

CRIMINAL TRESPASS BILL

EXPLANATORY NOTE

THIS Bill effects reforms in the law relating to criminal trespass. It leaves untouched the provisions of many enactments creating penalties in respect of trespass on various classes of property, e.g., State forest land.

Clause 1 relates to the Short Title to the Bill and to the date of its commencement. It is to come into force on 1 January 1969.

Clause 2 defines terms used in the Bill.

Clause 3: Subclause (1) repeats section 6A of the Police Offences Act 1927 except that the amount of the fine is doubled. The clause makes it an offence for any person wilfully to trespass on any place and neglect or refuse to leave that place after being warned to do so by the owner or any person in lawful occupation of the place, or any person acting under the express or implied authority of the owner or person in lawful occupation. *Subclause (2)* is new, and makes it an offence for a person who has been so warned to leave any place wilfully to trespass on that place at any time within six months after the giving of the warning. It is to be a defence to a charge under *subclause (2)* if the defendant proves that—

- (a) The person by whom or on whose behalf the warning was given is no longer the owner or in lawful occupation of the place; or
- (b) It was necessary for the defendant to commit the trespass because of some emergency involving his safety or the safety of some other person.

The existing provision for imprisonment is retained in *subclause (1)* because the failure of a trespasser to leave after warning may lead to a breach of the peace, but *subclause (2)* provides for punishment by fine only.

Clause 4: Section 103 of the Animals Act 1967 makes it an offence for any person, without the authority of the occupier or other lawful authority, to go upon private land with dog or firearm and disturb any domesticated animal thereon. Proceedings under the section can be taken only on the information of the occupier of the land. This clause and *clause 7* transfer these provisions to the Bill. *Clause 4* extends the provisions by making it an offence to go upon any private land and wilfully or recklessly disturb any domesticated animal thereon.

Clause 5 makes it an offence punishable by a fine of \$100 for a person, without reasonable cause, to discharge a firearm on any private land, or to discharge a firearm from any place, vehicle, vessel, aircraft, or hovercraft into or across any private land. The clause does not apply to any act done by or with the authority of the owner or occupier of the land or other lawful authority.

Clause 6 makes it an offence for any person—

- (a) Wilfully to trespass on any private land, and open and leave open a shut gate, or unfasten and leave unfastened a fastened gate, on or leading to any private land on which there is for the time being any domesticated animal which may move to other land if the gate is left open or unfastened; or
- (b) With intent to cause loss, annoyance, or harm to any other person, opens and leaves open a shut gate, or unfastens and leaves unfastened a fastened gate, on or leading to any private land on which there is for the time being any domesticated animal which may move to other land if the gate is left open or unfastened.

Clause 7 provides that proceedings under *clauses 4, 5, and 6* shall be taken only on the information of the occupier of the land in respect of which the offence was committed.

Clause 8 provides that, where any person is convicted by any Court of an offence against the Bill, and it is proved that at the time when the offence was committed he was carrying a firearm or had a firearm with him, the Court, instead of or in addition to any other penalty, may do all or any of the following things:

- (a) Order the revocation of the person's registration under the Arms Act 1958 as the owner of any firearm:
- (b) Order the revocation of any permit issued to the person under the Arms Act 1958 for the possession of any firearm:
- (c) Order that the person shall not carry a firearm, or shall be disqualified from being so registered or from obtaining such a permit, for such period not exceeding two years from the date of the conviction as the Court thinks fit.

Clause 9 declares that nothing in the Bill shall apply to anything that any person is authorised to do by or under any other enactment, or restrict the provisions of any of the following enactments and instruments:

- (a) Section 225 of the Mining Act 1926:
- (b) Section 23 of the Civil Aviation Act 1964:
- (c) Any enactment or instrument conferring a right of entry on any land.

Clause 10 provides for consequential repeals.

Hon. Mr Hanan

CRIMINAL TRESPASS

ANALYSIS

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A BILL INTITULED

An Act to effect reforms in the law relating to criminal trespass

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 Criminal Trespass Act 1968.

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

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

“Aircraft” has the same meaning as in the Civil Aviation Act 1964:

15 “Private land” means any land alienated from the Crown in fee simple or for any less estate or interest and any land, whether alienated from the Crown or not, of which any person is in actual occupation or in receipt of the rent or profits.

3. Trespass after warning to leave—(1) Every person commits an offence against this Act and is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred dollars who wilfully trespasses in any place and neglects or refuses to leave that place after being warned to do so by the owner or any person in lawful occupation of the place, or any person acting under the express or implied authority of the owner or person in lawful occupation. 5

(2) Every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding two hundred dollars who, being a person who has been so warned to leave any place, wilfully trespasses on that place at any time within six months after the giving of the warning: 10

Provided that it shall be a defence to a charge under this subsection if the defendant proves that— 15

- (a) The person by whom or on whose behalf the warning was given is no longer the owner or in lawful occupation of the place; or
- (b) It was necessary for the defendant to commit the trespass because of some emergency involving his safety or the safety of some other person. 20

Cf. 1927, No. 35, s. 6A; 1952, No. 43, s. 3

4. Disturbance of domesticated animals by trespassers with dog or firearm—Every person commits an offence and is liable on summary conviction to a fine not exceeding one hundred dollars who, without the authority of the occupier or other lawful authority,— 25

- (a) Goes upon any private land with dog or firearm and disturbs any domesticated animal thereon: 30
- (b) Goes on to any private land and wilfully or recklessly disturbs any domesticated animal thereon.

Cf. 1967, No. 50, s. 103

5. Discharge of firearm on private land—(1) Every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding one hundred dollars who, without reasonable cause,— 35

- (a) Discharges a firearm on any private land; or
- (b) Discharges a firearm from any place, vehicle, vessel, aircraft, or hovercraft into or across any private land. 40

(2) This section shall not apply to any act done by or with the authority of the owner or occupier of the land or other lawful authority.

6. Failure to shut gate—Every person commits an offence against this Act and is liable on summary conviction to a penalty not exceeding fifty dollars who—

- 5 (a) Wilfully trespasses on any private land, and opens and leaves open a shut gate, or unfastens and leaves unfastened a fastened gate, on or leading to any private land on which there is for the time being any domesticated animal which may move to other land if the gate is left open or unfastened; or
- 10 (b) With intent to cause loss, annoyance, or harm to any other person, opens and leaves open a shut gate, or unfastens and leaves unfastened a fastened gate, on or leading to any private land on which there is for the time being any domesticated animal which may
- 15 move to other land if the gate is left open or unfastened.

7. Proceedings under sections 4, 5, and 6—Proceedings under sections 4, 5, and 6 of this Act shall be taken only on the information of the occupier of the land in respect of
20 which the offence was committed.

8. Cancellation of firearms registration or permit—(1) Where any person is convicted by any Court of an offence against this Act, and it is proved that at the time when the offence was committed he was carrying a firearm or had a fire-
25 arm with him, the Court, instead of or in addition to any other penalty, may do all or any of the following things:

- (a) Order the revocation of the person's registration under the Arms Act 1958 as the owner of any firearm:
- 30 (b) Order the revocation of any permit issued to the person under the Arms Act 1958 for the possession of any firearm:
- (c) Order that the person shall not carry a firearm, or shall be disqualified from being so registered or from obtaining such a permit, for such period not
35 exceeding two years from the date of the conviction as the Court thinks fit.

(2) Every person commits an offence and is liable on summary conviction to a fine not exceeding four hundred dollars who carries any firearm in contravention of any
40 order of a Court made under this section.

9. Savings—Nothing in this Act shall apply to anything that any person is authorised to do by or under any other enactment, or restrict the provisions of any of the following enactments and instruments:

- (a) Section 225 of the Mining Act 1926: 5
- (b) Section 23 of the Civil Aviation Act 1964:
- (c) Any enactment or instrument conferring a right of entry on any land.

10. Repeals—The following enactments are hereby consequently repealed: 10

- (a) Section 6A of the Police Offences Act 1927:
- (b) Section 3 of the Police Offences Amendment Act (No. 2) 1952:
- (c) Section 103 of the Animals Act 1967.