



ANALYSIS

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1980, No. 65

An Act to amend the law relating to trespass

[17 December 1980]

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 1980.

(2) This Act shall come into force on the 1st day of January 1981.

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 causes harm to the animal, or material loss or material 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

(c) Any goat that is being lawfully kept in captivity within a goat-proof fence; and

(d) Any rabbit that is being lawfully kept in captivity; and

(e) Any wild animal within the meaning of the Wild Animal Control Act 1977 that is being lawfully kept in captivity—

(i) In a zoological garden; or

(ii) 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 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—(1) 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.

(2) It shall be a defence to a charge under subsection (1) of this section if the defendant proves that it was necessary for him to remain in or on the place concerned for his own protection or 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. 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) Subject to subsection (5) 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.

(5) It shall be a defence to a charge under subsection (4) 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 trespasses on any private land, 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. Laying of poison or setting of traps 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) Lays any poison or poisoned bait on that land; or
- (b) Sets any trap on that land.

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) 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. Informations—Proceedings under this Act shall be taken only on the information of an occupier of the place concerned or a member of the Police.

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 of this Act (being 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.