

AUSTRALIAN CAPITAL TERRITORY

Noise Control Ordinance 1988

No.71 of 1988

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AUSTRALIAN CAPITAL TERRITORY

Noise Control Ordinance 1988

No. 71 of 1988

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 8 September 1988.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

CLYDE HOLDING
Minister of State for the Arts
and Territories

An Ordinance to provide for the control of noise

PART I—PRELIMINARY

Short title

1. This Ordinance may be cited as the *Noise Control Ordinance 1988*.¹

Commencement

2. (1) Section 1 and this section shall come into operation on the day on which this Ordinance is notified in the *Gazette*.

(2) The remaining provisions of this Ordinance shall come into operation on such date as is, or such dates as are respectively, fixed by the Minister by notice in the *Gazette*.

(Ord. 25/87)—Cat. No.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Position of Crown

3. (1) This Ordinance binds the Crown.

(2) Nothing in subsection (1) renders the Crown (whether in right of the Commonwealth or a State) liable to be prosecuted for an offence.

Common law relating to nuisance

4. Nothing in this Ordinance or the regulations shall be taken to affect the common law rules relating to liability for nuisance.

Interpretation

5. (1) In this Ordinance, unless the contrary intention appears—

“audiometric test” means the measurement of the threshold of hearing of each ear of a person, using a pure tone as the test sound and air as the conductive medium;

“Authority” means the Pollution Control Authority established by the *Air Pollution Ordinance 1984*;

“background noise”, in relation to premises or an article, means the ambient noise measured at or near the premises or article in the absence of noise that is alleged to be excessive in relation to the premises or article;

“daily noise dose”, in relation to a person who is present on premises, means the sum of the partial noise doses, measured over a continuous period of 24 hours, which the person receives while present on those premises;

“excessive noise” means—

- (a) in relation to noise emitted from premises—noise that exceeds the level prescribed—
 - (i) in respect of premises generally or, where different noise levels are prescribed in respect of different classes of premises, in respect of premises of the class in which the first-mentioned premises are included; and
 - (ii) in respect of the time of day at which the noise is emitted;

other than noise emitted—

- (iii) by a motor vehicle or any plant, equipment, apparatus or thing that is being used to carry out work necessary for public safety, for the safety or security of plant or premises, or for the maintenance of essential services; or
 - (iv) by a lawnmower that is being used between the hours of 7 a.m. and 8 p.m. on any day Monday to Saturday (inclusive) or between the hours of 8 a.m. and 8 p.m. on a Sunday; and
- (b) in relation to noise emitted by an article—noise that exceeds the level prescribed in respect of articles of the class in which the first-mentioned article is included;

“lawnmower” means a grass-cutting machine having a motor of less than 8.5 kilowatts, other than shears having a cutting width of less than 120 millimetres;

“Manual” means the Noise Control Manual prepared pursuant to section 17;

“noise direction notice” means a notice given under section 12;

“non-domestic premises” means—

- (a) premises other than residential premises; and
- (b) a public place;

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

“plant” includes equipment, vessels, dredges and cranes;

“premises” includes vacant land;

“public place” means any premises, street, road, footpath, public park, recreation reserve or other place to which the public have access or which the public are entitled to use, whether on payment of money or otherwise;

“residential premises” means premises used exclusively or primarily for residential purposes, other than hotels, motels, hostels and guest houses;

“sell” includes exhibit or offer for sale, whether by wholesale or retail, and supply by way of exchange, lease, hire or credit sale;

“sound” means vibration of a frequency of more than 20 but not more than 20,000 hertz;

“Tribunal” means the Administrative Appeals Tribunal;

“vessel” means any kind of vessel used in navigation by water, however propelled or moved.

(2) A reference in this Ordinance consisting of the words “Australian Standard” followed by letters and figures shall be read as a reference to the standard published under those letters and figures by, or on behalf of, the Standards Association of Australia, being that standard as existing at the date on which this Ordinance is notified in the *Gazette*.

(3) A reference in this Ordinance to a noise level expressed in decibels, or in dB(A), shall be read as a reference to the sound pressure level measured by an instrument having a frequency response weighted in accordance with the A weighting network specified in Australian Standard 1259-1982.

(4) Where noise is measured, in relation to a person, at a position in relation to the person that is a position specified in Australian Standard 1269-1983 as a position in which noise is to be measured in relation to a person, the level of noise so measured shall be deemed to be the level of noise that would, at the time of measurement, be reaching the eardrums of the person.

(5) For the purpose of the definition of “daily noise dose” in subsection (1), the partial noise dose received by a person shall be calculated in accordance with the formula—

$$\left(\frac{T}{8} \right) \text{antilog } [0.1 (L-90)],$$

where—

T is a number equal to the number of hours during which noise reaches the eardrums of the person; and

L is a number equal to the number of decibels in the level of noise reaching the eardrums of the person during those hours.

(6) A reference in this Ordinance to plant shall be read as including a reference to plant that is carried on a vessel or motor vehicle, but not as a reference to equipment that forms part of a vessel or motor vehicle.

(7) A reference in this Ordinance to a Sunday shall be read as including a reference to a day that is a public holiday.

Application

6. This Ordinance does not apply in relation to noise that emanates from—
- (a) an animal;
 - (b) an aircraft;
 - (c) a train; or
 - (d) a motor vehicle while the vehicle is travelling on a public street, or entering or leaving residential premises.

PART II—CONTROL OF NOISE

Division 1—Inspectors

Appointment and functions

7. (1) The Authority may, by instrument in writing, appoint persons to be inspectors for the purposes of this Ordinance.

(2) An inspector shall, in addition to any powers conferred or duties imposed by this Ordinance, perform such duties for the purposes of this Ordinance as the Authority directs.

Identity cards

8. (1) The Authority shall cause to be issued to each person appointed under subsection 7 (1) an identity card that specifies the name and appointment of the person and to which is attached a recent photograph of the person.

(2) A person who was appointed under subsection 7 (1) shall not, upon ceasing to be an inspector, fail or refuse, without reasonable excuse, to return to the Authority the identity card issued to the person.

Penalty: \$100.

Division 2—Sale or use of certain articles

Sale of certain articles prohibited

9. A person who sells a prescribed article that, when in operation, emits noise that exceeds the level prescribed in respect of articles of the class in which the first-mentioned article is included is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a body corporate—\$50,000; or
- (b) in the case of a natural person—\$10,000.

Sale of unlabelled articles prohibited

10. A person who sells a prescribed article to which there is not attached as prescribed a label of the prescribed kind containing the notice prescribed in respect of the class of articles in which the first-mentioned article is included is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a body corporate—\$5,000; or
- (b) in the case of a natural person—\$1,000.

Intruder alarms

11. (1) The occupier of premises shall not permit the use on those premises of an intruder alarm, being an alarm installed on or after a date specified by the Authority by notice in the *Gazette* for the purposes of this section, that emits noise that is audible outside the premises unless the alarm is so constructed and regulated that—

- (a) it ceases to emit noise within 10 minutes of being activated; and
- (b) it will not again emit noise unless it is—
 - (i) activated by another detection device; or
 - (ii) reset manually.

(2) A person who contravenes this section is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a body corporate—\$2,500; or
- (b) in the case of a natural person—\$500.

Division 3—Noise directions

Noise direction notice

12. (1) Where excessive noise is being or has been emitted from premises, an inspector may, by notice in writing given to the occupier of the premises, direct that the occupier neither cause nor permit excessive noise to be emitted from the premises during a specified period.

(2) In deciding whether to give a noise direction notice or in determining a period, an inspector shall have regard to—

- (a) the level and character of the noise;
- (b) the times at which the noise is emitted; and
- (c) the duration of the noise.

(3) Where an exemption under section 16 is in force in respect of premises, a noise direction notice in respect of noise of the kind to which the exemption relates is invalid.

(4) An inspector may specify a period commencing on or after the date of the notice and ending not more than 12 months later.

(5) An inspector shall not specify a period exceeding 14 days unless the inspector reasonably believes that the noise will reoccur after 14 days.

(6) An inspector shall not specify a commencing date that is earlier than 14 days after the date of the notice if—

- (a) the occupier of the premises will be required to make structural alterations to the premises in order to comply with the notice; or
- (b) complying with the notice is likely to affect the operation of a commercial or industrial activity being carried out on the premises.

Contents of notice

13. A noise direction notice shall specify—

- (a) the address and description of the premises in respect of which the notice is issued;
- (b) the date on which the notice is issued;
- (c) the time at which, and date on which, the noise being emitted from the premises was measured;
- (d) the level at which the noise was measured;
- (e) the period during which the noise was measured; and
- (f) the level to which the noise is to be reduced.

Variation by Authority

14. (1) An occupier of premises to whom a noise direction notice has been given may apply in writing to the Authority for the Authority to vary the date on which the period for which the notice is to be in force commences by substituting a later date.

(2) In deciding whether to vary the commencement date, the Authority shall have regard to the nature, cost and complexity of the action required to be taken by the occupier in order to comply with the notice.

(3) The Authority shall make a decision on an application within 7 days of receiving the application.

(4) Where the Authority varies the commencement date of a period, the Authority may also vary the date on which the period ends by substituting a later date.

Non-compliance with notice—offence

15. An occupier of premises shall not, while a noise direction notice is in force in respect of the premises, cause or permit noise to be emitted from the premises in contravention of the notice.

- Penalty: (a) in the case of a body corporate—\$5,000; and
(b) in the case of a natural person—\$1,000.

Exemption

16. (1) A person may apply in writing to the Authority for exemption from the provisions of section 12 in respect of non-domestic premises.

(2) Where the Authority is satisfied that the noise proposed to be emitted from the premises is unlikely to interfere unduly with the comfort or repose of persons in the vicinity of the premises, the Authority may, by instrument in writing, exempt the applicant from the requirements of section 12 in respect of specified noise.

(3) Where the Authority is, on a request under subsection (4) or otherwise, satisfied that, by reason of changed circumstances, the noise emitted from premises in respect of which an exemption is in force is no longer unlikely to interfere unduly with the comfort or repose of persons in the vicinity of the premises, the Authority may, by notice in writing given to the holder of the exemption, revoke the exemption.

(4) A person affected by an exemption may, in writing, request the Authority to revoke the exemption.

(5) In determining whether to grant or revoke an exemption, the Authority shall have regard to the following:

- (a) the level and frequency of the noise;

- (b) the times at which the noise is, or is to be, emitted;
- (c) how often the noise is, or is to be, emitted;
- (d) the location of the premises;
- (e) the distance of the premises from other occupied premises;
- (f) whether it is technically feasible for the applicant to reduce the noise to a level that will not constitute excessive noise;
- (g) the cost of so reducing the noise;
- (h) in the case of intermittent noise—the duration of the periods during which the noise is, or is to be, emitted.

Division 4—Noise Control Manual

Preparation

17. (1) The Authority shall cause a manual, called the Noise Control Manual, to be prepared.

(2) The Authority may, in the Manual, set out the instruments to be used, and the procedures to be followed, in measuring noise.

(3) The Authority may, in writing, amend the Manual.

Approval

18. (1) The Minister may, by notice published in the *Gazette*, approve the Manual or an amendment of the Manual.

(2) A notice under subsection (1) shall state the date on which the Manual or amendment is to have effect and the place where copies of the Manual or amendment may be purchased.

(3) The Manual, and each amendment of the Manual, shall take effect 14 days after the date of publication of the notice of approval or, if a later date is specified in the Manual or amendment, on that later date.

Publication

19. The Minister shall cause the Manual and each amendment of the Manual to be published within 14 days after the date of publication of the notice of approval of the Manual or amendment, as the case requires.

Tabling

20. (1) The Minister shall cause a copy of the Manual and of each amendment to be laid before each House of the Parliament within 15 sitting days of that House after the date of publication of the notice of approval of the Manual or amendment, as the case may be.

(2) If the Manual or amendment is not laid before each House of the Parliament in accordance with subsection (1), it shall be void and of no effect.

(3) The provisions of subsections 12 (4) to (7) (inclusive) of the *Seat of Government (Administration) Act 1910* apply in relation to the Manual or amendment laid before a House of the Parliament under subsection (1) as if the references in those subsections to an Ordinance were references to the Manual or amendment.

(4) In the application, by virtue of subsection (3), of the provisions of subsection 12 (6) and (6A) of the *Seat of Government (Administration) Act 1910*, references in those subsections to subsection 12 (3) of that Act shall be read as references to subsection (2) of this section.

Interpretation

21. Unless the contrary intention appears, expressions used in the Manual have the same respective meanings as they would have if the Manual were regulations made under this Ordinance.

Inspection

22. (1) The Authority shall keep a copy of the Manual at his or her office at all times.

(2) Any person may, upon request at any time at which the Authority's office is open for business, inspect the copy of the Manual kept by the Authority.

Evidence

23. (1) In any proceedings in a court, a book purporting to be a copy of the Manual that bears a certificate signed by the Authority stating that the book is a true copy of the Manual as in force on the day or during the period specified in the certificate is evidence of the contents of the Manual as in force on that day or during that period, as the case may be.

(2) For the purposes of subsection (1), a certificate purporting to be signed by the Authority shall, unless the contrary is proved, be taken to have been signed by the Authority.

Measurements as evidence of noise levels

24. (1) Where background noise in relation to premises is measured in accordance with the Manual as in force at the time of measuring, the level of background noise so ascertained is evidence that background noise at that level existed in relation to those premises at that time.

(2) Where noise emitted from premises is measured in accordance with the Manual as in force at the time of measuring, the level of noise so ascertained is evidence that noise at that level was emitted from those premises at that time.

(3) Where noise emitted by an article is measured in accordance with the Manual as in force at the time of measuring, the level of noise so ascertained is evidence that noise at that level was emitted by that article.

Division 5—Powers of entry and search**Interpretation**

25. (1) For the purposes of this Division, a thing is connected with a particular offence if it is—

- (a) a thing that will afford evidence of the commission of the offence; or
- (b) a thing that was used, or is intended to be used, for the purpose of committing the offence.

(2) A reference in this Division to an offence shall be read as including a reference to an offence that there are reasonable grounds for believing has been, or is to be, committed.

(3) For the purposes of this Division, a private room in a hotel, motel, hostel or guest house shall be regarded as residential premises.

Powers of entry, etc.—non-domestic premises

26. (1) The Authority or an inspector may, at any reasonable hour of the day or night, with such assistance as is necessary and reasonable, enter upon or into any premises (other than residential premises) for the purpose of ensuring that the provisions of this Ordinance and the regulations are being complied with.

(2) Where the Authority or an inspector enters premises pursuant to subsection (1), he or she is not authorised to remain on the premises if, on request by or on behalf of the occupier or the person who is, or is reasonably believed to be, in charge of the premises, he or she does not produce the certificate issued to him or her under subsection 7 (4) of the *Air Pollution*

Ordinance 1984 or the identity card issued to him or her under subsection 8 (1), as the case requires.

(3) Where the Authority or an inspector enters premises, the Authority or inspector may—

- (a) inspect the premises and any article or equipment on the premises that appears to him or her capable of emitting noise;
- (b) conduct such tests and take such measurements as he or she considers necessary for the purpose of ascertaining whether the provisions of this Ordinance and the regulations are being, or have been, complied with;
- (c) at a reasonable time, for the purpose of conducting tests referred to in paragraph (b), require the occupier of the premises or a person nominated by the occupier to operate any article or plant on the premises;
- (d) take such photographs as he or she considers necessary for the purposes of this Ordinance or the regulations;
- (e) inspect any books, records or documents relating to noise emitted on the premises or to the hearing of persons employed on the premises, and make copies of, or take extracts from, those books, records or documents;
- (f) require the occupier of the premises to furnish any information relating to noise on the premises or to the hearing of persons employed on the premises; and
- (g) require the occupier of the premises to supply his or her name and address.

(4) Where the Authority or an inspector enters premises pursuant to subsection (1), any information obtained by the Authority or inspector in the exercise of his or her powers under subsection (3) is not admissible in evidence in proceedings for an offence under this Ordinance or the regulations.

Powers of entry, etc.—premises generally

27. The Authority or an inspector may enter upon or into any premises and may search for, and exercise his or her powers under subsection 26 (3) in relation to, any thing that he or she believes on reasonable grounds to be connected with an offence against this Ordinance that is found on or in the premises if, and only if, the search is made and those powers are exercised—

- (a) in pursuance of a warrant issued under section 28; or
- (b) after obtaining the consent of the occupier of the premises.

Search warrants

28. (1) Where an information on oath is laid before a Magistrate alleging that there are reasonable grounds for suspecting that there may be upon or in any premises a thing of a particular kind connected with a particular offence against a provision of this Ordinance, and the information sets out those grounds, the Magistrate may issue a search warrant authorising the Authority or the inspector named in the warrant, with such assistance as is necessary and reasonable and with such force as is necessary and reasonable—

- (a) to enter upon or into the premises;
- (b) to search the premises; and
- (c) to exercise any of his or her powers under subsection 26 (3) in regard to such a thing.

(2) A Magistrate shall not issue a warrant under subsection (1) unless—

- (a) the informant or some other person has given to the Magistrate, either orally or by affidavit, such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(3) There shall be stated in a warrant issued under subsection (1)—

- (a) a statement of the purpose for which the warrant is issued, which shall include a reference to the nature of the offence in relation to which the entry, search and exercise of powers are authorised;
- (b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night;
- (c) a description of the kind of thing in relation to which the powers are authorised; and
- (d) a date, not being later than one month after the date of issue of the warrant, on which the warrant ceases to have effect.

Consent to entry

29. (1) Before obtaining the consent of a person for the purposes of section 27, the Authority or an inspector shall inform the person that he or she may refuse to give his or her consent.

(2) Where the Authority or an inspector obtains the consent of a person, the Authority or inspector shall ask the person to sign a written acknowledgment—

- (a) of the fact that the person has been informed that he or she may refuse to give his or her consent;
- (b) of the fact that the person has given his or her consent; and
- (c) of the day on which, and the time at which, the person gave his or her consent.

(3) An entry by the Authority or an inspector by virtue of the consent of a person is not lawful unless the person voluntarily consented to the entry.

(4) Where it is material, in any proceedings, for a court to be satisfied of the voluntary consent of a person for the purposes of section 27 and an acknowledgment under subsection (2) signed by the person is not produced in evidence, the court shall assume, unless the contrary is proved, that the person did not voluntarily give such a consent.

Power to remove and test articles

30. (1) In addition to the powers conferred on the Authority and an inspector by subsection 26 (3), the Authority or inspector who has entered premises pursuant to a provision of this Ordinance may, where he or she has reasonable grounds for believing that an article is a prescribed article and is intended for sale—

- (a) for the purpose of testing the article, take possession of it and remove it to a testing site;
- (b) test the article; and
- (c) require the occupier of the premises or a person nominated by the occupier, within a reasonable time, to accompany the Authority or inspector to the test site and operate the article for the purpose of testing the article.

(2) Before removing an article from premises in accordance with subsection (1), the Authority or inspector shall give to the occupier of the premises a receipt for the article containing a description of the article, including, where applicable, the make, model and serial number of the article.

(3) Where the Authority or an inspector removes an article in accordance with subsection (1), the Authority or inspector shall test the article, in accordance with the regulations, as soon as practicable and return the article as soon as practicable after the tests have been completed.

Obstruction of Authority or inspector

31. A person who, without reasonable excuse—

- (a) obstructs or hinders the Authority or an inspector in the exercise of his or her powers under this Ordinance;
- (b) fails to comply with a reasonable requirement of the Authority or an inspector who has entered upon or into any premises pursuant to this Ordinance; or
- (c) being a person to whom the Authority or an inspector has made a reasonable requirement under paragraph 30 (1) (c), refuses or fails to comply with that requirement;

is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (d) in the case of a body corporate—\$5,000; and
- (e) in the case of a natural person—\$1,000.

PART III—HEARING CONSERVATION

Application of Part

32. This Part applies in relation to any premises at which a person is employed.

Ascertainment of noise levels, etc.

33. (1) Where the Authority has reasonable grounds for believing that the level of noise to which a person is exposed in the course of his or her employment exceeds 85 decibels, the Authority may, by notice in writing given to the person's employer, direct the employer to ascertain, within a specified period, the noise levels or the daily noise doses, or both, to which persons employed by the employer are exposed.

(2) A notice under subsection (1)—

- (a) may state the day or days on which, or the periods during which, the noise levels or daily noise doses are to be measured; and
- (b) may relate to all or part of the premises.

(3) An employer shall, within 21 days after measuring the noise levels or daily noise doses, or both, in accordance with a notice under subsection (1), inform the Authority of the noise levels or daily noise doses, or both, so ascertained.

(4) An employer who fails, without reasonable excuse, to comply with a direction given to the employer under subsection (1) or to comply with subsection (3) is guilty of an offence punishable, upon conviction, by a fine not exceeding—

- (a) in the case of a body corporate—\$5,000; or
- (b) in the case of a natural person—\$1,000.

Requirement for noise reduction

34. (1) Where—

- (a) the level of noise to which a person is exposed in the course of his or her employment exceeds 115 decibels; or
- (b) the daily noise dose to which a person is exposed in the course of his or her employment exceeds 0.33;

the Authority may, by notice in writing given on the person's employer, direct the employer, within a specified period, being a period of not less than 28 days after the date of the notice—

- (c) to take specified action—
 - (i) to ensure the noise level does not exceed 115 decibels; or
 - (ii) to ensure the daily noise does not exceed 0.33;or both; and
 - (d) in the case of indoor premises—to erect specified signs in specified places and in a specified manner.
- (2)** A notice—
- (a) shall state the date on which it was issued; and
 - (b) may include a direction that the employer provide hearing protectors for use by persons employed by the employer.

(3) An employer who fails, without reasonable excuse, to comply with a direction given to the employer under paragraph (1) (c) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a body corporate—\$50,000; or
- (b) in the case of a natural person—\$10,000.

(4) An employer who fails, without reasonable excuse, to comply with a direction given to the employer under paragraph (1) (d) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a body corporate—\$5,000; or
- (b) in the case of a natural person—\$1,000.

Operation and maintenance of noise control equipment

35. (1) An employer shall ensure that all noise control equipment installed on premises, or provided by the employer, is maintained properly and operated efficiently.

(2) A person who contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a body corporate—\$5,000; or
- (b) in the case of a natural person—\$1,000.

Hearing protectors

36. (1) Where any employer provides an employee with a hearing protector—

- (a) the hearing protector shall comply with the prescribed requirements; and
- (b) the employer shall comply with any prescribed requirements with respect to hearing protectors and, in particular, with respect to—
 - (i) the storage and maintenance of hearing protectors; and
 - (ii) the safety of persons using hearing protectors.

(2) An employer who, without reasonable excuse, fails to comply with, or provides an employee with a hearing protector that does not comply with, a requirement prescribed for the purposes of this section is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a body corporate—\$5,000; or
- (b) in the case of a natural person—\$1,000.

Audiometric tests

37. (1) Where the Authority has reasonable grounds for believing that the level of noise to which a person is exposed in the course of his or her employment exceeds 85 decibels, the Authority may, by notice in writing given to the person's employer, require the employer to arrange, within a specified reasonable period, an audiometric test for all or some of the employer's employees.

(2) An employer who, without reasonable excuse, fails to comply with a requirement under subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a body corporate—\$5,000; or
- (b) in the case of a natural person—\$1,000.

(3) For the purposes of subsection (2), the arranging of an audiometric test in respect of an employee—

- (a) to take place during a period during which, or on a day on which, the employee would not be working;
- (b) for which, or for expenses in connection with which, the employee is required to pay; or
- (c) in such circumstances that the employee is required to suffer loss of remuneration in order to undergo the test;

shall be deemed not to be sufficient compliance with a requirement made under subsection (1).

Notification of hearing damage

38. (1) Where an employer becomes aware that an employee of that employer—

- (a) has suffered loss of or damage to hearing that is, or is reasonably believed to be, a result of his or her employment; or
- (b) has made a claim under the *Compensation (Commonwealth Government Employees) Act 1971* or the *Workmen's Compensation Act 1951* in respect of loss of, or damage to, hearing;

the employer shall, within 14 days of becoming so aware, notify the Authority of the fact.

(2) An employer who contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a body corporate—\$5,000; or
- (b) in the case of a natural person—\$1,000.

Information to employees

39. (1) Where—

- (a) the level of noise on non-domestic premises exceeds 115 decibels; or
- (b) the daily noise dose which a person, in the course of his or her employment on non-domestic premises, receives, or would, but for the use of hearing protectors by the person, receive, exceeds 0.33;

the employer of persons on those premises shall—

- (c) cause each person employed on the premises to be given prescribed information; and
- (d) erect prescribed signs in prescribed places and in a prescribed manner.

(2) A person who, without reasonable excuse, refuses or fails to comply with paragraph (1) (c) or (d) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a body corporate—\$5,000; or
- (b) in the case of a natural person—\$1,000.

Exemption from section 39

40. (1) Subject to subsection (2), an employer may apply to the Authority for exemption from the requirements of section 39.

(2) An employer is not entitled to make an application under this section unless the employer notifies employees, by notice in writing displayed in a prominent place on the premises at which the employees are employed, that the employer proposed to make the application.

(3) Where, upon an application made in accordance with this section, the Authority is satisfied that it is not reasonably practicable for an employer to comply with section 39, the Authority may, by instrument in writing, exempt the employer from some or all of the requirements of that section.

(4) Where the Authority is satisfied that, by reason of changed circumstances, an employer to whom an exemption under this section has been granted is no longer unable to comply with some or all of the requirements of section 39, the Authority may, by notice in writing given to the employer, revoke or vary the exemption.

Records of employer

41. (1) An employer shall—

- (a) keep prescribed records relating to noise levels, daily noise doses and audiometric tests;
- (b) retain the records for prescribed periods;
- (c) upon request by an employee, furnish to the employee such of the records as relate to the employee; and
- (d) where the employer ceases to occupy the premises to which the records relate—deliver the records to the Authority as soon as practicable after ceasing to occupy the premises.

(2) An employer who fails to comply with subsection (1) is guilty of an offence punishable, upon conviction, by a fine not exceeding—

- (a) in the case of a body corporate—\$5,000; or
- (b) in the case of a natural person—\$1,000.

Information for Authority

42. (1) The Authority may, by notice in writing given to an employer, require the employer to furnish to the Authority, within a specified period—

- (a) the records required by section 41 to be kept by the employer; and
- (b) other specified information relating to the noise to which persons employed by the employer are exposed in the course of their employment.

(2) A person who, without reasonable excuse, refuses or fails to comply with a requirement under subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a body corporate—\$5,000; or
- (b) in the case of a natural person—\$1,000.

(3) Any information furnished by an employer pursuant to subsection (1) is not admissible in proceedings other than proceedings for an offence related to the giving of false information.

PART IV—MISCELLANEOUS**Notification of exemption**

43. Where the Authority grants or revokes an exemption under section 16, or grants, revokes or varies an exemption under section 40, notice of the granting, revocation or variation shall be published in the *Gazette*.

Review of decisions

44. (1) Application may be made to the Tribunal for a review of a decision of an inspector—

- (a) giving, or refusing to give, a noise direction notice; or
- (b) determining the commencing date of the period for which a noise direction notice is to be in force.

(2) Application may be made to the Tribunal for a review of a decision of the Authority—

- (a) varying or refusing to vary the commencing date of the period for which a noise direction notice is to be in force;
- (b) granting, refusing to grant, revoking or refusing to revoke an exemption under section 16;
- (c) giving a direction under section 34; or
- (d) granting, refusing to grant, varying, refusing to vary, revoking or refusing to revoke an exemption under section 40.

(3) An application may not be made to the Tribunal—

- (a) in the case of an application referred to in subsection (1)—after the noise direction notice referred to in that subsection has expired; and
- (b) in the case of an application referred to in paragraph (2) (c)—after the period specified in the direction referred to in that paragraph has expired.

(4) Where an application is made to the Tribunal, the period commencing on the date on which the application is made and ending at the expiration of—

- (a) if an appeal to the Federal Court or the High Court is instituted in relation to the decision—the date on which—
 - (i) the appeal is withdrawn or dismissed; or
 - (ii) the decision of the Court takes effect; or
- (b) in any other case—the date on which—
 - (i) the application is withdrawn or dismissed; or

(ii) the decision of the Tribunal on the application takes effect; whichever last occurs, shall be disregarded for the purpose of calculating the period of 28 days referred to in subsection 34 (1).

Notification of decisions

45. (1) Where—

- (a) an inspector makes a decision referred to in subsection 44 (1); or
- (b) the Authority makes a decision referred to in subsection 44 (2);

the inspector or Authority, as the case requires, shall, within 28 days after the date of the decision, cause notice in writing of the decision to be given to the person to whom the decision relates.

(2) A notice under subsection (1) shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal for a review of the decision to which the notice relates; and
- (b) except where subsection 28 (4) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 28 of that Act.

(3) The validity of a decision referred to in subsection (1) shall not be taken to have been affected by a failure to comply with subsection (2).

Conduct by directors, servants or agents of body corporate

46. (1) Where, in proceedings under this Ordinance in respect of conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a person by whom the conduct was engaged in within the scope of the person's actual or apparent authority, had that state of mind.

(2) Any conduct engaged in on behalf of a body corporate—

- (a) by a director, servant or agent of the body corporate within the scope of the person's actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or

agreement was within the scope of the actual or apparent authority of the director, servant or agent;

shall be deemed, for the purposes of this Ordinance, to have been engaged in also by the body corporate.

(3) A reference in this section to the state of mind of a person shall be read as including a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the person's intention, opinion, belief or purpose.

Evidentiary certificates

47. In proceedings for an offence against this Ordinance, a certificate purporting to be signed by the Authority or an inspector and stating—

- (a) that he or she was, on a specified date or during a specified period, the Authority or an inspector, as the case may be; and
- (b) that the equipment used to take the specified measurements and to conduct the specified tests conformed to the specifications in the Manual and was in proper working order;

is evidence of the matters so stated and of the facts on which they are based.

Giving of documents

48. (1) A document that is required by this Ordinance to be lodged with, or given to, the Authority may be so lodged or given—

- (a) by delivering the document to the Authority personally;
- (b) by leaving the document at the office of the Authority with a person who is, or is reasonably believed to be, employed at that office; or
- (c) by sending the document by post to the office of the Authority.

(2) A document that is required by this Ordinance to be given to a body corporate may be so given—

- (a) by delivering the document to a director, manager or secretary of the body corporate;
- (b) by leaving the document at the registered office in the Territory of the body corporate;
- (c) by leaving the document at an office or place of business of the body corporate in the Territory with a person who is, or is reasonably

believed to be, employed at that office or place of business and who is, or is reasonably believed to be, not less than 16 years of age; or

- (d) by sending the document by post to the registered office of the body corporate in the Territory.

(3) A document that is required by this Ordinance to be given to a person other than the Authority or a body corporate may be so given—

- (a) by delivering the document to him or her personally;
- (b) by leaving the document at his or her last known place of residence or business with a person who is, or is reasonably believed to be, resident or employed at that place and who is, or is reasonably believed to be, not less than 16 years of age; or
- (c) by sending the document by post to his or her last known place of residence or business.

Annual report

49. The Authority shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report concerning the operation of this Ordinance during the period of 12 months ending at the expiration of that day.

Regulations

50. The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters required or permitted by this Ordinance to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance, and, in particular, may make regulations—

- (a) relating to the provision of hearing protectors by employers; and
- (b) imposing penalties not exceeding \$500 for breaches of the regulations.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 21 September 1988.