

# TRESPASS BILL

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## EXPLANATORY NOTE

This Bill consolidates and amends the Trespass Act 1968.

*Clause 1* relates to the Short Title.

*Clause 2* relates to definitions. Two new definitions have been added. A definition of "occupier" has been added so that some substantive provisions may be shortened; and a definition of "weapon" has been added as a consequence of certain new provisions relating to weapons. In addition, it is provided that where any place is unoccupied, its owner is deemed to be its occupier.

*Clause 3* relates to the offence committed by a trespasser who fails to leave any place after being warned to do so. At present there is some doubt as to whether an offence is committed if the trespass is not wilful. The clause makes it clear that even if the trespass is not wilful, an offence is committed by a trespasser who fails to leave when warned.

In addition, the clause limits the power to give warnings to the lawful occupier. The owner of a place who is not its lawful occupier will not be able to give a warning to a trespasser unless there is no lawful occupier of that place.

The maximum penalty for the offence is increased from a fine of \$200 or 3 months imprisonment to a fine of \$1,000 or 3 months imprisonment.

*Clause 4* relates to the offence committed by a person who trespasses on any place within a specified time of being warned to stay off.

At present, the occupier of a place can give a warning off only to a person who has actually trespassed on the place.

The clause provides for 2 additional kinds of warning. First, the occupier of any place may warn off any person whom he has reasonable cause to suspect to be likely to trespass on that place. Secondly, a Court is empowered to warn any person convicted of an offence under the Bill off any place in respect of which the offence was committed.

Some doubts have arisen as to the extent of the place in respect of which a person can be warned off. *Subclause (4)* clarifies the situation, and provides that where the warning off relates to a trespass (or likely trespass) on any place, it extends to every contiguous place owned or occupied by the occupier of that place.

In addition, the time after a warning off within which a person warned off a place commits an offence if he trespasses on that place is increased from 6 months to 2 years.

The maximum penalty for trespass after a warning off is increased from a fine of \$200 to a fine of \$1,000 or 3 months imprisonment.

*Clause 5* relates to the delivery of warnings, and makes it clear that warnings must be given to individual persons (and not by general means such as notices or newspaper advertisements).

*Clause 6*, which relates to the disturbance of domestic animals, has the same effect as section 6 of the 1968 Act; but the maximum penalty is increased from a fine of \$100 to a fine of \$500 or 1 month's imprisonment in the case of wilful or reckless disturbance, and a fine of \$300 or 1 month's imprisonment in any case where the disturbance is not wilful or reckless, but is caused by a dog, weapon, or vehicle.

*Clause 7* has the same effect as section 6 of the 1968 Act, which relates to offences in respect of the use of weapons on private land; and in addition creates a new offence—that of laying poison on private land without authority. Also, the maximum penalty is increased from a fine of \$100 to a fine of \$300 or 1 month's imprisonment.

*Clause 8*, which relates to offences in respect of gates, differs in 3 respects from section 7 of the 1968 Act. First, it resolves a doubt relating to the use of the word "wilfully" in the 1968 provision, and makes it clear that where a trespasser wilfully deals with a gate in a certain way he commits an offence, notwithstanding that the trespass itself may not have been wilful. Secondly, it is extended so as to penalise persons who shut open gates (as well as persons who open shut gates or unfasten fastened gates). Thirdly, the maximum penalty is increased from a fine of \$50 to a fine of \$200.

*Clause 9* relates to the obligation of a trespasser to give his name and address when they are demanded. The clause authorises a member of the Police to demand them; enables the registration number of any firearm in the trespasser's possession to be demanded; and increases the maximum penalty for refusing to give information demanded from a fine of \$200 to a fine of \$500.

*Clause 10* authorises members of the Police to bring prosecutions in respect of offences under the Bill. At present only the occupier of the land concerned or his agent may do so.

*Clause 11* relates to penalties.

*Clause 12* relates to persons convicted of offences under the Bill who were carrying weapons at the time. The Court may order such a person not to carry a weapon, or obtain a permit under the Arms Act 1958, for a period not exceeding 2 years.

*Subclause (4)* provides that where a person is convicted of an offence under *clause 6* or *clause 7* of the Bill relating to the use of a weapon, the Court may order the weapon to be forfeited.

*Clause 13* is a savings provision preserving certain existing rights to enter private land.

*Clause 14* repeals the 1968 Act.

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*Hon. Mr McLay*

## TRESPASS

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### ANALYSIS

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### A BILL INTITULED

#### **An Act to consolidate and amend the Trespass Act 1968**

**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 Trespass Act 1979.

(2) This Act shall come into force on the 1st day of January 1980.

**2. Interpretation**—(1) In this Act, unless the context otherwise requires,—

“Disturb”, in relation to any domestic animal, means to disturb the animal to an extent that is likely to cause harm to the animal, or loss or inconvenience to the person who owns it or is in charge of it:

“Domestic animal” means—

(a) An animal of any of the following kinds when not in a wild state, namely, horses, cattle, sheep, and swine, within the meaning of the Animals Act 1967, and poultry within the meaning of the Poultry Act 1968; and

(b) Any deer that is being lawfully kept in captivity within a deer-proof fence, and any goat that is being lawfully kept in captivity within a goat-proof fence, and any wild animal within the meaning of the Wild Animal Control Act 1977 that is being lawfully kept in captivity in a zoological garden, or in a manner or by a restraining device that will prevent its escape:

“Occupier”, in relation to any place or land, means any person in lawful occupation of that place or land; and includes any employee or other person acting under the express or implied authority of any person in lawful occupation of that place or land:

“Private land” means any land alienated from the Crown in fee simple or for any lesser 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:

“Weapon” means any gun, rifle, airgun, or air rifle; and includes any kind of weapon or device from which any shot, bullet, arrow, tranquillising dart, or other missile can be discharged.

(2) Where, except by virtue of this subsection, no person is the occupier of any place or land, the owner of that place or land shall, for the purposes of this Act, be deemed to be its occupier.

Cf. 1968, No. 52, s. 2

**3. Trespass after warning to leave**—Every person commits an offence against this Act who trespasses on any place and, after being warned to leave that place by an occupier of that place, neglects or refuses to do so.

Cf. 1968, No. 52, s. 3

**4. Trespass after warning to stay off**—(1) Where any person is trespassing or has trespassed on any place, an occupier of that place may, at the time of the trespass or within a reasonable time thereafter, warn him to stay off that place.

(2) Where an occupier of any place has reasonable cause to suspect that any person is likely to trespass on that place, he may warn that person to stay off that place.

(3) Where any person is convicted of an offence against this Act committed on or in respect of any place, the Court may warn that person to stay off that place.

(4) Where any person is warned under this section to stay off any place, that warning shall be deemed to extend to any other place owned or lawfully occupied by the person by whom or on whose behalf the warning is given that is—

- (a) Contiguous to that first-mentioned place; or
- (b) Separated from that first-mentioned place or any such contiguous place by only a road or street; or
- (c) Contiguous to any such separated place.

(5) Subject to subsection (6) of this section, every person commits an offence against this Act who, being a person who has been warned under this section to stay off any place, wilfully trespasses on that place within 2 years after the giving of the warning.

(6) It shall be a defence to a charge under subsection (5) of this section if the defendant proves that—

- (a) The person by whom or on whose behalf the warning concerned was given is no longer an occupier of the place concerned; or
- (b) It was necessary for the defendant to commit the trespass for his own protection or for the protection of some other person, or because of some emergency involving his property or the property of some other person.

Cf. 1968, No. 52, s. 4

**5. Delivery of warnings**—A warning under section 3 or section 4 of this Act shall be given to the individual person concerned either orally, or by notice in writing delivered to him or sent to him by post in a registered letter at his usual place of abode in New Zealand.

Cf. 1968, No. 52, s. 4 (2)

**6. Disturbance of domestic animals by trespasser**—Every person commits an offence against this Act who goes onto any private land without the authority of an occupier, or other lawful authority, and—

- (a) By means of a dog, weapon, or vehicle, disturbs any domestic animal on that land; or

- (b) Wilfully or recklessly disturbs any domestic animal on that land.

Cf. 1968, No. 52, s. 5

**7. Discharge of weapon, or laying of poison, on private land**—Every person commits an offence against this Act who, without the authority of an occupier of any private land, or other lawful authority,—

- (a) Without reasonable cause discharges a weapon on that land; or  
 (b) Without reasonable cause discharges a weapon from outside or above that land onto or over that land; or  
 (c) Lays any poison or poisoned bait on that land.

Cf. 1968, No. 52, s. 6

**8. Gates**—Every person commits an offence against this Act who—

- (a) Trespasses on any private land and wilfully—  
     (i) Opens and leaves open a shut gate; or  
     (ii) Unfastens and leaves unfastened a fastened gate; or  
     (iii) Shuts and leaves shut an open gate; or  
 (b) With intent to cause loss, annoyance, or inconvenience to any other person,—  
     (i) Opens and leaves open a shut gate; or  
     (ii) Unfastens and leaves unfastened a fastened gate; or  
     (iii) Shuts and leaves shut an open gate—

on or leading to any land used for the farming of domestic animals or of any other animals held under lawful authority.

Cf. 1968, No. 52, s. 7

**9. Obligation to give name and other particulars**—(1) An occupier of any private land upon which any person is found trespassing, or any member of the Police, may require that person to—

- (a) Give particulars of his name and place of abode; and  
 (b) Produce for inspection satisfactory evidence of the correctness of those particulars; and  
 (c) Give the firearm registration number of every registered firearm in his possession.

(2) If any such person fails or refuses to comply with a requirement made under subsection (1) of this section, any member of the Police may caution him and, if he persists in his failure or refusal, may arrest him without warrant.

(3) Every person commits an offence against this Act who, in response to a requirement under subsection (1) of this section,—

- (a) Fails or refuses to comply with that requirement; or
- (b) Gives a false name or place of abode; or
- (c) Wilfully gives particulars of his place of abode that are insufficiently precise to enable it to be identified readily.

Cf. 1968, No. 52, s. 8; 1977, No. 111, s. 34

**10. Proceedings under sections 6 to 9—**(1) Proceedings under any of sections 6 to 9 of this Act shall be taken only on the information of an occupier of the land concerned or a member of the Police.

(2) Notwithstanding anything to the contrary in section 37 of the Summary Proceedings Act 1957, where an information has been laid in accordance with subsection (1) of this section, any member of the Police may appear at the hearing of the charge and conduct the proceedings on the informant's behalf.

Cf. 1968, No. 52, s. 9

**11. Offences and penalties—**(1) Every offence against this Act shall be punishable on summary conviction.

(2) Every person who commits an offence against this Act shall be liable on conviction—

- (a) In the case of an offence against section 3 or section 4 or section 12 of this Act, to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 3 months:
- (b) In the case of an offence against section 6 (a) or section 7 of this Act, to a fine not exceeding \$300 or to imprisonment for a term not exceeding 1 month:
- (c) In the case of an offence against section 6 (b) of this Act, to a fine not exceeding \$500 or to imprisonment for a term not exceeding 1 month:
- (d) In the case of an offence against section 8 of this Act, to a fine not exceeding \$200:

- (e) In the case of an offence against section 9 of this Act, to a fine not exceeding \$500.

**12. Weapons**—(1) Where any person is convicted by any Court of an offence against this Act, and it is proved that at the time of the offence he was carrying a weapon or had a weapon with him, the Court, instead of or in addition to any other penalty, order, or direction, may make either or both of the following orders:

- (a) An order that the person be disqualified from being registered or obtaining a permit under the Arms Act 1958 for such period not exceeding 2 years from the date of the conviction as the Court thinks fit;
- (b) An order that the person shall not carry any weapon, or any weapon of a specified class, for such period not exceeding 2 years from the date of the conviction as the Court thinks fit.

(2) Where an order is made under subsection (1) (a) of this section that a person be disqualified from being registered under the Arms Act 1958, and at the time of the making of that order that person is so registered, his registration shall be deemed to be revoked during the disqualification; but the disqualification shall not prevent the revocation of his registration under section 10 (2) of that Act.

(3) Every person commits an offence against this Act who carries a weapon in contravention of an order under subsection (1) (b) of this section.

(4) Where any person is convicted by any Court of an offence against section 6 or section 7 of this Act (being, in the case of an offence against section 6 of this Act, an offence involving disturbance by means of a weapon), the Court may, instead of or in addition to any other penalty or order, direct that the weapon involved in the offence be forfeited to the Crown; and in that case that weapon shall be forfeited to the Crown accordingly, and shall be disposed of as the Commissioner of Police directs.

Cf. 1968, No. 52, s. 10; 1977, No. 111, s. 13 (1)

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



- (a) Section 42 of the Mining Act 1971:
- (b) Section 23 of the Civil Aviation Act 1964:
- (c) Any enactment or instrument conferring a right of entry on any land.

Cf. 1968, No. 52, s. 11

**14. Repeal**—The Trespass Act 1968 is hereby consequentially repealed.