

Military Justice Legislation Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill is an omnibus Bill introduced in accordance with Standing Order 263(a). The amendments in this Bill deal with an interrelated topic that can be regarded as implementing a single broad policy.

The principal purpose of this Bill is to update the military justice system and to align it with the criminal justice system in certain respects, including by enhancing victims' rights. To achieve that purpose, this Bill amends the Armed Forces Discipline Act 1971, the Court Martial Act 2007, and the Court Martial Appeals Act 1953.

Victims' rights

Part 3 of the Victims' Rights Act 2002 confers rights on victims of certain serious offences of a sexual nature or that involve violence (**specified offences**), including the right to be kept informed and the right to be consulted in respect of decisions such as bail. One of the rights, namely, the right to be consulted on the accused's release on bail, is already incorporated into the military justice system. However, the remaining rights are not. Amendments made by this Bill ensure that victims of specified offences have rights and protections in the military justice system that are equivalent to those that they would receive in the criminal justice system.

Notice of judicial appointments

Section 15 of the Court Martial Act 2007 requires the Chief of Defence Force (the **CDF**) to arrange for notice of any judicial appointments to the Court Martial to be published in the *Gazette*. However, the CDF is not responsible for judicial appointments, so requiring the CDF to arrange for the notice to be published is anomalous. Notice of a judicial appointment to any other court is published in the *Gazette* on behalf of the person appointing the Judge without the need for such a legislative provision. This Bill repeals section 15 for consistency.

Court Martial procedure

The Bill amends some aspects of the procedure of the Court Martial of New Zealand.

Fitness to stand trial

The Bill aligns the provisions governing whether an accused is unfit to stand trial in the military justice system, and the steps associated with that determination, with the provisions of the Criminal Procedure (Mentally Impaired Persons) Act 2003.

Objection to military member

Currently, there is no legislative provision for the Director of Military Prosecutions or the prosecutor to object to the assignment of a military member to the Court Martial. It is possible that the Director of Military Prosecutions or the prosecutor may be aware of circumstances that would make it untenable for a particular person to be assigned or to sit as a military member. However, in the absence of a formal process for raising such matters with the court, there is the potential for a miscarriage of justice. The Bill amends the Court Martial Act 2007 to remedy this anomaly.

Substitute military member

Section 28(1) of the Court Martial Act 2007 gives the Registrar of the Court Martial the power to assign an officer or a warrant officer to act as a substitute military member. A substitute military member may be assigned to the Court Martial if a military member—

- dies or becomes seriously ill before or during the trial:
- is absent or found to be disqualified from sitting as a military member:
- retires from the Court Martial as a result of an objection:
- is found guilty of contempt of the Court Martial.

Under section 28, the power to appoint a substitute military member persists after the start of the trial. However, after a trial has started and the hearing of evidence has begun, appointing a substitute military member is not practicable because the substitute military member has no opportunity to assess the credibility of any witness who has given evidence before the substitute's appointment. This Bill amends the Court Martial Act 2007 to provide that a substitute military member cannot be appointed after the accused has entered a plea.

Onus of proof

Section 3(2) of the Armed Forces Discipline Act 1971 provides that the onus is on the accused to prove, on the balance of probabilities, any excuse, exception, exemption, or qualification that the accused relies on as a defence to a charge.

Provisions placing the onus of proof on the accused have largely been removed from the criminal justice system following the decision of the Supreme Court in *R v Hansen* [2007] NZSC 7. There is no good reason for members of the Armed Forces who are tried under the military justice system to have an onus of proof imposed on them

that is not imposed in the criminal justice system. Accordingly, the Bill repeals section 3(2) of the Armed Forces Discipline Act 1971.

Departmental disclosure statement

The New Zealand Defence Force is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2017&no=299>

Regulatory impact statement

The New Zealand Defence Force produced a regulatory impact statement on 22 August 2016 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.nzdf.mil.nz/corporate-documents/ris.htm>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill comes into force on **30 November 2018**.

Part 1

Amendments to Armed Forces Discipline Act 1971

Clause 3 provides that *Part 1* of the Bill amends the Armed Forces Discipline Act 1971 (the **principal Act**).

Clause 4 repeals section 3(2) of the principal Act. Section 3(2) is concerned with the onus of proof in circumstances where an accused who is charged with an offence seeks to establish as a defence any excuse, exception, exemption, or qualification contained in the provision creating the offence. In those circumstances, section 3(2) places the onus of proof on the accused; that is, the accused must prove the excuse, exception, exemption, or qualification on the balance of probabilities in order to establish the defence. Repealing section 3(2) means the onus of proof is on the prosecution (although in some situations the accused may still have to raise an evidential foundation for the existence of the defence).

Clause 5 inserts into the principal Act *new sections 5A and 5B*. *New section 5A* cross-refers to *new Schedule 1AA*, which is for transitional, savings, and related provisions. *New section 5B* provides that the principal Act binds the Crown.

Clause 6 replaces a reference to the provision in the Bail Act 2000 that requires victims' views about bail to be taken into account with a reference to a similar provision in *new Part 10A* (inserted by *clause 19*). The effect is that the Judge Advocate General must, when determining whether to grant bail under section 101A, take into account any views of a victim conveyed in accordance with *new section 198D*.

Clause 7 inserts into the principal Act *new section 102A*, which provides for the commanding officer of an accused to determine, at the time an allegation is recorded as a charge, whether the alleged offence has a victim and, if so, whether the alleged offence is a specified offence. If the commanding officer of the accused determines that there is a victim and that the offence is a specified offence, *new Part 10A*, which provides for victims' rights, applies.

Clause 8 inserts *new section 117ZIA* into the principal Act. *New section 117ZIA* applies to a charge that is referred to the Director of Military Prosecutions (the **Director**) under Part 5 of the principal Act. The Director must determine whether the alleged offence has a victim, and whether it is a specified offence. The Director's decision prevails over any earlier decision of the commanding officer of the accused under *new section 102A* so that if, and to the extent that, the Director determines that a victim identified by the commanding officer is not a victim, or that an alleged offence is not a specified offence, *new Part 10A* does not apply.

Clause 9 amends section 155 of the principal Act, which relates to the Reconsidering Authority. The Authority reconsiders sentences of imprisonment and detention imposed by the Court Martial. As amended, section 155 would require the Authority to take all reasonable steps to give written notice to each victim of a service prisoner or detainee of the reconsideration of the prisoner or detainee's sentence. The victim is entitled to make submissions on the reconsideration and, in the case of a prisoner serving a sentence of more than 2 years, the victim can request information on the prisoner. Victims may appear before the authority to make oral submissions and, with the leave of the Authority, be represented by counsel or another support person.

Clause 10 inserts into the principal Act *new section 155A*, which specifies the kind of information that victims must be sent if they request information under *new section 155(1B)(b)*.

Clause 11 makes a minor amendment to section 161 of the principal Act. Section 161 describes the purpose of the Armed Forces Discipline Committee. The effect of the amendment made by *clause 11* is to clarify that the purpose of the Discipline Committee is to issue guidelines to ensure consistency in the sentencing practice for offences against the principal Act regardless of whether the offender is sentenced by the Court Martial or by a disciplinary officer.

Clause 12 amends section 187 of the principal Act, which defines terms used in Part 10 of the principal Act. Part 10 contains provisions for dealing with mentally impaired persons. *Clause 12* replaces the definition of qualified medical practitioner with a definition of health assessor. The effect of this amendment is that it will usually be a psychiatrist or a psychologist that assesses the accused and gives evidence for the purposes of Part 10, rather than another health practitioner. (As is currently the

case, the Judge can approve a person who is not a health assessor to undertake the role in the case of a trial in the Court Martial that is held overseas.)

Clause 13 inserts *new section 187A* into the principal Act. *New section 187A* provides that the Court Martial must act through the Judge alone when exercising any power or performing any function or duty under Part 10 (subject to 2 exceptions). This will mean that, generally, it will be the Judge (and not the military members of the Court Martial) who decides matters relating to an accused's fitness to stand trial.

Clause 14 amends section 188A of the principal Act to replace a reference to 1 qualified medical practitioner with a reference to 2 health assessors.

Clause 15 amends section 190 of the principal Act. The amendment provides that section 55 of the Court Martial Act 2007, which requires findings of the Court Martial to be determined by the unanimous vote of the military members, applies to a finding under section 190 of the principal Act.

Clause 16 amends section 191 of the principal Act to include a reference to the evidence of 1 or more health assessors.

Clause 17 amends section 194 of the principal Act to clarify that a sentence passed or an order made under that section must be passed or made by the Court Martial in the same way that the Court Martial passes sentence in other circumstances (that is, by the majority of the votes of the Judge and the military members, with the Judge holding a casting vote).

Clause 18 amends section 196 of the principal Act to replace a reference to a qualified medical practitioner with a reference to a health assessor.

Clause 19 inserts into the principal Act *new Part 10A*, which provides for victims' rights. The provisions of *new Part 10A* are largely based on Part 3 of the Victims' Rights Act 2002.

New section 198A provides that *new Part 10A* applies to a victim of a specified offence.

New section 198B contains definitions of terms that are used in the Part, including specified offence, support person, victim, and victim support officer.

New section 198C requires the victim support officer and the Director of Military Prosecutions (the **Director**) to make reasonable efforts to ensure that a victim of a specified offence is accorded the rights set out in the Part.

New section 198D requires the Director, in situations where the Judge Advocate General or a Judge is required to determine whether to grant bail to the person who is accused of the offence, to make all reasonable efforts to ascertain any views that the victim has about the accused being released on bail and to inform the Judge Advocate General or the Judge of those views.

New section 198E provides for the victim support officer to inform the victim of a specified offence that the victim (or the victim's representative) has the right to receive various notices under *new Part 10A*. The section also contains provisions relating to the contact details of the victim or representative.

New section 198F provides for the victim (or the victim's representative) to notify a change in address.

New section 198G enables the victim to opt out of receiving notices under *new Part 10A*.

New section 198H provides that sections 40 to 46 of the Victims' Rights Act 2002 apply, with some modifications. Those sections relate to the appointment of a representative to receive notice on behalf of a victim and to the ways in which notices may be given.

New section 198I provides that *new sections 198J to 198N* (which provide for a victim to be notified of certain matters relating to an accused or offender) apply only if the victim (or the victim's representative) has—

- requested the Director to ensure that the notice is given:
- given the Director the address for notices.

New section 198J provides that the Director must give a victim notice of—

- the release on bail of the accused or offender:
- any terms or conditions of release that relate to the safety or security of the victim or the victim's immediate family or that require the accused or offender not to associate with, or not to contact, the victim or any member of the victim's immediate family:
- the variation, substitution, or revocation of that kind of term or condition:
- the date to which the hearing of an application for release on bail has been adjourned.

New section 198K provides that the Director must give a victim notice of—

- the offender's impending temporary or permanent release from custody:
- the accused's or offender's escape from, or death in, custody.

New section 198L provides that the Director must give a victim notice of—

- a breach by the accused or offender of any terms or conditions of release that relate to the safety or security of the victim or the victim's immediate family or that require the accused or offender not to associate with, or not to contact, the victim or any member of the victim's immediate family:
- the conviction of the accused or offender for an offence against section 45 (for escaping from custody) or 45A (for failing to answer bail):
- the sentence imposed on the accused or offender for an offence against section 45 or 45A.

New section 198M applies only if the accused or offender is liable to be detained as a special patient in a hospital or facility in connection with the offence as a special patient within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992 in accordance with Part 10 of the principal Act. *New section 198M* provides that the Director must give a victim notice of—

- the impending discharge of the accused or offender from the hospital or facility;
- the first unescorted leave of absence from the hospital or facility granted to the accused or offender under certain sections of the Mental Health (Compulsory Assessment and Treatment) Act 1992;
- the first unescorted overnight leave of absence granted to the accused or offender under a leave provision under certain sections of the Mental Health (Compulsory Assessment and Treatment) Act 1992;
- the escape of the accused or offender;
- the death of the accused or offender;
- the accused or offender ceasing to be a special patient.

New section 198N applies if the offender is liable for deportation under the Immigration Act 2009 as a result of any criminal offending and—

- the Minister of Immigration is considering cancelling or suspending the offender's liability for deportation; or
- the offender appeals against the offender's liability for deportation to the Immigration and Protection Tribunal.

New section 198N provides that section 39(2), (3), (5), and (6) of the Victims' Rights Act 2002 applies in relation to the victim (with some modifications). The effect of this is that the chief executive of the department that is responsible for the administration of the Immigration Act 2009 must—

- give the victim notice that the Minister is considering cancelling or suspending the offender's liability for deportation; or
- in certain circumstances relating to an appeal to the Immigration and Protection Tribunal, provide the victim's address to the Tribunal (and the Tribunal must give the victim prior notice of the hearing of the appeal).

New section 198O provides that the victim may make submissions to the Minister of Immigration and to the Immigration and Protection Tribunal in accordance with sections 173 and 208 of the Immigration Act 2009.

Clause 20 amends section 206 of the principal Act to—

- enable Defence Force Orders made under that section to provide for warrant officers who are attending the proceedings of the Court Martial for the purpose of being instructed in the court's procedure to attend Court Martial trials (section 206(1)(b) currently refers to the attendance at trials of officers for that purpose but does not provide for the attendance of warrant officers);
- remove the ability for Defence Force Orders to be made that provide for the appointment of, and specify duties and functions that may be performed by, officers of the Court Martial (this is provided for in the Court Martial Act 2007 and in the Armed Forces Discipline Rules of Procedure 2008 and, accordingly, the ability to make Defence Force Orders for this purpose is unnecessary).

Clause 21 inserts *new Schedule IAA*, which contains transitional and savings provisions.

Part 2

Amendments to Court Martial Act 2007

Clause 22 provides that *Part 2* of the Bill amends the Court Martial Act 2007 (the **principal Act**).

Clause 23 inserts into the principal Act *new section 6A*, which cross-refers to *new Schedule IAA*, which is for transitional, savings, and related provisions.

Clause 24 repeals section 15 of the principal Act. Section 15 obliges the Chief of Defence Force to arrange for notices of judicial appointment under any of sections 12 to 14 of the principal Act to be published in the *Gazette*.

Clause 25 amends section 26 of the principal Act, which relates to the procedure for assigning military members to the Court Martial. The effect of the amendment is to require the Registrar to give notice of an assignment to the Director.

Clause 26 amends section 27 of the principal Act to enable the Director to object to the assignment of any person as a military member on the grounds set out in that section.

Clause 27 amends section 28 of the principal Act to provide that—

- the Registrar may only assign a substitute military member before the accused enters a plea to the charge at the trial:
- if, after the accused enters a plea, a military member is unable to continue for one of the reasons set out in that section, the Judge must discharge all of the members and refer the charge back to the Director, who must decide either not to proceed with the charge or to lay the charge again.

Clause 28 amends section 49 of the principal Act to cross-refer to *new section 198D* of the Armed Forces Discipline Act 1971. The effect of the amendment is that a Judge, when considering whether to grant bail to an accused under section 49, must take into account any views of a victim that have been conveyed under *new section 198D*.

Clause 29 inserts into the principal Act *new Schedule IAA*, which contains transitional and savings provisions.

Part 3

Amendments to Court Martial Appeals Act 1953

Clause 30 provides that *Part 3* of the Bill amends the Court Martial Appeals Act 1953 (the **principal Act**).

Clause 31 inserts into the principal Act *new sections 2A and 2B*. *New section 2A* cross-refers to *new Schedule 1*, which is for transitional, savings, and related provisions. *New section 2B* provides that the principal Act binds the Crown.

Clause 32 amends section 9EA of the principal Act to—

- provide that a person accused of an offence who has been found fit to stand trial by the Court Martial may appeal against the finding that the evidence is sufficient to establish that the appellant caused the act or omission that forms the basis of the offence, or the finding that the appellant is fit to stand trial, or both findings:
- replace a reference to qualified medical practitioners with a reference to health assessors, a change that is consequential on amendments made under *Part 1* of the Bill.

Clause 33 inserts *new section 9EB* into the principal Act. *New section 9EB* provides that the same right of appeal exists in relation to an order or a decision under section 191(1) or (2) of the Armed Forces Discipline Act 1971 as exists in relation to a sentence.

Clause 34 inserts *new Schedule 1*, which contains transitional and savings provisions.

Hon Mark Mitchell

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Military Justice Legislation Amendment Act **2016**.

2 Commencement

This Act comes into force on **30 November 2018**.

5

Part 1

Amendments to Armed Forces Discipline Act 1971

3 Principal Act

This **Part** amends the Armed Forces Discipline Act 1971 (the **principal Act**).

4 Section 3 amended (Special provisions relating to the interpretation, etc, of Part 2) 10

Repeal section 3(2).

5 New sections 5A and 5B inserted

After section 5, insert:

5A Transitional, savings, and related provisions 15

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

5B Act binds the Crown

This Act binds the Crown.

6 Section 101A amended (Judge Advocate General may grant bail pending trial) 20

(1) In section 101A(4)(a), delete “and (4)”.

(2) After section 101A(4)(a), insert:

(aa) must take into account any views of a victim to which **Part 10A** applies that are conveyed in accordance with **section 198D**; and 25

7 New section 102A inserted (Commanding officer must determine whether offence is specified offence)

After section 102, insert:

102A Commanding officer must determine whether offence is specified offence

(1) If the commanding officer of an accused causes an allegation to be recorded in the form of a charge, the commanding officer must determine whether the alleged offence has 1 or more victims. 30

- (2) If the commanding officer of the accused determines that the alleged offence has 1 or more victims, the commanding officer must determine whether the alleged offence is a specified offence.
- (3) If the commanding officer of the accused determines that the alleged offence is a specified offence,— 5
 - (a) the commanding officer of the accused must, for each victim,—
 - (i) advise the commanding officer of the victim and the Director of Military Prosecutions of that determination; and
 - (ii) if the victim does not have a commanding officer, appoint a member of the Defence Force to assist the victim; and 10
 - (b) **Part 10A** applies to the victim.
- (4) **Part 10A** and **subsection (3)(b)** cease to apply if, and to the extent that, the Director of Military Prosecutions determines, under **section 117ZIA**, that a victim identified by the commanding officer of the accused is not a victim or that the alleged offence is not a specified offence. 15
- (5) In this section, **specified offence** and **victim** have the meanings given in **section 198B**. 15
 Compare: 2002 No 39 s 29A

8 New section 117ZIA inserted (Director to determine whether offence is specified offence) 20
 After section 117ZI, insert:

- 117ZIA Director to determine whether offence is specified offence**
- (1) This section applies to a charge that is referred to the Director of Military Prosecutions under this Part.
 - (2) The Director must determine whether the alleged offence— 25
 - (a) has 1 or more victims; and
 - (b) is a specified offence.
 - (3) If, and to the extent that, the Director determines that a victim identified by the commanding officer is not a victim or that the alleged offence is not a specified offence, **Part 10A** and **section 102A(3)(b)** do not apply. 30
 - (4) In this section, **specified offence** and **victim** have the meanings given in **section 198B**.
 Compare: 2002 No 39 s 29A

9 Section 155 amended (Procedure for reconsideration)

- (1) After section 155(1), insert: 35
- (1A) The Authority must take all reasonable steps to give every victim of the service prisoner or detainee prior written notice of the reconsideration.

- (1B) A victim of the service prisoner or detainee may—
- (a) write to the Authority by a given date, making submissions on, or giving information relevant to, the reconsideration; and
 - (b) if the reconsideration relates to a prisoner who is subject to a long-term sentence, request information on the prisoner. 5
- (2) Replace section 155(3) with:
- (3) If the service prisoner or detainee requests a hearing under subsection (2)(a),—
- (a) the Director of Military Prosecutions—
 - (i) must be given reasonable prior written notice of the date and time of the hearing; and 10
 - (ii) may attend and be heard at the hearing (whether personally or through an agent); and
 - (b) the Authority must make reasonable efforts to ensure that every victim of the service prisoner or detainee is given reasonable prior written notice of the date and time of the hearing. 15
- (3A) Every victim of the service prisoner or detainee is entitled—
- (a) to appear and make oral submissions to the Authority for the purpose of assisting the Authority to reach a decision; and
 - (b) with the leave of the Authority, to be represented by counsel; and
 - (c) to be accompanied by 1 or more support persons (subject to any limitation on numbers imposed by the Authority), who may, with the leave of the Authority,— 20
 - (i) speak in support of the victim; and
 - (ii) with the permission of the victim, speak on behalf of the victim.
- (3) After section 155(4), insert: 25
- (5) In this section,—
- long-term sentence** means a sentence of more than 2 years of imprisonment
- victim** means, in relation to a service prisoner or detainee, a person who has asked for notice and who has given an address under **section 198I**.
- 10 New section 155A inserted (Information for victims) 30**
- After section 155, insert:
- 155A Information for victims**
- (1) If a victim requests information under **section 155(1B)(b)**, the relevant person must prepare and send to the victim and the Authority all of the following:
- (a) a list of any programmes that the service prisoner has attended since commencing the service prisoner’s sentence, and a list of any programmes that the service prisoner has completed: 35

- (b) a statement of the service prisoner’s current security classification:
 - (c) a list of any offences that the service prisoner has been convicted of since commencing the service prisoner’s sentence:
 - (d) a statement that the purpose of providing the victim with information about the service prisoner is to assist the victim to make submissions, and that the information is not to be used for any other purpose. 5
 - (2) The relevant person must prepare the information and send it to the victim and the Authority before every reconsideration hearing for the service prisoner.
 - (3) In this section, **relevant person** means— 10
 - (a) if the service prisoner is detained in a prison, the chief executive of the Department of Corrections; or
 - (b) in every other case, the Director of Military Prosecutions.
- Compare: 2002 No 10 s 44

11 Section 161 amended (Purpose of Discipline Committee)

In section 161, replace “the sentencing practice of the Court Martial”, with “sentencing practice”. 15

12 Section 187 amended (Interpretation of terms used in this Part)

- (1) In section 187(1), insert in its appropriate alphabetical order:
 - health assessor** means a person who is—
 - (a) a practising psychiatrist who is a medical practitioner; or 20
 - (b) a health practitioner who is, or is deemed to be, registered with the Psychologists Board continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of psychology; or
 - (c) in the case of a trial in the Court Martial held overseas, a person approved by the Judge. 25
- (2) In section 187(1), repeal the definition of **qualified medical practitioner**.

13 New section 187A inserted (Court Martial to act through Judge alone)

After section 187, insert:

- 187A Court Martial to act through Judge alone** 30
- (1) The Court Martial must act through the Judge alone when exercising any power or performing any function or duty under this Part.
 - (2) **Subsection (1)** is subject to **sections 190(2A) and 194(1B)**.

14 Section 188A amended (Determining if accused unfit to stand trial)

- (1) In section 188A(1), replace “1 qualified medical practitioner” with “2 health assessors”. 35

(2)	After section 188A(2), insert:	
(3)	If the Court records a finding under subsection (2) that the accused is fit to stand trial, the Court must continue the proceedings.	
15	Section 190 amended (Finding of insanity)	
	After section 190(2), insert:	5
(2A)	Section 55 of the Court Martial Act 2007 applies to a finding under this section.	
16	Section 191 amended (Order to be made if person unfit to stand trial or insane)	
	In section 191(2), replace “medical evidence” with “the evidence of 1 or more health assessors”.	10
17	Section 194 amended (Power of Court Martial to commit to hospital on conviction)	
(1)	In section 194(1A), replace “by a certificate of 1 qualified medical practitioner” with “on the evidence of 1 or more health assessors”.	15
(2)	After section 194(1A), insert:	
(1B)	A sentence passed or an order made under subsection (1) is a sentence of the Court Martial, and section 61 of the Court Martial Act 2007 applies to both a sentence and an order under that subsection.	
18	Section 196 amended (Insanity of certain persons while serving sentences of imprisonment under this Act)	20
	In section 196(2), replace “qualified medical practitioner” with “health assessor”.	
19	New Part 10A inserted	
	After section 198, insert:	25
Part 10A		
Victims’ rights		
198A	Application of this Part	
(1)	This Part applies to a victim of a specified offence.	
(2)	Subsection (1) is subject to sections 102A(4) and 117ZIA(3) .	30
198B	Interpretation of terms used in this Part	
	In this Part, unless the context otherwise requires,—	
	address has the meaning given in section 4 of the Victims’ Rights Act 2002	
	Director means the Director of Military Prosecutions	

immediate family has the meaning given in section 4 of the Victims' Rights Act 2002

specified offence has the meaning given in section 29 of the Victims' Rights Act 2002

support person has the meaning given in section 4 of the Victims' Rights Act 2002 5

victim has the meaning given in section 4 of the Victims' Rights Act 2002

victim support officer means the victim's commanding officer or, if the victim does not have a commanding officer, the member of the Defence Force appointed to assist the victim under **section 102A(3)(a)(ii)**. 10

198C Rights to be accorded to victim of specified offence

The victim support officer and the Director must make all reasonable efforts to ensure that a victim of a specified offence is accorded the rights set out in this Part.

Victim's views about release on bail of accused or offender 15

198D Victim's views about release on bail of accused or offender

- (1) This section applies if—
 - (a) the victim is a victim of a specified offence; and
 - (b) the Judge Advocate General or a Judge of the Court Martial is required to determine whether to grant bail to the person who is accused of the offence. 20
- (2) If this section applies, the Director must—
 - (a) make all reasonable efforts to ascertain any views that the victim has about the accused being released on bail; and
 - (b) inform the Judge Advocate General or (as the case requires) a Judge of the Court Martial of any views ascertained under **paragraph (a)**. 25

Compare: 2002 No 39 s 30

Right to receive notice of certain matters and to appoint representative

198E Right to receive notice of certain matters and to appoint representative

- (1) A victim of a specified offence has a right to receive notice of the matters described in **sections 198J to 198N**. 30
- (2) The victim support officer must inform a victim who is a victim of a specified offence—
 - (a) that the victim has the right to receive any notice under **sections 198J to 198N** (and to appoint a representative to receive notices on behalf of the victim); and 35

- (b) that, if the victim wants to receive the notices, the victim (or, if a representative is appointed, the victim's representative) must request the Director to ensure that the victim is given notice under **sections 198J to 198N**, and—
- (i) the victim must give the Director the victim's address; or 5
- (ii) if a representative is appointed to receive the notices, the victim or the victim's representative must give the Director the representative's name and address; and
- (c) that the name and address of the victim (or, if a representative is appointed, the name and address of the victim's representative)— 10
- (i) will be provided to the Judge Advocate General to ensure that the victim receives any notice given under section 20 of the Prisoners' and Victims' Claims Act 2005; and
- (ii) may, if **section 198N** applies, be provided to the department of State that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Immigration Act 2009, to enable the victim to receive any notice under that section. 15
- (3) The Director may provide the name and address of the victim or the victim's representative to—
- (a) the Judge Advocate General for the purpose described in **subsection (2)(c)(i)**: 20
- (b) the department described in **subsection (2)(c)(ii)** for the purpose described in that subsection.
- (4) **Subsection (5)** applies if the Director knows, or ought reasonably to know, that the victim is not, or may not be, capable alone of either— 25
- (a) asking for, receiving, or understanding a notice under any of **sections 198J to 198N**; or
- (b) appointing a representative.
- (5) If this subsection applies, the Director must inform a support person of the victim that a representative of the victim may be appointed. 30
- Compare: 2002 No 39 ss 31, 33C

Provisions relating to giving and receiving of notices and appointment of representatives

198F Change of address of victim or representative

- (1) A victim may change the address given under **section 198E(2)(b)** by notifying the Director in writing. 35
- (2) A victim or a victim's representative may change the representative's address given under **section 198E(2)(b)** by notifying the Director in writing.

- (3) The Director must confirm receipt of a notification to the person who made the notification.

Compare: 2002 No 39 s 33A

198G Victim may opt out of receiving notices

- (1) A victim may notify the Director in writing that they no longer wish to receive notices under **sections 198J to 198N**. 5

- (2) The Director must confirm receipt of a notification to the person who made the notification.

Compare: 2002 No 39 s 33B

198H Sections 40 to 46 of Victims' Rights Act 2002 apply 10

- (1) The following provisions of the Victims' Rights Act 2002, with the modifications specified in **subsection (2)**, apply in relation to a victim to whom this Part applies:

- (a) sections 40 to 45 (relating to the appointment of a representative to receive notices on behalf of a victim): 15

- (b) section 46 (specifying the ways in which notices may be given).

- (2) The modifications are—

- (a) a reference to a notice under any of sections 34 to 39 of the Victims' Rights Act 2002 is to be treated as a reference to a notice under any of **sections 198J to 198N** of this Act; and 20

- (b) any other necessary modifications.

Sections 198J to 198N apply only to certain victims who request notice and give address

198I Application of sections 198J to 198N

Sections 198J to 198N apply to a victim of a specified offence only if— 25

- (a) the victim or the victim's representative has requested the Director to ensure that the victim is given notice under **sections 198J to 198N**; and

- (b) the victim or the victim's representative has given the Director the victim's address or the name and address of the victim's representative.

Compare: 2002 No 39 s 32B 30

Notice of certain matters to be given to victim

198J Notice of release on bail of accused or offender

- (1) The Director must, as soon as practicable, give notice of the matters specified in **subsection (2)** to a victim to whom this section applies.

- (2) The matters are— 35

- (a) whether the person accused of the offence (or, as the case requires, the offender) has been released on bail; and
- (b) if the person accused of the offence (or, as the case requires, the offender) has been released on bail, any terms or conditions of release imposed at any time that— 5
- (i) relate to the safety and security of the victim, or of 1 or more members of the victim’s immediate family, or of both; or
- (ii) require the accused or offender not to associate with, or not to contact, the victim, or 1 or more members of the victim’s immediate family, or both; and 10
- (c) the details of any order made by the Court Martial or Judge Advocate General that varies, revokes, or substitutes any term or condition of release referred to in **paragraph (b)**; and
- (d) if an application for release on bail has been made and the hearing of that application has been adjourned, the date to which the hearing has been adjourned. 15
- (3) In this section, **release on bail** includes a release on bail—
- (a) until the hearing of proceedings:
- (b) during an adjournment of proceedings:
- (c) until sentencing: 20
- (d) until determination of an appeal against conviction or sentence.
- (4) However, nothing in this section requires or permits the Director to give notice of a matter contrary to any provision of or contrary to any order made under subpart 3 of Part 5 of the Criminal Procedure Act 2011. 25
- Compare: 2002 No 39 s 34
- 198K Notice of release or escape from custody, or of death, of accused or offender**
- (1) The Director must give a victim to whom this section applies—
- (a) reasonable prior notice of the accused’s or offender’s impending temporary or permanent release from custody: 30
- (b) notice, as soon as practicable, of the accused’s or offender’s—
- (i) escape from custody, unless the accused or offender sooner returns, or is returned to, the place of custody:
- (ii) death in custody:
- (c) notice, as soon as practicable, of the accused’s or offender’s death while on bail. 35
- (2) In this section, **custody** means any type of imprisonment or detention that is provided for in section 168.

- (3) If the release or escape is from, or the death occurs in, a prison, the chief executive of the Department of Corrections must give the Director notice of the matters described in **subsection (1)** in order that the Director can give notice to the victim in accordance with that subsection.

Compare: 2002 No 39 s 35

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198L Notice of breach of release or detention conditions

The Director must, as soon as practicable, give a victim to whom this section applies notice of—

- (a) the breach by the accused or offender of any terms or conditions of release of the type described in **section 198J(2)(b)(i) and (ii)**;
- (b) the conviction of the accused or offender for an offence against section 45 or 45A;
- (c) the sentence imposed on the accused or offender in respect of a conviction referred to in **paragraph (b)**.

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Compare: 2002 No 39 s 36

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198M Notice of discharge, leave of absence, or escape or death of accused or offender who is compulsorily detained in hospital or facility

- (1) This section applies only if the accused or offender is liable to be detained in a hospital or facility in connection with the offence as a special patient within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992 in accordance with Part 10 of this Act.

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- (2) The Director must give a victim to whom this section applies—

- (a) reasonable prior notice of an impending discharge of the accused or offender from the hospital or facility; and
- (b) reasonable prior notice of the first unescorted leave of absence from the hospital or facility granted to the accused or offender under a leave provision; and
- (c) reasonable prior notice of the first unescorted overnight leave of absence granted to the accused or offender under a leave provision; and
- (d) notice, as soon as practicable, of every escape by the accused or offender; and
- (e) notice, as soon as practicable, of the death (whether within or outside a hospital or facility) of the accused or offender; and
- (f) notice, as soon as practicable, of the accused or offender ceasing to be a special patient within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992.

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- (3) To avoid doubt, in **subsection (2)(b)**,—

facility includes the land on which the facility is situated

hospital includes the land on which the hospital is situated.

- (4) In this section, **leave provision** means section 31, 50, or 52 of the Mental Health (Compulsory Assessment and Treatment) Act 1992.
- (5) The Director-General of Health must give the Director notice of the matters described in **subsection (2)** in order that the Director can give notice to the victim in accordance with that subsection. 5
Compare: 2002 No 39 ss 37, 38
- 198N Notice of proposal to cancel or suspend liability for deportation**
- (1) A victim to whom this section applies is entitled to receive a notice in accordance with section 39 of the Victims' Rights Act 2002 if—
- (a) the offender is liable for deportation under the Immigration Act 2009 as a result of any criminal offending; and 10
- (b) the Minister of Immigration is considering cancelling or suspending the offender's liability for deportation or the offender appeals against the offender's liability for deportation to the Immigration and Protection Tribunal. 15
- (2) Section 39(2), (3), (5) and (6) of the Victims' Rights Act 2002 applies in relation to the victim with the following modifications:
- (a) a reference to a specified person in that section must be treated as a reference to the Director; and
- (b) any other necessary modifications. 20
Compare: 2002 No 39 s 39
- Submissions on deportation of offender*
- 198O Victim may make submission on consideration of cancellation or suspension of liability for deportation, or offender's appeal against deportation** 25
- A victim to whom this Part applies may make submissions to the Minister of Immigration and to the Immigration and Protection Tribunal, in accordance with sections 173 and 208 of the Immigration Act 2009.
Compare: 2002 No 39 s 48
- 20 Section 206 amended (Defence Force Orders)** 30
- (1) In section 206(1)(b), after "officers", insert "and warrant officers".
- (2) Repeal section 206(1)(c).
- 21 New Schedule 1AA inserted**
- Insert the **Schedule 1AA** set out in **Schedule 1** of this Act as the first schedule to appear after the last section of the principal Act. 35

Part 2
Amendments to Court Martial Act 2007

- 22 Principal Act**
This **Part** amends the Court Martial Act 2007 (the **principal Act**).
- 23 New section 6A inserted (Transitional, savings, and related provisions) 5**
After section 6, insert:
- 6A Transitional, savings, and related provisions**
The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.
- 24 Section 15 repealed (Notice requirement for appointment of Chief Judge, Deputy Chief Judges, or other Judges) 10**
Repeal section 15.
- 25 Section 26 amended (Procedure for assigning military members)**
- (1) In section 26(1)(b), after “proceedings”, insert “; and”.
- (2) After section 26(1)(b), insert: 15
(c) the Director of Military Prosecutions.
- (3) In section 26(2)(b), after “accused”, insert “or the Director of Military Prosecutions”.
- (4) In section 26(3), replace “notice under subsection (1)(b)” with “notices under subsection (1)(b) and (c)”. 20
- (5) In section 26(3)(b), replace “the accused has” with “the accused and the Director of Military Prosecutions have”.
- 26 Section 27 amended (Accused may object against assignment of person as military member)**
- (1) In the heading to section 27, replace “**Accused may object against**” with “**Objections against**”. 25
- (2) In section 27(1), after “accused”, insert “or the Director of Military Prosecutions”.
- (3) In section 27(4)(b)(ii), delete “by the accused”.
- (4) In section 27(4)(b)(iii), after “accused”, insert “; and”. 30
- (5) After section 27(4)(b)(iii), insert:
(iv) the Director of Military Prosecutions.
- (6) In section 27(6)(b), replace “and the accused” with “, the accused, and the Director of Military Prosecutions”.

- 27 Section 28 amended (Substitute military members)**
- (1) In section 28(1), after “the Registrar may”, insert “, before the accused has entered a plea to the charge at the trial,”.
- (2) In section 28(2)(a), delete “before the beginning, or in the course, of the trial”.
- (3) In section 28(3), after “accused”, insert “or the Director of Military Prosecutions”.
- (4) After section 28(3), insert:
- (4) If, after the accused has entered a plea to the charge at the trial, a military member is unable to continue for one of the reasons specified in subsection (2), the Judge must discharge all of the military members and refer the charge back to the Director of Military Prosecutions.
- (5) The Director of Military Prosecutions may—
- (a) decide not to proceed with the charge; or
- (b) lay the charge sheet again, or an amended version of the charge sheet, before the Registrar.
- (6) If **subsection (5)(b)** applies, the Registrar must assign new military members in accordance with sections 22 to 26 and, as the case may be, section 28.
- 28 Section 49 amended (Judge may grant bail pending trial)**
- After section 49(4)(a), insert:
- (aa) must take into account any views of a victim to which **Part 10A** of the Armed Forces Discipline Act 1971 applies that are conveyed in accordance with **section 198D** of that Act; and
- 29 New Schedule 1AA inserted**
- Insert the **Schedule 1AA** set out in **Schedule 2** of this Act as the first schedule to appear after the last section of the principal Act.

Part 3

Amendments to Court Martial Appeals Act 1953

- 30 Principal Act**
- This **Part** amends the Court Martial Appeals Act 1953 (the **principal Act**).
- 31 New sections 2A and 2B inserted**
- After section 2, insert:
- 2A Transitional, savings, and related provisions**
- The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

2B	Act binds the Crown	
	This Act binds the Crown.	
32	Section 9EA amended (Appeal by accused against finding relating to fitness to stand trial)	
(1)	Replace section 9EA(1) with:	5
(1)	A person in relation to whom the Court Martial has made a finding as to fitness to stand trial may appeal against 1 or both of the following findings:	
	(a) that the evidence against the person is sufficient to establish that the person caused the act or omission that forms the basis of the offence with which the person is charged:	10
	(b) that the person is, according to the finding, fit or unfit to stand trial.	
(2)	In section 9EA(5), replace “qualified medical practitioners” with “health assessors”.	
33	New section 9EB inserted (Appeal against order for detention, release, etc)	
	After section 9EA, insert:	15
9EB	Appeal against order for detention, release, etc	
(1)	This section applies to the following orders and decisions made under section 191 of the Armed Forces Discipline Act 1971 in respect of a person tried by the Court Martial:	
	(a) an order for the person’s detention under section 191(1) or (2)(a) of that Act:	20
	(b) an order for the person’s release under section 191(2)(b) of that Act:	
	(c) a decision, made under section 191(2)(c) of that Act, not to make an order.	
(2)	The person and the Director of Military Prosecutions have the same right of appeal against the order or decision as they would have if the order or decision were a sentence.	25
(3)	The provisions of this Act, to the extent that they are applicable and with any necessary modifications, apply to the appeal.	
(4)	The court may—	30
	(a) dismiss the appeal:	
	(b) if the appeal is against an order, vary the order:	
	(c) cancel the order or decision and substitute another order or decision under section 191(1) or (2) of the Armed Forces Discipline Act 1971.	

34 New Schedule 1 inserted

Insert the **Schedule 1** set out in **Schedule 3** of this Act as the first schedule to appear after the last section of the principal Act.

Schedule 1
New Schedule 1AA inserted

s 21

Schedule 1AA
Transitional, savings, and related provisions

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s 5A

Part 1
Provisions relating to Part 1 of Military Justice Legislation
Amendment Act 2016

- | | | |
|----------|--|----------------|
| 1 | <p>Interpretation in this Part</p> <p>In this Part,—</p> <p>amendment Act means Part 1 of the Military Justice Legislation Amendment Act 2016</p> <p>commencement means the commencement of the Amendment Act</p> <p>other amendments means the amendments made by sections 13 to 19 of the amendment Act</p> <p>proceeding means the disposal of a charge recorded under this Act, and includes any appeals</p> <p>victims’ rights amendments means the amendments made by sections 7 to 11 and 20 of the amendment Act.</p> | 10
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20 |
| 2 | <p>Burden of proof amendment</p> <p>(1) Despite its repeal by section 5 of the amendment Act, section 3(2) continues to apply in relation to a proceeding in which the accused has been arraigned in accordance with section 116 before commencement.</p> <p>(2) Despite subclause (1), if the accused in a proceeding described in that subclause is, after commencement, remanded for trial in the Court Martial, section 3(2) does not apply to the proceeding from the point at which the accused is remanded.</p> | 25 |
| 3 | <p>Victims’ rights amendments</p> <p>(1) The victims’ rights amendments do not apply in relation to a proceeding in which the charge is recorded under section 102 before commencement.</p> <p>(2) Despite subclause (1), the victims’ rights amendments apply in relation to a proceeding described in that subclause if—</p> <p style="margin-left: 20px;">(a) any further charges for an offence arising from the same incident or series of incidents are recorded after commencement; or</p> | 30
35 |

- (b) the charge is referred to the Director of Military Prosecutions under subpart 2 of Part 5 (whether before or after commencement) and the proceeding is not completed at the time of commencement.

4 Other amendments

The other amendments do not apply in relation to a proceeding in which the Director of Military Prosecutions has laid the charge before the Registrar of the Court Martial before commencement. 5

Schedule 3
New Schedule 1 inserted

s 34

Schedule 1
Transitional, savings, and related provisions

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s 2A

Part 1
Provisions relating to Part 3 of Military Justice Legislation
Amendment Act 2016

1 Interpretation in this Part

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In this Part,—

amendment Act means **Part 3 of the Military Justice Legislation Amendment Act 2016**

proceeding has the meaning given in **clause 1 of Schedule 1AA** of the Armed Forces Discipline Act 1971.

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2 Application of amendments to proceedings

The amendments made by **sections 35 and 36** of the amendment Act do not apply in relation to a proceeding described in **clause 4 of Schedule 1AA** of the Armed Forces Discipline Act 1971.