

## FENCING AMENDMENT BILL

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### EXPLANATORY NOTE

This Bill gives a Magistrate's Court power to order the occupier of any land to remove or trim any tree, shrub, or plant on his land which unduly interferes with the reasonable enjoyment of any other land for residential purposes. The power is a discretionary one, to be exercised only where the Court considers it to be fair and reasonable in all the circumstances (including the time when the applicant came to the land), but it may be exercised not only in cases where the interference amounts to a legal "nuisance" for which proceedings may be taken under the common law, but also in cases where there is at present no legal remedy. The Court is not to make an order unless the applicant proves that his hardship is greater than that of the defendant, and that the interference involves injury or annoyance or actual or potential danger to life or health or property. The reasonable cost of removing or trimming the tree, shrub, or plant is to be borne by the person applying for the order, unless he would be entitled to the order under the present law. If any such order is not complied with within one month or such further time as the Court may allow, the applicant for the order may cause the work to be done, but only if this is agreed to by the parties or authorized by the Court. In making an order the Court may impose such conditions as it thinks fit, including conditions requiring the applicant to give security for or indemnify the defendant against any costs or expenses that may be incurred or any damage that may be caused in carrying out the order, and also including conditions as to the terms on which the applicant may cause work to be done on the defendant's land. Where the occupier of the land on which the tree is growing is not the owner of that land, both the occupier and the owner are to be defendants in the proceedings. The Bill is to bind the Crown.

*Clause 3* provides that the provisions of the Bill are not to interfere with agreements relating to the above-mentioned matters.

*Clause 4* provides that orders and agreements made for the purposes of the above provisions will run with the land, so that the occupiers for the time being will have the benefits or be subject to the burdens of the orders or agreements.

*Hon. Mr Marshall*

## FENCING AMENDMENT

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### ANALYSIS

Title.  
1. Short Title.

2. Magistrate's Court may order removal or trimming of trees injuriously affecting neighbour's land used for residential purposes.
3. Act not to interfere with agreements.
4. Orders and agreements to run with the land.

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### A BILL INTITULED

AN ACT to amend the Fencing Act 1908.

Title.

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

1. This Act may be cited as the Fencing Amendment Act 1955, and shall be read together with and deemed part of the Fencing Act 1908 (hereinafter referred to as the principal Act).

Short Title.

Reprinted 1954,  
Vol. II, p. 1367

2. The principal Act is hereby amended by inserting, after section twenty-six, the following section:

Magistrate's Court may order removal or trimming of trees injuriously affecting neighbour's land used for residential purposes.

“26A. (1) The occupier of any land on which is erected any building used for residential purposes may at any time apply to a Magistrate's Court for an order requiring the occupier of any other land to remove or trim any tree growing or standing on that other land.

“(2) Where the occupier of that other land is not the owner thereof both the occupier and the owner shall be joined as defendants to any such application.

“(3) On any such application the Court may make such order as it thinks fit, upon and subject to such conditions as it thinks fit, if, having regard to all the circumstances of the case and all other relevant considerations, the Court considers the order to be fair and reasonable, and to be necessary to remove or prevent, or to prevent the recurrence of, any undue interference with the reasonable enjoyment of the applicant’s land for residential purposes. 5

“(4) The conditions of any such order may, if the Court thinks fit, include conditions requiring the applicant to give security or indemnity in respect of any costs, expenses, or damage. 10

“(5) The Court shall not make an order under this section unless it is satisfied— 15

“(a) That the interference involves injury or annoyance to the applicant or to some other person on the applicant’s land or actual or potential danger to life or health or property; and 20

“(b) That the hardship that would be caused to the applicant or to any other person by the refusal to make the order is greater than the hardship that would be caused to the occupier of the land on which the tree is growing or standing, or to any other person, by the making of the order. 25

“(6) An order may be made under this section whether or not the interference amounts to a legal nuisance, and whether or not it could be the subject of any proceedings otherwise than under this section. 30

“(7) In determining whether or not to make an order under this section the Court shall have regard to the time when the applicant became the occupier of his land in relation to the time when the interference commenced, but if the Court thinks fit, having regard to all the circumstances of the case, an order may be made notwithstanding that the applicant became the occupier of his land after the interference commenced. 35

“(8) Every order made under this section shall provide that the reasonable cost of removing or trimming any tree (the amount thereof to be determined by the Court unless the parties otherwise agree) shall be borne by the applicant for the order, unless the Court is satisfied that the applicant would have been entitled to an order for the removal or trimming of the tree if this section had not been passed.

“(9) If an order made under this section in respect of the removal or trimming of any tree is not duly complied with within one month after the date of the order, or such longer period as may be specified in the order or allowed by the Court, the applicant for the order may at any time thereafter cause the land on which the tree is growing or standing to be entered upon and the order to be complied with, and may cause to be done on that land such things as may reasonably be considered necessary for any such purposes as aforesaid:

“Provided that, unless the parties otherwise agree, the applicant shall not exercise the rights conferred by this subsection except with the leave of the Court, which may be granted upon or subject to such conditions as the Court thinks fit, whether as to security or indemnity against any costs, expenses, or damage, the avoidance of or making good of any injury or damage, the disposal of the trees or any part thereof, or otherwise.”

“(10) In this section the term ‘tree’ includes any shrub or plant.

“(11) This section shall bind the Crown, and shall apply to all land, including Maori land, Crown land, and public reserves.”

3. Section six of the principal Act is hereby amended by adding the words “or relative to any matters referred to in section twenty-six A of this Act”.

Act not to interfere with agreements.

4. Section seven of the principal Act is hereby amended by inserting, after the words “this Act”, the words “and every order made under section twenty-six A of this Act and every agreement entered into for the purposes of that section or relative to any matters referred to in that section”.

Orders and agreements to run with the land.