on reasonable grounds to have been offensive noise ; ~~or~~

~~(iii) at any reasonable time,~~

15 with the aid of such authorised persons as he considers necessary and with the use of reasonable force ; and

20 (b) (whether or not he enters those premises) require any person who is or was present in or on those premises at any time during the emission of noise referred to in paragraph (a), and to whom he has given an oral or written warning of that person's obligation to furnish the information under this Act, to furnish him with that person's name and address and with the name and address of the occupier of the premises.

25

(2) A person shall not refuse or fail to comply with a requirement under subsection (1) (b).

Penalty: \$500.

30 (3) A person shall not, in purported compliance with a requirement under subsection (1) (b), knowingly furnish information that is false or misleading in a material particular.

Penalty: \$500.

(4)

Noise Control.

(4) A person is not guilty of an offence arising under subsection (2) if he proves that in so far as he did not comply with the requirement he was not capable of complying with it.

5 **62.** (1) A noise abatement direction has no force in so far as it— Restrictions on noise abatement directions.

(a) is directed to—

- (i) the Crown or a person acting on behalf of the Crown;
- 10 (ii) a public authority or a person in his capacity as a member, officer, employee or servant of a public authority; or
- (iii) a prescribed person or body; or

(b) would have the result of affecting—

- 15 (i) any activity carried on by or for the Crown or a public authority;
- (ii) any lawful sporting activity; or
- (iii) any activity of a prescribed class or description.

20 (2) A noise abatement direction given between 6 a.m. on a day and 9 p.m. on the same day has no force unless it is given by an authorised officer who is a member or officer of the Commission.

25 (3) Unless sooner revoked, a noise abatement direction shall be deemed to be revoked at 6 a.m. next following the time at which the direction was given, unless it was given by an authorised officer who is a member or officer of the Commission.

Noise Control.

63. A noise abatement direction may be revoked by the person who gave the direction or by a prescribed person.

Revoca-
tion of
noise
abatement
direction.

PART VIII.

REGULATIONS.

5 64. (1) The Governor may make regulations, not incon- Regulations.
sistent with this Act, for or with respect to any matter that
by this Act is required or permitted to be prescribed or that
is necessary or convenient to be prescribed for carrying out
or giving effect to this Act.

10 (2) Without affecting the generality of subsection
(1), the regulations may make provision for or with respect
to—

15 (a) prohibiting or regulating the emission of noise
from premises (whether or not those premises are
scheduled premises, and whether or not those
premises are a public place);

(b) prohibiting or regulating the making or emission
of noise in public places;

20 (c) prohibiting the sale, use or operation of an article
except in accordance with prescribed conditions
relating to the emission of noise from the article
when in use or operation, and in particular prohi-
biting the sale, use or operation of an article unless
it is fitted with prescribed noise control equipment;

(d)

Noise Control.

5 (d) prohibiting the carrying on of any trade, industry or process except in accordance with the prescribed conditions relating to the emission of noise arising in the course of the carrying on of the trade, industry or process;

(e) prohibiting or regulating the use or operation of any article, or the carrying on of any trade, industry or process, at any prescribed times;

10 (f) requiring or empowering the Commission to require the installation, maintenance, use or operation of noise barriers and noise control equipment; and

15 (g) the manner of installing, maintaining, using and operating noise barriers and equipment referred to in paragraph (f).

(3) Without affecting the generality of subsections (1) and (2), the regulations may also make provision for or with respect to—

20 (a) exempting any persons or class of persons, or any premises or class of premises, or any articles or class of articles, from any specified provision or provisions of this Act, in such circumstances, if any, and subject to such conditions, if any, as may be specified in the regulations;

25 (b) the issue, renewal, refusal, revocation, suspension or transfer of licences and the granting or refusal of approvals under section 27;

(c) the keeping of registers under this Act;

(d)

Noise Control.

- 5 (d) the assistance and facilities (including means of access, and the means of making examinations, inspections and tests) to be provided by occupiers of premises to enable authorised officers to exercise their powers under this Act;
- 10 (e) the inspection of articles, and requiring articles to be tested, for the purpose of determining the level, nature, character or quality of the noise emitted by them or the noise which they are capable of emitting;
- (f) prescribing standards with respect to the making or emission of noise, and the methods of determining the level, nature, character or quality of noise made or emitted;
- 15 (g) preventing or controlling noise made by animals (including birds) on any premises, and in particular the giving of notices requiring the prevention or control of any such noise; and
- (h) appeals under Part IX.

20 **65.** (1) Without affecting the generality of the foregoing provisions of this Part, the regulations may make provision for or with respect to prohibiting, or providing for the suspension of, the registration under the Motor Traffic Act, 1909, of any motor vehicle that does not comply with
25 the regulations, and in particular may authorise or require a person or body to suspend the registration under that Act of a motor vehicle that does not so comply.

Regulations
respecting
the registration of
motor
vehicles.

(2) While the registration of a motor vehicle is suspended by or under the regulations, the vehicle shall be
30 deemed, for the purposes of this Act, the Motor Traffic Act, 1909, and any other Act, not to be registered under the Motor Traffic Act, 1909.

(3)

Noise Control.

5 (3) Nothing in this section or the regulations affects any power or duty (conferred or imposed by or under any other Act) of the Commissioner for Motor Transport or any other person or body to cancel or suspend the registration of a motor vehicle, the registration of which is suspended by or under the regulations.

66. The regulations may impose, for an offence against the regulations committed— Offences against the regulations.

10 (a) by a corporation—a penalty not exceeding \$2,500 and, in the case of a continuing offence, a further penalty not exceeding \$500 for each day the offence continues; or

15 (b) by any other person—a penalty not exceeding \$250 and, in the case of a continuing offence, a further penalty not exceeding \$50 for each day the offence continues.

67. (1) A regulation may—

(a) be of general application or limited in its application by reference to time, place or circumstances; Provisions applicable to regulations.

20 (b) be restricted in its application to any specified class of subject-matter or to all subject-matter other than that of a specified class; and

(c) differ in its application according to specified factors or circumstances.

25 (2) A regulation may authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body.

(3)

Noise Control.

(3) The regulations may prescribe standards or tests by reference to standards or tests specified in any work or document that has been published and is referred to in the regulations or by reference to any such standards or tests as amended in any manner specified in any such work or document or specified in the regulations.

PART IX.

APPEALS AND DISPUTES.

68. (1) Any person—

Appeals to District Court: licences, approvals, notices.

10 (a) who is an applicant for a licence or for the renewal or transfer of a licence, or a licensee, and who is aggrieved by any decision of the Commission with respect to his application or licence;

15 (b) who is an applicant for the approval of the Commission under section 27 and who is aggrieved by the decision of the Commission with respect to his application;

(c) on whom—

20 (i) a noise control notice under Division 3 of Part V;

(ii) a noise control notice issued under Division 5 of Part V with respect to scheduled premises or with respect to scheduled premises and other premises; or

25 (iii) a notice under section 74, has been served and who is aggrieved by the notice; or

(d)

Noise Control.

(d) any person who is aggrieved by a decision that is made under the regulations by a person or body and that is a decision of a class prescribed for the purposes of this paragraph,

5 may, in accordance with the rules of the District Court made in that behalf, appeal to the District Court.

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

(a) the prescribed period; or

10 (b) where the regulations do not prescribe a period—
twenty-one days,

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

15 (3) An appeal under this section shall be in the nature of a rehearing.

(4) The decision of the District Court in an appeal under this section shall be final and is binding on the appellant and person or body who or which made the decision
20 appealed against or issued the notice appealed against.

69. (1) Any person who is aggrieved by a noise abatement order may, in accordance with the rules of the District Court made in that behalf, appeal to the District Court.

Appeals to District Court: noise abatement orders.

(2)

Noise Control.

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

(a) the prescribed period ; or

5 (b) where the regulations do not prescribe a period—
twenty-one days,

after the day on which the order was made.

(3) An appeal under this section shall be in the nature of a rehearing.

10 (4) In an appeal under this section, the District
Court—

(a) may confirm or revoke the order appealed against ;
and

15 (b) if it revokes the order, may make any order that
the court appealed from could have made under
Part VI.

(5) An order made under subsection (4) (b) shall be deemed to be a noise abatement order made under Part VI.

(6) Part V of the Justices Act, 1902, does not apply to or in respect of a noise abatement order.

20 70. (1) Any person—

(a) on whom a noise control notice not referred to in section 68 (1) (c) has been served and who is aggrieved by the notice ; or

25 (b) who is aggrieved by a decision that is made under the regulations by a person or body and that is a decision of a class prescribed for the purposes of this paragraph,

may appeal to the court of petty sessions nearest to the place where that person ordinarily resides or carries on business.

Appeals to
courts of
petty
sessions.

(2)

Noise Control.

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

(a) the prescribed period ; or

5 (b) where the regulations do not prescribe a period—
twenty-one days,

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.

10 (3) An appeal under this section shall be in the nature of a rehearing.

(4) An appeal under this section shall be heard and determined by a court of petty sessions held before a stipendiary magistrate.

15 (5) The decision of the court in an appeal under this section shall be final and is binding on the appellant and the person or body who or which issued the notice appealed against or made the decision appealed against.

71. In any appeal under this Part the court may award **Costs.**
20 costs against any party.

72. (1) Where a dispute arises between the Commission **Disputes**
and a public authority or a person acting on behalf of the **between**
Crown with respect to any matter or thing against which an **Commis-**
appeal lies under this Part, the Commission or that authority **sion and**
or person may refer the dispute to the Premier for settlement, **public**
and the decision of the Premier on the dispute shall be given **authorities,**
effect to by the Commission and that authority or person. **etc.**

(2)

Noise Control.

(2) Where a dispute is settled by the Premier under subsection (1), the authority or person which or who was a party to the dispute is not entitled to appeal under this Part against the matter or thing to which the dispute related.

5

PART X.

MISCELLANEOUS.

73. (1) In this section, "alarm" means a burglar alarm or fire alarm, and includes any device (including a bell or siren) that is designed to give audible warning or audible notice of any act, matter or thing. ^{Burglar and other alarms.}

(2) Where a member of the police force is satisfied that an alarm has been sounding in or on any premises for a period of at least thirty minutes and that offensive noise is thereby being emitted from those premises, he may—

15 (a) enter those premises; and

(b) take all such steps as appear to him to be reasonably necessary for or in connection with stopping the alarm from sounding,

with the aid of such assistants as he considers necessary and 20 with the use of reasonable force.

(3) It is the duty of a member of the police force who has taken action under subsection (2) to cause such persons or authorities as appear to him to be appropriate in the circumstances to be promptly informed of the action so 25 taken.

(4)

Noise Control.

(4) Nothing in this section applies with respect to an alarm in a motor vehicle.

74. (1) The Commission may, by notice in writing served on any person, being— Power to require information.

- 5 (a) the occupier of any premises, other than a vessel;
- (b) the occupier or owner of any vessel; or
- (c) the owner of any plant or motor vehicle or any person in whose care, custody or control the plant or vehicle is for the time being,
- 10 require that person to furnish, in such manner as is specified in the notice, to it within fourteen days or such longer period as is specified in the notice, such information (including plans and specifications where appropriate)—
- 15 (d) in the case of a person referred to in paragraph (a) —as to any plant or motor vehicle in or on the premises;
- (e) in the case of a person referred to in paragraph (b) —as to any plant in or on the vessel; or
- 20 (f) in the case of a person referred to in paragraph (c) —as to the plant or motor vehicle,

as it requires by the notice.

(2) A local authority may, by notice in writing served on any person, being—

- 25 (a) the occupier of any premises, other than scheduled premises or vessels;

Noise Control.

(b) the occupier or owner of any vessel, other than a vessel being used or operating in navigable waters; or

5 (c) the owner of any plant or any person in whose care, custody or control the plant is for the time being,

require that person to furnish, in such manner as is specified in the notice, to it within fourteen days or such longer period as is specified in the notice, such information (including plans and specifications where appropriate)—

10 (d) in the case of a person referred to in paragraph (a) —as to any plant in or on the premises;

(e) in the case of a person referred to in paragraph (b) —as to any plant in or on the vessel; or

15 (f) in the case of a person referred to in paragraph (c) —as to the plant,

as it requires by the notice.

(3) The Maritime Services Board may, by notice in writing served on any person, being the occupier or owner of any vessel being used or operating in navigable waters, require
20 that person to furnish, in such manner as is specified in the notice, such information (including plans and specifications where appropriate) as to any plant in or on the vessel as it requires by the notice.

(4) A person shall not, without reasonable excuse,
25 neglect or fail to comply with any requirement made pursuant to this section.

Penalty: \$1,000.

(5)

Noise Control.

5 (5) Any statement made to the Commission, a local authority or the Maritime Services Board pursuant to any requirement made pursuant to this section shall not, if the person making the statement objected, at the time of making it, to doing so on the ground that it might tend to incriminate him, be admissible in evidence in any prosecution against him for any offence, not being the offence of neglecting or failing to comply with any requirement made pursuant to this section.

10 (6) A notice shall not be served under subsection (2) or (3) on the Crown, a person acting on behalf of the Crown, a public authority or a prescribed person or body.

75. A person shall not disclose any information obtained by him in connection with the administration or execution of this Act, unless the disclosure is made— Disclosure of information.

15 (a) with the consent of the person from whom the information was obtained, or where the information relates to a manufacturing, industrial or trade process carried on in or on any premises, with the consent of the occupier of those premises;

20 (b) in connection with the administration or execution of this Act; or

(c) subject to section 74, for the purpose of any legal proceedings arising out of this Act or of any report of any such proceedings.

25 Penalty: \$1,000.

76. (1) An authorised officer may enter—

Powers of authorised officers.

30 (a) any premises used as a factory or any premises in which an industry or trade is being carried on, at any time during which any manufacturing, industrial or trade process is being carried on therein;

(b)

Noise Control.

- (b) any premises, not being a dwelling-house or land used in connection therewith, from which he reasonably suspects that offensive noise is being or is likely to be emitted, at any time; and
- 5 (c) any other premises, at any reasonable time,
with the aid of such authorised officers or members of the police force as he considers necessary and with the use of reasonable force, and may therein—
- 10 (d) examine any noise control equipment or any plant or motor vehicles emitting or likely to emit noise;
- 15 (e) make such examination and inquiry and such tests as he considers necessary to ascertain whether the provisions of this Act or of any requirement, direction, order or notice made or given under or pursuant to this Act or the conditions in force and attached to any licence or approval under this Act are being or have been complied with; and
- (f) take such photographs as he considers necessary in connection with the administration of this Act.
- 20 (2) An authorised officer may—
- (a) by notice in writing, require—
- 25 (i) the occupier of any premises from which noise is being or is usually emitted to produce to that authorised officer any reports, books, plans, maps or documents relating to the emission from those premises of noise or relating to any manufacturing, industrial or trade process carried on in or on those premises; or

(ii)

Noise Control.

5 (ii) any local authority or public authority to produce to that authorised officer any reports, books, plans, maps or documents in the custody or possession of the local authority or public authority relating to any noise control equipment or any plant or motor vehicle that emits or may emit noise,

and may take copies of any such reports, books, plans, maps or documents ; and

10 (b) require a person whom he suspects on reasonable grounds to be offending against this Act to state his full name and place of abode.

(3) Subsection (2) (a) (ii) only applies to an authorised officer who is a member or officer of the
15 Commission.

(4) Every authorised officer shall be provided with a certificate of his appointment, and on applying for admission to any premises which he is empowered by this Act to enter, shall, if requested to do so, produce the certificate to the
20 occupier of the premises.

(5) The Commission may, by notice in writing served on the occupier of any premises, require the occupier to provide such assistance and facilities (whether of the same kind as, or of a different kind from, those prescribed pursuant to
25 section 64 (3) (d)) as are specified in the notice within such time and in such manner as are specified therein, for the purpose of enabling an authorised officer to exercise his powers under this Act.

(6)

Noise Control.

(6) Any person—

- 5 (a) who wilfully delays or obstructs an authorised officer, or fails to comply with any requirement made under this section by an authorised officer, in the exercise of his powers under this Act;
- (b) who, in purported compliance with a requirement under subsection (2) (b), states a name that is not his name or a place of abode that is not his place of abode; or
- 10 (c) who, being the occupier of any premises—
- (i) refuses to permit or to assist an authorised officer to do, perform or carry out the matters or things, or any of the matters or things, which he is authorised to do, perform or carry out;
- 15 (ii) refuses to provide such assistance and facilities as may be prescribed for the purpose of enabling an authorised officer to exercise his powers under this Act; or
- 20 (iii) refuses to comply with a requirement under subsection (5),

is guilty of an offence against this Act and liable to a penalty not exceeding \$1,000.

(7) Nothing in this section affects section 61.

25 77. Any notice or other instrument issued, made or given Service of instruments. for the purposes of this Act may be served—

- (a) by delivering it personally to the person to whom it is addressed;

(b)

Noise Control.

(b) by delivering it to the place of abode or business of the person to whom it is addressed and by leaving it there with some person for him; or

5 (c) by posting it duly stamped and addressed to the person to whom it is addressed at the place last shown in the records of the Commission as his place of abode or business.

78. (1) In this section, "instrument" includes a notice. Evidence.

10 (2) Any instrument purporting to be an instrument issued, made or given for the purposes of this Act (including subsection (4) or (5)) and to have been signed by the Director, an officer of the Commission authorised generally or specially by the Commission or the Director to do so, or a member or servant of a local authority or an officer or 15 employee of the Maritime Services Board duly authorised to do so, 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.

20 (3) Proof shall not, in the absence of evidence to the contrary, be required of the appointment of the Director, any officer of the Commission, any servant of a local authority or any officer or employee of the Maritime Services Board.

25 (4) A document certified by the Director or by an officer of the Commission authorised generally or specially by the Commission or the Director to do so to be a true copy of an instrument, being an instrument purporting—

(a) to be issued, made or given for the purposes of this Act; and

(b)

Noise Control.

- (b) to have been signed by the Director or an officer of the Commission authorised generally or specially by the Commission or the Director to do so,

5 is admissible in any proceedings under this Act as if it were the original document of which it purports to be a copy.

(5) A certificate signed by the Director or by an officer of the Commission authorised generally or specially by the Commission or the Director to do so certifying any one or more of the following matters, that is to say—

- 10 (a) that an instrument, a copy of which is set out in the certificate, being an instrument purporting—

(i) to be issued, made or given for the purposes of this Act; and

- 15 (ii) to have been signed by the Director or an officer of the Commission authorised generally or specially by the Commission or the Director to do so,

was issued, made or given on a day specified in the certificate;

- 20 (b) that premises are within a part of the State to which a proclamation under section 17 relates, a copy of which proclamation is set out in the certificate;

- 25 (c) that a person was, or was not, at a time or during a period so specified, the holder of a licence in respect of premises so specified;

- (d) that a licence was, or was not, at a time or during a period so specified, subject to conditions so specified;

(e)

Noise Control.

- (e) that a licence was, at a time so specified, revoked, or suspended for a period so specified;
- (f) that a condition attached to a licence was, at a time so specified, revoked or varied;
- 5 (g) that a new condition was, at a time so specified, attached to a licence;
- (h) that an approval was, or was not, given under section 27 in relation to any matter so specified;
- 10 (i) that an approval under section 27 was, or was not, subject to conditions so specified;
- (j) that a register kept under this Act shows that premises so specified were, at a time or during a period so specified, within a classification referred to in the regulations and so specified;
- 15 (k) that a person was, or was not, at a time or during a period so specified, an authorised officer; or
- (l) that a person was, or was not, at a time or during a period so specified, an officer of the Commission,
- 20 is admissible in any proceedings under this Act and shall be prima facie evidence of the matters so certified.

(6) In proceedings for an offence against this Act, a certificate under subsection (5) that is admitted in evidence and that certifies that a person was, at a time or during a period specified in the certificate, the holder of a licence in
25 respect of premises so specified shall be accepted by the court as evidence of the truth of an allegation, in the information in respect of the offence, that—

- (a) that person was, at that time or during that period, the occupier of those premises; and

(b)

Noise Control.

(b) those premises were, at that time or during that period, scheduled premises,

unless the contrary is proved or unless it is proved that that person was not, at that time or during that period, the holder
5 of a licence in respect of those premises.

(7) In proceedings for an offence against this Act, evidence that a register kept under this Act shows that premises were, at a time or during a period, within a classification referred to in the regulations and specified in the register shall
10 be accepted by the court as evidence of the truth of an allegation, in the information in respect of the offence, that those premises were, at that time or during that period, within that classification, unless the contrary is proved.

79. Any person who—

Offences.

- 15 (a) fails to comply with any of the provisions of this Act, other than the regulations;
- (b) being a licensee, does not comply with any condition or prohibition in force and attached to the licence held by him under this Act;
- 20 (c) fails to comply with any condition subject to which an approval is granted by the Commission; or
- (d) neglects or fails to comply with any requirement made under or pursuant to this Act.

is guilty of an offence against this Act.

80.

Noise Control.

80. Any person guilty of an offence against this Act, other Penalties.
than the regulations, shall, where no other penalty is expressly
provided, be liable—

- 5 (a) where the offence was committed by a corporation
—to a penalty not exceeding \$5,000 and, in the case
of a continuing offence, to a further penalty not
exceeding \$1,000 for each day the offence
continues; or
- 10 (b) where the offence was committed by any other per-
son—to a penalty not exceeding \$500 and, in the
case of a continuing offence, to a further penalty not
exceeding \$100 for each day the offence continues.

81. Where any person has been convicted of an offence Power to
against this Act, the court by which he is convicted— order con-
travention
to be
remedied.

- 15 (a) in addition to imposing a penalty for the offence,
may order that person to take such steps within such
time as may be specified in the order to prevent the
continuance or recurrence of the offence; and
- (b) may enlarge the time so specified,
- 20 and if, upon the expiration of the time originally specified or
so enlarged, the order has not been complied with, the person
so convicted is guilty of an offence against this Act.

82. (1) Proceedings for an offence against this Act may Proceedings
be taken before a court of petty sessions or before the Supreme for offences.
25 Court in its summary jurisdiction.

(2)

Noise Control.

(2) Subject to subsection (3), proceedings for an offence against this Act (other than an offence arising under Part VI or VII) shall not be instituted without the written consent of the Minister or of such member or officer of the Commission as may be authorised by the Minister for the purposes of this subsection.

(3) Subsection (2) does not apply to the institution—

10 (a) by a member or officer of the Commission of proceedings for an offence if the proceedings are instituted with the consent of the Commission or with the written consent of such member or officer of the Commission as may be authorised by the Commission for the purposes of this paragraph;

15 (b) by a servant of a local authority of proceedings for an offence if—

20 (i) the offence was not committed in respect of or in relation to scheduled premises or vessels being used or operating in navigable waters; and

25 (ii) the proceedings are instituted with the consent of the local authority or with the written consent of such member or servant of the local authority as may be authorised by the local authority for the purposes of this paragraph; or

(c) by an officer or employee of the Maritime Services Board of proceedings for an offence if—

30 (i) the offence was committed in respect of or in relation to a vessel being used or operating in navigable waters; and

(ii)

Noise Control.

5 (ii) the proceedings are instituted with the consent of that Board or with the written consent of such member or officer or employee of that Board as may be authorised by that Board for the purposes of this paragraph.

10 (4) If proceedings in respect of an offence against this Act are brought in a court of petty sessions, the maximum penalty that the court may impose in respect of the offence is, notwithstanding any other provision of this Act, \$2,000 (including any daily penalty) or the maximum penalty provided by this Act in respect of the offence, whichever is the lesser.

15 (5) If proceedings in respect of an offence against this Act are brought in the Supreme Court in its summary jurisdiction, the Supreme Court may impose a penalty not exceeding the maximum penalty provided by this Act in respect of the offence.

20 (6) Proceedings in the Supreme Court in its summary jurisdiction in respect of an offence against this Act may, except as provided in section 27, only be commenced within six months after the offence was committed.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1975

[64c]

(b) The proceeding is continued with the consent of that board or with the written consent of such board or officer or employee of the board as may be authorized by a board for the purpose of the proceeding.

(c) If proceedings in respect of an officer under this Act are brought in a court of law, the court may order that the officer be removed from office or that the officer be suspended from office or that the officer be placed under any other order or restriction (including any daily penalty) of the court in respect of the officer, and may also order that the officer be removed from office or that the officer be suspended from office or that the officer be placed under any other order or restriction of the court in respect of the officer.

(d) If proceedings in respect of an officer under this Act are brought in the Superior Court in its summary jurisdiction, the Superior Court may order that the officer be removed from office or that the officer be suspended from office or that the officer be placed under any other order or restriction of the court in respect of the officer.

(e) Proceedings in respect of an officer under this Act are brought in a court of law, the court may order that the officer be removed from office or that the officer be suspended from office or that the officer be placed under any other order or restriction of the court in respect of the officer, and may also order that the officer be removed from office or that the officer be suspended from office or that the officer be placed under any other order or restriction of the court in respect of the officer.

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 20 March, 1975.*

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. 35, 1975.

An Act relating to the prevention, minimising and abatement of noise and vibrations; to constitute a Noise Advisory Committee; to confer and impose powers, authorities, duties and functions relating to the control of noise and vibrations on the State Pollution Control Commission, the Maritime Services Board of New South Wales, councils and certain other persons; and for purposes connected therewith. [Assented to, 16th April, 1975.]

BE

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

H. G. COATES,
Acting Chairman of Committees of the Legislative Assembly.

Noise Control.

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:—

PART I.

PRELIMINARY.

Short title. **1.** This Act may be cited as the "Noise Control Act, 1975".

**Commence-
ment.** **2.** (1) This section and sections 1 and 3 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Division
of Act.** **3.** This Act is divided as follows:—

PART I.—PRELIMINARY—ss. 1–10.

PART II.—NOISE ADVISORY COMMITTEE—ss. 11–16.

PART III.—SCHEDULED PREMISES—ss. 17–27.

DIVISION 1.—*Licensing provisions*—ss. 17–24.

DIVISION 2.—*Other provisions*—ss. 25–27.

PART IV.—PROHIBITION OF SALE OF ARTICLES—ss. 28–30.

PART

Noise Control.

PART V.—NOISE CONTROL NOTICES—ss. 31–50.

DIVISION 1.—*Preliminary*—s. 31.

DIVISION 2.—*Noise control notices relating to articles, irrespective of where used*—ss. 32–35.

DIVISION 3.—*Noise control notices relating to scheduled premises*—ss. 36–38.

DIVISION 4.—*Noise control notices relating to premises other than scheduled premises*—ss. 39–43.

DIVISION 5.—*Noise control notices relating to times*—ss. 44–47.

DIVISION 6.—*General provisions*—ss. 48–50.

PART VI.—NOISE ABATEMENT ORDERS—ss. 51–57.

PART VII.—NOISE ABATEMENT DIRECTIONS—ss. 58–63.

PART VIII.—REGULATIONS—ss. 64–67.

PART IX.—APPEALS AND DISPUTES—ss. 68–72.

PART X.—MISCELLANEOUS—ss. 73–82.

SCHEDULE.

4. (1) In this Act, except in so far as the context or Interpretation. subject-matter otherwise indicates or requires—

“article” means any plant, motor vehicle, article or thing of any description whatever;

“authorised officer” means a person authorised in writing by the Commission;

“Commission” means the State Pollution Control Commission;

“Committee”

Noise Control.

“Committee” means the Noise Advisory Committee constituted under section 11;

“court of petty sessions” means a court of petty sessions held before a stipendiary magistrate sitting alone;

“Director” means the Director of the Commission;

“information”, when used in relation to an offence, includes an application referred to in section 4 of the Supreme Court (Summary Jurisdiction) Act, 1967;

“level”, in relation to noise, includes the volume or intensity of the noise;

“licence” means a valid and unexpired licence issued under this Act, whether it is an original or a renewed licence;

“licensee” means the person to whom a licence is granted or transferred under this Act;

“local authority” means the council of a city, municipality or shire, and includes a person appointed under the Public Health Act, 1902, to be a local authority for the purposes of that Act;

“Maritime

Noise Control.

“Maritime Services Board” means the Maritime Services Board of New South Wales;

“motor vehicle” means any motor car, motor carriage, motor cycle, motor omnibus, motor lorry or other vehicle propelled wholly or partly by any volatile spirit, steam, electricity, gas, or oil, or by any means other than human or animal power, but does not include a railway locomotive;

“navigable waters” means navigable waters within the meaning of the Maritime Services Act, 1935;

“noise” includes sound and vibration;

“noise abatement direction” means a direction under Part VII;

“noise abatement order” means an order under section 52;

“noise control equipment” means—

- (a) any apparatus or device used for the purposes of preventing or limiting the emission of noise; or
- (b) any apparatus or device used for indicating or recording the emission of noise or for giving warning of the excessive emission of noise,

and includes any apparatus or device which, though not so used, is, or would, if properly maintained and operated, be, capable (without modification) of being so used;

“noise control notice” means a notice under Part V, but does not include a notice under section 36 (4) or 50;

“occupier”.

Noise Control.

“occupier”, in relation to any premises, means the person in occupation or control of the premises and, in relation to any premises where different parts are occupied or controlled by different persons, means, in relation to any such part, the person in occupation or control of that part;

“offensive noise” means noise that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances, is likely—

- (a) to be harmful to;
- (b) to be offensive to; or
- (c) to interfere unreasonably with the comfort or repose of,

persons who are—

- (d) if the noise is made in premises that are not a public place—outside those premises; or
- (e) if the noise is made in premises that are a public place—within or outside those premises;

“plant” means any plant, equipment, apparatus, device, machine or mechanism, and includes any vessel, dredge, railway locomotive or crane, but does not include a motor vehicle;

“premises” includes place (including public place) and vessel;

“public authority” means—

- (a) a public authority constituted by or under any Act;
- (b) a Government Department; or
- (c) a person or body prescribed for the purposes of this paragraph,

but

Noise Control.

but does not include—

- (d) a local authority or a county council; or
- (e) a person or body prescribed for the purposes of this paragraph;

“public place” includes—

- (a) a public road or a public reserve, as respectively defined in section 4 of the Local Government Act, 1919; and
- (b) a place that is open to the public, or is used by the public, whether or not on payment of money or other consideration, whether or not the place is ordinarily so open or used, and whether or not the public to whom the place is so open, or by whom the place is so used, consists only of a limited class of persons;

“regulations” means regulations made under this Act;

“scheduled premises” means any premises of a class for the time being described in the Schedule;

“sell”, in relation to an article, means sell, exhibit or offer for sale, or conduct negotiations for the sale of, the article;

“this Act” includes the regulations;

“trade” includes commercial undertaking;

“vessel” means ship, lighter, barge, boat, craft, or vessel of whatever description and however navigated.

(2) In this Act, a reference (however expressed) to making or emitting noise includes a reference to causing, permitting or allowing the making or emission of noise.

Noise Control.

Act binds
Crown.

5. Except as provided by this Act, this Act binds the Crown.

Effect of
this Act
on other
Acts.

6. (1) Subject to subsection (2), nothing in this Act affects any of the provisions of any other Act, or any regulations, ordinances or by-laws thereunder, or takes away any powers vested in any person or body by any other Act, or any regulations, ordinances or by-laws made under any other Act.

(2) Where the provisions of this Act (other than the regulations) are inconsistent with any of the provisions of any other Act or any regulation, ordinance or by-law made under any other Act (other than the State Pollution Control Commission Act, 1970, or any regulation thereunder), the provisions of this Act (other than the regulations) shall prevail.

(3) Where the provisions of any regulation made under this Act are inconsistent with any of the provisions of any regulation, ordinance or by-law made under any other Act (other than a regulation made under the State Pollution Control Commission Act, 1970), the provisions of the regulation made under this Act shall prevail.

Effect of
this Act
on other
rights,
etc.

7. (1) The provisions of this Act do not limit or affect any right, remedy or proceeding under any other Act or law.

(2) No proceedings taken under this Act interfere with or lessen any right or remedy under any other Act or law, but no person is, by virtue of this subsection, liable to be punished twice for the same offence.

Noise Control.

8. The powers, authorities, duties and functions conferred or imposed on a local authority by or under this Act may only be exercised or performed—

Exercise or performance of local authority's powers, etc.

- (a) in relation to a city, municipality or shire—by the council thereof; or
- (b) in relation to a district for which a person is appointed under the Public Health Act, 1902, to be a local authority for the purposes of that Act—by that person.

9. Where the authorisation of a person as an authorised officer is given subject to conditions, limitations and restrictions or only for limited purposes, nothing in this Act authorises or requires that person to act as an authorised officer in contravention of those conditions, limitations or restrictions or for purposes other than those purposes, as the case may be.

Exercise or performance of authorised officer's powers, etc.

10. (1) The Governor may, by proclamation published in the Gazette, amend this Act by inserting at the end of this Act a Schedule containing matter describing classes of premises.

Insertion, amendment or substitution of Schedule.

(2) The Governor may, by proclamation published in the Gazette, amend the Schedule—

- (a) by omitting therefrom matter describing a class of premises; or
- (b) by inserting therein matter describing a class of premises.

(3) The Governor may, by proclamation published in the Gazette, amend this Act by omitting the Schedule and by inserting instead a Schedule containing matter describing classes of premises.

Noise Control.

(4) A proclamation published under this section shall be laid before each House of Parliament within fourteen sitting days of that House after the date of publication.

(5) If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after a proclamation referred to in subsection (4) has been laid before it, disallowing the proclamation or any part thereof, the proclamation or part thereupon ceases to have effect.

(6) For the purposes of subsections (4) and (5), sitting days shall be counted, whether or not they occur during the same session.

(7) In this section, "premises" does not include any vessel.

PART II.**NOISE ADVISORY COMMITTEE.**

**Constitution
of the
Committee.**

11. (1) For the purposes of this Act there shall be constituted a Noise Advisory Committee which shall consist of twelve members.

(2) The members of the Committee shall be appointed by the Governor and shall consist of—

- (a) two persons, each of whom is a member of the Commission nominated by the Commission or an officer of the Commission so nominated;
- (b) a member of the Health Commission of New South Wales nominated by that Commission or an officer of that Commission so nominated;
- (c) an officer of the Department of Motor Transport nominated by the Minister for Transport;

(d)

Noise Control.

- (d) an officer of the Department of Mines nominated by the Minister for Mines;
- (e) an officer of the Department of Labour and Industry nominated by the Minister for Labour and Industry;
- (f) a person nominated by the Local Government Association of New South Wales;
- (g) a person nominated by the Shires Association of New South Wales; and
- (h) four persons nominated by the Minister, being persons having such professional and technical qualifications as the Minister considers appropriate.

(3) One of the persons referred to in subsection (2) (a) shall, in and by the instrument of his appointment or a subsequent instrument executed by the Governor, be appointed as the Chairman of the Committee.

(4) Any nomination of a member of the Committee shall be made within the time and in the manner prescribed and in default of any person or body entitled to make any such nomination doing so within that time and in that manner the Governor may appoint any person to the Committee as if that person had been duly nominated by the person or body entitled to make the nomination.

(5) Every member of the Committee shall be entitled to receive such travelling and other expenses, and every member referred to in subsection (2) (f), (g) and (h) shall, if the Minister so approves, be entitled to receive such fees for attending meetings and transacting business of the Committee, and making inspections for the purposes of this Act, as the Minister may from time to time determine in respect of that member.

(6) The office of a member of the Committee shall not, by reason of the member's accepting or receiving any expenses or fees to which he is entitled under subsection (5), be deemed to be an office of profit under the Crown for the purposes of the Constitution Act, 1902.

(7)

Noise Control.

(7) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment of any member of the Committee, and any such member shall not, in his capacity as such a member, be subject to the provisions of that Act during his term of office.

Term of
office.

12. The members of the Committee shall, subject to this Part, hold office for a period of three years and shall, if otherwise qualified, be eligible for reappointment.

Vacancies.

13. (1) On the occurrence of a vacancy in the office of a member of the Committee otherwise than by the expiration of the term for which he was appointed, the Governor may appoint a person to fill the vacant office so that the Committee is constituted as provided by section 11 (2).

(2) A person appointed under subsection (1) shall, subject to this Part, hold office for the balance of his predecessor's term of office.

(3) A member of the Committee shall be deemed to have vacated his office if he—

- (a) dies;
- (b) resigns his office by writing under his hand addressed to the Minister;
- (c) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- (d) is removed from office under subsection (4); or
- (e) being—
 - (i) a person referred to in section 11 (2) (a) or (b)—ceases to be a member or officer of the body referred to therein; or

(ii)

Noise Control.

(ii) a person referred to in section 11 (2) (c), (d) or (e)—ceases to be an officer of the department referred to therein.

(4) The Governor may remove from office, for any cause which appears to him sufficient, any member of the Committee.

14. (1) The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall, subject to the regulations, be as determined by the Committee. Meetings of the Committee.

(2) The Chairman of the Committee shall preside at all meetings of the Committee at which he is present, and in his absence the members of the Committee present shall appoint one of their number to preside at that meeting during the Chairman's absence.

(3) The person entitled to preside at any meeting of the Committee shall have a deliberative vote, and, in the event of an equality of votes, shall have a second or casting vote.

(4) Seven members of the Committee shall form a quorum at any meeting of the Committee and any duly convened meeting of the Committee at which a quorum is present shall be competent to transact any business of the Committee.

(5) Questions arising at a meeting of the Committee shall be determined by a majority of votes of the members present and voting.

15. (1) The Committee may establish sub-committees for the purpose of advising the Committee upon such matters within the scope of the Committee's functions as may be referred to the sub-committees by the Committee. Sub-committees.

(2)

Noise Control.

(2) A person may be appointed to a sub-committee whether or not he is a member of the Committee.

(3) A sub-committee may exercise and discharge such of the Committee's powers, authorities, duties and functions as may be delegated to it by the Committee.

(4) Notwithstanding any such delegation, the Committee may continue to exercise and discharge any of the powers, authorities, duties and functions so delegated.

(5) The Committee may at any time revoke any such delegation, either wholly or in part.

(6) Every member of a sub-committee shall be entitled to receive such travelling and other expenses and, if the Minister so approves, such fees for attending meetings and transacting business of the sub-committee, and making inspections for the purposes of this Act, as the Minister may from time to time determine in respect of that member.

(7) The office of a member of a sub-committee shall not, by reason of the member's accepting or receiving any expenses or fees to which he is entitled under subsection (6), be deemed to be an office of profit under the Crown for the purposes of the Constitution Act, 1902.

Functions
of the
Committee.

16. It is the duty of the Committee to make recommendations to the Commission in respect of matters referred to it by the Commission, and the Committee may initiate and refer to the Commission recommendations, relating to—

- (a) the administration of this Act;
- (b) making, altering or repealing any regulation; and
- (c) the prevention, control or abatement of noise.

PART

Noise Control.

PART III.

SCHEDULED PREMISES.

DIVISION 1.—*Licensing provisions.*

17. (1) This Division applies to a part of the State specified in a proclamation under subsection (2). Application of Division.

(2) The Governor may, by proclamation published in the Gazette, declare that this Division applies to any part of the State specified in the proclamation.

18. (1) A person who is the occupier of any scheduled premises in a part of the State to which this Division applies and who is not the holder of a licence issued in respect of those premises is guilty of an offence against this Act. Scheduled premises to be licensed.

(2) Where premises are, at the time when this Division is applied to the part of the State in which those premises are situated, scheduled premises, subsection (1) does not apply to the occupier of those premises until—

- (a) the expiration of the prescribed period after this Division is so applied; or
- (b) the application (if any) made within that period by the occupier for a licence in respect of those premises has been finally determined,

whichever is the later.

(3) Where, by reason of the coming into force of a proclamation under section 10, premises become scheduled premises at the time the proclamation comes into force, subsection (1) does not apply to the occupier of those premises until—

- (a) the expiration of the prescribed period after the proclamation comes into force; or

(b)

Noise Control.

- (b) the application (if any) made within that period by the occupier for a licence in respect of those premises has been finally determined,

whichever is the later.

(4) Where a person becomes the occupier of scheduled premises and immediately before he became the occupier of the premises they were occupied by a person who was the holder of a licence in respect of those premises, subsection (1) does not apply to that firstmentioned person until—

- (a) the expiration of the prescribed period after he became the occupier of the premises; or
 (b) the application (if any) made within that period by him for the transfer to him of the licence has been finally determined,

whichever is the later.

Applications
for licences.

19. (1) An application for a licence or for the renewal or transfer of a licence shall be made to the Commission in or to the effect of the prescribed form, and shall be accompanied by the prescribed fee.

(2) An application for the renewal of a licence shall be made within the prescribed time before the licence would expire if not renewed.

(3) An application for the transfer of a licence shall be made with the consent of the holder of the licence.

Licences.

20. (1) The Commission—

- (a) may grant any application for a licence or for the renewal or transfer of a licence, either subject to conditions or unconditionally; or
 (b) may refuse any such application.

(2)

Noise Control.

(2) The Commission may, during the currency of a licence, by notice in writing served on the holder of the licence—

- (a) revoke the licence or suspend it for such period expiring not later than the date of expiry of the licence as the Commission thinks fit;
- (b) revoke or vary any condition attached to the licence;
or
- (c) attach new conditions to the licence.

(3) In exercising its powers under this section, the Commission shall have regard to the level, nature, character and quality of, and the times at which, noise is or is likely to be emitted from the premises to which the application or the licence, as the case may require, relates.

(4) The refusal of an application, the revocation or suspension of a licence, the revocation or variation of any condition attached to a licence or the attaching of a condition to a licence, under this section, has no force—

- (a) until the time limited for appealing against the Commission's decision has expired; and
- (b) where within that time an appeal against the decision has been made under this Act, until the District Court confirms the decision.

21. Subject to this Division—

- (a) an original licence remains in force for a period of one year from the date of its issue; and
- (b) a renewed licence remains in force until the expiration of the period of one year specified in the renewal.

Dura-
tion of
licences.

22. The Commission shall cause to be kept such registers of licences as may be prescribed.

Regis-
ters of
licences.

23.

Noise Control.

Fees. **23.** (1) The fee prescribed for a licence shall not exceed \$3,000.

(2) Without affecting the generality of section 67 (1), different fees may be prescribed for the purposes of subsection (1) according to specified factors or circumstances.

(3) Where the Commission is satisfied that the noise from any scheduled premises would not be such as to warrant the payment of the prescribed fee, the Commission may, upon the application of the occupier of those premises, remit in whole or in part the fee payable under this Division in respect of the premises.

**Require-
ment to
furnish
informa-
tion, etc.**

24. The Commission may, by notice in writing served on an applicant for a licence, require the applicant to furnish to the Commission such information and such plans and specifications as the Commission considers necessary and relevant to the application and specifies in the notice.

DIVISION 2.—Other provisions.

**Applica-
tion of
Division.**

25. This Division applies to and in respect of scheduled premises, whether or not those premises are within a part of the State to which Division 1 applies.

**Occupiers
to main-
tain and
operate
noise
control
equip-
ment, etc.**

26. (1) The occupier of any scheduled premises shall maintain any noise control equipment installed in or on those premises in an efficient condition and shall operate that equipment in a proper and efficient manner.

(2) The occupier of any scheduled premises who operates any plant (other than noise control equipment) in or on those premises in such a manner as to cause or increase

the

Noise Control.

the emission of noise from those premises is guilty of an offence if the noise so caused or increased, or any part thereof, is caused by reason of his failure—

- (a) to maintain that plant in an efficient condition; or
- (b) to operate that plant in a proper and efficient manner.

(3) The occupier of any scheduled premises who processes, handles, moves or stores any materials in such a manner as to cause or increase the emission of noise from those premises is guilty of an offence if the noise so caused or increased, or any part thereof, is caused by reason of his failure to process, handle, move or store those materials in a proper and efficient manner.

(4) In subsection (3), "materials" includes raw materials, materials in the process of manufacture, manufactured materials, by-products and waste materials.

27. (1) The occupier of any scheduled premises—

(a) shall not—

(i) alter the method of operation of any trade, industry, process or plant in or on those premises; or

(ii) install, alter or replace any plant in or on those premises,

if by so doing he is likely to cause or increase the emission of noise from those premises; or

(b) shall not carry out any work in or on those premises that constitutes the beginning of, or any subsequent step in, any work of the nature referred to in paragraph (a) (ii), if, were the installation,

Approval of
Commission
required for
certain
work.

alteration

Noise Control.

alteration or replacement completed, it would be likely that it would cause or increase the emission of noise from those premises,

except in accordance with an approval in writing given by the Commission or in accordance with a noise control notice.

(2) The occupier of any premises—

(a) shall not—

(i) in or on those premises carry out any work that would cause those premises to be scheduled premises; or

(ii) on any land construct any building designed for use for a purpose that would cause the land or building to be scheduled premises; or

(b) shall not carry out any work in or on those premises that constitutes the beginning of, or any subsequent step in, any work of the nature referred to in paragraph (a),

except in accordance with an approval in writing given by the Commission.

(3) An application for an approval under this section shall be in or to the effect of the prescribed form and accompanied by—

(a) the prescribed fee; and

(b) details of the trade, industry or process proposed to be carried on in or on the premises or proposed premises, together with details of the methods intended to be adopted so as to control the emission of noise that may be associated with the subject-matter of the application.

(4)

Noise Control.

(4) Without affecting the generality of section 67 (1), different fees may be prescribed for the purposes of subsection (3) according to specified factors or circumstances.

(5) The Commission—

- (a) may grant any application under this section, either subject to conditions or unconditionally; or
- (b) may refuse any such application.

(6) Without affecting the generality of subsection (5), the Commission may—

- (a) refuse an application under this section, having regard to the site on which any work that is the subject of the application is to be carried out; or
- (b) attach to an approval under this section a condition that requires, or has the effect of requiring, that any work that is the subject of the approval is to be carried out on a site specified or referred to in the approval.

(7) The Commission may revoke any condition attached to an approval under this section.

(8) Where the occupier of any scheduled premises installs or replaces any plant in contravention of subsection (1), the Commission may, by notice in writing, require him to remove the plant within such time as may be specified in the notice.

(9) A notice under subsection (8) has no force—

- (a) until the time limited for appealing against the Commission's decision has expired; and
- (b) where within that time an appeal against the notice has been made under this Act, until the District Court confirms the decision.

(10)

Noise Control.

(10) Proceedings in respect of an offence arising under this section may be commenced at any time within three years after the offence was committed.

(11) For the purposes of subsections (1) (b) and (2) (b), it is immaterial whether or not the work referred to therein, being work of the nature referred to in subsection 1 (a) (ii) or (2) (a), was or is completed.

(12) In proceedings for an offence arising under subsection (1) or (2), it is not necessary that it be established that the offence was committed on a particular day or on particular days, provided it is established that the offence was committed during a particular period.

(13) The Commission may, by notice in writing served on an applicant for an approval under this section, require the applicant to furnish to the Commission such information and such plans and specifications as the Commission considers necessary and relevant to the application and specifies in the notice.

(14) An application for an approval under this section shall not be granted unless evidence is produced that any necessary approval required under the Local Government Act, 1919, has been obtained.

PART IV.**PROHIBITION OF SALE OF ARTICLES.**

Sale of
articles
emitting
more than
prescribed
noise.

28. A person shall not, whether on his own behalf or on behalf of another person, sell any article of a class prescribed for the purposes of this section if, when in use or operation,

the

Noise Control.

the article emits noise that, when measured at any point specified in or determined in accordance with the regulations, is in excess of the level prescribed in respect of the class to which it belongs.

29. (1) A person shall not, whether on his own behalf or on behalf of another person, sell any article of a class prescribed for the purposes of this subsection unless the article is fitted in the prescribed manner with noise control equipment of a prescribed class.

Sale of articles required to be fitted with noise control equipment.

(2) A person shall not, whether on his own behalf or on behalf of another person, sell any article of a class prescribed for the purposes of this subsection unless the noise control equipment with which it is fitted is maintained in accordance with the regulations.

30. It is a sufficient defence to a prosecution for an offence arising under this Part if the defendant proves that the offence was committed by him in the course of his employment by another person or that, upon, or in the event of, the sale of the article to which the offence relates, he received or was to receive remuneration, by way of commission, from a person other than the owner of the article.

Defence.

PART V.

NOISE CONTROL NOTICES.

DIVISION 1.—Preliminary.

31. In this Part, except in so far as the context or subject-matter otherwise indicates or requires, "specified", in relation to a noise control notice, means specified or described in the notice.

Interpretation: Part V.

DIVISION

(d)

Noise Control.

DIVISION 2.—*Noise control notices relating to articles, irrespective of where used.*

Interpreta-
tion: Part V,
Div. 2.

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

- (a) in any case—the Commission or an authorised officer; and
- (b) to the extent and in the class of cases specified in the regulations—a person or body specified or described in the regulations.

Noise
control
notices:
articles.

33. The appropriate authority may, by notice in writing served on a person, prohibit him from causing, permitting or allowing any specified article of a class prescribed for the purposes of this section to be used or operated if, when used or operated, it emits noise that, when measured at any point specified in or determined in accordance with the regulations, is in excess of the level prescribed in respect of the class to which it belongs.

Offence.

34. A person shall not, without reasonable excuse, contravene a noise control notice under this Division.

Defence.

35. It is a sufficient defence to a prosecution for an offence arising under section 34 if the defendant proves—

- (a) that a certificate, relating to the article referred to in the information for the offence, was issued by a person of a prescribed class within the prescribed period before the commission of the offence, certifying that the article had been tested in the prescribed manner on the date which the certificate bears and that that test shows that it had not then emitted at any point referred to in section 33 noise in excess of the level prescribed in respect of the class to which it belongs; and

(b)

Noise Control.

- (b) that he had not, since the date that the certificate bears, failed to take all reasonable and practicable steps to prevent the commission of the offence.

DIVISION 3.—Noise control notices relating to scheduled premises.

36. (1) The Commission may, by notice in writing served on the occupier of any scheduled premises, prohibit him from causing, permitting or allowing—

Noise
control
notices:
scheduled
premises.

- (a) any specified activity to be carried on in or on those premises; or
- (b) any specified article to be used or operated in or on those premises,

in such a manner as to cause the emission from those premises of noise that, when measured at any specified point (whether within or outside those premises), is in excess of the specified level.

(2) Where the Commission is satisfied that any noise is being or is likely to be emitted from any scheduled premises, the Commission may, by notice in writing served on the occupier, require the occupier—

- (a) to install and operate noise control equipment in or on those premises;
- (b) to repair, alter or replace any noise control equipment in or on those premises;
- (c) to erect a noise barrier in or on those premises;
- (d) to install plant of a specified type, where the Commission is satisfied that the use of that plant will result in the prevention or reduction of the emission of noise from those premises; or

(e)

Noise Control.

- (e) to carry out repairs or adjustments to specified articles, where the Commission is satisfied that the carrying out of those repairs or adjustments will result in the prevention or reduction of the emission of noise from those premises,

within the specified time and in the specified manner.

(3) The Commission may, by notice in writing served on the occupier of scheduled premises, require the occupier to operate, in accordance with any directions contained in the notice, any noise control equipment in or on those premises.

(4) The Commission may, by notice in writing, vary a noise control notice under subsection (2) by extending any time specified in the noise control notice before the expiry of that time.

(5) Nothing in this section affects the power of the Commission under section 20 (1) or (2) to attach conditions to a licence.

Offence.

37. (1) A person shall not, without reasonable excuse, contravene a noise control notice under this Division.

(2) A person is not guilty of an offence arising under subsection (1) in relation to a noise control notice under section 36 (1) unless it is established that the alleged offence resulted in the emission, from the premises to which the alleged offence relates, of noise that was able to be detected or perceived outside those premises without the aid of an instrument, machine or device.

**Postpone-
ment of
operation
of notices.**

38. A noise control notice under this Division has no force—

- (a) until the time limited for appealing against the notice has expired; and

(b)

Noise Control.

- (b) where within that time an appeal against the notice has been made under this Act, until the District Court confirms the notice.

DIVISION 4.—*Noise control notices relating to premises other than scheduled premises.*

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

Interpretation:
Part V,
Div. 4.

- (a) in any case—the Commission or an authorised officer;
- (b) except in relation to vessels being used or operating in navigable waters—a local authority; and
- (c) in relation to vessels being used or operating in navigable waters—the Maritime Services Board.

40. (1) The appropriate authority may, by notice in writing served on the occupier of any premises (other than scheduled premises), give a warning to the occupier to the effect—

Noise control notices: premises other than scheduled premises.

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

in contravention of such one or more conditions of the kinds referred to in subsection (2), or of the prescribed kinds, as are imposed by the appropriate authority and set out in the notice (being conditions compliance with which the appropriate authority is satisfied will prevent or reduce the emission from those premises of noise arising from the carrying out of that step or the use or operation of that article); and

(b)

Noise Control.

- (b) that if, as a result thereof, offensive noise is—
- (i) if those premises are not a public place—
emitted from those premises; or
 - (ii) if those premises are a public place—made
in or emitted from those premises,

he may be proceeded against for an offence arising under this Division.

(2) The following kinds of conditions may be imposed in a noise control notice under this Division, namely—

- (a) that specified noise control equipment is installed in or on the premises in a specified manner;
- (b) that specified noise control equipment in or on the premises is used or operated in a specified manner;
- (c) that specified noise control equipment in or on those premises is repaired, altered or replaced in a specified manner;
- (d) that a specified noise barrier is erected in or on those premises in a specified manner;
- (e) that a specified noise barrier in or on those premises is used or operated in a specified manner; or
- (f) that specified repairs or adjustments are carried out to specified articles.

Offence.

41. (1) Where a noise control notice has been served under this Division on the occupier of specified premises, he shall not, while the notice remains in force, cause, permit or allow—

- (a) the specified step to be carried out in or on those premises; or

(b)

Noise Control.

- (b) the specified article to be used or operated in or on those premises,

except in accordance with the conditions set out in the notice.

(2) A person is not guilty of an offence arising under subsection (1) unless it is established that the alleged offence resulted in—

- (a) if the premises to which the alleged offence relates were not—at any relevant time, a public place—the emission of offensive noise from those premises; or
- (b) if those premises were, at any relevant time, a public place—the making of offensive noise in, or the emission of offensive noise from, those premises.

42. A noise control notice under this Division has no force— Postponement of operation of notices.

- (a) until the time limited for appealing against the notice has expired; and
- (b) where within that time an appeal against the notice has been made under this Act, until the court confirms the notice.

43. A noise control notice under this Division has no force in so far as it is issued in relation to— Restriction on notices.

- (a) premises that are a public place; or
- (b) 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,

unless it is made by the Commission in accordance with this Division.

DIVISION

Noise Control.

 DIVISION 5.—*Noise control notices relating to times.*

Interpreta-
tion: Part V,
Div. 5.

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

- (a) in any case—the Commission or an authorised officer;
- (b) except in relation to scheduled premises and to vessels being used or operating in navigable waters—a local authority; and
- (c) in relation to vessels being used or operating in navigable waters—the Maritime Services Board.

Noise
control
notices:
times.

45. (1) The appropriate authority may, by notice in writing—

- (a) served on the occupier of any premises, give a warning to him to the effect that if, by reason of his causing, permitting or allowing any specified step in a trade, industry or process to be carried out in or on those premises between specified times on specified days, offensive noise is emitted from those premises; or
- (b) served on a person, give a warning to him to the effect that if, by reason of his causing, permitting or allowing any specified article to be used or operated in or on any specified premises between specified times on specified days, offensive noise is—
 - (i) if those premises are not a public place—emitted from those premises; or

(ii)

Noise Control.

(ii) if those premises are a public place—made in or emitted from those premises,
he may be proceeded against for an offence arising under this Division.

(2) A noise control notice may be issued under this Division in relation to a step in a trade, industry or process or an article notwithstanding that the regulations restrict or have the effect of restricting the times when that step may be carried out or that article may be used or operated.

46. (1) Where a noise control notice has been served **Offences.** under section 45 (1) (a) on the occupier of specified premises, he shall not, while the notice remains in force, cause, permit or allow the specified step to be carried out in or on those premises at any time between the specified times on the specified days.

(2) Where a noise control notice has been served under section 45 (1) (b) on a person, he shall not, while the notice remains in force, cause, permit or allow the specified article to be used or operated in or on the specified premises at any time between the specified times on the specified days.

(3) A person is not guilty of an offence arising under subsection (1) unless it is established that the alleged offence resulted in the emission of offensive noise from the premises to which the alleged offence relates.

(4) A person is not guilty of an offence arising under subsection (2) unless it is established that the alleged offence resulted in—

(a) if the premises to which the alleged offence relates were not, at any relevant time, a public place—the emission of offensive noise from those premises; or

(b)

Noise Control.

- (b) if those premises were, at any relevant time, a public place—the making of offensive noise in, or the emission of offensive noise from, those premises.

Restrictions on notices.

47. (1) A noise control notice under this Division has no force in so far as it is issued in relation to—

- (a) premises that are a public place; or
 (b) 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,

unless it is made by the Commission in accordance with this Division.

(2) A noise control notice issued under this Division by a local authority or an authorised officer who is a servant of a local authority has no force in so far as it is made with respect to—

- (a) the carrying out, at any time between 6 a.m. on a day and 9 p.m. on the same day, of any step in a trade, industry or process; or
 (b) the use or operation, at any such time, of any article.

DIVISION 6.—General provisions.

Restrictions on noise control notices.

48. A noise control notice has no force in so far as it—

- (a) is directed to—
 (i) the Crown or a person acting on behalf of the Crown;

(ii)

Noise Control.

- (ii) a public authority or a person in his capacity as a member, officer, employee or servant of a public authority; or
- (iii) a prescribed person or body; or

(b) would have the result of affecting—

- (i) any activity carried on by or for the Crown or a public authority;
- (ii) any lawful sporting activity; or
- (iii) any activity of a prescribed class or description,

unless it is made by the Commission in accordance with this Part.

49. Subject to section 50 and Part IX, a noise control notice ceases to be in force at the expiration of the period of twelve months, or such lesser period as is specified in the notice, from the date of service of the notice. Expiry of noise control notices.

50. (1) A noise control notice issued by the Commission, a local authority or the Maritime Services Board may, by notice in writing, be revoked by the Commission, that authority or that Board, as the case may be. Revocation of noise control notices.

(2) A noise control notice issued by an authorised officer may, by notice in writing, be revoked—

- (a) in any case—by the authorised officer or the Commission;

(b)

Noise Control.

- (b) if he is a servant of a local authority—by that authority; and
- (c) if he is an officer or employee of the Maritime Services Board—by that Board.

PART VI.
NOISE ABATEMENT ORDERS.

Interpre-
tation:
Part VI.

51. (1) In this Part, “district” means a district appointed under section 5 of the Justices Act, 1902.

(2) For the purposes of this Part, noise amounts to a nuisance if it is offensive noise.

Issue of
noise
abatement
orders.

52. (1) Where the occupier of any premises makes a complaint to a justice of the peace alleging that his occupation of those premises is affected by noise amounting to a nuisance, the justice may summon the person (in this section referred to as “the defendant”) alleged to be making or contributing to the making of the noise or the occupier of the premises from which the noise is alleged to be emitted before a court of petty sessions held for the district in which those premises are situated.

(2)

Noise Control.

(2) If the court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises, the court may make an order—

- (a) directing the defendant to abate the nuisance within the time specified in the order; or
- (b) directing the defendant to prevent a recurrence of the nuisance,

or the court may make an order containing directions under both paragraphs (a) and (b).

53. A person shall not, without reasonable excuse, contravene a noise abatement order.

Contraven-
tion of noise
abatement
orders.

Penalty: \$500.

54. A noise abatement order has no force in so far as it—

Restrictions
on noise
abatement
orders.

(a) is directed to—

- (i) the Crown or a person acting on behalf of the Crown;
- (ii) a public authority or a person in his capacity as a member, officer, employee or servant of a public authority; or
- (iii) a prescribed person or body; or

(b) would have the result of affecting—

- (i) any activity carried on by or for the Crown or a public authority;
- (ii) any lawful sporting activity; or
- (iii) any activity of a prescribed class or description.

55.

(d)

Noise Control.

Commence-
ment of
operation
of noise
abatement
order.

55. A noise abatement order takes effect from the day on which it is made or a later day specified in the order.

Revocation
or variation
of noise
abatement
orders.

56. A noise abatement order, made pursuant to a complaint alleging that a person's occupation of premises is affected by noise, may be revoked or varied by a court of petty sessions held for the district in which those premises are situated.

Costs.

57. In any proceedings under this Part the court may award costs against either party.

PART VII.

NOISE ABATEMENT DIRECTIONS.

Interpreta-
tion:
Part VII.

58. In this Part, "authorised person" means a member of the police force or an authorised officer.

Issue of
noise
abatement
directions.

59. Where it appears to an authorised person that offensive noise is being, or has at any time during the preceding thirty minutes been, emitted from any premises, he may—

- (a) direct the person whom he believes to be the occupier of those premises to cause the emission of the noise to cease; or

(b)

Noise Control.

(b) direct any person whom he believes to be making or contributing to the making of the noise to cease making or contributing to the making of the noise, or he may give directions under both paragraphs (a) and (b).

60. (1) A person to whom a noise abatement direction has been given under section 59 (a) shall not, without reasonable excuse, while the direction remains in force— Contra-vention of noise abatement directions.

(a) fail to cause the emission of the noise from the premises to cease promptly; or

(b) at any time within six hours following the time at which the direction was given, cause, permit or allow noise to be emitted from the premises.

Penalty: \$500.

(2) A person to whom a noise abatement direction has been given under section 59 (b) shall not, without reasonable excuse—

(a) fail to promptly cease making or contributing to the making of the noise; or

(b) at any time within six hours following the time at which the direction was given, make or contribute to the making of noise that is emitted from the premises.

Penalty: \$500.

(3) A person is not guilty of an offence arising under this section unless it is established that the noise to which the alleged offence relates was offensive noise.

61.

Noise Control.

Powers of
authorised
persons.

61. (1) For the purpose of enabling an authorised person to whom a complaint has been made and the identity of the complainant recorded to give a noise abatement direction in relation to noise emitted from premises or to ascertain whether an offence arising under section 60 has been committed in or on those premises, he may—

(a) enter those premises—

- (i) at any time when he believes on reasonable grounds that offensive noise is being emitted from those premises;
- (ii) at any time within thirty minutes after noise has been emitted from those premises, being noise that he believes on reasonable grounds to have been offensive noise,

with the aid of such authorised persons as he considers necessary and with the use of reasonable force; and

(b) (whether or not he enters those premises) require any person who is or was present in or on those premises at any time during the emission of noise referred to in paragraph (a), and to whom he has given an oral or written warning of that person's obligation to furnish the information under this Act, to furnish him with that person's name and address and with the name and address of the occupier of the premises.

(2) A person shall not refuse or fail to comply with a requirement under subsection (1) (b).

Penalty: \$500.

(3) A person shall not, in purported compliance with a requirement under subsection (1) (b), knowingly furnish information that is false or misleading in a material particular.

Penalty: \$500.

(4)

Noise Control.

(4) A person is not guilty of an offence arising under subsection (2) if he proves that in so far as he did not comply with the requirement he was not capable of complying with it.

62. (1) A noise abatement direction has no force in so far as it—

Restrictions on noise abatement directions.

(a) is directed to—

(i) the Crown or a person acting on behalf of the Crown;

(ii) a public authority or a person in his capacity as a member, officer, employee or servant of a public authority; or

(iii) a prescribed person or body; or

(b) would have the result of affecting—

(i) any activity carried on by or for the Crown or a public authority;

(ii) any lawful sporting activity; or

(iii) any activity of a prescribed class or description.

(2) A noise abatement direction given between 6 a.m. on a day and 9 p.m. on the same day has no force unless it is given by an authorised officer who is a member or officer of the Commission.

(3) Unless sooner revoked, a noise abatement direction shall be deemed to be revoked at 6 a.m. next following the time at which the direction was given, unless it was given by an authorised officer who is a member or officer of the Commission.

(b)

63.

Noise Control.

Revoca-
tion of
noise
abatement
direction.

63. A noise abatement direction may be revoked by the person who gave the direction or by a prescribed person.

PART VIII.

REGULATIONS.

Regulations. 64. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without affecting the generality of subsection (1), the regulations may make provision for or with respect to—

- (a) prohibiting or regulating the emission of noise from premises (whether or not those premises are scheduled premises, and whether or not those premises are a public place);
- (b) prohibiting or regulating the making or emission of noise in public places;
- (c) prohibiting the sale, use or operation of an article except in accordance with prescribed conditions relating to the emission of noise from the article when in use or operation, and in particular prohibiting the sale, use or operation of an article unless it is fitted with prescribed noise control equipment;

(d)

Noise Control.

- (d) prohibiting the carrying on of any trade, industry or process except in accordance with the prescribed conditions relating to the emission of noise arising in the course of the carrying on of the trade, industry or process;
 - (e) prohibiting or regulating the use or operation of any article, or the carrying on of any trade, industry or process, at any prescribed times;
 - (f) requiring or empowering the Commission to require the installation, maintenance, use or operation of noise barriers and noise control equipment; and
 - (g) the manner of installing, maintaining, using and operating noise barriers and equipment referred to in paragraph (f).
- (3) Without affecting the generality of subsections (1) and (2), the regulations may also make provision for or with respect to—
- (a) exempting any persons or class of persons, or any premises or class of premises, or any articles or class of articles, from any specified provision or provisions of this Act, in such circumstances, if any, and subject to such conditions, if any, as may be specified in the regulations;
 - (b) the issue, renewal, refusal, revocation, suspension or transfer of licences and the granting or refusal of approvals under section 27;
 - (c) the keeping of registers under this Act;
 - (d)

Noise Control.

- (d) the assistance and facilities (including means of access, and the means of making examinations, inspections and tests) to be provided by occupiers of premises to enable authorised officers to exercise their powers under this Act;
- (e) the inspection of articles, and requiring articles to be tested, for the purpose of determining the level, nature, character or quality of the noise emitted by them or the noise which they are capable of emitting;
- (f) prescribing standards with respect to the making or emission of noise, and the methods of determining the level, nature, character or quality of noise made or emitted;
- (g) preventing or controlling noise made by animals (including birds) on any premises, and in particular the giving of notices requiring the prevention or control of any such noise; and
- (h) appeals under Part IX.

Regulations
respecting
the regis-
tration of
motor
vehicles.

65. (1) Without affecting the generality of the foregoing provisions of this Part, the regulations may make provision for or with respect to prohibiting, or providing for the suspension of, the registration under the Motor Traffic Act, 1909, of any motor vehicle that does not comply with the regulations, and in particular may authorise or require a person or body to suspend the registration under that Act of a motor vehicle that does not so comply.

(2) While the registration of a motor vehicle is suspended by or under the regulations, the vehicle shall be deemed, for the purposes of this Act, the Motor Traffic Act, 1909, and any other Act, not to be registered under the Motor Traffic Act, 1909.

(3)

Noise Control.

(3) Nothing in this section or the regulations affects any power or duty (conferred or imposed by or under any other Act) of the Commissioner for Motor Transport or any other person or body to cancel or suspend the registration of a motor vehicle, the registration of which is suspended by or under the regulations.

66. The regulations may impose, for an offence against the regulations committed— Offences against the regulations.

(a) by a corporation—a penalty not exceeding \$2,500 and, in the case of a continuing offence, a further penalty not exceeding \$500 for each day the offence continues; or

(b) by any other person—a penalty not exceeding \$250 and, in the case of a continuing offence, a further penalty not exceeding \$50 for each day the offence continues.

67. (1) A regulation may—

Provisions applicable to regulations.

(a) be of general application or limited in its application by reference to time, place or circumstances;

(b) be restricted in its application to any specified class of subject-matter or to all subject-matter other than that of a specified class; and

(c) differ in its application according to specified factors or circumstances.

(2) A regulation may authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body.

(3)

Noise Control.

(3) The regulations may prescribe standards or tests by reference to standards or tests specified in any work or document that has been published and is referred to in the regulations or by reference to any such standards or tests as amended in any manner specified in any such work or document or specified in the regulations.

PART IX.
APPEALS AND DISPUTES.

Appeals to
District
Court:
licences,
approvals,
notices.

68. (1) Any person—

- (a) who is an applicant for a licence or for the renewal or transfer of a licence, or a licensee, and who is aggrieved by any decision of the Commission with respect to his application or licence;
- (b) who is an applicant for the approval of the Commission under section 27 and who is aggrieved by the decision of the Commission with respect to his application;
- (c) on whom—
 - (i) a noise control notice under Division 3 of Part V;
 - (ii) a noise control notice issued under Division 5 of Part V with respect to scheduled premises or with respect to scheduled premises and other premises; or
 - (iii) a notice under section 74,
 has been served and who is aggrieved by the notice;
or
 - (d)

Noise Control.

- (d) who is aggrieved by a decision that is made under the regulations by a person or body and that is a decision of a class prescribed for the purposes of this paragraph,

may, in accordance with the rules of the District Court made in that behalf, appeal to the District Court.

(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—
twenty-one days,

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

(3) An appeal under this section shall be in the nature of a rehearing.

(4) The decision of the District Court in an appeal under this section shall be final and is binding on the appellant and person or body who or which made the decision appealed against or issued the notice appealed against.

69. (1) Any person who is aggrieved by a noise abatement order may, in accordance with the rules of the District Court made in that behalf, appeal to the District Court.

Appeals to
District
Court: noise
abatement
orders.

(2)

Noise Control.

(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—
twenty-one days,

after the day on which the order was made.

(3) An appeal under this section shall be in the nature of a rehearing.

(4) In an appeal under this section, the District Court—

- (a) may confirm or revoke the order appealed against ;
and
- (b) if it revokes the order, may make any order that the court appealed from could have made under Part VI.

(5) An order made under subsection (4) (b) shall be deemed to be a noise abatement order made under Part VI.

(6) Part V of the Justices Act, 1902, does not apply to or in respect of a noise abatement order.

Appeals to
courts of
petty
sessions.

70. (1) Any person—

- (a) on whom a noise control notice not referred to in section 68 (1) (c) has been served and who is aggrieved by the notice ; or
- (b) who is aggrieved by a decision that is made under the regulations by a person or body and that is a decision of a class prescribed for the purposes of this paragraph,

may appeal to the court of petty sessions nearest to the place where that person ordinarily resides or carries on business.

(2)

Noise Control.

(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—
twenty-one days,

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.

(3) An appeal under this section shall be in the nature of a rehearing.

(4) An appeal under this section shall be heard and determined by a court of petty sessions held before a stipendiary magistrate.

(5) The decision of the court in an appeal under this section shall be final and is binding on the appellant and the person or body who or which issued the notice appealed against or made the decision appealed against.

71. In any appeal under this Part the court may award **Costs.** costs against any party.

72. (1) Where a dispute arises between the Commission and a public authority or a person acting on behalf of the Crown with respect to any matter or thing against which an appeal lies under this Part, the Commission or that authority or person may refer the dispute to the Premier for settlement, and the decision of the Premier on the dispute shall be given effect to by the Commission and that authority or person.

(2)

Noise Control.

(2) Where a dispute is settled by the Premier under subsection (1), the authority or person which or who was a party to the dispute is not entitled to appeal under this Part against the matter or thing to which the dispute related.

PART X.

MISCELLANEOUS.

Burglar
and other
alarms.

73. (1) In this section, "alarm" means a burglar alarm or fire alarm, and includes any device (including a bell or siren) that is designed to give audible warning or audible notice of any act, matter or thing.

(2) Where a member of the police force is satisfied that an alarm has been sounding in or on any premises for a period of at least thirty minutes and that offensive noise is thereby being emitted from those premises, he may—

- (a) enter those premises; and
- (b) take all such steps as appear to him to be reasonably necessary for or in connection with stopping the alarm from sounding,

with the aid of such assistants as he considers necessary and with the use of reasonable force.

(3) It is the duty of a member of the police force who has taken action under subsection (2) to cause such persons or authorities as appear to him to be appropriate in the circumstances to be promptly informed of the action so taken.

(4)

Noise Control.

(4) Nothing in this section applies with respect to an alarm in a motor vehicle.

74. (1) The Commission may, by notice in writing served on any person, being— Power to require information.

- (a) the occupier of any premises, other than a vessel;
- (b) the occupier or owner of any vessel; or
- (c) the owner of any plant or motor vehicle or any person in whose care, custody or control the plant or vehicle is for the time being,

require that person to furnish, in such manner as is specified in the notice, to it within fourteen days or such longer period as is specified in the notice, such information (including plans and specifications where appropriate)—

- (d) in the case of a person referred to in paragraph (a) —as to any plant or motor vehicle in or on the premises;
- (e) in the case of a person referred to in paragraph (b) —as to any plant in or on the vessel; or
- (f) in the case of a person referred to in paragraph (c) —as to the plant or motor vehicle,

as it requires by the notice.

(2) A local authority may, by notice in writing served on any person, being—

- (a) the occupier of any premises, other than scheduled premises or vessels;

(b)

Noise Control.

(b) the occupier or owner of any vessel, other than a vessel being used or operating in navigable waters; or

(c) the owner of any plant or any person in whose care, custody or control the plant is for the time being,

require that person to furnish, in such manner as is specified in the notice, to it within fourteen days or such longer period as is specified in the notice, such information (including plans and specifications where appropriate)—

(d) in the case of a person referred to in paragraph (a) —as to any plant in or on the premises;

(e) in the case of a person referred to in paragraph (b) —as to any plant in or on the vessel; or

(f) in the case of a person referred to in paragraph (c) —as to the plant,

as it requires by the notice.

(3) The Maritime Services Board may, by notice in writing served on any person, being the occupier or owner of any vessel being used or operating in navigable waters, require that person to furnish, in such manner as is specified in the notice, such information (including plans and specifications where appropriate) as to any plant in or on the vessel as it requires by the notice.

(4) A person shall not, without reasonable excuse, neglect or fail to comply with any requirement made pursuant to this section.

Penalty: \$1,000.

(5)

Noise Control.

(5) Any statement made to the Commission, a local authority or the Maritime Services Board pursuant to any requirement made pursuant to this section shall not, if the person making the statement objected, at the time of making it, to doing so on the ground that it might tend to incriminate him, be admissible in evidence in any prosecution against him for any offence, not being the offence of neglecting or failing to comply with any requirement made pursuant to this section.

(6) A notice shall not be served under subsection (2) or (3) on the Crown, a person acting on behalf of the Crown, a public authority or a prescribed person or body.

75. A person shall not disclose any information obtained by him in connection with the administration or execution of this Act, unless the disclosure is made— Disclosure of information.

- (a) with the consent of the person from whom the information was obtained, or where the information relates to a manufacturing, industrial or trade process carried on in or on any premises, with the consent of the occupier of those premises;
- (b) in connection with the administration or execution of this Act; or
- (c) subject to section 74, for the purpose of any legal proceedings arising out of this Act or of any report of any such proceedings.

Penalty: \$1,000.

76. (1) An authorised officer may enter—

- (a) any premises used as a factory or any premises in which an industry or trade is being carried on, at any time during which any manufacturing, industrial or trade process is being carried on therein;

Powers of authorised officers.

(b)

Noise Control.

(b) any premises, not being a dwelling-house or land used in connection therewith, from which he reasonably suspects that offensive noise is being or is likely to be emitted, at any time; and

(c) any other premises, at any reasonable time,

with the aid of such authorised officers or members of the police force as he considers necessary and with the use of reasonable force, and may therein—

(d) examine any noise control equipment or any plant or motor vehicles emitting or likely to emit noise;

(e) make such examination and inquiry and such tests as he considers necessary to ascertain whether the provisions of this Act or of any requirement, direction, order or notice made or given under or pursuant to this Act or the conditions in force and attached to any licence or approval under this Act are being or have been complied with; and

(f) take such photographs as he considers necessary in connection with the administration of this Act.

(2) An authorised officer may—

(a) by notice in writing, require—

(i) the occupier of any premises from which noise is being or is usually emitted to produce to that authorised officer any reports, books, plans, maps or documents relating to the emission from those premises of noise or relating to any manufacturing, industrial or trade process carried on in or on those premises; or

(ii)

Noise Control.

(ii) any local authority or public authority to produce to that authorised officer any reports, books, plans, maps or documents in the custody or possession of the local authority or public authority relating to any noise control equipment or any plant or motor vehicle that emits or may emit noise,

and may take copies of any such reports, books, plans, maps or documents; and

(b) require a person whom he suspects on reasonable grounds to be offending against this Act to state his full name and place of abode.

(3) Subsection (2) (a) (ii) only applies to an authorised officer who is a member or officer of the Commission.

(4) Every authorised officer shall be provided with a certificate of his appointment, and on applying for admission to any premises which he is empowered by this Act to enter, shall, if requested to do so, produce the certificate to the occupier of the premises.

(5) The Commission may, by notice in writing served on the occupier of any premises, require the occupier to provide such assistance and facilities (whether of the same kind as, or of a different kind from, those prescribed pursuant to section 64 (3) (d)) as are specified in the notice within such time and in such manner as are specified therein, for the purpose of enabling an authorised officer to exercise his powers under this Act.

(6)

Noise Control.

(6) Any person—

- (a) who wilfully delays or obstructs an authorised officer, or fails to comply with any requirement made under this section by an authorised officer, in the exercise of his powers under this Act;
- (b) who, in purported compliance with a requirement under subsection (2) (b), states a name that is not his name or a place of abode that is not his place of abode; or
- (c) who, being the occupier of any premises—
 - (i) refuses to permit or to assist an authorised officer to do, perform or carry out the matters or things, or any of the matters or things, which he is authorised to do, perform or carry out;
 - (ii) refuses to provide such assistance and facilities as may be prescribed for the purpose of enabling an authorised officer to exercise his powers under this Act; or
 - (iii) refuses to comply with a requirement under subsection (5),

is guilty of an offence against this Act and liable to a penalty not exceeding \$1,000.

(7) Nothing in this section affects section 61.

Service of instruments. **77.** Any notice or other instrument issued, made or given for the purposes of this Act may be served—

- (a) by delivering it personally to the person to whom it is addressed;

(b)

Noise Control.

- (b) by delivering it to the place of abode or business of the person to whom it is addressed and by leaving it there with some person for him; or
- (c) by posting it duly stamped and addressed to the person to whom it is addressed at the place last shown in the records of the Commission as his place of abode or business.

78. (1) In this section, "instrument" includes a notice. **Evidence.**

(2) Any instrument purporting to be an instrument issued, made or given for the purposes of this Act (including subsection (4) or (5)) and to have been signed by the Director, an officer of the Commission authorised generally or specially by the Commission or the Director to do so, or a member or servant of a local authority or an officer or employee of the Maritime Services Board duly authorised to do so, 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.

(3) Proof shall not, in the absence of evidence to the contrary, be required of the appointment of the Director, any officer of the Commission, any servant of a local authority or any officer or employee of the Maritime Services Board.

(4) A document certified by the Director or by an officer of the Commission authorised generally or specially by the Commission or the Director to do so to be a true copy of an instrument, being an instrument purporting—

- (a) to be issued, made or given for the purposes of this Act; and

(b)

Noise Control.

- (b) to have been signed by the Director or an officer of the Commission authorised generally or specially by the Commission or the Director to do so,

is admissible in any proceedings under this Act as if it were the original document of which it purports to be a copy.

(5) A certificate signed by the Director or by an officer of the Commission authorised generally or specially by the Commission or the Director to do so certifying any one or more of the following matters, that is to say—

- (a) that an instrument, a copy of which is set out in the certificate, being an instrument purporting—
- (i) to be issued, made or given for the purposes of this Act; and
 - (ii) to have been signed by the Director or an officer of the Commission authorised generally or specially by the Commission or the Director to do so,

was issued, made or given on a day specified in the certificate;

- (b) that premises are within a part of the State to which a proclamation under section 17 relates, a copy of which proclamation is set out in the certificate;
- (c) that a person was, or was not, at a time or during a period so specified, the holder of a licence in respect of premises so specified;
- (d) that a licence was, or was not, at a time or during a period so specified, subject to conditions so specified;

(e)

Noise Control.

- (e) that a licence was, at a time so specified, revoked, or suspended for a period so specified;
- (f) that a condition attached to a licence was, at a time so specified, revoked or varied;
- (g) that a new condition was, at a time so specified, attached to a licence;
- (h) that an approval was, or was not, given under section 27 in relation to any matter so specified;
- (i) that an approval under section 27 was, or was not, subject to conditions so specified;
- (j) that a register kept under this Act shows that premises so specified were, at a time or during a period so specified, within a classification referred to in the regulations and so specified;
- (k) that a person was, or was not, at a time or during a period so specified, an authorised officer; or
- (l) that a person was, or was not, at a time or during a period so specified, an officer of the Commission,

is admissible in any proceedings under this Act and shall be prima facie evidence of the matters so certified.

(6) In proceedings for an offence against this Act, a certificate under subsection (5) that is admitted in evidence and that certifies that a person was, at a time or during a period specified in the certificate, the holder of a licence in respect of premises so specified shall be accepted by the court as evidence of the truth of an allegation, in the information in respect of the offence, that—

- (a) that person was, at that time or during that period, the occupier of those premises; and

(b)

Noise Control.

- (b) those premises were, at that time or during that period, scheduled premises,

unless the contrary is proved or unless it is proved that that person was not, at that time or during that period, the holder of a licence in respect of those premises.

(7) In proceedings for an offence against this Act, evidence that a register kept under this Act shows that premises were, at a time or during a period, within a classification referred to in the regulations and specified in the register shall be accepted by the court as evidence of the truth of an allegation, in the information in respect of the offence, that those premises were, at that time or during that period, within that classification, unless the contrary is proved.

Offences. 79. Any person who—

- (a) fails to comply with any of the provisions of this Act, other than the regulations;
- (b) being a licensee, does not comply with any condition or prohibition in force and attached to the licence held by him under this Act;
- (c) fails to comply with any condition subject to which an approval is granted by the Commission; or
- (d) neglects or fails to comply with any requirement made under or pursuant to this Act,

is guilty of an offence against this Act.

Noise Control.

80. Any person guilty of an offence against this Act, other than the regulations, shall, where no other penalty is expressly provided, be liable—

- (a) where the offence was committed by a corporation—to a penalty not exceeding \$5,000 and, in the case of a continuing offence, to a further penalty not exceeding \$1,000 for each day the offence continues; or
- (b) where the offence was committed by any other person—to a penalty not exceeding \$500 and, in the case of a continuing offence, to a further penalty not exceeding \$100 for each day the offence continues.

81. Where any person has been convicted of an offence against this Act, the court by which he is convicted—

Power to order contravention to be remedied.

- (a) in addition to imposing a penalty for the offence, may order that person to take such steps within such time as may be specified in the order to prevent the continuance or recurrence of the offence; and

- (b) may enlarge the time so specified,

and if, upon the expiration of the time originally specified or so enlarged, the order has not been complied with, the person so convicted is guilty of an offence against this Act.

82. (1) Proceedings for an offence against this Act may be taken before a court of petty sessions or before the Supreme Court in its summary jurisdiction.

Proceedings for offences.

(2)

Noise Control.

(2) Subject to subsection (3), proceedings for an offence against this Act (other than an offence arising under Part VI or VII) shall not be instituted without the written consent of the Minister or of such member or officer of the Commission as may be authorised by the Minister for the purposes of this subsection.

(3) Subsection (2) does not apply to the institution—

(a) by a member or officer of the Commission of proceedings for an offence if the proceedings are instituted with the consent of the Commission or with the written consent of such member or officer of the Commission as may be authorised by the Commission for the purposes of this paragraph;

(b) by a servant of a local authority of proceedings for an offence if—

(i) the offence was not committed in respect of or in relation to scheduled premises or vessels being used or operating in navigable waters; and

(ii) the proceedings are instituted with the consent of the local authority or with the written consent of such member or servant of the local authority as may be authorised by the local authority for the purposes of this paragraph; or

(c) by an officer or employee of the Maritime Services Board of proceedings for an offence if—

(i) the offence was committed in respect of or in relation to a vessel being used or operating in navigable waters; and

(ii)

Noise Control.

(ii) the proceedings are instituted with the consent of that Board or with the written consent of such member or officer or employee of that Board as may be authorised by that Board for the purposes of this paragraph.

(4) If proceedings in respect of an offence against this Act are brought in a court of petty sessions, the maximum penalty that the court may impose in respect of the offence is, notwithstanding any other provision of this Act, \$2,000 (including any daily penalty) or the maximum penalty provided by this Act in respect of the offence, whichever is the lesser.

(5) If proceedings in respect of an offence against this Act are brought in the Supreme Court in its summary jurisdiction, the Supreme Court may impose a penalty not exceeding the maximum penalty provided by this Act in respect of the offence.

(6) Proceedings in the Supreme Court in its summary jurisdiction in respect of an offence against this Act may, except as provided in section 27, only be commenced within six months after the offence was committed.

In the name and on behalf of Her Majesty I assent to this Act.

L. W. STREET,
Lieutenant-Governor.

*Government House,
Sydney, 16th April, 1975.*

Public Control

(1) The provisions of the Act shall apply to the extent that they are not inconsistent with the provisions of any other law, and shall be construed to give effect to the purposes of the Act.

(2) If necessary to carry out the purposes of the Act, the Board may, in its discretion, require any person who is subject to the provisions of the Act to file with the Board a statement of his or her assets and liabilities, and to file with the Board a statement of his or her income and expenses, and to file with the Board a statement of his or her expenditures, and to file with the Board a statement of his or her other financial information.

(3) If necessary to carry out the purposes of the Act, the Board may, in its discretion, require any person who is subject to the provisions of the Act to file with the Board a statement of his or her assets and liabilities, and to file with the Board a statement of his or her income and expenses, and to file with the Board a statement of his or her expenditures, and to file with the Board a statement of his or her other financial information.

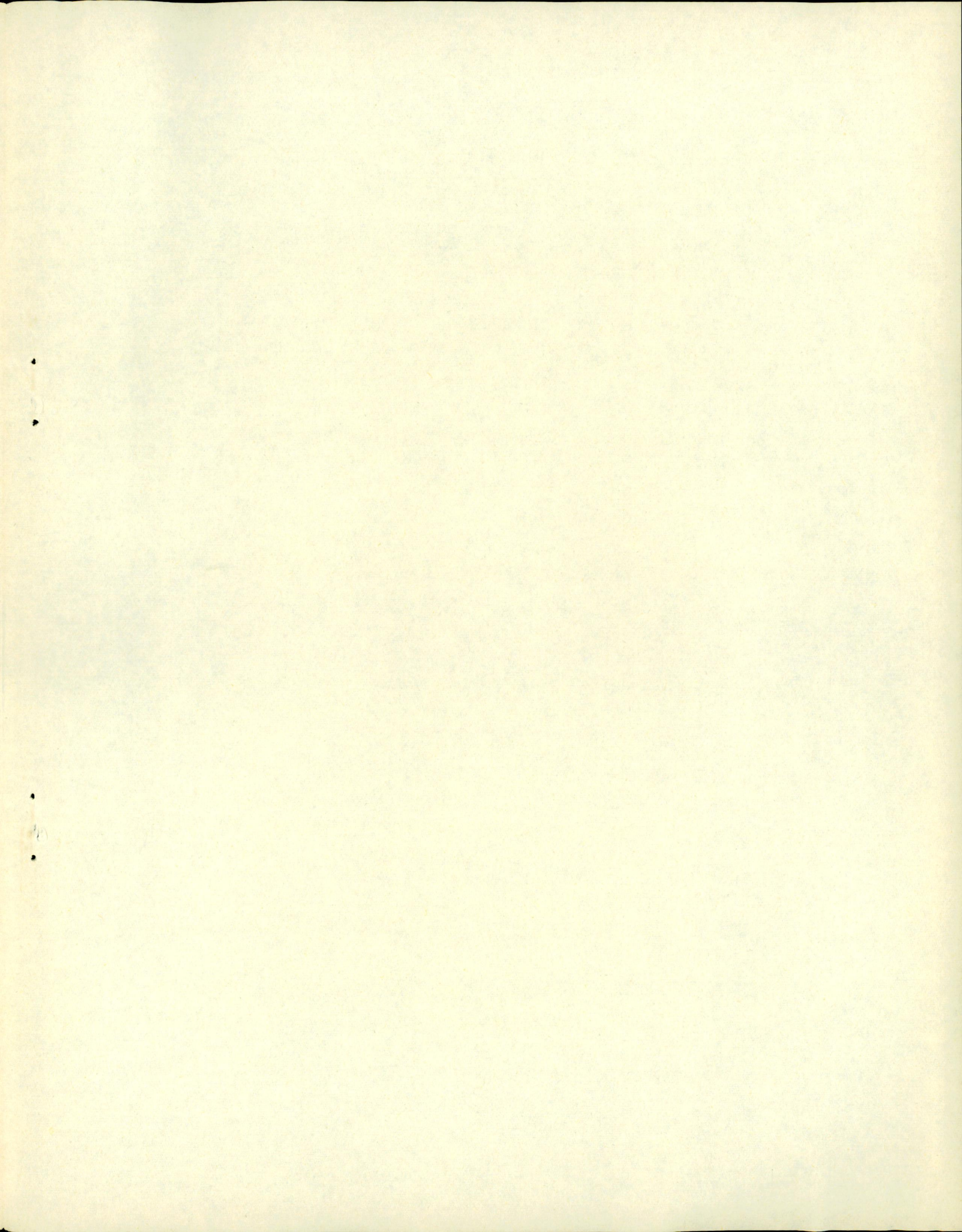
(4) If necessary to carry out the purposes of the Act, the Board may, in its discretion, require any person who is subject to the provisions of the Act to file with the Board a statement of his or her assets and liabilities, and to file with the Board a statement of his or her income and expenses, and to file with the Board a statement of his or her expenditures, and to file with the Board a statement of his or her other financial information.

In the event of any conflict between the provisions of this Act and any other law, the provisions of this Act shall prevail.

L. W. STREET,
Lieutenant-Governor.

Government Printer

2000



NOISE CONTROL BILL.

*Schedule of Amendments referred to in Legislative Council's
Message of 20 March, 1975*

- No. 1.—Page 38, clause 61, line 1. *After* “person” *insert* “**to whom a complaint has been made and the identity of the complainant recorded**”.
- No. 2.—Page 38, clause 61, lines 14 and 15. *Omit*
“; or
(iii) at any reasonable time”.
- No. 3.—Page 45, clause 68, line 1. *Omit* “any person”.
-

NOISE CONTROL BILL.

Schedule of Amendments referred to in Legislative Council's
Message of 20 March 1975

No. 1.—Page 38, clause 61, line 1. After "person" insert "to whom a complaint has
been made and the identity of the complainant recorded."

No. 2.—Page 38, clause 61, lines 14 and 15. Omit

": or

(iii) at any reasonable time."

No. 3.—Page 45, clause 68, line 1. Omit "any person."