



ANALYSIS

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1982, No. 18

An Act to consolidate and amend the Quarries Act 1944 and amendments

[28 September 1982]

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 Quarries and Tunnels Act 1982.

(2) This Act shall come into force on the 1st day of April 1983.

PART I

PRELIMINARY

2. Act to bind Crown—This Act shall bind the Crown.

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

“Board” means the Board of Examiners established under section 163 of the Mining Act 1971:

“Deputy Secretary” means the Deputy Secretary of Energy (Mines Division):

“Inspector” means an Inspector appointed under this Act:

“Minister” means the Minister of Energy:

“Occupier”, in relation to a quarry or tunnel, includes any person who is liable for the payment of wages of persons employed in the quarry or tunnel or who would be so liable if persons were so employed:

“Prescribed” means—

(a) Prescribed by this Act or by any regulations in force under this Act:

(b) In respect of forms, prescribed by this Act or by any such regulations, or prescribed or provided by the Deputy Secretary in accordance with any such regulations.

PART II

OFFICERS AND APPOINTMENTS

4. Inspectors of Quarries—(1) There may from time to time be appointed, under the State Services Act 1962, a Chief Inspector of Quarries and such number of persons to be Inspectors of Quarries as may be required for the purposes of this Act.

(2) The Chief Inspector of Quarries shall have all the powers of and be deemed to be an Inspector of Quarries, and shall perform such duties and have such powers consistent with the provisions of this Act as the Minister may from time to time direct.

(3) The Chief Inspector of Quarries and every Inspector of Quarries shall be the holder of an A-grade quarry manager’s surface certificate or shall have such other qualifications and experience as the State Services Commission, after consultation with the Deputy Secretary, determines.

5. Inspectors of Tunnels—(1) There may from time to time be appointed, under the State Services Act 1962, a Chief Inspector of Tunnels and such number of persons to be Inspectors of Tunnels as may be required for the purposes of this Act.

(2) The Chief Inspector of Tunnels shall have all the powers of and be deemed to be an Inspector of Tunnels, and shall perform such duties and have such powers consistent with the provisions of this Act as the Minister may from time to time direct.

(3) The Chief Inspector of Tunnels and every Inspector of Tunnels shall be the holder of an A-grade tunnel manager's certificate or shall have such other qualifications and experience as the State Services Commission, after consultation with the Deputy Secretary, determines.

6. Electrical Inspector of Tunnels—(1) There may from time to time be appointed, under the State Services Act 1962, an Electrical Inspector of Tunnels.

(2) It shall be the function of the Electrical Inspector of Tunnels to inspect and test electrical equipment and electrical wiring work used in tunnelling operations, and, for the purpose of enabling him to carry out his duties more effectively, the provisions of sections 7, 8, 9, 11, 54, 70, and 75 of this Act shall, with the necessary modifications, apply as if he were an Inspector of Tunnels.

(3) Notwithstanding anything to the contrary in this Act, if the Electrical Inspector of Tunnels has given any direction, authorisation, or consent, whether on or subject to any conditions or not, any person appointed by the Chief Inspector of Tunnels to deputise for the Electrical Inspector may take further steps thereon, or revoke or from time to time vary the direction, authorisation, or consent, or any condition on or subject to which it was given.

7. Powers and duties of Inspectors—(1) Every Inspector may at any reasonable time by day or by night, but so as not to impede or obstruct the working of the quarry or tunnel, enter and inspect any quarry or tunnel, and shall from time to time make such examination, tests, and inquiry as may be necessary to ascertain whether the provisions of this Act and of any regulations in force under this Act are being complied with, and whether sufficient steps are being taken to ensure the safety and health of the persons employed in or about the quarry or tunnel.

(2) Every occupier of a quarry or tunnel and every person employed in or about a quarry or tunnel shall give such assistance as may be reasonably required for facilitating any such inspection.

(3) Inspectors shall have such other powers as may be reasonably necessary to carry into effect the provisions of this Act or as may be prescribed by regulations in force under this Act.

(4) Every Inspector shall have all the powers of—

(a) An Inspector under the Machinery Act 1950, with respect to any machinery to which that Act applies in or about a quarry or tunnel; and

(b) An Engineer Surveyor under the Boilers, Lifts, and Cranes Act 1950, with respect to any machinery (other than steam engines and boilers) to which that Act applies in or about a quarry or tunnel—

but nothing in this Act shall abridge or annul any of the provisions of the Machinery Act 1950, or of the Boilers, Lifts, and Cranes Act 1950, or affect the duties of any Inspector or Engineer Surveyor appointed under either of those Acts in relation to the inspection in or about quarries or tunnels of machinery and boilers to which either of those Acts apply.

(5) An Inspector exercising any power under this Act or under any regulations in force under this Act shall have with him, and shall produce if required to do so by the manager of the quarry or tunnel, evidence of his authority and identity.

8. Obstructing Inspector—Every person commits an offence against this Act who wilfully obstructs, hinders, or deceives, or wilfully causes to be obstructed, hindered, or deceived, any Inspector while the Inspector is exercising or performing any power, function, or duty under this Act or under any regulations in force under this Act.

9. Directions, etc., given by Inspector—Any direction or consent given, or exemption granted, by an Inspector pursuant to this Act in connection with the working, regulation, or inspection of a quarry or tunnel shall be in writing signed by the Inspector, and may be given or granted either absolutely or subject to such conditions as he imposes. Any such direction, consent, or exemption may at any time be altered or may be withdrawn or revoked.

10. Matters may be completed by different Inspectors—Notwithstanding anything to the contrary in this Act, if an Inspector has given any direction, authorisation, or consent, whether on or subject to any conditions or not, the same or any other Inspector may take further steps thereon, or revoke or from time to time vary the direction, authorisation, or consent, or any condition on or subject to which it was given.

11. Costs incurred by Inspector—All costs incurred by an Inspector, or which may be awarded against him in any proceedings under this Act, shall be met from the Consolidated Account, out of money appropriated by Parliament for the purpose; and in no case shall an Inspector be personally liable for such costs.

PART III

QUARRIES

Preliminary

12. Application of this Part—Except where otherwise specially provided or where explosives are used, nothing in this Part of this Act shall apply to any quarry where the distance, measured vertically, from the highest point to the lowest point of the quarry workings is 4.5 metres or less.

13. Interpretation—In this Part of this Act, unless the context otherwise requires,—

“Crushing plant” means any works, machinery, or plant used for the crushing, screening, or pulverising of material taken from a quarry or of stone or shingle; and includes any tramway, fixed dragline, belt, chute, or other similar appliance used in the conveyance of any such material, stone, or shingle to a crushing plant, and any motor vehicle that is so used otherwise than on a road or street; but does not include any works, machinery, or plant used in connection with the manufacture of cement:

“Dredge” means any works, machinery, or plant, mounted on a floating pontoon, used for the recovery of any mineral as defined in section 5 of the Mining Act 1971; but does not include a dredge used in harbour works:

“Inspector” means an Inspector of Quarries appointed under this Act:

“Quarry” means any place in which persons work in excavating any kind of material from the earth; and includes a dredge, and any works, machinery, and plant used in connection with a quarry; but does not include—

(a) Any place in which mining or searching for coal or petroleum is carried on:

(b) Any place in which underground mining for any mineral as defined in section 5 of the Mining Act 1971 is carried on:

(c) Any road cutting or railway cutting not forming part of a quarrying operation:

(d) Any tunnel:

(e) Any place where work is carried on in connection with—

(i) Sinking a well:

(ii) Digging a shaft for the purposes of constructing a bridge or the approaches to a bridge:

(iii) Preparing a foundation for a building:

(iv) Making an excavation for the purposes of the supply of gas, water, electricity, or telecommunications facilities:

(v) Constructing sewerage or drainage works:

(f) Any quarry which has been declared to be a construction work pursuant to section 3 (6) of the Construction Act 1959:

“Quarrying operations” means operations in connection with the construction or working of a quarry; and includes—

(a) The erection, maintenance, and use of plant and machinery, and the construction or use of roads, railways, tramways, dams, races, channels, buildings, dwellings, and other works connected with any such operations:

(b) The removal of overburden by mechanical or other means, and the stacking, deposit, or discharge of any mineral, material, debris, refuse, or waste water produced from or consequent on any such operations:

(c) The lawful use of land, watercourses, and water, and the doing of all lawful acts incidental or conducive to any such operations—

but does not include any work carried on in a quarry which has been declared to be a construction work pursuant to section 3 (6) of the Construction Act 1959.

Certificates of Competency

14. Certificates of competency—(1) The certificates of competency which may be granted under this Part of this Act shall be as follows:

- (a) A-grade quarry manager's surface certificate:
 - (b) B-grade quarry manager's surface certificate:
 - (c) Quarry manager's surface permit:
 - (d) Quarry shot firer's certificate.
- (2) Every A-grade quarry manager's surface certificate shall be granted by the Board.
- (3) Every other certificate of competency shall be granted by an Inspector.

15. A-grade quarry managers' surface certificates—An A-grade quarry manager's surface certificate shall be granted to a person if, in addition to passing the prescribed examination, he satisfies the Board that he is not less than 21 years of age and that—

- (a) He has had in the aggregate at least 2 years' experience (including at least 6 months' experience assisting in the use of explosives) in the workings of a surface quarry or opencut mine, being experience of a nature acceptable to the Board; or
- (b) He has had in the aggregate at least 12 months' experience in the workings of a surface quarry or opencut mine, and at least 2 years' experience in the underground workings of a mine, coal mine, or tunnel, including (within that period of 3 years) at least 6 months' experience assisting in the use of explosives, being experience of a nature acceptable to the Board; or
- (c) He is the holder of a mine manager's certificate under the Mining Act 1971 or under the Coal Mines Act 1979.

16. B-grade quarry managers' surface certificates—A B-grade quarry manager's surface certificate shall be granted to a person if, in addition to passing the prescribed oral examination by an Inspector, he satisfies the Inspector that he is not less than 21 years of age and that—

- (a) He has had in the aggregate at least 2 years' experience (including at least 6 months' experience assisting in the use of explosives) in the workings of a surface quarry or opencut mine, being experience of a nature acceptable to the Inspector; or
- (b) He has had in the aggregate at least 12 months' experience in the workings of a surface quarry or opencut mine, and at least 2 years' experience in the underground workings of a mine, coal mine, or

tunnel, including (within that period of 3 years) at least 6 months' experience assisting in the use of explosives, being experience of a nature acceptable to the Inspector; or

- (c) He is the holder of a mine manager's certificate under the Mining Act 1971 or under the Coal Mines Act 1979.

17. Quarry managers' surface permits—(1) A quarry manager's surface permit shall be granted to a person if, in addition to passing the prescribed oral examination by an Inspector, he satisfies the Inspector that—

- (a) He is not less than 21 years of age;
(b) He has had in the aggregate at least 2 years' experience in the type of work involved in the quarrying operation in respect of which the permit is sought; and
(c) The quarrying operation in respect of which the permit is sought is an operation in which explosives are not used and is of a size which does not require a manager having higher qualifications.

(2) Every quarry manager's surface permit shall specify the quarry in respect of which it is issued and shall be valid only in respect of that quarry.

18. Quarry shot firers' certificates—A quarry shot firer's certificate shall be granted to a person if, in addition to passing the prescribed oral examination by an Inspector, he satisfies the Inspector that he is not less than 19 years of age and that he has had in the aggregate at least 6 months' experience in assisting in the preparation, charging, tamping, and firing of explosives.

19. Recognition of overseas certificates—(1) Notwithstanding the provisions of section 15 of this Act but subject to subsection (2) of this section, the Board may grant an A-grade quarry manager's surface certificate, without examination, to a person permanently or temporarily resident in New Zealand if in the opinion of the Board—

- (a) He holds a certificate of a corresponding class, acceptable to the Board, granted outside New Zealand, or holds a degree in civil engineering or mining acceptable to the Board; and
(b) He has had the experience set out in section 15 of this Act or his credentials clearly demonstrate his

experience outside New Zealand as a surface quarry manager and his ability to carry out his duties as such.

(2) Before granting a certificate under subsection (1) of this section, the Board shall satisfy itself that the applicant for the certificate—

- (a) Is of good character and repute;
- (b) Is able to speak, write, and understand the English language sufficiently for the purpose of carrying out the duties of a surface quarry manager; and
- (c) After an oral examination by an Inspector, has an adequate knowledge of the New Zealand law relating to quarries, and of the quarrying methods used in New Zealand.

(3) Notwithstanding the provisions of subsection (2) (b) of this section, the Board may grant a certificate under this section and limit its validity to a specified quarry if it is satisfied that the applicant for the certificate and the employees under his control can only satisfactorily communicate in a language other than English.

20. Applications for certificates, etc.—Every applicant for a certificate of competency under this Part of this Act shall forward an application in the prescribed form, together with the prescribed fee, to—

- (a) The Board, if he is applying for an A-grade quarry manager's surface certificate; or
- (b) The Inspector for the district in which the applicant resides, if he is applying for any other certificate of competency.

(2) If an Inspector is satisfied that a certificate of competency granted by him or any other Inspector under this Part of this Act has been defaced, lost, or destroyed, he may, on payment of the prescribed fee and (if the certificate has been defaced) on the surrender to him of the certificate, issue a duplicate certificate.

21. Register of certificates—When an Inspector grants a certificate of competency under this Part of this Act he shall forward details of it to the Board, and the Board shall enter those details in the register kept by it under section 167(1) (c) of the Mining Act 1971.

22. Certificates of competency to be produced—Every person who is employed or acting in any capacity in or about

any quarry and who is required under this Act to hold a certificate of competency in respect of his duties, shall produce his certificate to any Inspector who requires him to do so.

23. Investigation of holders of certificates—On receiving representations from an Inspector or any other person that the holder of a certificate of competency granted under this Part of this Act has been convicted of an offence against this Act, or is incompetent, or has been guilty of negligence or of misconduct in the performance of his duties under this Act or under any regulations in force under this Act, the Minister may direct that a formal investigation shall be held; and in any such case the provisions of sections 75 to 80 of this Act shall, with the necessary modifications, apply accordingly.

Management of Quarries

24. Duties of occupiers of quarries—(1) Every occupier of a quarry, and every person who directly or indirectly exercises any control or gives any direction relating to quarrying operations, shall make such financial and other provision, and take such other steps, as may be necessary to ensure that—

- (a) The quarrying operations are managed and carried out in accordance with the provisions in that behalf of this Act and of the regulations in force under this Act; and
- (b) All the other provisions of this Act and of the regulations in force under this Act, so far as they are applicable to the quarrying operations, are duly complied with.

(2) Any directions given to the manager of a quarry by the occupier of the quarry or other person in relation to the occupier's or other person's duties under subsection (1) of this section shall be in writing.

(3) As soon as practicable after giving any directions under subsection (2) of this section, the occupier or other person shall forward a copy of them to the Inspector of Quarries for the district in which the quarry is situated.

25. Quarries to have managers—(1) A quarry shall not be worked unless a quarry manager has been appointed to be in charge of the quarry, and that manager exercises daily personal supervision of the quarry while it is being worked.

(2) A person shall not be appointed as a quarry manager unless he possesses such qualifications (if any) as are required of a quarry manager by section 26 of this Act for the type or class of quarry of which he will be the manager, and an Inspector has been notified in writing of the name and address of the intended appointee.

(3) Every quarry manager shall be appointed by the occupier of the quarry. If the occupier is an individual he may appoint himself as quarry manager if he possesses such qualifications (if any) as are required of a quarry manager by section 26 of this Act for the type or class of quarry of which he will be the manager.

(4) A quarry manager shall not, without the written approval of an Inspector, be appointed to manage, nor manage, more than 1 quarry.

26. Qualifications required of quarry managers—

(1) The manager of a quarry in which 5 or more men are ordinarily employed at any one time and where explosives are used shall be the holder of an A-grade quarry manager's surface certificate.

(2) The manager of a quarry in which not more than 4 men are ordinarily employed at any one time and where explosives are used shall be the holder of an A-grade or a B-grade quarry manager's surface certificate.

(3) The manager of a quarry where no explosives are used shall be the holder of an A-grade or a B-grade quarry manager's surface certificate or the holder of a quarry manager's surface permit relating to that quarry.

(4) Notwithstanding anything in subsections (1) to (3) of this section, an Inspector may by notice in writing served by hand or by registered letter on the occupier of any quarry of a type or class referred to in any of those subsections—

(a) Exempt the manager of the quarry from the provisions of the subsection or allow the appointment as quarry manager of a person holding lower qualifications than those required by the subsection, for such period of time, and in respect of such type of work in which the manager is experienced, as may be specified by the Inspector:

(b) Require the appointment as manager of the quarry, within such period as may be specified in the notice, of a person holding higher qualifications than those required by the subsection, if the Inspector

considers that conditions in the quarry are such as to require special knowledge or skill on the part of the manager.

(5) Any notice given under subsection (4) of this section may at any time in like manner be varied or revoked.

(6) The occupier of any quarry who has received a notice under subsection (4) (b) of this section may, at any time before the expiration of the period specified in the notice, appeal to the Minister against any requisition of an Inspector contained in the notice; and the decision of the Minister shall be final.

27. Deputies of quarry managers—(1) Notwithstanding the provisions of sections 25 and 26 of this Act but subject to subsection (2) of this section, on the occurrence from any cause of a vacancy in the office of quarry manager, or in the absence from duty for more than 3 working days of any quarry manager, from whatever cause arising, the occupier or manager of the quarry shall appoint a person to exercise and perform all the powers, functions, and duties of the quarry manager so long as the vacancy or absence continues.

(2) A person who is not the holder of the appropriate qualification set out in section 26 of this Act—

(a) Shall not be appointed to act as quarry manager under this section unless his appointment is first approved in writing by an Inspector:

(b) Shall not act as a quarry manager under this section for more than 15 workings days at any one time unless authorised to do so by an Inspector.

(3) An Inspector shall not give an authorisation under subsection (2) (b) of this section unless—

(a) He specifies the period of time during which the appointed person may act as quarry manager; and

(b) He is satisfied that the person so acting is experienced in the type of work being carried out.

28. Dredgemasters to be qualified—(1) A person shall not act as the master or person in charge of a dredge unless he has had such experience and holds such qualifications as the Board from time to time or in respect of any particular dredge determines.

(2) The Board may determine in respect of any particular dredge that a person shall not act as the master or person in charge of the dredge unless he satisfies the Board that he is competent to do so and the Board has issued a certificate to that effect.

29. Quarry manager may appoint shift foremen and quarry shot firers—Every quarry manager may from time to time, with the approval of an Inspector, appoint—

- (a) Competent persons having the prescribed qualifications and experience to be shift foremen:
- (b) Competent persons holding a quarry shot firer's certificate to be quarry shot firers.

30. Notice of appointments—Where any person is appointed in any capacity under section 25, section 27, section 28, or section 29 of this Act, or is appointed to take charge of blasting operations in any quarry, the occupier of the quarry, within 7 days after the appointment, shall notify an Inspector of the name and address of the person appointed and of the capacity in which he has been appointed.

31. Crushing plants—(1) Where any crushing plant is worked by the occupier of any quarry supplying material to that plant for crushing, screening, pulverising, or treatment, and that plant is under the control and management of a manager appointed for that quarry in accordance with this Act, the crushing plant shall for the purposes of this Act be deemed to be part of the quarry.

(2) Every crushing plant that is not under the control and management of the manager of a quarry or tunnel shall for the purposes of this Part of this Act be deemed to be a quarry; and the provisions of this Part of this Act shall, so far as they are applicable and with the necessary modifications, apply to the crushing plant accordingly:

Provided that it shall not be necessary for the manager or any deputy manager of any such crushing plant to be the holder of a certificate of competency under this Part of this Act.

32. Methods of quarrying to be approved—The occupier of a quarry shall not cause or permit—

- (a) The commencement of quarrying operations; or
- (b) The recommencement of quarrying operations (if the quarry has not been worked for more than 3 months); or
- (c) A change to be made in the method of carrying out quarrying operations—

unless he has given written notice to an Inspector of the method proposed to be used in carrying out the quarrying operations and the Inspector has approved that method.

33. Closure of quarry to be notified—On the cessation of the working of a quarry, the occupier of it shall give written notice of the cessation to an Inspector within 7 days after the date on which the working of the quarry ceased.

34. Fencing of quarries and disused quarry workings—(1) Every occupier of a quarry shall cause such fences or other structures to be erected as are necessary to prevent accidents to persons in or in the vicinity of the quarry.

(2) Where the working of a quarry has been discontinued, the occupier of the land on which the quarry was situated shall cause the disused workings to be fenced or otherwise protected in such a manner as to prevent accidents to persons in or in the vicinity of the disused workings.

(3) An Inspector may require the occupier of any quarry, or the owner or occupier of any land on which is situated disused quarry workings, to exhibit such warning notices, to cause to be erected such fences or other structures, or to take such other steps for the purpose of ensuring the safety of persons in or in the vicinity of the quarry or disused workings, as the Inspector thinks fit.

35. Annual returns by occupiers—(1) The occupier or manager of every quarry shall in the month of January in each year furnish to the Inspector of Quarries for the district in which the quarry is situated, in the prescribed form, a return showing—

(a) The quantity, and the estimated value at the quarry, of material produced at the quarry during the year ended on the 31st day of December then last past:

(b) The number of persons ordinarily employed in or about the quarry during the year:

(c) Such other particulars as may be prescribed.

(2) Every person who makes default in furnishing any such return or in causing it to be furnished, or who furnishes any return that is wilfully false or misleading in any particular, commits an offence against this Act.

(3) The Minister may cause any such return, or any extract from it or synopsis of it, to be published in such manner as he thinks proper.

(4) An Inspector may, by notice in writing given to the occupier of any place where material is extracted or removed from the ground, apply the provisions of this section to that place notwithstanding that it is not a quarry within the meaning of this Act.

Safety in Quarries

36. Part VI of Mining Act 1971 not to apply to quarries—Except as otherwise provided in this Part of this Act, nothing in Part VI of the Mining Act 1971 shall apply in respect of any quarry.

37. Persons under 18 years of age not to prepare explosives, etc.—(1) A person under 18 years of age shall not be appointed or permitted to prepare any explosives or detonators for use in a quarry or, in any quarry, to charge a hole with explosives or to tamp or fire any charge.

(2) The manager or occupier of any quarry, or any person in charge of or giving orders or directions relating to the carrying on of quarrying operations, who permits or appoints any person to do any act in breach of this section commits an offence against this Act.

38. Restricting employment of young persons—(1) A person under 15 years of age shall not be employed in any capacity in or about a quarry.

(2) A person under 16 years of age shall not be employed on a dredge.

(3) A person under 18 years of age shall not, except in cases of a breakage or some other emergency, be employed in or about any quarry for more than—

(a) Forty-eight hours (excluding meal times) in any 1 week;

or

(b) Eight hours (excluding meal times) in any 1 day.

39. Inspector to inquire into complaints—(1) If any person employed in or about a quarry complains to an Inspector about any matter involving health or safety, the Inspector shall forthwith inquire into the complaint and take such steps as he thinks necessary to investigate it.

(2) An Inspector shall not divulge the name of any person who has made a complaint to him under this section.

40. Inspector may stop quarrying operations in case of danger—(1) If, in the opinion of an Inspector, any quarry or any part of a quarry, or any practice existing in the working of a quarry, is or may become dangerous to life or injurious to health, he may by notice in writing addressed to the person for the time being in charge of the quarry and delivered at the quarry require that person to forthwith—

- (a) Order the withdrawal of employees from the quarry or that part of it that is or may become dangerous to life or injurious to health, except such employees as may be necessary to put the quarry in a safe condition; or
 - (b) Order the discontinuance of the dangerous practice— as the case may require.
- (2) Immediately after delivering a notice under subsection (1) of this section, the Inspector shall forward a copy of the notice to the Deputy Secretary, together with a written report stating the reasons for giving the notice.
- (3) Every person to whom a notice is given under subsection (1) of this section shall, on receiving the notice, immediately take active steps to comply with it.
- (4) Every occupier, agent, quarry manager, and person in charge of a quarry who directs or wilfully permits quarrying operations or any practice to be resumed or continued in breach of a notice given under subsection (1) of this section, commits an offence and shall be liable on summary conviction to a fine not exceeding \$5,000 for every day or part of a day during which the quarrying operations or practice has been resumed or continued, unless—
- (a) In respect of the resumption or continuation of quarrying operations, the Inspector has certified in writing that the quarry or part of the quarry has been made safe to his satisfaction; or
 - (b) A District Court has, under subsection (9) of this section, reversed the notice or modified it in such a way that the resumption or continuation of the quarrying operations or practice does not constitute a breach of the modified notice.
- (5) Within 7 days after receiving a notice under subsection (1) of this section, the occupier of the quarry in respect of which the notice was given may object to the notice by lodging a written notice of objection, stating the grounds of the objection, with the Registrar of the District Court nearest to the quarry or, with the consent of the Deputy Secretary, with the Registrar of any other District Court.
- (6) A copy of the notice of objection shall be served on the Deputy Secretary, and on the Inspector who gave the notice, either before or immediately after it is lodged with the Registrar.
- (7) The Registrar of the Court shall give notice of the time and place fixed for the hearing of the objection to the objector, the Deputy Secretary, and the Inspector.

(8) The objector, the Deputy Secretary, and the Inspector, either personally or by their counsel, shall be entitled to be present and to be heard at the hearing of the objection.

(9) On hearing the objection, the Court may by order confirm, reverse, or modify the notice; and the order shall be final and binding on all parties.

(10) Until an order is made by a District Court under subsection (9) of this section, the notice shall have full effect; and the lodging of an objection under subsection (5) of this section shall not relieve any person from the obligation of complying with the notice.

(11) Without limiting the liability of any person to be convicted of an offence against subsection (4) of this section, the High Court shall have jurisdiction to restrain any breach or threatened breach of that subsection by injunction at the instance of the Deputy Secretary or an Inspector, and to make such order in the matter as to costs and otherwise as it thinks fit.

(12) No person shall be precluded by any contract or agreement from doing or refraining from doing such acts as may be necessary to comply with the provisions of this section, or be liable under any contract or agreement to any penalty or forfeiture for doing or refraining from doing any such act.

41. Notification of serious accidents—(1) If, in or about a quarry or in connection with quarrying operations, any accident occurs that causes—

(a) The death of any person; or

(b) Any fracture of the skull or of any limb, or any dislocation of a limb, or any other serious bodily injury to any person—

the manager or other person for the time being in charge of the quarry shall forthwith give notice to an Inspector of the accident by telephone or telegram, and shall also, within 7 days after the occurrence of the accident, furnish to the Inspector such particulars of the accident as may be prescribed.

(2) On receipt of a notice under subsection (1) of this section, the Inspector shall as soon as practicable inspect the quarry after notifying the person who gave notice of the accident of the time of the intended inspection.

(3) Except for the purpose of saving life or of preventing injury or of preventing serious disruption to the working of the quarry, the place where the accident occurred shall,

subject to subsection (4) of this section, be left as it was immediately after the accident until it has been inspected by the Inspector.

42. Notification of other accidents—Within 7 days after the occurrence in or about a quarry or in connection with quarrying operations of any accident to which section 41 of this Act does not apply and which renders any employee unfit for work for 1 whole shift or more the manager or other person for the time being in charge of the quarry shall furnish to an Inspector such particulars of the accident as may be prescribed.

43. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Regulating the working of quarries and machinery used in quarries, and providing for the health and safety of persons working, and the safety of property used, in connection with quarrying operations:
- (b) Providing for the fencing off and filling up of shafts, pits, holes, and excavations in or about quarries:
- (c) Providing for the suppression and prevention of dust and noxious gases in quarries and crushing plants, the measurement and distribution of air in quarries and crushing plants, and the ventilation of quarries and crushing plants, and requiring the installation of mechanical ventilating appliances in quarries and crushing plants:
- (d) Requiring occupiers of quarries to provide such appliances, works, and structures, for safety purposes, as may be specified in the regulations, and requiring such occupiers to keep them in good repair and condition:
- (e) Regulating and controlling the storage and use of explosives in or about quarries:
- (f) Regulating the use of motor vehicles and mobile plant, including face-shovels, front-end loaders, bulldozers, and scraper loaders, in quarries:
- (g) Providing for the examination and inspection of quarries, and of machinery in or about quarries:
- (h) Requiring the use by persons employed in or about quarries of protective clothing, covering, or equipment of a prescribed kind to be used in such work as may be specified:

- (i) Regulating and controlling the level of noise in or about quarries, and requiring the provision and use of equipment and devices for protection from noise:
- (j) Regulating the use of rock drills in quarries:
- (k) Regulating, controlling, or prohibiting the use of boilers, internal combustion and diesel engines, and other machinery, in or about quarries:
- (l) Requiring the provision of bathhouses, changehouses, toilets, and other sanitary appliances at quarries, and regulating the construction, equipment, control, and use thereof:
- (m) Requiring the provision in or about quarries of supplies of drinking water and facilities for the consumption of meals, and regulating the construction, equipment, control, and use of such facilities:
- (n) Providing for the supply and maintenance of fire-extinguishing appliances, ambulance appliances, and other appliances for use in rescue work in or about quarries, and for the formation and training of rescue and first-aid teams at quarries:
- (o) Requiring the installation of telephone communications between quarries and the nearest places where medical assistance is obtainable:
- (p) Defining the duties of Inspectors of Quarries and conferring on Inspectors all such powers as may be necessary for the efficient performance of their duties:
- (q) Regulating the operation of dredges and providing for the safety of persons working on or about dredges:
- (r) Requiring copies of regulations made under this section to be displayed at quarries.

PART IV

TUNNELS

Preliminary

44. Application of this Part—Except where explosives are used, nothing in this Part of this Act shall apply to any tunnel intended to be less than 15 metres long or to any shaft intended to be less than 4.5 metres deep.

45. Interpretation—In this Part of this Act, unless the context otherwise requires,—

“Crushing plant” means any works, machinery, or plant used for the crushing, screening, or pulverising of

material taken from a tunnel or of stone or shingle; and includes any tramway, fixed dragline, belt, chute, or other similar appliance used in the conveyance of any such material, stone, or shingle to a crushing plant, and any motor vehicle that is so used otherwise than on a road or street; but does not include any works, machinery, or plant used in connection with the manufacture of cement:

“Inspector” means an Inspector of Tunnels appointed under this Act:

“Tunnel” means any adit, drive, shaft, winze, or other underground working in which persons work on the construction thereof; and includes any works, machinery, and plant used in connection with a tunnel; but does not include—

(a) Any place in which mining or searching for coal or petroleum is carried on:

(b) Any place in which underground mining for any mineral as defined in section 5 of the Mining Act 1971 is carried on:

(c) Any place (other than a tunnel) where work is carried on in connection with—

(i) Sinking a well:

(ii) Digging a shaft for the purposes of constructing a bridge or the approaches to a bridge:

(iii) Preparing the foundation for a building:

(iv) Making an excavation for the purposes of the supply of gas, water, electricity, or telecommunications facilities:

(v) Constructing sewerage or drainage works:

(d) Any tunnel which has been declared to be a construction work pursuant to section 3 (6) of the Construction Act 1959:

“Tunnelling operations” means operations in connection with the construction of a tunnel; and includes—

(a) The erection, maintenance, and use of plant and machinery, and the construction or use of roads, railways, tramways, dams, races, channels, buildings, dwellings, and other works connected with any such operations:

(b) The removal of overburden by mechanical or other means, and the stacking, deposit, or discharge of any mineral, material, debris, refuse, or waste water produced from or consequent on any such operations:

(c) The lawful use of land, watercourses, and water, and the doing of all lawful acts incidental or conducive to any such operations—
but does not include any work carried on in a tunnel which has been declared to be a construction work pursuant to section 3 (6) of the Construction Act 1959.

Certificates of Competency

46. Certificates of competency—(1) The certificates of competency which may be granted under this Part of this Act shall be as follows:

- (a) A-grade tunnel manager's certificate:
- (b) B-grade tunnel manager's certificate:
- (c) Tunnel shot firer's certificate.

(2) Every A-grade tunnel manager's certificate shall be granted by the Board.

(3) Every other certificate of competency shall be granted by an Inspector.

47. A-grade tunnel managers' certificates—An A-grade tunnel manager's certificate shall be granted to a person if, in addition to passing the prescribed examination, he satisfies the Board that he is not less than 21 years of age and that—

- (a) He has had in the aggregate at least 3 years' experience (including at least 6 months' experience assisting in the use of explosives) in the underground workings of a tunnel, mine, or coal mine, being experience of a nature acceptable to the Board; or
- (b) He is the holder of a mine manager's certificate under the Mining Act 1971, or a mine manager's certificate, an underviewer's certificate, or a fireman deputy's certificate under the Coal Mines Act 1979.

48. B-grade tunnel managers' certificates—A B-grade tunnel manager's certificate shall be granted to a person if, in addition to passing the prescribed oral examination by an Inspector, he satisfies the Inspector that he is not less than 21 years of age and that—

- (a) He has had in the aggregate at least 3 years' experience (including at least 6 months' experience assisting in the use of explosives) in the underground workings of a tunnel, mine, or coal mine, being experience of a nature acceptable to the Inspector; or

- (b) He is the holder of a mine manager's certificate under the Mining Act 1971, or a mine manager's certificate, an underviewer's certificate, or a fireman deputy's certificate under the Coal Mines Act 1979.

49. Tunnel shot firers' certificates—A tunnel shot firer's certificate shall be granted to a person if, in addition to passing the prescribed oral examination by an Inspector, he satisfies the Inspector that he is not less than 19 years of age and that he has had in the aggregate at least 6 months' experience in assisting in the preparation, charging, tamping, and firing of explosives.

50. Recognition of overseas certificates—(1) Notwithstanding the provisions of section 47 of this Act but subject to subsection (2) of this section, the Board may grant an A-grade tunnel manager's certificate, without examination, to a person permanently or temporarily resident in New Zealand if in the opinion of the Board—

- (a) He holds a certificate of a corresponding class, acceptable to the Board, granted outside New Zealand, or holds a degree in civil engineering or mining acceptable to the Board; and
- (b) He has had the experience set out in section 47 of this Act or his credentials clearly demonstrate his experience outside New Zealand as a tunnel manager and his ability to carry out his duties as such.

(2) Before granting a certificate under subsection (1) of this section, the Board shall satisfy itself that the applicant for the certificate—

- (a) Is of good character and repute;
- (b) Is able to speak, write, and understand the English language sufficiently for the purpose of carrying out the duties of a tunnel manager; and
- (c) After an oral examination by an Inspector, has an adequate knowledge of the New Zealand law relating to tunnels and of the tunnelling methods used in New Zealand.

(3) Notwithstanding the provisions of subsection (2) (b) of this section, the Board may grant a certificate under this section and limit its validity to a specified tunnel if it is satisfied that the applicant for the certificate and the employees under his control can only satisfactorily communicate in a language other than English.

51. Applications for certificates, etc.—(1) Every applicant for a certificate of competency under this Part of this Act shall forward an application in the prescribed form, together with the prescribed fee, to—

- (a) The Board, if he is applying for an A-grade tunnel manager's certificate; or
- (b) The Inspector for the district in which the applicant resides, if he is applying for any other certificate of competency.

(2) If an Inspector is satisfied that a certificate of competency granted by him or any other Inspector under this Part of this Act has been defaced, lost, or destroyed, he may, on payment of the prescribed fee and (if the certificate has been defaced) on the surrender to him of the certificate, issue a duplicate certificate.

52. Register of certificates—When an Inspector grants a certificate of competency under this Part of this Act he shall forward details of it to the Board, and the Board shall enter those details in the register kept by it under section 167 (1) (c) of the Mining Act 1971.

53. Certificates of competency to be produced—Every person who is employed or acting in any capacity in or about any tunnel and who is required under this Act to hold a certificate of competency in respect of his duties, shall produce his certificate to any Inspector who requires him to do so.

54. Investigation of holders of certificates—On receiving representations from an Inspector or any other person that the holder of a certificate of competency granted under this Part of this Act has been convicted of an offence against this Act, or is incompetent, or has been guilty of negligence or of misconduct in the performance of his duties under this Act or under any regulations in force under this Act, the Minister may direct that a formal investigation shall be held; and in any such case the provisions of sections 75 to 80 of this Act shall, with the necessary modifications, apply accordingly.

Management of Tunnels

55. Duties of occupiers of tunnels—(1) Every occupier of a tunnel, and every person who directly or indirectly exercises any control or gives any direction relating to

tunnelling operations, shall make such financial and other provision, and take such other steps, as may be necessary to ensure that—

- (a) The tunnelling operations are managed and carried out in accordance with the provisions in that behalf of this Act and of the regulations in force under this Act; and
- (b) All the other provisions of this Act and of the regulations in force under this Act, so far as they are applicable to the tunnelling operations, are duly complied with.

(2) Any directions given to the manager of a tunnel by the occupier of the tunnel or other person in relation to the occupier's or other person's duties under subsection (1) of this section shall be in writing.

(3) As soon as practicable after giving any directions under subsection (2) of this section, the occupier or other person shall forward a copy of them to the Inspector of Tunnels for the district in which the tunnel is situated.

56. Tunnels to have managers—(1) Tunnelling operations shall not be carried out unless a tunnel manager has been appointed to be in charge of the tunnel, and that manager exercises daily personal supervision of the tunnel while it is being constructed.

(2) A person shall not be appointed as a tunnel manager unless he possesses such qualifications (if any) as are required of a tunnel manager by section 57 of this Act for the type or class of tunnel of which he will be the manager, and an Inspector has been notified in writing of the name and address of the intended appointee.

(3) Every tunnel manager shall be appointed by the occupier of the tunnel. If the occupier is an individual he may appoint himself as tunnel manager if he possesses such qualifications (if any) as are required of a tunnel manager by section 57 of this Act for the type or class of tunnel of which he will be the manager.

(4) A tunnel manager shall not, without the written approval of an Inspector, be appointed to manage, nor manage, more than 1 tunnel.

57. Qualifications required of tunnel managers—(1) The manager of a tunnel where 3 or more men are

ordinarily employed at the face of the tunnel at any one time, or where any cross-sectional dimension exceeds 2.5 metres, shall be the holder of an A-grade tunnel manager's certificate.

(2) The manager of a tunnel where not more than 2 men are ordinarily employed at the face, or where any cross-sectional dimension does not exceed 2.5 metres, shall be the holder of an A-grade or a B-grade tunnel manager's certificate.

(3) Notwithstanding anything in subsections (1) and (2) of this section, an Inspector may by notice in writing served by hand or by registered letter on the occupier of any tunnel of a type or class referred to in either of those subsections—

(a) Exempt the manager of the tunnel from the provisions of the subsection or allow the appointment as tunnel manager of a person holding lower qualifications than those required by the subsection, for such period of time, and in respect of such type of work in which the manager is experienced, as may be specified by the Inspector:

(b) Require the appointment as manager of the tunnel, within such period as may be specified in the notice, of a person holding higher qualifications than those required by the subsection, if the Inspector considers that conditions in the tunnel are such as to require special knowledge or skill on the part of the manager.

(4) Any notice given under subsection (3) of this section may at any time in like manner be varied or revoked.

(5) The occupier of any tunnel who has received a notice under subsection (3) (b) of this section may, at any time before the expiration of the period specified in the notice, appeal to the Minister against any requisition of an Inspector contained in the notice; and the decision of the Minister shall be final.

58. Deputies of tunnel managers—(1) Notwithstanding the provisions of sections 56 and 57 of this Act but subject to subsection (2) of this section, on the occurrence from any cause of a vacancy in the office of tunnel manager, or in the absence from duty for more than 3 working days of any tunnel manager, from whatever cause arising, the occupier or manager of the tunnel shall appoint a person to exercise and perform all the powers, functions, and duties of the tunnel manager so long as the vacancy or absence continues.

(2) A person who is not the holder of the appropriate qualification set out in section 57 of this Act—

- (a) Shall not be appointed to act as tunnel manager under this section unless his appointment is first approved in writing by an Inspector:
 - (b) Shall not act as a tunnel manager under this section for more than 15 workings days at any one time unless authorised to do so by an Inspector.
- (3) An Inspector shall not give an authorisation under subsection (2) (b) of this section unless—
- (a) He specifies the period of time during which the appointed person may act as tunnel manager; and
 - (b) He is satisfied that the person so acting is experienced in the type of work being carried out.

59. Tunnel manager may appoint shift foremen and tunnel shot firers—Every tunnel manager may from time to time, with the approval of an Inspector, appoint—

- (a) Competent persons having the prescribed qualifications and experience to be shift foremen:
- (b) Competent persons holding a tunnel shot firer's certificate to be tunnel shot firers.

60. Notice of appointments—Where any person is appointed in any capacity under section 56, section 58, or section 59 of this Act, or is appointed to take charge of blasting operations in any tunnel, the occupier of the tunnel, within 7 days after the appointment, shall notify an Inspector of the name and address of the person appointed and of the capacity in which he has been appointed.

61. Crushing plants—Where any crushing plant is worked by the occupier of any tunnel supplying material to that plant for crushing, screening, pulverising, or treatment, and that plant is under the control and management of a manager appointed for that tunnel in accordance with this Act, the crushing plant shall for the purposes of this Act be deemed to be part of the tunnel.

62. Methods of tunnelling to be approved—The occupier of a tunnel or proposed tunnel shall not cause or permit—

- (a) The commencement of tunnelling operations; or
- (b) The recommencement of tunnelling operations (if such operations have not been carried out for more than 3 months); or
- (c) A change to be made in the method of carrying out tunnelling operations—

unless he has given written notice to an Inspector of the method proposed to be used in carrying out the tunnelling operations and the Inspector has approved that method.

63. Cessation of tunnelling operations to be notified—

On the permanent cessation of tunnelling operations the tunnel manager shall, within 7 days after such cessation, give written notice of the cessation to an Inspector.

64. Fencing of tunnels and disused tunnel workings—

(1) Every occupier of a tunnel shall cause such fences or other structures to be erected as are necessary to prevent accidents to persons in or in the vicinity of the tunnel.

(2) Where tunnelling operations have been discontinued and the tunnel is not in use, the occupier of the tunnel or (if there is no such occupier) the occupier of the land on which the disused tunnel is situated shall cause the tunnel to be fenced or otherwise protected in such a manner as to prevent accidents to persons in or in the vicinity of the disused tunnel.

(3) An Inspector may require the occupier of any disused tunnel, or (if there is no such occupier) the occupier of the land on which is situated a disused tunnel, to exhibit such warning notices, to cause to be erected such fences or other structures, or to take such other steps for the purpose of ensuring the safety of persons in or in the vicinity of the disused tunnel, as the Inspector thinks fit.

Safety in Tunnels

65. Part VI of Mining Act 1971 not to apply to tunnels—Except as otherwise provided in this Part of this Act, nothing in Part VI of the Mining Act 1971 shall apply in respect of any tunnel.

66. Persons under 18 years of age not to prepare explosives, etc.—(1) A person under 18 years of age shall not be appointed or permitted to prepare any explosives or detonators for use in a tunnel or, in any tunnel, to charge a hole with explosives or to tamp or fire any charge.

(2) The manager or occupier of any tunnel, or any person in charge of or giving orders or directions relating to the carrying on of tunnelling operations, who permits or appoints any person to do any act in breach of this section commits an offence against this Act.

67. Restricting employment of women and young persons—(1) A person under 15 years of age shall not be employed in any capacity in or about any tunnel.

(2) A woman or girl shall not be employed below ground in a tunnel except to do occasionally any class of work that she usually does above ground.

(3) A person under 16 years of age shall not be employed below ground in any tunnel.

(4) A person under 18 years of age shall not be employed as a lander or bracedman over any shaft; nor, except in cases of a breakage or some other emergency, shall he be employed in or about any tunnel for more than—

(a) Forty-eight hours (excluding meal times) in any 1 week;
or

(b) Eight hours (excluding meal times) in any 1 day.

(5) Nothing in this section shall apply to any student who is for the time being required to obtain experience below ground in any tunnel for the purposes of a course of study for any university degree or diploma.

(6) Subject to subsection (7) of this section, the Governor-General may by Order in Council, on the recommendation of the Minister, repeal subsection (2) of this section.

(7) The Minister shall not recommend to the Governor-General the repeal of subsection (2) of this section unless the Minister is satisfied that New Zealand is no longer bound by International Labour Organisation Convention 45 covering the employment of women underground.

68. Inspector to inquire into complaints—(1) If any person employed in or about a tunnel complains to an Inspector about any matter involving health or safety, the Inspector shall forthwith inquire into the complaint and take such steps as he thinks necessary to investigate it.

(2) An Inspector shall not divulge the name of any person who has made a complaint to him under this section.

69. Union Inspectors—(1) In respect of every tunnel, the union to which the majority of persons employed in the tunnel belong may at its own expense appoint not more than 2

persons (whether employed in the tunnel or not) to inspect the tunnel.

(2) A person shall not be so appointed by a union unless he has had at least 5 years' experience as a tunneller or is the holder of an A-grade or B-grade tunnel manager's certificate.

(3) An employee who has been discharged from his employment in a tunnel shall not be appointed to inspect the tunnel without the consent of the manager of the tunnel. If consent is not given, the union may refer the matter to the Deputy Secretary; and the Deputy Secretary, whose decision shall be final, shall decide whether or not the discharged employee should be appointed to inspect the tunnel.

(4) Every person so appointed (hereinafter in this section referred to as a union Inspector) may inspect every part of the tunnel in respect of which he has been appointed, and its machinery and workings, once in every 2 weeks.

(5) In addition to the right of inspection conferred by subsection (4) of this section, every union Inspector may inspect the tunnel, and its machinery and workings, at any reasonable time on receiving notice from 2 or more persons employed in the tunnel that in their belief the tunnel or its machinery is in a condition dangerous to life or injurious to health, or that any dangerous practice exists in the working of the tunnel, and stating the grounds of their belief.

(6) Before exercising the right of inspection conferred by subsection (5) of this section, the union Inspector shall notify the tunnel manager in writing of the intention to inspect the tunnel, of the time of the proposed inspection, and of the reason for making it.

(7) The tunnel manager or some other person appointed by him shall accompany every union Inspector making an inspection, and shall give the union Inspector full and free facilities for the inspection.

(8) Every union Inspector shall, on completing an inspection of a tunnel, forthwith prepare a written report of the results of the inspection, sign it, and send or deliver it to the manager of the tunnel.

(9) On receiving the report the tunnel manager shall record it in the record book kept at the tunnel. Every such report shall at all reasonable times be open to inspection by—

(a) Any Inspector:

(b) Any person employed in the tunnel:

(c) Any officer of the union that appointed the union Inspector—

who may make copies of or take extracts from the report.

(10) If any such report is to the effect that the tunnel or any part of it is in a condition dangerous to life or injurious to health or that any dangerous practice exists in the working of the tunnel—

- (a) The tunnel manager shall forthwith forward a copy of the report to an Inspector; and
- (b) The union Inspector may by notice in writing served on the tunnel manager request the manager to forthwith order the withdrawal of employees from the tunnel or that part of it that is dangerous to life or injurious to health, or to forthwith order the discontinuance of any dangerous practice, as the case may require.

(11) If any tunnel manager fails within a reasonable time to comply with a notice served on him by a union Inspector under subsection (10) of this section, the union Inspector may forward a copy of his report to an Inspector.

(12) On receiving such a report from a union Inspector, the Inspector shall forthwith investigate the matter and, if he is satisfied that the report is materially correct, require the tunnel manager to forthwith—

- (a) Order the withdrawal of employees from the tunnel or that part of it that is dangerous to life or injurious to health, except such employees as may be necessary to put the tunnel in a safe condition; or
- (b) Order the discontinuance of any dangerous practice— as the case may require.

(13) Every tunnel manager commits an offence against this Act who fails without reasonable cause to comply with—

- (a) A notice served on him by a union Inspector under subsection (10) of this section if, at the time of inspection, the tunnel or any part of it was dangerous to life or injurious to health, or if at that time a dangerous practice existed in the working of the tunnel, as the case may be; or
- (b) Any requirement of an Inspector made under subsection (12) of this section.

(14) Every union Inspector shall, while making any inspection under this section, be deemed to be an earner employed by the occupier of the tunnel for the purposes of the Accident Compensation Act 1972.

(15) If, in respect of any tunnel, 2 persons are appointed as union Inspectors, references in this section to a union Inspector shall, unless the context otherwise requires, be read as references to the 2 union Inspectors acting jointly where an inspection of the tunnel is carried out by both of them.

70. Inspector may stop tunnelling operations in case of danger —(1) If, in the opinion of an Inspector, any tunnel or any part of a tunnel, or any practice existing in the construction of a tunnel, is or may become dangerous to life or injurious to health, he may by notice in writing addressed to the person for the time being in charge of the tunnel and delivered at the tunnel require that person to forthwith—

(a) Order the withdrawal of employees from the tunnel or that part of it that is or may become dangerous to life or injurious to health, except such employees as may be necessary to put the tunnel in a safe condition; or

(b) Order the discontinuance of the dangerous practice— as the case may require.

(2) Immediately after delivering a notice under subsection (1) of this section, the Inspector shall forward a copy of the notice to the Deputy Secretary, together with a written report stating the reasons for giving the notice.

(3) Every person to whom a notice is given under subsection (1) of this section shall, on receiving the notice, immediately take active steps to comply with it.

(4) Every occupier, agent, tunnel manager, and person in charge of a tunnel who directs or wilfully permits tunnelling operations or any practice to be resumed or continued in breach of a notice given under subsection (1) of this section, commits an offence and shall be liable on summary conviction to a fine not exceeding \$5,000 for every day or part of a day during which the tunnelling operations or practice has been resumed or continued, unless—

(a) In respect of the resumption or continuation of tunnelling operations, the Inspector has certified in writing that the tunnel or part of the tunnel has been made safe to his satisfaction; or

(b) A District Court has, under subsection (9) of this section, reversed the notice or modified it in such a way that the resumption or continuation of the tunnelling operations or practice does not constitute a breach of the modified notice.

(5) Within 7 days after receiving a notice under subsection (1) of this section, the occupier of the tunnel in respect of which the notice was given may object to the notice by lodging a written notice of objection, stating the grounds of the objection, with the Registrar of the District Court nearest to the tunnel or, with the consent of the Deputy Secretary, with the Registrar of any other District Court.

(6) A copy of the notice of objection shall be served on the Deputy Secretary, and on the Inspector who gave the notice, either before or immediately after it is lodged with the Registrar.

(7) The Registrar of the Court shall give notice of the time and place fixed for the hearing of the objection to the objector, the Deputy Secretary, and the Inspector.

(8) The objector, the Deputy Secretary, and the Inspector, either personally or by their counsel, shall be entitled to be present and to be heard at the hearing of the objection.

(9) On hearing the objection, the Court may by order confirm, reverse, or modify the notice; and the order shall be final and binding on all parties.

(10) Until an order is made by a District Court under subsection (9) of this section, the notice shall have full effect; and the lodging of an objection under subsection (5) of this section shall not relieve any person from the obligation of complying with the notice.

(11) Without limiting the liability of any person to be convicted of an offence against subsection (4) of this section, the High Court shall have jurisdiction to restrain any breach or threatened breach of that subsection by injunction at the instance of the Deputy Secretary or an Inspector, and to make such order in the matter as to costs and otherwise as it thinks fit.

(12) No person shall be precluded by any contract or agreement from doing or refraining from doing such acts as may be necessary to comply with the provisions of this section, or be liable under any contract or agreement to any penalty or forfeiture for doing or refraining from doing any such act.

71. Notification of serious accidents—(1) If, in or about a tunnel or in connection with tunnelling operations, any accident occurs that causes—

(a) The death of any person; or

(b) Any fracture of the skull or of any limb, or any dislocation of a limb, or any other serious bodily injury to any person—

the manager or other person for the time being in charge of the tunnel shall forthwith give notice to an Inspector of the accident by telephone or telegram, and shall also, within 7 days after the occurrence of the accident, furnish to the Inspector such particulars of the accident as may be prescribed.

(2) On receipt of a notice under subsection (1) of this section, the Inspector shall as soon as practicable inspect the tunnel after notifying the person who gave notice of the accident of the time of the intended inspection.

(3) Except for the purpose of saving life or of preventing injury or of preventing serious disruption to tunnelling operations, the place where the accident occurred shall, subject to subsection (4) of this section, be left as it was immediately after the accident until it has been inspected by the Inspector.

(4) If the Inspector is not immediately available to make an inspection, the inspection shall be made by a committee, approved in that behalf by an Inspector, consisting of 2 persons, one representing the occupier of the tunnel and one representing the persons employed in the tunnel. Where the inspection is carried out by such a committee, the committee shall forward a written report to the Inspector, and no further work shall be permitted in the place where the accident occurred, without the consent of both members of the committee, until that place has been inspected by the Inspector.

72. Notification of other accidents—Within 7 days after the occurrence in or about a tunnel or in connection with tunnelling operations of any accident to which section 71 of this Act does not apply and which renders any employee unfit for work for 1 whole shift or more, the manager or other person for the time being in charge of the tunnel shall furnish to an Inspector such particulars of the accident as may be prescribed.

73. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (1) Regulating the working of tunnels and machinery used in tunnels, and providing for the health and safety of persons working, and the safety of property used, in connection with tunnelling operations:
- (2) Providing for the fencing off and filling up of shafts, pits, holes, and excavations in or about tunnels:
- (3) Providing for the drainage of tunnels and for the prevention of damage from the escape or overflow of water from tunnels:
- (4) Providing for the suppression and prevention of dust and noxious gases in tunnels and crushing plants,

the measurement and distribution of air in tunnels and crushing plants, and the ventilation of tunnels and crushing plants, and requiring the installation of mechanical ventilating appliances in tunnels and crushing plants:

- (5) Requiring samples to be taken of the air in tunnels, providing for the determination of the amount of dust in the air, and requiring the air in tunnels to be of a specified standard of purity:
- (6) Prescribing, for the purposes of ventilation of tunnels, the method of putting up and the height of rises, and the carrying up of air passages in stopes:
- (7) Prescribing the maximum temperature of air in tunnels while persons are employed therein:
- (8) Requiring occupiers of tunnels to provide such appliances, works, and structures, for safety purposes, as may be specified in the regulations, and requiring such occupiers to keep them in good repair and condition:
- (9) Regulating and controlling the storage and use of explosives in or about tunnels:
- (10) Regulating the use of electricity, and the installation and use of electrical wiring and equipment, in or about tunnels:
- (11) Requiring the provision in tunnels of manholes, ladders, and places of refuge, and regulating their condition and use:
- (12) Regulating the fencing, casing, and lining of shafts in tunnels:
- (13) Providing for the safety of persons employed in drives and excavations in tunnels:
- (14) Regulating the use and condition of cages, mantrucks, and other appliances for raising and lowering persons in tunnels:
- (15) Regulating the use (including signalling systems) and condition of winding machinery in tunnels:
- (16) Providing for the examination and inspection of tunnels, and of machinery in or about tunnels:
- (17) Requiring the use by persons employed in or about tunnels of protective clothing, covering, or equipment of a prescribed kind to be used in such work as may be specified:
- (18) Regulating and controlling the level of noise in or about tunnels, and requiring the provision and use of equipment and devices for protection from noise:

- (19) Regulating the use of rock drills in tunnels:
- (20) Regulating, controlling, or prohibiting the use of boilers, internal combustion and diesel engines, and other machinery, in or about tunnels:
- (21) Regulating the use of underground locomotives and trucks, including shuttle cars, in tunnels:
- (22) Requiring the provision of bathhouses, changehouses, toilets, and other sanitary appliances at tunnels, and regulating the construction, equipment, control, and use thereof:
- (23) Requiring the provision in or about tunnels of supplies of drinking water and facilities for the consumption of meals, and regulating the construction, equipment, control, and use of such facilities:
- (24) Providing for the supply and maintenance of fire-extinguishing appliances, ambulance appliances, and other appliances for use in rescue work in or about tunnels, and for the formation and training of rescue and first-aid teams at tunnels:
- (25) Requiring the installation of telephone communications between tunnels and the nearest places where medical assistance is obtainable:
- (26) Defining the duties of Inspectors and conferring on Inspectors all such powers as may be necessary for the efficient performance of their duties:
- (27) Requiring copies of regulations made under this section to be displayed at tunnels.

PART V

GENERAL PROVISIONS

Inquests

74. Inquests—(1) If, on holding an inquest into the death of any person, the Coroner has reason to believe that the death may have been caused by an accident to which section 41 or section 71 of this Act applies, he shall adjourn the proceedings unless an Inspector or some other person appointed in that behalf by the Secretary is present at the proceedings.

(2) Before adjourning any proceedings under subsection (1) of this section, the Coroner may hear and record evidence of identification and order the burial of the body.

(3) Not less than 4 days before holding an adjourned inquest, the Coroner shall give written notice to the Inspector

of the time and place at which the adjourned inquest is to be held.

(4) If an accident has not caused the death of more than 1 person and the Coroner has given notice of the time and place at which the inquest is to be held at such time as to reach the Inspector not less than 48 hours before the time of holding the inquest, the Coroner need not adjourn the inquest pursuant to subsection (1) of this section if he considers it unnecessary to do so.

(5) An Inspector or other person authorised by the Deputy Secretary who is present at an inquest pursuant to this section shall have the right to examine and cross-examine any witness, subject to the power of the Coroner to disallow any question that is in his opinion not relevant or that is otherwise not a proper question.

(6) If an Inspector or person authorised by the Deputy Secretary is not present at an inquest to which this section applies and evidence is given to the effect that the accident was caused or contributed to by neglect or that there is a defect in or about the quarry or tunnel, as the case may be, that appears to the Coroner to need remedying, the Coroner shall give written notice of the evidence to the Inspector.

(7) In respect of an inquest to which this section applies—

- (a) Any relative of a person whose death may have been caused by the accident; and
- (b) The occupier and manager of the quarry or tunnel, as the case may be, in or about which the accident occurred; and
- (c) An officer of the union to which the deceased belonged at the time of his death—

shall be deemed to have a sufficient interest in the result of the inquest for the purposes of section 17 of the Coroners Act 1951.

Court of Inquiry

75. Investigation of accidents by Court of Inquiry—

(1) If an accident in or about a quarry or tunnel resulting in the death or injury of any person was in the opinion of an Inspector caused directly or indirectly by the non-observance by the occupier or manager of the quarry or tunnel, or by any other person employed in or about the quarry or tunnel, of any of the provisions of this Act or of any regulations in force under this Act, or by reason of his negligence, the Inspector shall report the circumstances to the Deputy Secretary who

shall forward the report to the Minister, and, if the Minister so directs, a formal investigation shall be held.

(2) The formal investigation shall be held before a Court of Inquiry consisting of a District Court Judge appointed by the Minister.

(3) The formal investigation shall be conducted in such manner as to afford any person into whose conduct inquiry is made the opportunity of attending the inquiry by himself, his counsel, or agent, and of being sworn and examined as an ordinary witness, and of making a defence.

(4) For the purposes of a formal investigation the Court of Inquiry shall have the powers of a District Court in any case where jurisdiction is conferred on a District Court Judge in relation to any matter in respect of which proceedings may be commenced by an information or complaint under the Summary Proceedings Act 1957.

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

76. Assessors—(1) If a formal investigation involves, or appears likely to involve, any question as to the cancellation or suspension of a certificate of competency granted under this Act or the Mining Act 1971, the Court of Inquiry shall hold the investigation with the assistance of not less than 2 assessors, 1 or more of whom shall be appointed by the Minister, and a like number may be appointed by the holder of the certificate.

(2) No person shall be appointed to act as an assessor unless he is—

(a) A mining engineer, or the holder of a first-class mine manager's certificate, or the holder of an A-grade quarry manager's surface certificate or an A-grade tunnel manager's certificate; or

(b) A person having other special skill or knowledge in relation to quarrying operations or tunnelling operations, as the case may require.

(3) There shall be paid, from the Consolidated Account out of money appropriated by Parliament for the purpose, to any assessors appointed under this section remuneration by way of fees, salary or allowances, and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951; and the provisions of that Act shall apply accordingly as if the assessors were members of a statutory Board within the meaning of that Act.

77. Conduct of Court of Inquiry—(1) The management of any case before a Court of Inquiry shall be superintended by such person as the Minister may appoint, and the person so appointed shall render to the Court of Inquiry such assistance as is in his power.

(2) If a formal investigation relates to an accident in or about a quarry or tunnel, the following persons shall be entitled to be present at the Court of Inquiry, to require the attendance of any witness, to give evidence, and to examine any witness either personally or by counsel:

- (a) Any Inspector;
- (b) Any person injured as a result of the accident;
- (c) Any relative of any person whose death may have been caused by the accident;
- (d) The occupier of the quarry or tunnel in or about which the accident occurred, and the manager or any other official of the quarry or tunnel;
- (e) An officer or a representative of the union to which any person injured, or any person whose death may have been caused, belonged at the time of the accident.

(3) If the formal investigation involves, or appears likely to involve, any question as to the cancellation or suspension of a certificate of competency granted under this Act or the Mining Act 1971—

- (a) The Minister shall, before the commencement of the inquiry, supply the holder of the certificate with a statement of the case on which the inquiry has been directed to be held; and
- (b) The Court of Inquiry may require the holder of the certificate to deliver it to the Court.

78. Finding of Court of Inquiry—(1) If the Court of Inquiry finds that—

- (a) The holder of the certificate is incompetent, or has been guilty of negligence or of misconduct in the performance of his duties under this Act or under any regulations in force under this Act; or
- (b) The accident in respect of which the formal investigation is held was caused directly or indirectly by the failure of the holder of the certificate to observe any of the provisions of this Act or of any regulations in force under this Act, or by reason of his negligence—

it may, subject to subsection (2) of this section, cancel or suspend for such period as it thinks fit any certificate granted to that person under this Act or the Mining Act 1971; or, if it considers the facts do not warrant the cancellation or suspension of the certificate, it may fine that person an amount not exceeding \$500.

(2) A certificate shall not be cancelled or suspended by the Court unless a statement of the case on which the inquiry has been directed to be held has been supplied to the holder of the certificate before the commencement of the formal investigation.

(3) Where the formal investigation involves a question as to the cancellation or suspension of a certificate of competency, the Court of Inquiry shall, at the conclusion of the case or as soon afterwards as possible, state in open Court the decision to which it has come with respect to the cancellation or suspension of the certificate, and shall then either return, cancel, or suspend the certificate according to its decision on the case.

(4) The Court of Inquiry, after conducting the formal investigation, 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; and if the Court determines to cancel or suspend any certificate it shall send the certificate cancelled or suspended to the Minister with the report.

(5) Each assessor shall either sign the report or state in writing to the Minister his dissent from it with the reasons for his dissent.

(6) The Court of Inquiry may make such order as it thinks fit respecting the costs of the formal investigation or any part of it, and any such order may be enforced as if it were an order for costs under Part II of the Summary Proceedings Act 1957.

(7) The Minister may, if in any case he thinks fit, pay the costs of any such investigation.

79. Appeal from decision of Court of Inquiry—If a formal investigation has involved a question as to the cancellation or suspension of a certificate of competency, any party to the investigation may appeal against the decision of the Court of Inquiry to the High Court; and the provisions of Part IV of the Summary Proceedings Act 1957, with the

necessary modifications, shall apply as if the decision of the Court of Inquiry was a determination to which that Part applies.

80. Procedure where certificate cancelled or suspended —(1) If a certificate is cancelled or suspended by the Court of Inquiry under section 78 of this Act, the Deputy Secretary shall forward the particulars to the Board, and the Board shall cause a record of the cancellation or suspension to be made in the register of holders of certificates.

(2) If the certificate of any person is suspended under the said section 78 that person shall, during the period of the suspension, be deemed for the purposes of this Act not to be the holder of a certificate.

Regulations

81. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Prescribing or making provision for the Secretary to prescribe or provide forms of applications, certificates, returns, and other documents for the purposes of this Act, and prescribing the manner in which any such forms are to be executed:
- (b) Prescribing the nature of any information and particulars to be furnished to the Secretary in respect of quarries and tunnels:
- (c) Prescribing the subject-matter of examinations for certificates of competency under this Act and the conditions governing such examinations:
- (d) Prescribing the fees payable in respect of examinations for certificates of competency under this Act and in respect of the granting of such certificates:
- (e) Authorising the refund or remission, in such circumstances as in accordance with the regulations the Minister thinks fit, of any fees payable under this Act:
- (f) Prescribing the manner in which money payable under this Act is to be collected, accounted for, and distributed:
- (g) Providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

Offences and Legal Proceedings

82. Offences and penalties—(1) Every person commits an offence against this Act who acts in contravention of or fails to comply in any respect with any provision of this Act or of any regulations in force under this Act.

(2) Every person who commits an offence against this Act for which no penalty is provided elsewhere than in this section shall be liable on summary conviction to a fine not exceeding \$500 or, if the offence is knowingly committed, to a fine not exceeding \$1,500, and, if the offence is a continuing one, to a further fine not exceeding \$50 for every day or part of a day during which the offence has continued.

(3) If any body corporate is convicted of an offence against this Act, every director and every other officer concerned in the management of the body corporate shall be guilty of the offence if it is proved that the act or omission that constituted the offence took place with his authority, permission, or consent.

(4) For the purposes of this section, the continued existence of anything in a state contrary to any provision of this Act or of any regulations in force under this Act shall be deemed to be a continuing offence.

83. Proceedings against occupiers and managers of quarries and tunnels—(1) Where proceedings are taken against the occupier of a quarry or tunnel in respect of an offence against this Act for which both the occupier and manager are liable, the occupier shall not be liable if he proves that—

- (a) He was not in the habit of taking, and did not in respect of the matters in question take, any part in the management of the quarry or tunnel; and
- (b) He made all the financial and other provision necessary to enable the manager to carry out his duties; and
- (c) The offence was committed without his knowledge, consent, or connivance.

(2) Except as provided in subsection (1) of this section, it shall not be a defence in any proceedings brought against the occupier of a quarry or tunnel in respect of an offence against this Act that a manager of the quarry or tunnel has been appointed.

(3) It shall be a defence in any proceedings brought against the occupier or manager of a quarry or tunnel in respect of an offence against this Act if he proves that the offence was

committed owing to causes over which he had no control and against the happening of which it was impracticable for him to make provision.

(4) Nothing in this section shall be construed to prevent proceedings being commenced, in the first instance, against the manager of a quarry or tunnel for any offence for which the manager is liable under this Act.

(5) Nothing in this section shall limit or affect the provisions of section 24 or section 55 of this Act.

Miscellaneous Provisions

84. Amending Construction Act 1959—Section 3 of the Construction Act 1959 is hereby amended by repealing subsection (6) (as substituted by section 3 (1) of the Construction Amendment Act 1969), and substituting the following subsection:

“(6) This Act shall not apply to any work carried on in any quarry to which Part III of the Quarries and Tunnels Act 1982 applies or in any tunnel to which Part IV of that Act applies:

“Provided that the Minister of Labour, acting with the concurrence of the Minister of Energy, may from time to time by notice in the *Gazette* declare any such quarry or any such tunnel, or any work to be or being carried on in any such quarry or in any such tunnel, to be a construction work; and in any such case this Act and any regulations for the time being in force under this Act shall apply to the quarry or tunnel or work, as the case may be.”

85. Amending Mining Act 1971—(1) Section 174 of the Mining Act 1971 is hereby repealed.

(2) Section 200 (2) of the Mining Act 1971 is hereby amended by omitting the words “or, in the case of a person appointed to inspect a dredge, at least three years’ practical experience working on a dredge engaged in mining operations”.

(3) Section 211 (2) (a) of the Mining Act 1971 is hereby amended by omitting the words “a quarry manager’s surface or tunnel certificate”, and substituting the words “an A-grade quarry manager’s surface certificate or an A-grade tunnel manager’s certificate under the Quarries and Tunnels Act 1982”.

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

(2) The Quarries Amendment Act Commencement Order 1977 is hereby revoked.

Section 86

SCHEDULE

ENACTMENTS REPEALED

- 1944, No. 13—The Quarries Act 1944. (1957 Reprint, Vol. 13, p. 1.)
 1945, No. 40—The Statutes Amendment Act 1945: Section 67. (1957 Reprint, Vol. 13, p. 29.)
 1951, No. 83—The Quarries Amendment Act 1951. (1957 Reprint, Vol. 13, p. 29.)
 1954, No. 47—The Quarries Amendment Act 1954. (1957 Reprint, Vol. 13, p. 31.)
 1961, No. 64—The Quarries Amendment Act 1961.
 1971, No. 25—The Mining Act 1971: Section 158 (2) (c), (d), and (e).
 1972, No. 97—The Quarries Amendment Act 1972.
 1973, No. 88—The Quarries Amendment Act 1973.
 1975, No. 101—The Quarries Amendment Act 1975.
 1977, No. 33—The Ministry of Energy Act 1977: So much of Part VI of the Second Schedule as relates to the Quarries Act 1944.
 1977, No. 186—The Quarries Amendment Act 1977.
 1979, No. 21—The Coal Mines Act 1979: First Schedule.
 1980, No. 134—The Quarries Amendment Act 1980.

This Act is administered in the Ministry of Energy.