

EXPLANATORY STATEMENT
AUSTRALIAN CAPITAL TERRITORY
NOISE CONTROL ORDINANCE 1988

No. 71, 1988

The Noise Control Ordinance 1988 ("the Ordinance") adds to environmental protection, standing alongside similar legislation on water and air pollution. It enables maximum noise levels to be prescribed depending on the time of day, prohibits the sale of certain goods that emit excessive noise, and imposes obligations on employers for hearing conservation in industry.

The Ordinance also provides for the publication of a Noise Control Manual, which will outline the procedures and the instruments to be used when measuring sound.

Background

During the early 1970's there was a general move in the States and Territories to address the issue of noise control. The Commonwealth Ombudsman and Justices of the ACT Supreme Court have also expressed the need for legislative regulation of noise. The issue has become very significant in the ACT because of the increasingly urban nature of Canberra.

There is an inherent difficulty in making legislation dealing with noise - noise pollution is not easily measured and is, by and large, a subjective matter. The Ordinance seeks to eliminate subjective components by enabling maximum noise levels to be prescribed. No power is granted to inspectors to make an assessment of what is offensive or objectionable as in the States.

The main intent of the Ordinance is to prevent excessive noise by first educating persistent noise makers to the fact that they are creating a disturbance (by issuing a noise direction notice) rather than prosecuting without warning. The Departmental Committee on Environmental Quality believed that some discretionary powers are of fundamental importance in dealing adequately with the diversity of situations that may arise. Circumstances and peoples' perception of excessive noise are important factors. Thus, the Ordinance grants inspectors a discretion to issue a noise direction notice, if the emission of noise is above the allowable level.

Noise legislation in all other jurisdictions allows for entry without warrant. The Departmental Committee on Environmental Quality argued that to require inspectors to obtain a search warrant unduly restricts the enforceability of the Ordinance. For example, there are numerous retailers in shopping complexes. To require a warrant for each shop is both inexpedient and burdensome to those who issue warrants. The main role of inspectors is to secure compliance rather than prosecutions. It is also necessary to meet the legislative principle that entry without warrant unduly interferes with the liberty of individuals. The Ordinance strikes a compromise between these two requirements. It allows a power of entry without warrant but no information gained under such circumstances can be used as evidence in prosecutions. This reflects the policy which encourages prevention rather than prosecution.

Details of the Ordinance are as follows.

Section 1 provides that the Ordinance may be cited as the Noise Control Ordinance 1988.

Section 2 provides that sections 1 and 2 come into operation on gazettal of the Ordinance. The remaining provisions will come into operation on a date to be fixed by the Minister.

Section 3 provides that the Crown is bound by the Ordinance, although it cannot be prosecuted for an offence.

Section 4 provides that, to the extent that the common law rules relating to liability for nuisance are applicable in the Territory, they will be preserved.

Section 5 is a general interpretation section. Important definitions are:

- . "excessive noise" emitted from premises is noise that exceeds the prescribed level.

However, excluded from this definition is noise emitted by a motor vehicle, or any plant or equipment that is being used to carry out work necessary for public safety, the safety or security of plant or premises, or for the maintenance of essential services. Also excluded is the user of a lawnmower between 7am and 8pm Mondays to Saturdays or between 8am and 8pm on Sundays and public holidays.

- . "non-domestic premises" includes public places; and "premises" includes vacant land;
- . hotels, motels, hostels and guest houses are expressly excluded from the definition of "residential premises";
- . "sell" includes offer for sale and supply by way of exchange, lease, hire or credit sale.

Subsections 5(2) to 5(5) provide that noise levels are to be measured in accordance with Australian Standards.

Section 6 excludes the application of the Ordinance to noise from animals, aircraft, trains, or vehicles travelling on a public street or entering or leaving residential premises, as noise from those sources is dealt with by other laws. However, a major component of background noise comes from these sources and it is not intended to exclude them from the measurement of background noise.

Part II - Control of Noise

Division 1 - Inspectors

Section 7 allows for the appointment of inspectors whose duties are directed by the Pollution Control Authority.

Section 8 provides that an inspector is to be issued with an identity card containing a photograph of the inspector. These cards must be returned to the Authority when the holder ceases to be an inspector.

Division 2 - Sale or Use of Certain Articles

Section 9 prohibits the sale of prescribed articles which emit noise in excess of the level prescribed for articles of that class. It is intended that the regulations will allow for a transitional period (about 6 months) so that manufacturers can make the necessary arrangements.

Section 10 prohibits the sale of an article which does not have attached the label prescribed for articles of that class.

Section 11 prohibits the use on premises of intruder alarms that persist for longer than 10 minutes. This will not apply to car alarms and will only apply to alarms installed on or after the date specified in the Gazette.

Division 3 - Noise Directions

Section 12 provides that where excessive noise is emitted from premises an inspector may issue a written notice directing that the excessive noise cease and if that direction is ignored a prosecution may follow. A notice cannot endure for longer than 12 months and it will be unusual for it to last for more than 14 days. In deciding whether to issue a notice and in determining the period of the notice, regard must be had to:

- . the level and character of the noise;
- . the times at which the noise is emitted; and
- . the duration of the noise.

If compliance with the notice affects a commercial or industrial activity or requires structural alterations, the notice cannot commence until at least 14 days after its issue.

Section 13 provides that a notice must stipulate the address and description of the premises; the date on which the notice is issued; the time and day of measurement; the level of the noise and the level to which the noise must be reduced.

Section 14 provides for appeal to the Pollution Control Authority to vary the commencement date of the notice. In its decision the Authority is to have regard to the nature, cost and complexity of the action necessary for compliance. A decision must be made within 7 days.

Section 15 provides that non-compliance with a notice is an offence and determines the penalties.

Section 16 provides that an application can be made to the Authority seeking an exemption from the notice provision in respect of non-domestic premises. If the Authority is satisfied that the noise does not unduly interfere with the comfort of persons in the vicinity, then an exemption may be granted. If circumstances alter, the exemption may be revoked. The Authority, in reaching a decision, must have regard to:

- . the level and frequency of the noise;
- . the times at which, and how often the noise is emitted;
- . the location of the premises and the distance of the premises from other occupiers; and
- . the technical feasibility and cost of reducing the noise.

Division 4 - Noise Control Manual

Sections 17-22 provide for the publication of a Noise Control Manual, setting out the instruments and procedures to be used in measuring noise. The Authority may, in writing, amend the Manual, subject to Ministerial approval by notice published in the Gazette. The notice will state the places where copies of the Manual can be purchased. The Manual (and any amendments) must be laid before each House within 15 sitting days and is subject to the same kind of Parliamentary scrutiny as Ordinances and Regulations under the Seat of Government (Administration) ACT 1910.

The Manual essentially consists of the procedures and instruments for noise measurement as contained in the Australian Standards. Because noise measurement is technical, the scientific aspects of the scheme are more appropriate in a Manual. Also, because the Manual can be amended more easily, the measurement procedures will be kept up to date in accordance with Australian Standards.

Sections 23-24 provide that a certified copy of the Manual is evidence of the contents of the Manual. Where noise is measured in accordance with the procedures set out in the Manual, the level ascertained is evidence of the fact that the noise was at that level.

Division 5 - Powers of Entry and Search

Section 25 is a general interpretation section. It provides that a thing is connected with an offence if it affords evidence of the commission of the offence. A reference to "offence" includes a reference to an offence that there are reasonable grounds for believing has been, or is to be, committed.

For the purposes of this Division, a private room in a hotel, motel, hostel or guest house is regarded as residential premises.

Sections 26-29 These sections reflect the principle that entry should only be lawful if in pursuit of a search warrant or with the written consent of the occupier. A Magistrate may not issue a warrant unless satisfied that there are reasonable grounds for issuing the warrant. The warrant is to contain the following information:

- . the purpose of the warrant and a reference to the nature of the offence;
- . the time at which entry is permissible;
- . a description of the kind of thing in relation to which the powers are exercised; and
- . the date on which the warrant ceases to have effect (not later than one month after issue).

Before obtaining the written consent of an occupier an inspector is obliged to inform the occupier of his or her right to refuse. The consent must be voluntary and absence of the signed document raises a presumption of involuntariness. Sometimes, however, it will be necessary for immediate entry as the time involved in obtaining a warrant can be a crucial factor in policing noise, the frequency of which is never guaranteed. In other cases, it might be expedient to inspect premises to decide whether a warrant is needed. This is especially so for commercial or industrial premises. Therefore for non-domestic premises the Ordinance allows entry without warrant. However, this power is purely investigative for no material gained under such circumstances can be used in evidence for a prosecution. This accords with the underlying policy of the legislation which adopts a preventative approach.

Once lawful entry is gained, the Authority or inspectors have the following powers:

- . to inspect the premises and only article or equipment on the premises that appears capable of emitting noise;
- . to conduct tests and take measurements for the purpose of ascertaining whether the Ordinance is being complied with;
- . to require the occupier to operate any article or plant;

- . to take photographs;
- . to inspect books or records;
- . to require the occupier to furnish any information relating to noise or the hearing of persons; and
- . to require the name and address of the occupier.

Section 30 provides that when lawful entry is gained, the Authority or an inspector can remove articles for the purposes of testing. Provision is made for the return of articles when tests have been completed.

Section 31 provides that it is an offence to obstruct or hinder the Authority or an inspector in the execution of his or her duty.

Part III - Hearing Conservation

Section 32 is an interpretation provision. It provides that Part III applies to all premises where persons are employed.

Section 33 provides that if the Authority has reasonable grounds for suspecting that the noise level which an employee is exposed to exceeds 85 decibels, the Authority may give written notice directing the employer to ascertain the level or daily noise dose. The employer is obliged to inform the Authority of the results within 21 days of measurement. Failure to comply is an offence.

Section 34 provides that if the noise to which an employee is exposed exceeds 115 decibels or 0.33 daily noise dose the Authority may issue a written notice directing the employer to take action to ensure that the noise exposure does not exceed that limit. The notice must give the employer at least 28 days to comply. For indoor premises, the Authority can also direct the employer to erect specified signs and may also direct that hearing protectors are to be provided.

Section 35 imposes an obligation on the employer to maintain all noise control equipment.

Section 36 provides that hearing protectors must comply with the requirements prescribed. As well, the employer must comply with all requirements prescribed relating to the storage of hearing protectors and the safety of employees.

Section 37 provides that if the Authority has reasonable grounds for believing that the noise exposure of an employee exceeds 85 decibels, the Authority may issue a written notice directing the employer to arrange audiometric tests for employees. It will not be a sufficient discharge of the obligation if the employer arranges for the tests to be conducted outside working hours or if the employees are required to pay for the tests.

Section 38 provides that an employer must notify the Authority if he or she becomes aware that an employee has suffered loss or damage to hearing as a result of employment.

Section 39 places an obligation on the employer to provide such information to employees and erect such signs as are prescribed if the noise exposure exceeds 115 decibels or 0.33 daily noise dose.

Section 40 provides for exemption from the requirements of section 39. Although an employer may apply to the Authority for an exemption, he or she must first inform the employees in writing of his or her intention to apply. The decision of the Authority is revocable if circumstances change.

Section 41 obliges employers to keep records prescribed relating to noise levels, daily noise doses and audiometric tests. Upon request, an employee is entitled to have access to these documents. If the employer ceases to occupy the premises to which the records relate the records must be delivered to the Authority.

Section 42 provides that the Authority may, upon written notice, require the employer to produce the records or any other information relating to noise exposure in the course of employment. However, the information so provided is inadmissible in proceedings. This accords with the underlying preventative policy of the legislation.

Part IV - Miscellaneous

Section 43 provides that an exemption, or revocation of exemption, is to be published in the Gazette.

Section 44 provides for review by the Administrative Appeals Tribunal of:

- . decisions of inspectors concerning noise direction notices;
- . decisions of the Authority concerning the variation of the commencement date of a noise direction notice;
- . decisions of the Authority concerning exemptions under section 16 and section 40; and
- . decisions of the Authority to issue a direction under section 34.

Section 45 provides that for all reviewable decisions, the Authority or an inspector must give written notice of the decision to the person within 28 days. The notice will inform the person of his or her review rights and his or her right to request reasons.

Section 46 provides that the state of mind of the relevant director, servant or agent of a body corporate is the relevant state of mind to analyse when deciding on the criminal liability of a corporation.

Section 47 provides that a certificate signed by the Authority or an inspector verifying that he or she held that office and that the equipment used in tests was in proper working condition is evidence of those matters.

Section 48 provides that personal delivery of a document to the Authority, or leaving the document with someone employed at the office of the Authority, or sending the document by post to the office of the Authority is sufficient compliance with those sections in the Ordinance which require documents to be delivered to the Authority.

For service on a body corporate, it is sufficient if the document is delivered to a director, manager or secretary, left at the registered office, delivered to an employee reasonably believed to be over the age of sixteen or sent through the post.

For service on any other person, it is sufficient if the document was left at the person's last place of residence or business with a person reasonably believed to be over sixteen, or if the document was sent to that address through the post.

Section 49 provides that the Authority shall prepare an annual report for the Minister concerning the operation of the Ordinance.

Section 50 provides that the Minister may make regulations, not inconsistent with the Ordinance, concerning all matters necessary or convenient to be prescribed.



**Authorised by the Minister
for the Arts and Territories**