

[AS REPORTED FROM THE LABOUR BILLS COMMITTEE]
House of Representatives, 19 August 1959

Words struck out by the Labour Bills Committee are shown in italics within bold round brackets or in roman enclosed in panel; words inserted are shown in black within bold square brackets or in roman with rule down side.

Hon. Mr Hackett

CONSTRUCTION

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A BILL INTITULED

An Act to consolidate certain enactments of the General Assembly and to make better provision for the safety and welfare of persons engaged in construction work

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Construction Act 1959. 5

(2) This Act shall come into force on the first day of April, nineteen hundred and sixty.

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

“Construction work” means any work in connection with the construction, erection, installation, carrying out, repair, maintenance, cleaning, painting, renewal, removal, alteration, dismantling, or demolition of— 10

(a) Any building, erection, edifice, structure, wall, fence, or chimney, whether constructed wholly or partly above or below ground level: 15

(b) Any road, motorway, harbour works, railway, cableway, tramway, canal, or aerodrome:

(c) Any drainage, irrigation, or river control work:

(d) Any electricity, water, gas, telephone, or telegraph reticulation: 20

(e) Any bridge, viaduct, dam, reservoir, earth-works, pipeline, aqueduct, culvert, drive, shaft, tunnel, or reclamation:

(f) Any scaffolding; 25

and includes any work in connection with any excavation, site preparation, or preparatory work, carried out for the purpose of any construction work; and also includes the use of any plant, tools, gear, or materials for the purpose of any construction work: 30

“Department” means the Department of Labour:

“Employer”, in relation to any construction work, means any person who is liable for the payment of wages of men employed on the work or who would be so liable if men were so employed: 35

“Harbour works” has the same meaning as in the Harbours Act 1950:

- 5 “Mechanical plant” means plant or machinery, the motive power of which is supplied wholly or partly by mechanical means, used in construction work for the hoisting, lowering, carrying, or moving from place to place of material or for the digging or removal of earth or the sinking of piles; and includes any rope, blocks, pulley, sling, or attachment used in connection with any mechanical plant; but does not include a motorcar or motor truck:
- 10 “Minister” means the Minister of Labour:
“Notifiable work” means construction work from time to time prescribed as notifiable work by regulations under this Act:
- 15 “Road” includes a street and any other place to which the public have access, whether as of right or not; and also includes all bridges, culverts, and fords forming part of any road, street, or other place as aforesaid:
- 20 “Scaffolding” means any structure, framework, swinging stage, suspended scaffolding, or boatswain’s chair, of a temporary nature, used or intended to be used for the support or protection of workmen engaged in or in connection with construction work for the purpose of carrying out that work or for the support of materials used in connection with any such work; and includes any scaffolding constructed as such and not dismantled, whether or not it is being used as scaffolding; and also includes any plank, coupling, fastening, fitting, or device used in connection with the construction, erection, or use of scaffolding:
- 25 “Safety Inspector” or “Inspector” means a Safety Inspector appointed under this Act:
- 30 “Site” in relation to construction work, means the place where the work is being carried out; and includes any area in the immediate vicinity of any such place used for the storage of materials or plant used or intended to be used for the purpose of the work.
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3. Application of Act—(1) The provisions of this Act are in addition to and not in substitution for the provisions of any other Act and nothing in this Act shall derogate from the provisions of any other enactment. Compliance with the provisions of this Act or any regulations under this Act shall not confer any relief or exemption from liability under any other enactment but no person shall be convicted of any offence under this Act in respect of the same matter for which he has been convicted of an offence under any other enactment.

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(2) Any provision of this Act or of any regulations under this Act relating to the safety of workmen employed in construction work shall apply also to the safety of persons lawfully in the vicinity of the work, whether or not they are employed in the work. 5

(3) The provisions of this Act and of any regulations under this Act shall be deemed not to affect any workman if and so long as his presence in any place is not in the course of performing any work on behalf of his employer or is not expressly or impliedly authorised or permitted by his employer. 10

(4) This Act shall apply only to construction work carried out by an employer on the site of the work by way of his trade or business or in the exercise of his functions or for the purpose of any industrial or commercial undertaking.

(5) This Act shall not apply to any work carried on in any mine or coal mine, or in any quarry or tunnel within the meaning of the Quarries Act 1944. 15

4. Chief Safety Engineer—(1) There may from time to time be appointed as an officer of the Department a fit person [with suitable engineering experience] to be Chief Safety Engineer under this Act. 20

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(2) The Chief Safety Engineer shall be an engineer registered under the Engineers Registration Act 1924.

(3) The Chief Safety Engineer shall, under the general direction of the Secretary of Labour, be the officer of the Department having control of the administration of this Act and any regulations under this Act. 25

(4) The Chief Safety Engineer shall have all the powers and functions of a Safety Inspector. 30

5. Safety Inspectors—(1) There may from time to time be appointed as officers of the Department such number of fit persons to be Safety Inspectors under this Act as may be deemed necessary.

(2) No person shall be appointed under this section as an Inspector unless he has passed such examinations or has such qualifications as may be prescribed by regulations under this Act. 35

(3) Notwithstanding the provisions of subsection two of this section, a person may be appointed for a period not exceeding twelve months as an Inspector on probation without having passed the prescribed examinations or having the prescribed qualifications. 40

Provided that no person appointed on probation under this subsection shall exercise the powers of an Inspector except under the supervision of an Inspector appointed under subsection one of this section.

- 5 (4) Every Inspector shall be furnished with a certificate of his appointment in the prescribed form, and on entering any place or premises for the purposes of this Act he shall, if required, produce the certificate to the employer or person in charge.
- 10 (5) Every person who forges or counterfeits any such certificate, or makes use of any forged, counterfeited, or false certificate, or personates the Inspector named in any certificate, or falsely pretends to be an Inspector, commits an offence and shall be liable to imprisonment for a term not exceeding
- 15 three months, or to a fine not exceeding one hundred pounds, or to both.

6. Principal functions of Inspectors—The principal functions of Inspectors under this Act shall be to promote the safety and welfare of workmen engaged in construction work, to advise employers and workmen as to safe practices recommended in respect of construction work [, to ensure that the provisions of this Act and regulations thereunder are complied with,] to investigate accidents occurring in respect of construction work, and generally to take all such steps as may be

20 desirable to prevent or limit the occurrence or repetition of accidents in construction work.

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7. General powers and duties of Inspectors—(1) Every Inspector may—

- 30 (a) At any reasonable hour by day or by night enter any place where any construction work is being carried out or where he has cause to believe that any construction work is being carried out and may inspect the work in order to ascertain whether or not the provisions of this Act or regulations thereunder have been or are being complied with:
- 35 (b) In making any such inspection, call to his aid any member of the Police or any person whom he may think competent to assist him in the execution of his duty:
- 40 (c) Require the production of any record, notice, or other document that any person is by this Act or regulations thereunder required to keep or exhibit in respect of the work and copy any such document or make extracts from it:

- (d) Make such examination and inquiry as he deems necessary in order to ascertain whether or not the provisions of this Act or regulations thereunder have been or are being complied with:
- (e) Take or remove for purposes of analysis samples of materials or substances used in construction work, subject to the employer or his representative being notified of the *(taking or removal of)* **[intention to take or remove]** any material or substance for that purpose:
- (f) Exercise such other powers and authorities as may be necessary for carrying this Act and the regulations thereunder into effect.
- (2) No person shall, on an examination or inquiry by an Inspector under this section, be required to answer any question tending to incriminate himself.
- (3) Except for the purposes of this Act and the exercise of his functions under this Act, an Inspector shall not disclose to any person any information which in the exercise of those functions he acquires with respect to any construction work.
- (4) Any person who wilfully impedes an Inspector in the execution of his duties under this Act commits an offence against this Act.

8. Notifiable construction work---(1) Where the Governor-General is of the opinion that the carrying out of any construction work or any class of construction work is likely to be dangerous to workmen employed in the work, he may, by regulations under this Act, prescribe that work or that class of work as notifiable work for the purposes of this Act.

(2) Subject to the provisions of subsection six of this section, no employer shall commence any notifiable work without having notified the Inspector of the nature of the work and the time when he intends to commence the work.

(3) The notification shall be in the prescribed form and shall contain such particulars as may be prescribed by regulations under this Act.

(4) The notification shall be given to the Inspector at least twenty-four hours before the time when it is intended to commence the work.

(5) Any employer who commences or carries on any notifiable work which has not been notified to the Inspector in accordance with this section commits an offence against this Act.

(6) Notwithstanding the provisions of this Act, in any case of emergency arising from damage caused by earthquake, storm, rain, flood, lightning, explosion, fire, slip, or washout, or from the blockage or breakdown of any drain or sewer, or any gas, water, or electric supply, or any telegraphic or telephonic communications, it shall not be necessary to comply with the provisions of section nine of this Act relating to the appointment and notification of a safety supervisor or with the provisions of this section relating to notification of notifiable work before commencing any construction work necessary to deal with the emergency:

Provided that in any such case a safety supervisor shall be appointed and the required notifications shall be given as soon as practicable after the commencement of the work.

15 **9. Safety supervisors**—(1) Where an employer is unable to exercise personal supervision of any notifiable construction work or a material part of any such construction work, he shall appoint as his representative a suitable person (in this section referred to as a safety supervisor) experienced in the work to exercise that supervision and to carry out the duties and functions referred to in this section.

20 (2) Where an employer himself intends to carry out the functions of safety supervisor in respect of any work, the provisions of this Act relating to safety supervisors shall apply to the employer in all respects as if he had been appointed safety supervisor for the work under this section.

25 (3) An employer who appoints a person as a safety supervisor shall not assign such other duties to that person as will prevent him from discharging with reasonable efficiency the duties assigned to him under this section.

30 (4) An employer may from time to time replace any safety supervisor appointed by him under this section.

(5) The employer shall notify the Inspector in writing of the name and address of any person appointed, whether originally or otherwise, as safety supervisor in respect of the work or part thereof.

(6) The name of the safety supervisor shall be made known by the employer to all workmen employed on the work in respect of which any such supervisor is appointed.

(7) Subject to the provisions of this Act, it shall be the duty of each safety supervisor to ensure that the safety provisions of this Act and of any regulations under this Act are complied with in respect of the work for which he is appointed and, if he discovers any breach of any such provision or any defect in the carrying out of any construction work likely to be a source of danger to any person or property, to report the breach or defect to the employer.

(8) For the purpose of exercising his functions the safety supervisor shall remain on duty on the site of the construction work during such periods as may be necessary and the Inspector may, if he thinks fit, give directions to the employer that a safety supervisor shall be on duty during such hours and in such circumstances as may be specified in the directions. It shall be a ground for the replacement of a safety supervisor that he has not been on duty for sufficient periods to enable him to carry out his functions adequately or that any directions by an Inspector under this subsection have not been complied with.

(9) The liability of an employer under this Act shall not be affected by any failure of a safety supervisor to exercise his functions under this section.

(10) Subject to the provisions of subsection six of section eight of this Act, if any notifiable construction work is carried on without a duly appointed safety supervisor for the time being holding office as such being on duty in accordance with this section, the employer commits an offence against this Act.

(11) Nothing in this section shall be construed as preventing two or more employers from jointly appointing the same safety supervisor in respect of any construction work on the same site.

(12) Where a safety supervisor is required by any provision of this Act or of regulations under this Act to exercise or carry out any powers, functions, or duties, the powers of an Inspector shall not be deemed to be affected or limited in any way by any such provision.

10. **Replacement of safety supervisors**—(1) Where in the opinion of an Inspector any person appointed under section nine of this Act as a safety supervisor is unfit to hold the appointment by reason of incompetence, or gross negligence, or misconduct in the performance of his duties under this Act, the Inspector shall notify in writing the employer by whom the safety supervisor was appointed that the safety supervisor shall no longer hold office as such for the construction work in respect of which he was appointed and that a new safety supervisor be appointed in his stead.

(2) A duplicate of the notice given to the employer under subsection one of this section shall also be delivered to the safety supervisor to whom the notice relates.

(3) On the service of any duplicate notice under subsection two of this section the person to whom it relates shall be deemed to be no longer in office as a safety supervisor in respect of the construction work for which he was appointed.

(4) Any employer who employs any person in respect of whom a notice has been given under subsection one of this section as safety supervisor for the construction work to which the notice relates, and any person who acts as safety supervisor for that construction work after a duplicate of the notice has been given to him under subsection two of this section, commits an offence against this Act.

25 *Safety Provisions*

11. **General rules**—The following general rules shall be observed where any construction work is being carried out:

(a) Every employer shall exercise such supervision of the work as will ensure that the provisions of this Act and of regulations thereunder are complied with or, if he is unable to exercise sufficient personal supervision for that purpose, shall ensure that the work is adequately supervised on his behalf:

(b) All reasonable precautions shall be taken to ensure the safety of workmen employed in the work:

(c) All temporary works shall be constructed of suitable material and be of adequate strength for the purpose intended:

(d) All apparatus, plant, or gear used in connection with the work shall be operated by competent workmen:

- (e) Where the work is being carried out on **[, under,]** or over a road, such notices or warning devices as may be necessary to warn persons using the road of any danger likely to arise from the use of the road, and such screens, barricades, or other means as may be necessary to prevent workmen employed on the work and persons using the road from placing themselves in a position of danger in relation to the work, shall be provided by the employer: 5
- (f) The provisions of any enactment relating to the safety of any construction work shall be complied with. 10

12. Safety of excavations—The following rules shall be observed in respect of excavations carried out in connection with construction work:

- (a) Every such excavation shall, as far as practicable, be securely protected and made safe for workmen employed in or about the excavation: 15
- (b) All side strutting of any excavated face, and all underpinning of any load superimposed above any excavated face, shall be properly designed, constructed of good materials, and of sound construction with a sufficient reserve of strength for the loads likely to be imposed on the strutting or underpinning: 20
- (c) Every coffer dam or caisson or part thereof shall be properly designed, constructed of suitable and sound material of adequate strength, and properly maintained. Every such coffer dam or caisson shall, where necessary, be specially secured in position so as to prevent any movement which may endanger any workmen employed in the work. Adequate provision shall be made for safe working conditions when compressed air is used in any such work: 25 30
- (d) Every employer before commencing any such excavation shall ascertain, as far as practicable, the location and nature of all underground services providing for sewerage, drainage, telephonic or telegraphic communications, or the reticulation of water, gas, or electricity likely to be affected by the excavation, and shall take such steps as may be necessary to prevent danger to workmen or **[unnecessary]** interruption to any such service: 35 40

- (e) Work in connection with any excavation work of a kind prescribed in that behalf by regulations under this Act shall not be carried out except by competent workmen under the charge of a person having such qualifications as may be so prescribed.

13. **Safety of scaffolding**—The following rules shall be observed in respect of scaffolding used in connection with construction work:

- (a) Suitable and sufficient scaffolding shall be provided where any such construction work cannot be carried out safely by other means:
- (b) Scaffolding shall be of a kind suitable for the purpose for which it is used, properly constructed of sound material, and constructed with a sufficient reserve of strength having regard to the loads and stresses to which it may be subjected:
- (c) Scaffolding of a height or kind prescribed in that behalf by regulations under this Act shall not be erected, altered, interfered with, or dismantled except by competent workmen under the charge of a person having such qualifications as may be so prescribed:
- (d) Scaffolding to which paragraph (c) of this section applies shall be examined in accordance with and at such times as may be prescribed by regulations under this Act and a record of all such examinations shall be kept by the employer and the record shall be available for inspection by the Inspector at the site of the work.

14. **Safety of mechanical plant**—The following rules shall be observed in respect of mechanical plant used in connection with construction work:

- (a) All such mechanical plant shall be constructed of suitable and sound materials [**shall be maintained in good order and condition,**] and shall be of adequate strength having regard to the purpose for which it is to be used:
- (b) Mechanical plant of a kind or class prescribed in that behalf by regulations under this Act shall not be erected, altered, interfered with, or dismantled except by competent workmen under the charge of a person having such qualifications as may be so prescribed:

- (c) Mechanical plant to which paragraph (b) of this section applies shall be examined in accordance with and at such times as may be prescribed by regulations under this Act and a record of all such examinations shall be kept by the employer and the record shall be available for inspection by the Inspector at the site of the work: 5
- (d) Mechanical plant of a kind or class prescribed in that behalf by regulations under this Act shall not be operated or left in charge of any person except a person having such qualifications as may be so prescribed. 10

15. Safety of plant, tools, and gear—The following rules shall be observed in respect of plant (other than mechanical plant), tools, and gear used in connection with construction work: 15

- (a) Any such plant, tool, or gear shall be constructed of suitable and sound materials [, shall be maintained in good order and condition,] and shall be of adequate strength and suitable for the purpose for which it is used or intended to be used: 20
- (b) Plant, tools, or gear of a class or kind prescribed in that behalf by regulations under this Act shall not be used in construction work except subject to such conditions as may be prescribed in the regulations and by persons having such qualifications as may be so prescribed. 25

16. Use of explosives—The use of explosives or the carrying out of blasting operations in connection with any construction work shall not take place except in accordance with such regulations as may be made in that behalf under this Act. Any such regulations may provide that any such use or operations shall be in charge of a person having such qualifications as may be prescribed in that behalf. 30

17. Health and welfare provisions—(1) Subject to regulations under this Act, every employer shall provide and maintain at places conveniently accessible to workmen employed by him in any construction work adequate and suitable— 35

- (a) Supplies of drinking water; 40
- (b) Accommodation for clothing;
- (c) Accommodation for meals;
- (d) Sanitary conveniences;
- (e) First-aid facilities;
- (f) Washing facilities; and
- (g) Provision for the drying of clothes. 45

(2) Subject to regulations under this Act, every employer shall at all times, in respect of any construction work being carried out by him, make adequate and suitable provision for—

- (a) Lighting and ventilation;
- 5 (b) Safe means of access and egress;
- (c) The prevention of fire; and
- (d) The dewatering of wet places.

(3) Regulations under this Act may prescribe measures to be taken to ensure compliance with subsections one and two 10 of this section and may prescribe such other measures to be taken and safeguards to be provided to secure the health and welfare of workmen employed in construction work or of any class of those workmen as may be considered necessary by the Governor-General in Council.

15 (4) Without limiting the general power contained in subsection three of this section, it is hereby declared that regulations may be made under this Act providing, in respect of workmen engaged in construction work, for the supply [**and use**] of protective clothing and equipment, the protection of 20 eyes, and the protection from harmful effects arising from such causes as dust, fumes, gases, noise, and shock from explosives.

18. Directions by Inspector to ensure safety—(1) Where it appears to an Inspector that any construction work is being carried out in such a manner as to be dangerous to any work- 25 man employed in the construction work, he shall give to the employer for the work such directions in writing as the Inspector thinks necessary to prevent accidents, and the employer shall forthwith carry out any such directions.

(2) Any directions under subsection one of this section may 30 be given by the Inspector either to the employer or to any person apparently in charge of the work or acting as safety supervisor in respect of the work to which the notice relates and, if the notice is given to any such person, it shall be his duty forthwith to bring the directions to the notice of the 35 employer and, within the limits of his functions as an employee, to give effect to the directions.

(3) Where an Inspector gives any directions under subsection one of this section, he may also, at the same time or 40 subsequently, order any persons to cease forthwith such work in connection with the construction work as may be specified in the order until the directions are complied with, and the employer shall advise all workmen likely to be affected by the order.

- (4) Every person who, without lawful excuse,—
- (a) Being an employer, fails to comply with any direction or order of an Inspector under this section;
 - (b) Being a workman, and having knowledge in any manner of any direction or order of an Inspector under this section, does any act or thing which, if done by the person to whom the direction or order was given would constitute an offence, 5
commits an offence against this Act.

Accidents

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19. Accidents in connection with construction work—(1) In every case where there occurs in connection with any construction work any accident causing death or serious bodily injury to any person, written notice of the accident shall, as soon as practicable but not later than forty-eight hours after the accident, be delivered or posted to the Inspector. 15

(2) The notice shall be in the prescribed form and shall be given by the employer for the work.

(3) Except for the purpose of saving life or preventing further injury or of preventing serious danger to life or property, the part of the construction work where the accident occurred shall not, if a continuance of the work is likely to prevent discovery of the cause of the accident, be interfered with and no person shall do any act likely to prevent the discovery of the cause of the accident until authorised by an Inspector. 25

(4) For the purposes of this section the expression “serious injury” means an injury that is likely to incapacitate the sufferer from work for at least forty-eight hours.

20. Inquiries into accidents—(1) Where any accident occurs in connection with any construction work, the Minister may direct that an inquiry shall be held before a Court of Inquiry consisting of a Magistrate and, if the Minister so directs, not more than two persons having a special knowledge of the particular class of construction work in respect of which the accident occurred. 35

(2) The members of the Court of Inquiry shall be appointed by the Minister.

(3) The purpose of the inquiry shall be to establish the cause of the accident and the inquiry shall be conducted in such a manner as to afford any of the following persons the opportunity of attending the inquiry by himself, his counsel, or agent, and of being sworn and examined as an ordinary witness, and of cross-examining witnesses, that is to say:

- (a) Any employer in respect of the work where the accident occurred:
- 10 (b) The personal representative of any person killed in the accident:
- (c) Any person injured in the accident:
- (d) Any Inspector concerned with the inspection of the work:
- 15 (e) Any person whose conduct in respect of the accident may be called in question:
- (f) A representative of any industrial union of workers to which any workman involved in the accident belongs:
- 20 (g) A representative of any industrial union of employers to which any employer concerned with the accident belongs:
- (h) Any other person authorised in that behalf by the Court of Inquiry.

(4) For the purposes of any inquiry under this section the Court of Inquiry shall have the powers of a Magistrate's Court in any case where jurisdiction is conferred on a Magistrate or one or more Justices in relation to any matter in respect of which proceedings may be commenced by an information under the Summary Proceedings Act 1957.

30 (5) Subject to the provisions of this Act and of any regulations thereunder, the Court of Inquiry may regulate its own procedure.

(6) The Court of Inquiry, after conducting an inquiry under this section, shall make to the Minister a full report containing a complete statement of all the circumstances relevant to the subject-matter of the investigation, and of the opinion of the Court thereon, accompanied by such reports of or extracts from the evidence and such observations as the Court thinks fit.

Appeals

21. Appeals from Inspector's decisions—(1) In any case where an Inspector requires the replacement of a safety supervisor under section ten of this Act or has given a direction or order under [subsection eight of section nine or] section eighteen of this Act, the employer in respect of the construction work may, within fourteen days after the date of notification of the decision, appeal to a Magistrate from the decision of the Inspector. 5

(2) On the hearing of any such appeal the Magistrate 10 may either confirm, modify, or reverse the decision appealed against.

(3) The decision of the Magistrate on any appeal under this section shall be final and conclusive.

(4) Every appeal under this section shall be made and 15 dealt with by way of originating application, on notice, under the rules of procedure for the time being in force under the Magistrates' Courts Act 1947, and the provisions of those rules shall apply accordingly.

(5) Pending the determination of any such appeal any 20 requirement, direction, or order to which the appeal relates shall be deemed to be suspended:

Provided that no person shall be excused from complying with any order under section eighteen of this Act to cease work on the ground that an appeal under this section against 25 the order is pending.

Liabilities of Employers and Duties of Workmen

22. Liability of employers—In every case where under this Act any requirement, obligation, rule, or provision is imposed or enacted or required to be observed with respect to or in 30 connection with any construction work the employer shall cause the requirement, obligation, rule, or provision to be duly and faithfully complied with or observed, and if the requirement, obligation, rule, or provision is not duly and faithfully 35 complied with or observed the employer commits an offence against this Act.

23. Duties of workmen—Every workman employed by an employer who fails to comply with such requirement under this Act as relates to the performance of any act by him or wilfully does any act or thing likely to endanger himself or 40 others or wilfully or negligently disregards any instructions given to him by an authorised person for the purpose of securing the observance of this Act or any regulations thereunder, commits an offence against this Act.

Penalties and Proceedings

24. General penalty—Every person who commits an offence against this Act for which no penalty is elsewhere provided shall be liable to a fine not exceeding one hundred
5 pounds and, if the offence is a continuing one, to a further fine not exceeding five pounds for every day on which the offence continues.

25. Employer may have actual offender charged—

(1) Where an employer is charged with an offence against this
10 Act, he shall be entitled upon information duly laid by him to have any other person whom he alleges to be the actual offender brought before the Magistrate on the same charge; and to enable both charges to be heard together, the charge against the employer may be adjourned for such time as the
15 Magistrate thinks reasonable.

(2) In any such case, if the charges are heard together and the offence is proved, but the Magistrate finds that—

(a) The offence was committed in fact by the said other
20 person, without the knowledge, consent, or connivance of the employer; and

(b) That the employer had done all that could reasonably be expected of him to prevent the offence,—
that other person shall be convicted of the offence, and the employer shall not be guilty of the offence.

(3) If, before the commencement of any proceedings against
25 an employer in respect of any offence under this Act, the Inspector is satisfied that if any other person were charged with the offence under the foregoing provisions of this section that other person would be convicted of the offence, the
30 Inspector shall proceed against the person whom he believes to be the actual offender without first proceeding against the employer.

26. Proceedings to be before Magistrate alone—(1) All
35 proceedings in respect of offences or matters of complaint under this Act shall be taken in a summary manner and shall be heard before a Magistrate alone.

(2) Except as provided in section twenty-five of this Act,
40 all such proceedings as aforesaid shall be taken only on the information or complaint of an Inspector who shall not be called upon to prove that he holds that office and all such proceedings may be continued and conducted by the same or any other Inspector or any person permitted by the Magistrate to conduct the same.

27. Provisions in respect of proceedings—(1) With respect to proceedings by an Inspector against any person for any offence against this Act or any regulations under this Act, the following provisions shall apply:

- (a) The proceedings shall be commenced within six months after the offence was committed: 5

Provided that if the offence consists of non-compliance with an Inspector's direction and notice of appeal has been given, the proceedings shall not be commenced, nor shall the aforesaid limit of time begin to run, until the appeal has been disposed of or has lapsed: 10

- (b) The proceedings shall be deemed to be commenced when the information or complaint is laid by the Inspector: 15

- (c) For the purposes of the aforesaid limit of time a continuing offence shall be deemed to be committed on the latest day on which it is continued next preceding the commencement of the proceedings:

- (d) It shall lie on the defendant to bring himself under exemption, proviso, excuse, or qualifications, and it shall not be necessary to negative the same in the information or complaint. 20

(2) The Inspector or any other party who may be dissatisfied with the judgment of the Court on any summary proceedings under this Act, other than an appeal under section twenty-one hereof, may appeal to the Supreme Court in the manner provided by the Summary Proceedings Act 1957. 25

28. Prevention of continued non-observance of Act or regulations—In any proceedings against any person in respect of the non-observance of any of the provisions of this Act or of any regulations under this Act, the following provisions shall apply: 30

- (a) The Magistrate, in addition to or instead of imposing a fine, may by order require the defendant to do any specified work or to adopt any specified means for the purpose of preventing further such non-observance, and may specify a time within which the order shall be obeyed: 35

- (b) The time so specified may be extended by the Magistrate on the application of the defendant: 40

- (c) If an order is made instead of imposing a fine, the Magistrate shall adjourn the proceedings until the expiry of the time specified in the order; and if the order is duly obeyed he may, if he thinks fit to do so, impose no penalty in respect of the offence:
- 5 (d) If default is made in duly obeying the order within the time or extended time specified in that behalf, the defendant commits an offence, and shall be liable to a fine not exceeding five pounds for every day during
- 10 which the default continues:
- (e) Any fine imposed under paragraph (d) of this section shall be in addition to any fine imposed in respect of the original offence.

General

- 15 **29. Notices**—(1) Any notice required or authorised to be given by or under this Act to an Inspector shall be given by delivering it or sending it by post to the office of the Department nearest to the construction work to which the notice relates.
- 20 (2) Any notice or direction required or authorised to be given by or under this Act to an employer or other person shall be given by delivering it to the person concerned or by sending it by post in a letter addressed to his usual or last known address.
- 25 (3) Where any notice or direction is sent to any person by post as aforesaid, the notice shall be deemed to be given at the time when the letter containing it would have been delivered in the ordinary course of post.

- 30 **30. Regulations**—(1) The Governor-General may from time to time, by Order in Council, make regulations in regard to any matter or for any purpose for which regulations are prescribed or contemplated by this Act, and may make all such other regulations as may in his opinion be necessary or expedient for giving full effect to the provisions of this Act,
- 35 and for the due administration thereof.
- (2) Without limiting the general power conferred by subsection one of this section, it is hereby declared that regulations may be made for all or any of the following purposes:
- 40 (a) Prescribing fees payable under this Act:
- (b) Prescribing penalties, not exceeding a fine of one hundred pounds, in respect of any breach of any regulation under this Act:
- (c) Prescribing qualifications to be held under this Act.

(3) All regulations made under this Act shall be laid before Parliament within twenty-eight days after the date of the making thereof if Parliament is then in session and, if not, shall be laid before Parliament within twenty-eight days after the date of the commencement of the next ensuing session. 5

31. Repeals and savings—(1) The enactments specified in the Schedule to this Act are hereby repealed.

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of any provision by this Act shall not affect any document made or any thing whatsoever done under the provision so repealed or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done. 10
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32. Act to bind the Crown—This Act shall bind the Crown:
New 20

Provided that nothing in this Act shall apply to any construction work carried out by members of any of the armed forces of New Zealand in the course of their duties.

33. Act to be administered by the Labour Department—
(1) This Act shall be administered by the Department of Labour established under the Labour Department Act 1954. 25
(2) The First Schedule to the Labour Department Act 1954 is hereby amended by omitting the reference to the Scaffolding and Excavation Act 1922, and substituting a reference to this Act. 30

SCHEDULE

Section 31 (1)

ENACTMENTS REPEALED

- 1922, No. 49—The Scaffolding and Excavation Act 1922. (1931 Reprint, Vol. VIII, p. 1241.)
1924, No. 35—The Scaffolding and Excavation Amendment Act 1924. (1931 Reprint, Vol. VIII, p. 1249.)
1948, No. 4—The Scaffolding and Excavation Amendment, Act 1948.
1949, No. 51—The Statutes Amendment Act 1949: Section 51.
1951, No. 12—The Scaffolding and Excavation Amendment Act 1951.