

Version
as at 28 October 2021



Armed Forces Discipline Act 1971

Public Act 1971 No 53
Date of assent 12 November 1971
Commencement see section 1(2)

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

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An Act to consolidate and amend certain enactments of the Parliament of New Zealand and the Parliament of the United Kingdom relating to the discipline of Her Majesty's Armed Forces of New Zealand, and to provide for the discipline of and the administration of justice within those forces

Title: amended, on 1 January 1987, pursuant to section 29(2) of the Constitution Act 1986 (1986 No 114).

1 Short Title and commencement

- (1) This Act may be cited as the Armed Forces Discipline Act 1971.
- (2) This Act shall come into force on a date to be fixed by the Governor-General by Order in Council.

- (3) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 1(2): Armed Forces Discipline Act 1971 brought into force, on 1 December 1983, by clause 2 of the Armed Forces Discipline Act Commencement Order 1983 (SR 1983/232).

Section 1(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

2 Interpretation

- (1) In this Act, unless the context otherwise requires,—

able rank, in relation to the Navy, includes ordinary rank and apprentices

accused, in relation to a person subject to this Act, means a person charged with having committed an offence against this Act

acquittal includes an acquittal on account of insanity; and **acquitted** has a corresponding meaning

Air Force means the Royal New Zealand Air Force constituted under section 11(5) of the Defence Act 1990

Air Force base has the meaning assigned to that term by section 2(1) of the Defence Act 1990

aircraft has the meaning assigned to that term by section 2(1) of the Defence Act 1990

aircraft material includes—

- (a) parts of, and components of or accessories for, aircraft, whether for the time being in aircraft or not;
- (b) engines, armaments, ammunition, and bombs and other missiles of any description in, or for use in, aircraft;
- (c) any other gear, apparatus, or instruments in, or for use in, aircraft;
- (d) any apparatus used in connection with the taking-off or landing of aircraft or for detecting the movement of aircraft;
- (e) any fuel used for the propulsion of aircraft and any material used as a lubricant for aircraft or aircraft material

airman has the meaning assigned to that term by section 2(1) of the Defence Act 1990

alcohol has the meaning given by section 5(1) of the Sale and Supply of Alcohol Act 2012

Allied force means a force or part of a force of another country acting in co-operation with a part of the Armed Forces

Armed Forces means the Navy, the Army, and the Air Force collectively; and includes any branch, corps, command, formation, unit, or other part of the Armed Forces; but does not include any part of the cadet forces

Armed Forces Canteen Council means the Armed Forces Canteen Council constituted under the Armed Forces Canteens Act 1948

armoured fighting vehicle includes a track-based self-propelled gun or missile

Army means the New Zealand Army constituted under section 11(4) of the Defence Act 1990

Army camp has the meaning assigned to that term by section 2(1) of the Defence Act 1990

Authority means the Reconsidering Authority established under section 151

basic pay, in relation to a member of the Armed Forces, means the daily amount payable to the member as determined by the Chief of Defence Force, but excluding allowances

before the enemy, in relation to any person subject to this Act, means that he is in the presence or vicinity of the enemy, or is engaged in any action or operation against the enemy, or is under orders to be prepared for any action or operation by or against the enemy

cadet forces means the cadet forces raised and maintained under Part 6 of the Defence Act 1990

Chief Judge means the Chief Judge of the Court Martial

Chief of Defence Force means the officer appointed under section 8 of the Defence Act 1990

civil court in relation to any offence, means a court exercising ordinary criminal jurisdiction in New Zealand

civil custody means the custody of the Police or other civil authority authorised to retain persons in civil custody; and includes confinement in a civil prison

claim of right has the same meaning as it has in section 2(1) of the Crimes Act 1961

commanding officer—

(a) means—

(i) an officer for the time being appointed or authorised to be a commanding officer for the purposes of this Act by a superior commander:

(ii) an officer who is named as a commanding officer under section 16:

- (iii) the officer who is in command of one of Her Majesty's New Zealand ships in commission (other than a tender or a boat):
- (iv) the officer who is in command of one of Her Majesty's New Zealand naval establishments in commission:
- (v) the officer who is in command of a ship declared by the Chief of Defence Force, the Chief of Navy, the Chief of Army, or the Chief of Air Force to be a service ship:
- (vi) the officer who is in command of a battalion or regiment:
- (vii) an officer of a force of another State that is declared to be serving together with a New Zealand force under section 23B of the Defence Act 1990, who is for the time being appointed or authorised to be a commanding officer for the purposes of this Act by a superior commander; but

(b) does not include any midshipman or officer cadet or chaplain

competent service authority—

- (a) means every superior commander; and
- (ab) includes every Judge; and
- (b) includes any officer, not below the rank of lieutenant commander in the Navy, major in the Army, or squadron leader in the Air Force, appointed as a competent service authority by a superior commander; but
- (c) does not include any chaplain

controlled drug means a controlled drug within the meaning of the Misuse of Drugs Act 1975

corps means such part of the Army as may from time to time be declared by Defence Force Order to be a corps for the purposes of this Act

Court Martial means the Court Martial of New Zealand established under section 8 of the Court Martial Act 2007

decoration means the insignia of any decoration or order, or any medal, clasp, or good conduct badge; and includes any miniature of any of them

defence area has the meaning assigned to that term by section 2(1) of the Defence Act 1990

Defence Force Orders means orders issued under section 206 of this Act or section 27 of the Defence Act 1990

dental practitioner means a health practitioner who is, or is deemed to be, registered with the Dental Council established by section 114(2) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of dentistry

Deputy Chief Judge means a Deputy Chief Judge of the Court Martial

detachment commander,—

- (a) in relation to the Navy, means an officer who is for the time being posted, or authorised by his or her commanding officer to be, in command of—
 - (i) a tender or boat; or
 - (ii) a body of persons stationed or employed at a distance from the ship or establishment to which they belong; and
- (b) in relation to the Army and the Air Force, means an officer who is for the time being authorised by his or her commanding officer to act as detachment commander of a part of a unit stationed or employed at a distance from its unit headquarters; but
- (c) does not include any midshipman or officer cadet or chaplain

detainee means a person under a sentence that includes the punishment of detention imposed under this Act by the Court Martial or a disciplinary officer

detention quarter means a building or part of a building set aside under this Act as a detention quarter

Director of Military Prosecutions means the person appointed under section 101E

disciplinary officer—

- (a) means any officer who exercises the summary powers of discipline under Part 5; but
- (b) does not include any chaplain

Discipline Committee means the Armed Forces Discipline Committee established under section 160

dismissed from Her Majesty's Service, in relation to a member of the Armed Forces sentenced for an offence against this Act, means that he is dismissed from the service to which he belongs; and **dismissal from Her Majesty's Service** has a corresponding meaning

enemy has the meaning assigned to that term by section 2(1) of the Defence Act 1990

is liable means is liable on conviction by the Court Martial

joint force means a joint force established under section 12(1) of the Defence Act 1990

Judge—

- (a) means a Judge of the Court Martial; and
- (b) includes the Chief Judge and a Deputy Chief Judge

Judge Advocate General means the Judge Advocate General of the Armed Forces appointed under section 203

lawyer means a person who holds a current practising certificate as a barrister or as a barrister and solicitor

leading aircraftman includes an aircraftman, a general service hand, and an air force cadet

medical practitioner means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine

member of the Armed Forces means a person subject to this Act by virtue of section 6, or section 9, or section 10, or section 11

member of the Court Martial means a Judge or a military member

military member, in relation to the Court Martial, means an officer or a warrant officer who is assigned by the Registrar of the Court Martial to be a member of that court

military tribunal means any of the following:

- (a) a disciplinary officer:
- (b) the Summary Appeal Court:
- (c) the Court Martial

Minister means the Minister of Defence; and includes any other Minister for the time being lawfully exercising his powers

mutiny means a combination between 2 or more persons subject to service law, or between persons of whom at least 2 are persons subject to service law, to overthrow or resist lawful authority in a part of the Armed Forces or in a force of another country acting in co-operation with a part of the Armed Forces

naval establishment and **naval ship** have the meanings assigned to those terms by section 2(1) of the Defence Act 1990

Navy means the New Zealand Naval Forces constituted under section 11(3) of the Defence Act 1990

New Zealand force or **force** has the same meaning as New Zealand force in section 2(1) of the Defence Act 1990

non-commissioned officer has the meaning assigned to that term by section 2(1) of the Defence Act 1990

oath includes an **affirmation**; and references to swearing shall be construed accordingly

officer has the meaning assigned to that term by section 2(1) of the Defence Act 1990

part of the Commonwealth means a country (other than New Zealand) which is a member of the Commonwealth of Nations; and includes every territory for

whose international relations the Government of any such country is responsible

prescribed means prescribed by this Act, or by rules of procedure or regulations made under this Act, or by regulations made under the Defence Act 1990 or by Defence Force Orders issued under this Act or the Defence Act 1990

president means the president of a court of inquiry

prison means any prison established or deemed to be established under the Corrections Act 2004

private includes a gunner, trooper, sapper, signaller, driver, or craftsman

provost officer means an officer who—

- (a) is not a midshipman, an officer cadet, or a chaplain; and
- (b) is any of the following:
 - (i) a provost marshal appointed in writing by or on behalf of the Chief of Defence Force:
 - (ii) an assistant provost marshal appointed in writing by or on behalf of the Chief of Defence Force or by a provost marshal:
 - (iii) any other officer of the Navy, the Army, or the Air Force appointed in writing as a provost officer by or on behalf of the Chief of Defence Force or by a provost marshal or an assistant provost marshal:
 - (iv) a person attached or lent as a provost officer, with approval in writing by or on behalf of the Chief of Defence Force or by a provost marshal or an assistant provost marshal, to any part of the Armed Forces:
 - (v) a person seconded for service or appointed for duty as a provost officer, with approval in writing by or on behalf of the Chief of Defence Force or by a provost marshal or an assistant provost marshal, with any part of the Armed Forces

rank, in relation to any member of the Armed Forces, means the rank held by him for the time being, whether substantive, temporary, acting, or honorary

rating has the meaning assigned to that term by section 2(1) of the Defence Act 1990

record officer means any person who has custody of any records of any of the Armed Forces and whose duty it is to make or record entries in those records or to take extracts from them

Registrar means the Registrar of the Summary Appeal Court

relative rank means the appropriate rank prescribed under section 17 of the Defence Act 1990

rules of procedure means rules of procedure made under section 150

service means either the Navy, the Army, or the Air Force; and, when used adjectivally, means belonging or pertaining to, or connected with, 1 or more of those services or any part of 1 or more of those services

service law includes the provisions of this Act and the law of another country whose forces are acting in co-operation with a part of the Armed Forces which provides for the disciplinary control of that country's forces

service penal establishment includes—

- (a) any service prison or detention quarter (whether in New Zealand or elsewhere); and
- (b) any prison, naval detention quarters, military or air force prison, detention barrack, corrective training centre, detention room, cell, or similar establishment set aside in New Zealand or elsewhere for the confinement of members of the Armed Forces of an allied force undergoing punishment

service prison means a building or part of a building set aside under this Act as a service prison

service prisoner means a person under a sentence that includes imprisonment imposed under this Act by the Court Martial

service property means any property belonging to the Crown in right of New Zealand; and also includes any other property (whether belonging to the Crown or not) used by or in the possession or under the control of the Armed Forces or an allied force, or a service mess, band, club, institution, or the Armed Forces Canteen Council

ship has the meaning assigned to that term by section 2(1) of the Defence Act 1990

soldier has the meaning assigned to that term by section 2(1) of the Defence Act 1990

stealing has the meaning assigned to that term by section 219 of the Crimes Act 1961

subject to this Act, in relation to any person, means that he is subject to the law established by this Act

subordinate commander means an officer to whom all or any of the powers to act as a disciplinary officer have been delegated under section 106

Summary Appeal Court means the Summary Appeal Court of New Zealand established under section 118

superior commander—

- (a) means any of the following:
 - (i) the Chief of Defence Force; or
 - (ii) the Vice Chief of Defence Force; or

- (iii) the Chief of Navy; or
 - (iv) the Chief of Army; or
 - (v) the Chief of Air Force; or
 - (vi) the Commander Joint Forces New Zealand; or
 - (vii) an officer who is not below the rank of captain in the Navy, colonel in the Army, or group captain in the Air Force and who is appointed by any of the officers referred to in subparagraphs (i) to (vi) to act as a disciplinary officer under Part 5 in respect of charges against officers who—
 - (A) are not below the rank of lieutenant commander in the Navy, major in the Army, or squadron leader in the Air Force; and
 - (B) are under his or her command; and
 - (C) hold a rank at least 2 grades below his or her own rank; or
 - (viii) an officer of a force of another State that is declared to be serving together with a New Zealand force under section 23B of the Defence Act 1990 who is not below the relative rank of captain in the Navy, colonel in the Army, or group captain in the Air Force and who is authorised by the Chief of Defence Force to act as a disciplinary officer under Part 5 in respect of charges against other officers who—
 - (A) are not below the rank of lieutenant commander in the Navy, major in the Army, or squadron leader in the Air Force; and
 - (B) are under his or her command; and
 - (C) hold a relative rank at least 2 grades below his or her own rank; but
- (b) does not include a commanding officer or chaplain
- superior officer**, in relation to any member of the Armed Forces,—
- (a) means another member holding a higher rank (not being an honorary rank); and
 - (b) includes another member of equal rank (except an honorary rank) who is entitled to exercise powers of command over him or her; but
 - (c) does not include,—
 - (i) for the purposes of sections 35, 36, and 38, a midshipman or an officer cadet except if, in the course and for the purposes of the training he or she is undergoing or the instruction he or she is receiving, he or she is posted to a naval ship or he or she is authorised in writing by his or her commanding officer to exercise powers of command:

(ii) for the purposes of section 38, a chaplain

visiting force has the same meaning as in section 4 of the Visiting Forces Act 2004

warrant officer has the meaning assigned to that term by section 2(1) of the Defence Act 1990.

- (2) For the purposes of this Act, in all matters relating to the sailing or handling of a ship or the flying or handling of an aircraft, or affecting the safety of a ship or aircraft every person subject to this Act who is in or near the ship or aircraft shall, whatever his rank or whatever his rank is deemed to be, be under the direction of the person in command of the ship or aircraft, as the case may be, whether the person in command is a member of the Armed Forces or not.
- (3) In this Act and in any instrument made under this Act, unless the context otherwise requires, mention of a person by reference to the designation of his office or appointment includes a reference to any person who for the time being is lawfully performing the functions or duties of, or acting in, that office or appointment—
 - (a) by virtue of a permanent, temporary, or acting appointment; or
 - (b) by assumption of the functions or duties of the office or appointment pursuant to this Act or any other Act; or
 - (c) pursuant to an order, or to a custom of the service which pertains to the office or appointment.
- (4) In this Act, a reference to the relationship between rank grades is a reference to the relationship that is to be regarded as existing between those rank grades as prescribed under section 17 of the Defence Act 1990.
- (5) In this Act, a reference to this Act includes, unless the context otherwise requires, a reference to the Court Martial Act 2007.
- (6) In this Act, a reference to counsel for an accused includes, unless the context otherwise requires, a reference to a member of the Armed Forces who undertakes the defence of an accused in the Court Martial.
- (7) If a charge against a person in respect of an offence is tried summarily, or otherwise dealt with, under Part 5 or 5A, the following paragraphs apply for the purposes of references in this Act to conviction, acquittal, sentence or passing sentence, or to any related expressions:
 - (a) if a disciplinary officer finds the accused guilty on the charge, that must be treated as a conviction:
 - (b) any punishment imposed by a disciplinary officer, or by the Summary Appeal Court, must be treated as a sentence passed by the officer or Summary Appeal Court:
 - (c) if a disciplinary officer dismisses the charge or finds the accused not guilty on the charge, or the Summary Appeal Court directs a finding of

not guilty of having committed the offence to be entered, that must be treated as an acquittal.

Compare: 1950 No 39 s 2; 1950 No 40 s 2; 1954 No 53 s 2; Naval Discipline Act 1957 s 135 (UK)

Section 2(1) **able rank**: substituted, on 1 January 1986, by section 2(1) of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Section 2(1) **Air Force**: amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 2(1) **Air Force base**: amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 2(1) **aircraft**: amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 2(1) **airman**: amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 2(1) **alcohol**: inserted, on 18 December 2013, by section 417(1) of the Sale and Supply of Alcohol Act 2012 (2012 No 120).

Section 2(1) **Army**: amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 2(1) **Army camp**: amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 2(1) **Authority**: inserted, on 1 July 2009, by section 4(13) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **basic pay**: substituted, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 2(1) **cadet forces**: amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 2(1) **Chief Judge**: inserted, on 1 July 2009, by section 4(13) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **Chief of Defence Force**: inserted, on 28 July 1997, by section 2 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 2(1) **civil court**: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 2(1) **claim of right**: inserted, on 1 October 2003, by section 34 of the Crimes Amendment Act 2003 (2003 No 39).

Section 2(1) **colour of right**: repealed, on 1 October 2003, by section 34 of the Crimes Amendment Act 2003 (2003 No 39).

Section 2(1) **commanding officer**: substituted, on 1 July 2009, by section 4(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **Commonwealth force**: repealed, on 24 October 2019, by section 7(1) of the Statutes Amendment Act 2019 (2019 No 56).

Section 2(1) **competent service authority**: substituted, on 1 July 2009, by section 4(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **competent service authority** paragraph (ab): inserted, on 7 July 2010, by section 4 of the Armed Forces Discipline Amendment Act 2010 (2010 No 48).

Section 2(1) **constable**: repealed, on 27 May 1988, by section 2(1) of the Armed Forces Discipline Amendment Act 1988 (1988 No 89).

Section 2(1) **controlled drug**: inserted, on 1 January 1986, by section 2(4) of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Section 2(1) **convening officer**: repealed, on 1 July 2009, by section 4(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **corps**: amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 2(1) **Court Martial**: substituted, on 1 July 2009, by section 4(4) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **deal summarily with**: repealed, on 1 July 2009, by section 4(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **defence area**: amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 2(1) **Defence Council**: repealed, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 2(1) **Defence Force Orders**: inserted, on 1 July 2009, by section 4(13) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **dental practitioner**: inserted, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2(1) **Deputy Chief Judge**: inserted, on 1 July 2009, by section 4(13) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **detachment commander**: substituted, on 1 July 2009, by section 4(5) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **detainee**: substituted, on 1 July 2009, by section 4(6) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **Director of Military Prosecutions**: inserted, on 1 July 2009, by section 4(13) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **disciplinary officer**: inserted, on 1 July 2009, by section 4(13) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **Discipline Committee**: inserted, on 1 July 2009, by section 4(13) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **dismissed from Her Majesty's Service**: amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 2(1) **enemy**: amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 2(1) **is liable**: amended, on 1 July 2009, by section 4(7) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **joint force**: inserted, on 27 May 1988, by section 2(2) of the Armed Forces Discipline Amendment Act 1988 (1988 No 89).

Section 2(1) **joint force**: amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 2(1) **joint force**: amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 2(1) **Judge**: inserted, on 1 July 2009, by section 4(13) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **lawyer**: inserted, on 1 July 2009, by section 4(13) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **leading aircraftman**: substituted, on 1 January 1986, by section 2(5) of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Section 2(1) **medical practitioner**: inserted, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2(1) **member of the Armed Forces**: inserted, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 2(1) **member of the Court Martial**: inserted, on 1 July 2009, by section 4(13) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **military member**: inserted, on 1 July 2009, by section 4(13) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **military tribunal**: inserted, on 1 July 2009, by section 4(13) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **narcotic**: repealed, on 1 January 1986, by section 2(6) of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Section 2(1) **naval establishment** and **naval ship** : amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 2(1) **Navy**: amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 2(1) **New Zealand force** or **force**: substituted, on 1 July 2004, by section 26 of the Visiting Forces Act 2004 (2004 No 59).

Section 2(1) **non-commissioned officer**: amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 2(1) **officer**: amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 2(1) **officer exercising summary powers**: repealed, on 1 July 2009, by section 4(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **penal institution**: repealed, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 2(1) **prescribed**: substituted, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 2(1) **president**: substituted, on 1 July 2009, by section 4(8) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **prison**: inserted, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 2(1) **private**: amended, on 1 January 1986, by section 2(7) of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Section 2(1) **provost officer**: replaced, on 24 October 2019, by section 7(2) of the Statutes Amendment Act 2019 (2019 No 56).

Section 2(1) **rank**: amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 2(1) **rating**: amended, on 1 April 1990, pursuant to section 105(2) of the Defence Act 1990 (1990 No 28).

Section 2(1) **Registrar**: inserted, on 1 July 2009, by section 4(13) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **relative rank**: inserted, on 1 July 2004, by section 26 of the Visiting Forces Act 2004 (2004 No 59).

Section 2(1) **reviewing authority**: repealed, on 1 July 2009, by section 4(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **service**: amended, on 27 May 1988, by section 2(3) of the Armed Forces Discipline Amendment Act 1988 (1988 No 89).

Section 2(1) **service penal establishment**: amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 2(1) **service prisoner**: amended, on 1 July 2009, by section 4(10) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **serviceman**: repealed, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 2(1) **ship**: amended, on 1 April 1990, pursuant to section 105(2) of the Defence Act 1990 (1990 No 28).

Section 2(1) **soldier**: amended, on 1 April 1990, pursuant to section 105(2) of the Defence Act 1990 (1990 No 28).

Section 2(1) **stealing**: amended, on 1 October 2003, by section 34 of the Crimes Amendment Act 2003 (2003 No 39).

Section 2(1) **subordinate commander**: inserted, on 1 July 2009, by section 4(13) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **Summary Appeal Court**: inserted, on 1 July 2009, by section 4(13) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **superior commander**: substituted, on 1 July 2009, by section 4(11) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **superior officer**: substituted, on 1 July 2009, by section 4(12) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **try summarily**: repealed, on 1 July 2009, by section 4(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **visiting force**: inserted, on 1 July 2004, by section 26 of the Visiting Forces Act 2004 (2004 No 59).

Section 2(1) **warrant officer**: amended, on 1 April 1990, pursuant to section 105(2) of the Defence Act 1990 (1990 No 28).

Section 2(4): added, on 1 July 2009, by section 4(14) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(5): added, on 1 July 2009, by section 4(14) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(6): added, on 1 July 2009, by section 4(14) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(7): added, on 1 July 2009, by section 4(14) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

3 Special provisions relating to the interpretation, etc, of Part 2

- (1) All the provisions of Part 3 of the Crimes Act 1961, so far as they are applicable and with any necessary modifications, shall apply in respect of every offence against this Act as if it were a crime within the meaning of section 2 of that Act.
- (1A) The following provisions of the Sentencing Act 2002 apply to proceedings under this Act and to proceedings on appeal from any decision under this Act:
 - (a) section 6 (which provides that penal enactments are not to have retrospective effect to the disadvantage of an offender):
 - (b) sections 102 to 104 (which relate to the sentencing of offenders convicted of murder).
- (2) *[Repealed]*

Section 3(1A): substituted, on 1 July 2009, by section 5(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 3(2): repealed, on 30 November 2018, by section 4 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

4 Extraterritorial operation of this Act

- (1) This Act applies to all acts done or omitted whether in New Zealand or elsewhere.
- (2) Except as provided in section 21, this Act applies to persons who are subject to the law established by this Act, whether they are within New Zealand or not.

5 Active service

- (1) For the purposes of this Act, any part of the Armed Forces is on active service when—
 - (a) there is for the time being in force an active service order posting it for active service; or
 - (b) it is engaged in operations against the enemy; or
 - (c) it is in armed occupation of any foreign country.
- (2) For the purposes of this Act, every member of the Armed Forces is on active service when—
 - (a) there is for the time being in force an active service order posting that member for active service; or
 - (b) the part of the Armed Forces with which that member is serving or which that member is visiting is an active service.
- (3) No person or part of the Armed Forces that is for the time being on active service shall cease to be on active service until the issue of an active service order to that effect.
- (4) For the purposes of this section, the term **active service order** means an order of the Chief of Defence Force, or of an officer authorised by the Chief of Defence Force, for the purpose of—
 - (a) posting a part of the Armed Forces or any member of the Armed Forces on active service; or
 - (b) declaring that a part of the Armed Forces or any member of the Armed Forces has ceased to be on active service.

Compare: 1950 No 39 ss 2, 4; 1950 No 40 ss 2, 4; Army Act 1955 s 224 (UK); Air Force Act 1955 s 224 (UK); Naval Discipline Act 1957 s 134 (UK)

Section 5(1)(b): substituted, on 1 January 1986, by section 4 of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Section 5(1)(c): added, on 1 January 1986, by section 4 of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Section 5(2): substituted, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 5(4): substituted, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

5A Transitional, savings, and related provisions

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

Section 5A: inserted, on 30 November 2018, by section 5 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

5B Act binds the Crown

This Act binds the Crown.

Section 5B: inserted, on 30 November 2018, by section 5 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Part 1 Jurisdiction

6 Persons in the Navy, the Army, and the Air Force

- (1) The following members of the Navy shall be subject to this Act:
- (a) all officers of the Royal New Zealand Navy, the Royal New Zealand Naval Reserve, the Royal New Zealand Naval Volunteer Reserve, or the Naval Reserves, or of any additional naval force raised in accordance with section 11(3)(e) of the Defence Act 1990;
 - (b) all ratings of the Royal New Zealand Navy;
 - (c) all ratings of the Royal New Zealand Naval Reserve, the Royal New Zealand Naval Volunteer Reserve, or the Naval Reserves who for the time being are—
 - (i) undergoing or required to undergo training, whether in uniform or not; or
 - (ii) performing or required to perform any naval duty, whether in uniform or not; or
 - (iii) in or on any naval ship, aircraft, vehicle, or establishment, or performing any work for the Navy; or
 - (iv) going to or from any place of parade, training, or naval duty; or
 - (v) absent on leave or without leave from any naval ship, aircraft, vehicle, or establishment, or from any work being performed by them for the Navy; or
 - (vi) declared liable for continuous service pursuant to a Proclamation issued under section 39 or section 40 of the Defence Act 1990; or
 - (vii) called out under any enactment in aid of the civil power; or
 - (viii) called out under any enactment to render assistance in a disaster; or

- (ix) present, whether in uniform or not, when members of the Armed Forces are parading or undergoing training; or
 - (x) in uniform:
 - (d) all ratings of any additional naval force raised in accordance with section 11(3)(e) of the Defence Act 1990.
- (2) The following members of the Army shall be subject to this Act:
- (a) all officers of the Regular Force, the Territorial Force, the Army Reserve, or any additional New Zealand Army force raised in accordance with section 11(4)(d) of the Defence Act 1990:
 - (b) all soldiers of the Regular Force:
 - (c) all soldiers of the Territorial Force and the Army Reserve who for the time being are—
 - (i) undergoing or required to undergo training, whether in uniform or not; or
 - (ii) performing or required to perform any army duty, whether in uniform or not; or
 - (iii) in or on any army camp, unit, ship, aircraft, or vehicle, or performing any work for the Army; or
 - (iv) going to or from any place of parade, training, or army duty; or
 - (v) absent on leave or without leave from any army camp, unit, ship, aircraft, or vehicle, or from any work being performed by them for the Army; or
 - (vi) declared liable for continuous service pursuant to a Proclamation issued under section 39 or section 40 of the Defence Act 1990; or
 - (vii) called out under any enactment in aid of the civil power; or
 - (viii) called out under any enactment to render assistance in a disaster; or
 - (ix) present, whether in uniform or not, when members of the Armed Forces are parading or undergoing training; or
 - (x) in uniform:
 - (d) all soldiers of any additional New Zealand army force raised in accordance with section 11(4)(d) of the Defence Act 1990.
- (3) The following members of the Air Force shall be subject to this Act:
- (a) all officers of the Regular Air Force, the Territorial Air Force, or the Air Force Reserve, or of any additional air force raised in accordance with section 11(5)(d) of the Defence Act 1990:
 - (b) all airmen of the Regular Air Force:

- (c) all airmen of the Territorial Air Force or the Air Force Reserve who for the time being are—
- (i) undergoing or required to undergo training, whether in uniform or not; or
 - (ii) performing or required to perform any air force duty, whether in uniform or not; or
 - (iii) in or on any Air Force base, unit, ship, aircraft, or vehicle, or performing any work for the Air Force; or
 - (iv) going to or from any place of parade, training, or air force duty; or
 - (v) absent on leave or without leave from any Air Force base, unit, ship, aircraft, or vehicle, or from any work being performed by them for the Air Force; or
 - (vi) declared liable for continuous service pursuant to a Proclamation issued under section 39 or section 40 of the Defence Act 1990; or
 - (vii) called out under any enactment in aid of the civil power; or
 - (viii) called out under any enactment to render assistance in a disaster; or
 - (ix) present, whether in uniform or not, when members of the Armed Forces are parading or undergoing training; or
 - (x) in uniform:
- (d) all airmen of any additional air force raised in accordance with section 11(5)(d) of the Defence Act 1990.

Compare: 1950 No 39 ss 2, 3; 1950 No 40 ss 2, 3; 1954 No 53 ss 31, 32; Army Act 1955 ss 205, 211 (UK); Air Force Act 1955 ss 205, 211 (UK); Naval Discipline Act 1957 s 111 (UK)

Section 6(1)(a): amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 6(1)(c)(vi): amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 6(1)(d): amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 6(2)(a): amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 6(2)(c)(vi): amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 6(2)(d): amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 6(3)(a): amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 6(3)(c)(vi): amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 6(3)(d): amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

7 Provisions of Act may be modified, etc, in relation to certain classes of persons

[Repealed]

Section 7: repealed, on 1 July 2009, by section 6 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

8 Members of the Armed Forces attached to forces of another country remain subject to this Act

A member of the Armed Forces who is temporarily attached to the forces of another country, or who is a member of a United Nations force, shall not cease to be subject to this Act by reason only of his being so temporarily attached.

Compare: Naval Discipline Act 1957 s 121 (UK)

Section 8 heading: amended, on 1 April 1990, pursuant to section 105(1) of the Defence Act 1990 (1990 No 28).

Section 8: amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

9 Members of other forces attached to Armed Forces under section 23A of Defence Act 1990

- (1) A member of the armed forces of another State who is attached to the Armed Forces of New Zealand under section 23A of the Defence Act 1990 is, subject to any express provision in the law of that other State to the contrary, subject to this Act.
- (2) However, the Governor-General may, by Order in Council,—
 - (a) exempt all or any class of the persons specified in subsection (1) from all or any of the provisions of this Act; or
 - (b) modify any of the provisions of this Act so far as they relate to all or any class of the persons specified in subsection (1).
- (3) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 9: substituted, on 1 July 2004, by section 26 of the Visiting Forces Act 2004 (2004 No 59).

Section 9(2): added, on 1 July 2009, by section 7 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 9(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

10 Volunteers

- (1) Subject to subsection (2), where any person, not otherwise subject to this Act, volunteers or engages for service, training, or exercise with any part of the Armed Forces (not being a person or a member of a class of persons excepted from the provisions of this subsection by Defence Force Order), he shall be subject to this Act during the period of service, training, or exercise.
- (2) Subject to any Defence Force Order to the contrary, where, by virtue of this section, this Act applies to a person who is not a member of the Armed Forces, the following provisions shall apply:
 - (a) if the person holds a rank in an armed force, this Act shall, subject to such exceptions and modifications as may be prescribed, apply to him in the same manner and to the same extent as it applies to a person holding the corresponding rank in the Armed Forces:
 - (b) in any other case, this Act shall, subject to such exceptions and modifications as may be prescribed, apply to him in the same manner and to the same extent as it applies to a rating of able rank or to a private or a leading aircraftman.

Compare: Naval Discipline Act 1957 s 111(5) (UK)

Section 10(1): amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 10(2): amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

11 Trainees

- (1) Subject to subsection (2), where any person, not otherwise being subject to this Act, is a member of any armed force other than the Armed Forces of New Zealand (not being a force excepted from the provisions of this subsection by Defence Force Order), he shall be subject to this Act during any period when he is under orders to carry out any training or exercise in any defence area or ship or with any unit or other part of the Armed Forces.
- (2) Subject to any Defence Force Order to the contrary, where, by virtue of this section, this Act applies to a person who is not a member of the Armed Forces of New Zealand, the following provisions shall apply:
 - (a) if the person holds a rank in an armed force, this Act shall, subject to such exceptions and modifications as may be prescribed, apply to him in the same manner and to the same extent as it applies to a person holding the corresponding rank in the Armed Forces:
 - (b) in any other case, this Act shall, subject to such exceptions and modifications as may be prescribed, apply to him in the same manner and to the same extent as it applies to a rating of able rank or to a private or a leading aircraftman.

Compare: Naval Discipline Act 1957 s 111(6) (UK)

Section 11(1): amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 11(2): amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

12 Prisoners of war

- (1) Subject to the provisions of the Geneva Conventions Act 1958 and of subsection (2), a prisoner of war in the custody of any part of the Armed Forces shall be subject to this Act.
- (2) The following sections of this Act do not apply to prisoners of war:
 - (a) section 28 (cowardly behaviour):
 - (b) section 30 (offences in relation to capture by the enemy):
 - (c) paragraph (c) of subsection (5) of section 34 (threat of force against a person who is on guard duty or watch):
 - (d) section 33 (failure to suppress or report mutiny):
 - (e) paragraph (b) of subsection (1) of section 37 (refusing to assist a provost officer or person assisting a provost officer):
 - (f) section 47 (desertion).

13 Spies, etc

Where a person (being a person not otherwise subject to this Act) is alleged to have committed an offence against section 26 or section 27, that person shall, on the recording of the allegation in the form of a charge, be deemed to be subject to this Act,—

- (a) until the charge against that person is, on investigation, dismissed by a disciplinary officer; or
- (b) until the disciplinary officer finds that person not guilty on the charge; or
- (ba) until that person is acquitted by the Court Martial; or
- (c) if that person is convicted, until the sentence has been carried out or that person has served his sentence (including any further sentence imposed upon him while serving that sentence) or that person is released in due course of law from any imprisonment or detention imposed under the sentence.

Section 13: substituted, on 1 January 1986, by section 6 of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Section 13(a): substituted, on 1 July 2009, by section 8 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 13(b): substituted, on 1 July 2009, by section 8 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 13(ba): inserted, on 1 July 2009, by section 8 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

14 Commanding officer in relation to prisoners of war and spies

Every person subject to this Act by virtue of section 12 or section 13 shall, for the purposes of this Act, be deemed to be under the command of the commanding officer of the defence area or ship in which, or the unit or other part of the Armed Forces with which, he is for the time being held in custody.

Compare: National Defence Act 1962 s 56(10) (Canada)

15 Application of Act to passengers in HM ships, aircraft, and vehicles

Where any person (being a person who would not, apart from this section, be subject to this Act) is for the time being a passenger in any ship, aircraft, or vehicle of the Armed Forces, whether in New Zealand or elsewhere, that person shall be subject to this Act to such extent as may be prescribed; and the provisions of this Act, subject to such exceptions and modifications as may be prescribed, shall apply to him accordingly.

Compare: 1950 No 39 s 133; 1950 No 40 s 133; Naval Discipline Act 1957 s 117 (UK)

16 Certain civilians closely associated with Armed Forces subject to this Act

(1) Subject to subsections (5) to (7), where any New Zealand force is on active service—

- (a) every person employed in the service of that force; and
- (b) every person employed in the service of a part of that force or any member of the force; and
- (c) every person who accompanies the force or any part of it—

shall, while so employed or while accompanying the force or part of the force, as the case may be, be subject to this Act in the same manner and to the same extent as if he were a rating, soldier, or airman, unless there is for the time being in force a certificate issued by the officer commanding that part of the force with which he is employed or which he is accompanying stating that he is entitled to be treated as if he were an officer, in which case he shall, so long as the certificate remains in force, be treated as if he were an officer for the purposes of any proceedings against him for an offence against this Act.

(2) Every person who is subject to this Act by virtue of subsection (1) shall be deemed to be on active service.

(3) Without limiting the provisions of subsection (1), but subject to subsections (4) to (7), any member of a class of persons specified in Schedule 1 who is for the time being within the limits of the command of any officer commanding any New Zealand force outside New Zealand shall, while within those limits, be subject to this Act in the same manner and to the same extent as if he were a rating, soldier, or airman, unless there is for the time being in force a certificate issued by the officer commanding that part of the force with which he is employed or which he is accompanying stating that he is entitled to be treated as if he were an officer, in which case he shall, so long as the certificate

remains in force, be treated as an officer for the purposes of any proceedings against him for an offence against this Act.

- (4) The provisions of Parts 2 and 3 shall not apply to persons who are subject to this Act by virtue only of subsection (3) except—
 - (a) section 37, sections 39 and 40, sections 44 and 45, sections 70, 71, and 74, and subsections (5) and (6) of section 34:
 - (b) sections 75 to 77, so far as they relate to offences against those sections specified in paragraph (a) of this subsection:
 - (c) sections 78 to 80 and sections 85 to 87A.
- (5) Every person to whom subsections (1) and (3) apply shall for the purposes of this Act be deemed to be under the command of any officer who may for the time being be named as that person's commanding officer by the officer commanding the New Zealand force which is on active service or is outside New Zealand, as the case may be.
- (6) All the provisions of this Act relating to arrest, investigation of offences, summary disposal of charges, trial and punishment of offences, and insanity, and, so far as they are applicable, the provisions of Part 11, shall, subject to the modifications specified in subsection (7), and to such orders, not inconsistent with this Act, as may be prescribed by the Chief of Defence Force, apply to those persons who are subject to this Act by virtue of this section.
- (7) The modifications to which subsection (6) refers are as follows:
 - (a) *[Repealed]*
 - (b) *[Repealed]*
 - (c) *[Repealed]*
 - (d) any person to whom this section applies may, on being convicted of an offence against this Act, be fined a sum not exceeding \$3,000 in addition to or instead of any other penalty that may be imposed on him; but no other punishment less severe than imprisonment may be imposed on him:

provided that where any such person is tried summarily, or otherwise dealt with, under Part 5, no punishment other than a fine not exceeding \$1,000, may be imposed:
 - (e) if a disciplinary officer finds an accused guilty of a charge, he or she must not record a finding until the accused has been given the right to elect trial by the Court Martial and, if the accused so elects,—
 - (i) a finding must not be recorded; and
 - (ii) the officer must take the steps that are necessary to have the charge tried by the Court Martial:

- (f) the amount of compensation that any such person may be ordered to pay under section 86 must not exceed \$1,000, whether the order is made by the Court Martial or a disciplinary officer:
- (g) any such person may be arrested—
 - (i) by a provost officer; or
 - (ii) by a non-commissioned officer exercising authority under a provost officer; or
 - (iii) by any person acting on the order of an officer.
- (8) Any certificate issued by an officer under this section may at any time be revoked by that officer or by any other officer of an equivalent or higher rank.
- (9) Nothing in this section shall apply to any person who is subject to service law by virtue of any other section of this Act.

Compare: 1950 No 39 ss 2, 132; 1950 No 40 ss 4, 132; Army Act 1955 s 209 (UK); Air Force Act 1955 s 209 (UK); Naval Discipline Act 1957 s 118 (UK)

Section 16(4)(c): amended, on 1 December 1983, by section 4 of the Armed Forces Discipline Amendment Act 1981 (1981 No 48).

Section 16(6): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 16(7)(a): repealed, on 27 May 1988, by section 3 of the Armed Forces Discipline Amendment Act 1988 (1988 No 89).

Section 16(7)(b): repealed, on 27 May 1988, by section 3 of the Armed Forces Discipline Amendment Act 1988 (1988 No 89).

Section 16(7)(c): repealed, on 27 May 1988, by section 3 of the Armed Forces Discipline Amendment Act 1988 (1988 No 89).

Section 16(7)(d): amended, on 1 January 1986, by section 7(a) of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Section 16(7)(d) proviso: amended, on 1 July 2009, by section 9(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 16(7)(d) proviso: amended, on 1 January 1986, by section 7(b) of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Section 16(7)(d) proviso: amended, on 1 December 1983, by section 3 of the Armed Forces Discipline Amendment Act 1981 (1981 No 48).

Section 16(7)(e): substituted, on 1 July 2009, by section 9(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 16(7)(f): substituted, on 1 July 2009, by section 9(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

17 Certain persons sentenced under this Act to remain subject to this Act

- (1) Where a member of the Armed Forces—
 - (a) is sentenced to a term of imprisonment or detention by the Court Martial or to a term of detention by a disciplinary officer; and
 - (b) is by virtue of that sentence deemed to be dismissed from Her Majesty's Service or is sentenced to dismissal from Her Majesty's Service or is discharged from the service of the Armed Forces to which he belongs—

he shall remain subject to this Act until he has served the sentence of imprisonment or detention or any further sentence of imprisonment or detention imposed in accordance with subsection (1) or subsection (4) of section 178 or has been released from that imprisonment or detention in due course of law.

- (2) Where a person (other than a member of the Armed Forces) who is subject to this Act is sentenced by the Court Martial to a term of imprisonment and serves his sentence in a service penal establishment, he shall remain subject to this Act until he has served the sentence or is released from that imprisonment in due course of law.

Compare: 1950 No 39 s 127(2); 1950 No 40 s 127(2); Army Act 1955 s 131 (UK); Air Force Act 1955 s 131 (UK); Naval Discipline Act 1957 s 119 (UK)

Section 17(1): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 17(1): amended, on 1 January 1986, by section 8 of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Section 17(1)(a): substituted, on 1 July 2009, by section 10(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 17(2): amended, on 1 July 2009, by section 10(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 17(2): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

18 Trial and punishment of person who has ceased to be subject to this Act

- (1) Where it is alleged that a person who has ceased to be subject to this Act has committed an offence while he was so subject, he may, subject to section 20, be charged under this Act with the commission of that offence, and the charge may be tried by the Court Martial.
- (2) On the recording of the allegation in the form of a charge, the person charged shall be deemed—
- (a) to be a person subject to this Act until the charge is disposed of; and
 - (b) to hold the same status and rank as he held immediately before he ceased to be a person subject to this Act.
- (3) Where, by virtue of this section, a person is to be deemed to be subject to this Act—
- (a) he is not liable to arrest under this Act except under a warrant; and
 - (b) for the purposes of investigation and trial of the charge and his punishment, if convicted, every reference in this Act or in the rules of procedure or in regulations made under this Act, or in orders issued by the Chief of Defence Force, to his commanding officer shall be read as a reference to the officer who, in accordance with any such orders, is deemed to be his commanding officer for those purposes.
- (4) Where a person to whom this section applies is convicted by the Court Martial of an offence and sentenced to a term of imprisonment or detention, he shall be deemed to be subject to this Act until he has served his sentence or is lawfully

released in due course of law from imprisonment or detention, as the case may be.

Compare: 1950 No 39 s 127(1); 1950 No 40 s 127(1); Army Act 1955 s 131 (UK); Air Force Act 1955 s 131 (UK); Naval Discipline Act 1957 s 51 (UK)

Section 18(1): amended, on 1 July 2009, by section 11 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 18(3)(b): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 18(4): amended, on 1 July 2009, by section 11 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

19 Status and rank of person deemed to be subject to this Act when imprisoned or detained

Where, by virtue of section 17 or section 18, a person is deemed to be subject to this Act during any term of imprisonment or detention the following provisions shall apply:

- (a) if, before he was sentenced to dismissal from Her Majesty's Service, or was sentenced to imprisonment involving dismissal from Her Majesty's Service, or was discharged or otherwise ceased to be a member of the Armed Forces, that person was a member of the Navy, the provisions of this Act shall apply to him in the same manner and to the same extent as they apply to a rating of able rank:
- (b) if, before he was sentenced to dismissal from Her Majesty's Service, or was sentenced to imprisonment involving dismissal from Her Majesty's Service, or was discharged or otherwise ceased to be a member of the Armed Forces, that person was a member of the Army, the provisions of this Act shall apply to him in the same manner and to the same extent as they apply to a soldier holding the rank of private:
- (c) if, before he was sentenced to dismissal from Her Majesty's Service, or was sentenced to imprisonment involving dismissal from Her Majesty's Service, or was discharged or otherwise ceased to be a member of the Armed Forces, that person was a member of the Air Force, the provisions of this Act shall apply to him in the same manner and to the same extent as they apply to an airman holding the rank of leading aircraftman:
- (d) if, by virtue of subsection (2) of section 17, a person continues to be subject to this Act for the duration of the term of his imprisonment or detention, the provisions of this Act shall apply to him in the same manner and to the same extent as if he were a soldier holding the rank of private.

Compare: Army Act 1955 s 131 (UK); Air Force Act 1955 s 131 (UK); Naval Discipline Act 1957 s 119 (UK)

Section 19(a): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 19(b): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 19(c): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

20 Limitation of time within which charges may be dealt with summarily or tried under this Act

- (1) A charge alleging that a person has committed an offence against this Act may be tried summarily, or otherwise dealt with, under Part 5 or tried by the Court Martial only if it is so tried or dealt with, or referred to the Director of Military Prosecutions, within 3 years after the alleged commission of the offence.
- (1A) Subsection (1) is subject to subsections (2) to (6).
- (2) Any time during which a person accused of an offence was a prisoner of war, or has been declared by a court of inquiry under section 201 to have been absent without leave or other sufficient reason or was serving a sentence of imprisonment in a civil prison shall not be counted towards completion of the period of 3 years referred to in subsection (1).
- (3) Notwithstanding anything to the contrary in this section, where—
 - (a) any person subject to this Act is charged with having committed an offence against section 74 in relation to any act or omission which would, if the act or omission had taken place in New Zealand, have constituted a civil offence within the meaning of that section; and
 - (b) the Act constituting that civil offence or, if that Act does not so provide, any other Act provides for a limited period within which a charging document may be filed in respect of that offence—that period of limitation shall apply in respect of the person charged with having committed an offence against the said section 74.
- (4) A charge alleging that a person who, by virtue of section 18, is to be deemed to be subject to this Act has committed an offence against this Act while he was in fact so subject shall not be tried by the Court Martial unless—
 - (a) the charge is referred to the Director of Military Prosecutions within 6 months after the person ceased in fact to be subject to this Act; or
 - (b) the offence is against any of the following provisions of this Act:
 - (i) subsection (1) of section 23 (aiding the enemy with intent to assist the enemy):
 - (ii) subsection (1) of section 24 (communicating with the enemy with intent to assist the enemy):
 - (iii) section 26 (spying):
 - (iv) section 32 (mutiny):
 - (v) section 33 (failure to suppress or report a mutiny):
 - (vi) section 47 (desertion):
 - (vii) section 74 (an offence against the civil law of New Zealand).
- (5) A charge alleging that a member of the Armed Forces who has ceased to be employed on full-time service has committed an offence against this Act while

he was so employed shall not be tried summarily, or otherwise dealt with, under Part 5 or be tried by the Court Martial unless—

- (a) the person is so tried or dealt with or the charge is referred to the Director of Military Prosecutions within 6 months after the person ceased to be so employed; or
 - (b) the offence is against any of the following provisions of this Act:
 - (i) subsection (1) of section 23 (aiding the enemy with intent to assist the enemy):
 - (ii) subsection (1) of section 24 (communicating with the enemy with intent to assist the enemy):
 - (iii) section 26 (spying):
 - (iv) section 32 (mutiny):
 - (v) section 33 (failure to suppress or report a mutiny):
 - (vi) section 47 (desertion):
 - (vii) section 74 (an offence against the civil law of New Zealand).
- (6) A charge alleging that a person has committed an offence against—
- (a) subsection (1) of section 23 (aiding the enemy with intent to assist the enemy); or
 - (b) subsection (1) of section 24 (communicating with the enemy with intent to assist the enemy); or
 - (c) section 26 (spying); or
 - (d) section 32 (mutiny); or
 - (e) section 33 (failure to suppress or report a mutiny); or
 - (f) section 47 (desertion)—

may be tried by the Court Martial at any time after the alleged commission of the offence.

Compare: 1950 No 39 s 129; 1950 No 40 s 129; Army Act 1955 s 132 (UK); Air Force Act 1955 s 132 (UK); Naval Discipline Act 1957 s 52 (UK)

Section 20(1): substituted, on 1 July 2009, by section 12(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 20(1A): inserted, on 1 July 2009, by section 12(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 20(2): amended, on 1 July 2009, by section 12(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 20(3)(b): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 20(4): amended, on 1 July 2009, by section 12(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 20(4)(a): substituted, on 1 July 2009, by section 12(4) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 20(5): amended, on 1 July 2009, by section 12(5) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 20(5): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 20(5): amended, on 1 December 1983, by section 3 of the Armed Forces Discipline Amendment Act 1981 (1981 No 48).

Section 20(5)(a): substituted, on 1 July 2009, by section 12(6) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 20(6): amended, on 1 July 2009, by section 12(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

21 Person may not be tried under this Act and under the civil law in respect of same act or omission

- (1) Where under this Act a person—
- (a) has been charged with an offence before the Court Martial and has been acquitted or convicted of the offence; or
 - (b) has been charged with an offence before a disciplinary officer and the charge was, on investigation, dismissed, or he was acquitted or found guilty of the offence; or
 - (c) has had an offence taken into consideration by the Court Martial in sentencing him for another offence—

he shall not subsequently be charged before a civil court with having committed any offence that is substantially the same as the offence of which he was acquitted, convicted, or found guilty or that is substantially the same as the offence contained in the charge that was dismissed, or that is substantially the same as the offence taken into consideration, as the case may be.

- (2) Except as provided in subsection (1), nothing in this Act shall restrict the jurisdiction of a civil court to try a charge alleging that a person subject to this Act has committed an offence against any Act other than this Act.
- (3) Subsection (4) applies if, whether in New Zealand or elsewhere, a person—
- (a) has been acquitted or convicted by a competent court of ordinary criminal jurisdiction, or by a court-martial or other military tribunal of the armed forces of another State, of an offence against a law in force in the country or place in which that court, court-martial, or tribunal has jurisdiction; or
 - (b) has had an offence taken into consideration by that court, court-martial, or tribunal in sentencing him or her for another offence; or
 - (c) has been found by that court, court-martial, or tribunal to be unfit to stand trial in relation to an offence and the proceedings against that person in the course of which the finding was made have been stayed.
- (4) The person must not subsequently be charged before the Court Martial or before a disciplinary officer with an offence against this Act that is substantially the same as—

- (a) the offence of which he or she was acquitted or convicted; or
 - (b) the offence that was taken into consideration; or
 - (c) the offence that was the subject of the stayed proceedings.
- (5) For the purposes of this section,—
- (a) a reference to an offence that is substantially the same as another offence is a reference to an offence of which the accused could have been convicted, under this Act or otherwise, on the same facts:
 - (b) a reference to a person having been convicted by the Court Martial includes a reference to a person in respect of whom that court found the charge proved but did not convict him or her:
 - (c) a reference to a person having been convicted by a competent court of ordinary criminal jurisdiction or by a court-martial or other military tribunal of the armed forces of another State includes a reference to a person in respect of whom that court, court-martial, or tribunal found the charge proved but did not convict him or her:
 - (d) a person must not be considered to have had an offence taken into consideration if the sentence passed on him or her is subsequently quashed, or if the decision to take the offence into consideration has been annulled by an appellate court:
 - (e) a person is deemed to have been found guilty of an offence by a disciplinary officer even if the finding made by that officer has been quashed or the punishment imposed and any order made by the officer was quashed or varied on appeal.

Compare: 1950 No 39 s 63; 1950 No 40 s 63; Army Act 1955 s 133 (UK); Air Force Act 1955 s 133 (UK); Naval Discipline Act 1957 s 129 (UK)

Section 21(1): amended, on 1 January 1986, by section 9(1) of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Section 21(1)(a): amended, on 1 July 2009, by section 13(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 21(1)(b): amended, on 1 July 2009, by section 13(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 21(1)(b): amended, on 1 December 1983, by section 5(1) of the Armed Forces Discipline Amendment Act 1981 (1981 No 48).

Section 21(1)(c): amended, on 1 July 2009, by section 13(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 21(3): substituted, on 1 July 2009, by section 13(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 21(4): substituted, on 1 July 2009, by section 13(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 21(5): added, on 1 July 2009, by section 13(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

22 Persons cannot be tried under this Act for offences already disposed of

- (1) This section applies if—
 - (a) a person has been charged with having committed an offence against this Act and the charge was, on investigation, dismissed, or he or she was acquitted or found guilty of the offence by a disciplinary officer; or
 - (b) a person has been acquitted or convicted of an offence by the Court Martial; or
 - (c) a person has had an offence taken into consideration by the Court Martial in sentencing him or her for another offence; or
 - (d) the proceedings against a person who was charged with having committed an offence against this Act have been stayed under section 101H; or
 - (e) a person who was charged with having committed an offence against this Act has been found to be unfit to stand trial and the proceedings against that person in the course of which the finding was made have been stayed.
- (2) A subsequent charge alleging that the person committed the offence disposed of in the manner referred to in subsection (1) must not be tried by the Court Martial or tried summarily, or otherwise dealt with, under Part 5.
- (3) For the purposes of this section,—
 - (a) if a person was convicted of an offence by the Court Martial or found guilty of an offence by a disciplinary officer and the conviction or finding was quashed on appeal, he or she is deemed to have been acquitted of the offence by the Court Martial or the disciplinary officer, unless a new trial of the charge of having committed that offence was ordered by an appellate court:
 - (b) a person must not be regarded as having had another offence taken into consideration if the sentence passed on him or her is subsequently quashed, or if the decision to take the offence into consideration has been annulled, by an appellate court.

Section 22: substituted, on 1 July 2009, by section 14 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Part 2
Offences

Offences involving treachery, cowardice, and looting

23 Aiding the enemy

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for life, who, with intent to assist the enemy,—

- (a) abandons or surrenders any place or any ship, aircraft, or armoured fighting vehicle, that it is his duty to defend or to destroy; or
 - (b) causes the capture or destruction by the enemy of any ship, aircraft, or armoured fighting vehicle of the Armed Forces or of an allied force; or
 - (c) engages in conduct which is likely to imperil the success of any operation against the enemy being carried out by a part of the Armed Forces or by an allied force; or
 - (d) provides the enemy with, or permits or enables the enemy to have access to, supplies of any description whatsoever; or
 - (e) harbours or gives comfort or protection to enemy personnel (other than prisoners in custody); or
 - (f) gives a false signal, message, or other communication, or materially alters or interferes with a signal, message, or other communication; or
 - (g) interferes with any apparatus used for giving a signal, message, or other communication; or
 - (h) when ordered by his superior officer to prepare for or carry out an operation against the enemy, or when otherwise under a duty or under lawful orders to do so, fails to use his utmost efforts to carry those orders into effect or to perform that duty, as the case may be; or
 - (i) having been captured by the enemy, serves with or aids the enemy in the prosecution of hostilities against New Zealand or against the Armed Forces or any allied force.
- (2) Every person subject to this Act commits an offence, and is liable to imprisonment for life, who, knowingly and without lawful excuse,—
- (a) abandons or surrenders to the enemy any place, or any ship, aircraft, or armoured fighting vehicle, that it is his duty to defend or to destroy; or
 - (b) causes the capture or destruction by the enemy of any ship, aircraft, or armoured fighting vehicle of the Armed Forces or of an allied force; or
 - (c) engages in conduct which to his knowledge is likely to imperil the success of any operation against the enemy being carried out by a part of the Armed Forces or by an allied force; or
 - (d) provides the enemy with, or permits or enables the enemy to have access to, supplies of any description whatsoever; or
 - (e) harbours or gives comfort or protection to enemy personnel (other than prisoners in custody); or
 - (f) gives a false signal, message, or other communication, or materially alters or interferes with a signal, message, or other communication, so as to be likely to assist the enemy; or

- (g) interferes with any apparatus used for giving a signal, message, or other communication with the result that the enemy is assisted in the prosecution of hostilities against New Zealand; or
- (h) when ordered by his superior officer to prepare for or carry out an operation against the enemy, or when otherwise under a duty or under lawful orders to do so, fails to use his utmost efforts to carry those orders into effect or to perform that duty, as the case may be; or
- (i) having been captured by the enemy—
 - (i) aids the enemy to carry out measures designed to lower the morale of the Armed Forces or any allied force; or
 - (ii) aids the enemy in any other manner whatsoever unless the act is authorised or required by international law or usage.

Compare: 1950 No 39 ss 24(a), (d)–(i), 25(g); 1950 No 40 ss 24(a), (d)–(i), 25(g); Army Act 1955 s 24 (UK); Air Force Act 1955 s 24 (UK); Naval Discipline Act 1957 ss 2(b)–(e), 3, 5(c) (UK)

Section 23(1): amended, on 26 December 1989, by section 5(2) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

24 Communication with the enemy

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for life, who, with intent to assist the enemy,—
 - (a) communicates with or gives intelligence to the enemy; or
 - (b) fails to report any information received by him from or about the enemy that would or might be directly or indirectly useful in the prosecution of hostilities against the enemy.
- (2) Every person subject to this Act commits an offence, and is liable to imprisonment for life, who—
 - (a) without authority, communicates with or gives intelligence to the enemy; or
 - (b) without lawful excuse, fails to report any information received by him from or about the enemy that to his knowledge would or might be directly or indirectly useful in the prosecution of hostilities against the enemy.
- (3) For the purposes of this section, the term **intelligence** means information that would or might be, or purports to be, directly or indirectly useful to the enemy.

Compare: 1950 No 39 ss 24(c), 25(d); 1950 No 40 ss 24(c), 25(d); Army Act 1955 s 25 (UK); Air Force Act 1955 s 25 (UK); Naval Discipline Act 1957 s 5(a), (b) (UK)

Section 24(1): amended, on 26 December 1989, by section 5(3) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

25 Unauthorised disclosure of information

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who knowingly, and with knowledge

that he is acting without proper authority, communicates to any other person any official information (as defined in section 78A of the Crimes Act 1961), not being official information that is publicly available, or delivers to any other person any object (as defined in that provision of that Act), knowing that the communication of that information or the delivery of that object is likely—

- (a) to prejudice the security or defence of New Zealand; or
- (b) to prejudice the entrusting of information, being information relating directly or indirectly to the security or defence of New Zealand or otherwise of use or interest to the Armed Forces of New Zealand, to the Government of New Zealand on a basis of confidence by—
 - (i) the government of any other country or any agency of such a government; or
 - (ii) any international organisation.

Section 25: substituted, on 1 January 1986, by section 11 of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

26 Spying in ships or establishments abroad

Every person commits an offence, and is liable to imprisonment for life, who, being on board a naval ship outside New Zealand or within a defence area outside New Zealand, spies for the enemy.

Compare: Naval Discipline Act 1957 s 93 (UK)

Section 26: amended, on 26 December 1989, by section 5(4) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

Section 26: amended, on 1 January 1986, by section 12 of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

27 Seduction from duty or allegiance

Every person commits an offence, and is liable to imprisonment for life, who, being on board a naval ship outside New Zealand or within a defence area outside New Zealand, seduces or endeavours to seduce a member of the Armed Forces from his duty or from his allegiance to Her Majesty the Queen.

Compare: 1950 No 39 s 27(b); 1950 No 40 s 27(b); Naval Discipline Act 1957 ss 3, 6, 94 (UK)

Section 27: amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 27: amended, on 1 January 1986, by section 13 of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

28 Cowardly behaviour

Every person subject to this Act commits an offence, and is liable to imprisonment for life, who, when before the enemy, in such a manner as to show cowardice—

- (a) leaves his post or position or any other place of duty where it is his duty to be; or
- (b) abandons his weapons or any other equipment in his charge; or

(c) by any act or omission, fails to carry out the duty required of him.

Compare: 1950 No 39 ss 24(a), (b), 25(a), (i); 1950 No 40 ss 24(a), (b), 25(a), (i); Army Act 1955 s 26 (UK); Air Force Act 1955 s 26 (UK); Naval Discipline Act 1957 ss 3, 6 (UK)

29 Offence to create alarm or despondency

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for life, who—
 - (a) spreads (either orally, or by writing or by signal, or by any other means whatsoever) any report relating to any war or warlike operations in which the Armed Forces or any allied forces are engaged which to his knowledge is likely to create despondency or unnecessary alarm amongst any persons (not being the enemy); or
 - (b) when before the enemy, uses words which to his knowledge are likely to create despondency or unnecessary alarm amongst any persons (not being the enemy).
- (2) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 5 years, who, when before the enemy, uses words which create or are likely to create despondency or unnecessary alarm amongst any persons (not being the enemy).

Compare: 1950 No 39 s 25(e), (f); 1950 No 40 s 25(e), (f); Army Act 1955 s 27 (UK); Air Force Act 1955 s 27 (UK)

30 Offences in relation to capture by the enemy

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 10 years, who is captured by the enemy either—
 - (a) as a result of failing to take reasonable precautions; or
 - (b) by reason of wilful neglect of duty.
- (2) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 5 years, who, having been captured by the enemy, fails to take reasonable steps to rejoin the Armed Forces.
- (3) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 10 years, who, having been captured by the enemy—
 - (a) with intent to secure favourable treatment for himself from the enemy,—
 - (i) does any act to the detriment of his fellow prisoners; or
 - (ii) omits to do an act with the result that his fellow prisoners are detrimentally affected; or
 - (b) when in a position of authority over other prisoners, ill-treats any of them; or

- (c) discourages or knowingly prevents any other person subject to this Act from taking reasonable steps to rejoin the Armed Forces.

Compare: 1950 No 39 ss 24(e), 25(c); 1950 No 40 ss 24(e), 25(c); Naval Discipline Act 1957 s 5(d) (UK)

31 Looting

Every person subject to this Act commits the offence of looting, and is liable to imprisonment for life, who—

- (a) steals from, or with intent to steal searches, the person of anyone killed, wounded, or captured in the course of any war or warlike operations in which New Zealand is engaged, or killed, injured, or detained in the course of operations undertaken by any service of the Armed Forces for the preservation of law and order or otherwise in aid of the civil power; or
- (b) steals any property which has been left exposed or unprotected in consequence of any such war or operations as are mentioned in paragraph (a); or
- (c) appropriates, otherwise than on behalf of Her Majesty the Queen in right of New Zealand, any supplies of any description whatsoever captured from or abandoned by the enemy.

Compare: 1950 No 39 s 26(2)(a), (b); 1950 No 40 s 26(2)(a), (b); Army Act 1955 s 12 (UK); Air Force Act 1955 s 12 (UK); Naval Discipline Act 1957 s 24 (UK)

Offences involving mutiny

32 Mutiny

Every person subject to this Act commits an offence, and is liable to imprisonment for life, who takes part in any mutiny.

Section 32: substituted, on 26 December 1989, by section 5(5) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

33 Failure to suppress or report mutiny

Every person subject to this Act commits an offence, and is liable to imprisonment for life, who, knowing that a mutiny is taking place or is intended,—

- (a) fails to use his utmost efforts to suppress or prevent the mutiny; or
- (b) fails to use his utmost efforts to report forthwith that the mutiny is taking place or is intended.

Compare: 1950 No 39 s 27(c), (d); 1950 No 40 s 27(c), (d); Army Act 1955 s 31 (UK); Air Force Act 1955 s 31 (UK); Naval Discipline Act 1957 s 10 (UK)

Offences involving guard duty, violence, and insubordination

34 Offences by or in relation to a person on guard duty or on watch

- (1) Every reference in this section to a person on guard duty shall be construed as a reference to a person who is ordered to patrol, or who is a member of a guard or other party mounted or ordered to patrol, or who is posted, for the purpose of—
 - (a) protecting any person, place, or premises, or any ship, vehicle, aircraft, weapons, or other equipment or stores; or
 - (b) preventing or controlling entry to or departure from any place, premises, ship, vehicle, or aircraft; or
 - (c) regulating traffic by land, water, or air.
- (2) Every person subject to this Act commits an offence who, while on guard duty or watch—
 - (a) sleeps at his post or on watch; or
 - (b) not being on duty at a post, sleeps at a time when it is his duty to be awake; or
 - (c) is drunk; or
 - (d) without lawful excuse, leaves his post or otherwise absents himself from a place where it is his duty to be.
- (3) For the purposes of paragraph (c) of subsection (2), a person is drunk if, owing to the influence of alcohol or a drug (not being a drug administered by, or taken in accordance with the directions of, a person lawfully authorised to administer the drug), whether alone or in combination with each other or in combination with any other circumstances, he is unfit to be entrusted with his duty.
- (4) Every person who commits an offence against subsection (2) while on active service is liable to imprisonment for life or, if the offence is committed at any other time, to imprisonment for a term not exceeding 2 years.
- (5) Every person subject to this Act commits an offence who—
 - (a) strikes any person (not being an enemy) who is on guard duty or on watch; or
 - (b) otherwise than by striking, uses force against any person (not being an enemy) who is on guard duty or on watch; or
 - (c) by threat of force, compels any person (not being an enemy) who is on guard duty or on watch to allow him or any other person to pass.
- (6) Every person who commits an offence against subsection (5) while on active service is liable to imprisonment for a term not exceeding 10 years or, if the

offence is committed at any other time, to imprisonment for a term not exceeding 2 years.

Compare: 1950 No 39 s 26(2)(c)–(g); 1950 No 40 s 26(2)(c)–(g); Army Act 1955 s 29 (UK); Air Force Act 1955 s 29 (UK)

35 Violence to a superior officer

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 5 years, who—
- (a) strikes; or
 - (b) otherwise than by striking, uses violence to; or
 - (c) offers violence to—
- his superior officer.
- (2) In any proceedings in respect of a charge for an offence against subsection (1), it is a defence to the charge if the accused proves that he neither knew nor had reasonable cause to believe that the person against whom the offence was alleged to have been committed was his superior officer.

Compare: 1950 No 39 s 28(a); 1950 No 40 s 28(a); Army Act 1955 s 33 (UK); Air Force Act 1955 s 33 (UK); Naval Discipline Act 1957 s 11 (UK)

36 Insubordinate behaviour

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who—
- (a) uses threatening language to his superior officer; or
 - (b) uses insubordinate language to his superior officer; or
 - (c) uses insulting language to his superior officer; or
 - (d) in the presence of his superior officer, behaves with contempt towards him.
- (2) In any proceedings in respect of a charge for an offence against subsection (1), it is a defence to the charge if the accused proves that he neither knew nor had reasonable cause to believe that the person against whom the offence was alleged to have been committed was his superior officer.

Compare: 1950 No 39 s 28(b); 1950 No 40 s 28(b); Army Act 1955 s 33 (UK); Air Force Act 1955 s 33 (UK); Naval Discipline Act 1957 s 12(b) (UK)

37 Obstruction of provost officers

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who—
- (a) obstructs; or
 - (b) after being called on to do so, refuses to assist—

a provost officer while acting in the execution of his duty, or a person (whether subject to this Act or not) lawfully exercising authority under or on behalf of a provost officer.

- (2) In any proceedings in respect of a charge for an offence against subsection (1), it is a defence to the charge if the accused proves that he neither knew nor had reasonable cause to believe that the person against whom the offence was alleged to have been committed was a provost officer or, as the case may be, a person lawfully exercising authority under or on behalf of a provost officer.

Compare: 1950 No 39 s 26(3)(c); 1950 No 40 s 26(3)(c); Army Act 1955 s 35 (UK); Air Force Act 1955 s 35 (UK); Naval Discipline Act 1957 s 14 (UK)

38 Disobeying a lawful command

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 5 years, who disobeys a lawful command of his superior officer by whatever means communicated to him.

- (2) In any proceedings in respect of a charge for an offence against subsection (1), it is a defence to the charge if the accused proves that he neither knew nor had reasonable cause to believe that the person against whom the offence was alleged to have been committed was his superior officer.

Compare: 1950 No 39 s 29; 1950 No 40 s 29; Army Act 1955 s 34 (UK); Air Force Act 1955 s 34 (UK); Naval Discipline Act 1957 s 12(a) (UK)

Section 38(2): added, on 1 January 1986, by section 15 of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

39 Failure to comply with written orders

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who fails to comply with a lawful order of which he has knowledge or of which he could, with reasonable diligence, have had knowledge—

- (a) being a Defence Force Order; or
(b) being a general, standing, daily, or routine order made for any service, force, command, formation, or corps, or any ship or defence area, or any unit, detachment, or other part of the Armed Forces.

Compare: 1950 No 39 s 31; 1950 No 40 s 31; Army Act 1955 s 36 (UK); Air Force Act 1955 s 36 (UK); Naval Discipline Act 1957 s 7 (UK)

Section 39(a): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

40 Failure to comply with directions given by the captain of a ship or aircraft

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 5 years, who, when in or near any ship or aircraft, fails to comply with a lawful direction given to him by or with the authority of the person in command of the ship or aircraft—

- (a) in relation to the sailing or handling of the ship or flying or handling of the aircraft; or
 - (b) affecting the safety of the ship or aircraft—
- whether the person in command is a member of the Armed Forces or not.

Compare: 1950 No 39 s 59(3); 1950 No 40 s 59(3)

Section 40: amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

41 Ill-treatment of person of lower rank

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who—

- (a) strikes; or
 - (b) otherwise than by striking, ill-treats—
- any other person subject to this Act who holds a lower rank.

Compare: 1950 No 39 s 56; 1950 No 40 s 56; Army Act 1955 s 65 (UK); Air Force Act 1955 s 65 (UK); Naval Discipline Act 1957 ss 36, 39 (UK)

42 Cruel or disgraceful conduct

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who—

- (a) behaves in a cruel manner towards any person, or any animal used for the purposes of the Armed Forces or kept in a state of captivity; or
- (b) behaves in a disgraceful and indecent manner.

Compare: 1950 No 39 ss 38(f), 45(e); 1950 No 40 ss 38(f), 45(e); Army Act 1955 s 66 (UK); Air Force Act 1955 s 66 (UK); Naval Discipline Act 1957 ss 36, 37 (UK)

43 Fighting or causing a disturbance

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 3 months, who—

- (a) fights any person other than an enemy; or
- (b) uses threatening, insulting, or provocative language to any person not being an enemy; or
- (c) causes a disturbance or behaves in a manner likely to cause a disturbance.

Compare: Naval Discipline Act 1957 s 13 (UK)

Offences relating to arrest and escape from custody

44 Resisting arrest

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who refuses to obey a member of the Armed Forces who has lawfully ordered him into arrest.

- (2) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who—
- (a) strikes; or
 - (b) otherwise than by striking, uses violence to; or
 - (c) offers violence to—
- any member of the Armed Forces (whether that member of the Armed Forces is his superior officer or not) who has lawfully ordered him into arrest.
- (3) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who—
- (a) strikes; or
 - (b) otherwise than by striking, uses violence to; or
 - (c) offers violence to—
- any person (whether subject to this Act or not) who attempts to arrest him or is holding him in custody pursuant to this Act.

Compare: 1950 No 39 s 30; 1950 No 40 s 30; Army Act 1955 s 55 (UK); Air Force Act 1955 s 55 (UK)

Section 44(1): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 44(2): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

45 Escape from custody

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who escapes from custody in which he is being held in accordance with this Act.

Compare: 1950 No 39 ss 30(d), 43; 1950 No 40 ss 30(d), 43; Army Act 1955 s 56 (UK); Air Force Act 1955 s 56 (UK)

45A Failure to answer bail

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 1 year, who, having been released from custody on bail,—

- (a) fails without reasonable excuse to attend personally at the time and before the military tribunal or the Court Martial Appeal Court specified in the grant of bail; or
- (b) fails without reasonable excuse to attend personally at any time and place to which, during the course of the proceedings, the hearing has been adjourned

Section 45A: inserted, on 1 July 2009, by section 15 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

46 Permitting the escape of prisoners

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 5 years, who, wilfully and without authority,

releases or wilfully permits the escape of any person who is committed to his charge or whom it is his duty to guard.

- (2) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who—
- (a) without authority, releases a person who is committed to his charge or whom it is his duty to guard; or
 - (b) without lawful excuse, permits the escape of a person who is committed to his charge or whom it is his duty to guard; or
 - (c) with intent to facilitate the escape of any person lawfully detained in a prison or a service penal establishment—
 - (i) conveys or causes to be conveyed into any such prison or establishment any thing whatsoever; or
 - (ii) otherwise facilitates the escape of any person so detained.

Compare: 1950 No 39 s 41; 1950 No 40 s 41; Army Act 1955 s 54 (UK); Air Force Act 1955 s 54 (UK); Naval Discipline Act 1957 s 17(1) (UK)

Section 46(2)(c): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 46(2)(c)(i): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Desertion, absence, and malingering

47 Desertion

- (1) Every person subject to this Act who deserts commits an offence, and—
- (a) if the offence is committed on active service or after having been warned for active service, is liable to imprisonment for life; or
 - (b) if the offence is committed at any other time, is liable to imprisonment for a term not exceeding 2 years.
- (2) For the purposes of this section, the term **deserts**, in relation to any person subject to this Act, means that—
- (a) with intent to remain permanently absent from duty, he leaves or fails to attend at his place of duty without authority; or
 - (b) having left or failed to attend at his place of duty, he behaves in a manner which shows intent to remain permanently absent from duty without authority; or
 - (c) having been warned for active service, he is absent from duty without authority, with intent to avoid that service.

Compare: 1950 No 39 s 32; 1950 No 40 s 32; Army Act 1955 s 37 (UK); Air Force Act 1955 s 37 (UK); Naval Discipline Act 1957 ss 15, 16 (UK)

48 Absence without leave

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 12 months, who absents himself without leave.

Compare: 1950 No 39 s 35; 1950 No 40 s 35; Army Act 1955 s 38 (UK); Air Force Act 1955 s 38 (UK); Naval Discipline Act 1957 s 17 (UK)

49 Avoidance of duty

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 6 months, who, without reasonable excuse—

- (a) fails to attend a muster or parade, or for any other service duty; or
- (b) leaves a muster or parade, or stops performing any other service duty, before he is authorised to do so.

Compare: Army Act 1955 s 41 (UK); Air Force Act 1955 s 41 (UK)

50 Malingering

(1) Every person subject to this Act commits an offence who—

- (a) falsely represents that he is suffering from any sickness or disability, with intent to avoid service or duty; or
- (b) injures himself with intent to render or keep himself unfit for service or duty; or
- (c) with intent to render or keep himself unfit for service or duty, causes or permits some other person to injure him; or
- (d) with intent to render or keep himself unfit for service or duty, does or fails to do anything by which he produces, prolongs, or aggravates any sickness or disability.

(2) Every person who commits an offence against this section is liable—

- (a) if the offence is committed on active service, to imprisonment for life; or
- (b) if the offence is committed at any other time, to imprisonment for a term not exceeding 2 years.

(3) For the purposes of subsection (1), the term **unfit** includes temporarily unfit.

Compare: 1950 No 39 s 38(a)–(c); 1950 No 40 s 38(a)–(c); Army Act 1955 s 42 (UK); Air Force Act 1955 s 42 (UK); Naval Discipline Act 1957 s 27 (UK)

Offences involving alcohol and drugs

Heading: amended, on 18 December 2013, by section 417(1) of the Sale and Supply of Alcohol Act 2012 (2012 No 120).

51 Drunkenness and being under the influence of drugs

(1) Every person subject to this Act who is drunk, whether on duty or not, commits an offence, and—

- (a) if the offence is committed on active service, is liable to imprisonment for a term not exceeding 2 years; or

- (b) if the offence is committed at any other time, is liable to imprisonment for a term not exceeding 12 months.
- (2) For the purposes of subsection (1), a person is drunk if, owing to the influence of alcohol or a drug (not being a drug administered by, or taken in accordance with the directions of, a person lawfully authorised to administer the drug), whether alone or in combination with each other or in combination with any other circumstances, he is unfit to be entrusted with his duty or with any duty that he may be required to perform.
- Compare: 1950 No 39 s 39; 1950 No 40 s 39; Army Act 1955 s 43 (UK); Air Force Act 1955 s 43 (UK); Naval Discipline Act 1957 s 28 (UK)

52 Being in possession of alcohol in a ship, establishment, camp, or base

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 6 months, who, knowingly and without authority, is in possession of alcohol within the bounds of any naval ship or defence area, or any other place where members of the Armed Forces are quartered, stationed, or serving, or are undergoing exercises or training.
- (2) Where any person is convicted of an offence under subsection (1), the alcohol in respect of which the offence was committed, together with the receptacles containing it, shall be forfeited to the Crown, and may be disposed of by public auction or private contract as the Chief of Defence Force directs, and the proceeds of the sale shall be paid into an appropriate bank account in accordance with the Public Finance Act 1989.

Compare: 1950 No 39 s 40; 1950 No 40 s 40

Section 52(1) heading: amended, on 18 December 2013, by section 417(1) of the Sale and Supply of Alcohol Act 2012 (2012 No 120).

Section 52(1): amended, on 18 December 2013, by section 417(1) of the Sale and Supply of Alcohol Act 2012 (2012 No 120).

Section 52(1): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 52(2): amended, on 18 December 2013, by section 417(1) of the Sale and Supply of Alcohol Act 2012 (2012 No 120).

Section 52(2): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

False statements, documents, and corruption

53 False statements on appointment or enlistment

Every person commits an offence, and is liable to imprisonment for a term not exceeding 6 months, who, if having become and remaining subject to this Act, at or before the time of his appointment or enlistment to any part of the Armed Forces—

- (a) knowingly gave a false answer to any question set out in a document required to be completed in connection with his appointment or enlistment; or

- (b) knowingly gave any false information or document in connection with his appointment or enlistment.

Compare: 1950 No 39 s 52(a); 1950 No 40 s 52(a); Army Act 1955 s 61 (UK); Air Force Act 1955 s 61 (UK)

54 Official corruption

- (1) Every person subject to this Act for the time being acting as an official commits an offence, and is liable to imprisonment for a term not exceeding 7 years, who corruptly accepts or obtains, agrees, or offers to accept, or attempts to obtain any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his official capacity.
- (2) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 3 years, who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any person subject to this Act for the time being acting as an official in respect of any act or omission by him in his official capacity.
- (3) For the purposes of this section—

bribe means any money, valuable consideration, office or employment, or any benefit, whether direct or indirect

official means any person subject to this Act who is acting in his official capacity in or in connection with the Armed Forces; and in particular includes any person subject to this Act who is for the time being acting—

- (a) as an official of a service mess, band, club, canteen, or other service institution; or
- (b) as a trustee of any unit, mess, or canteen fund, or of any other non-public service fund; or
- (c) under the control or direction of the Armed Forces Canteen Council.

Compare: 1950 No 39 ss 26(3)(e), 44; 1950 No 40 ss 26(3)(e), 44

55 Falsification of service documents

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who—
- (a) makes or signs an official document knowing that the document is false in a material particular; or
- (b) makes or signs an entry in an official document knowing that the entry is false in a material particular; or
- (c) makes an alteration to an official document with intent to render the document false in a material particular; or
- (d) fails to make an entry in an official document with intent to render the document false in a material particular; or

- (e) wilfully suppresses, defaces, makes away with, or destroys an official document which he is under a duty to keep or to produce to any person.
- (2) For the purposes of this section, the term **official document** includes a book, record, return, report, map or plan, signal, tape recording, or any form of computer input or output, or any other document or similar material (whether produced mechanically, electronically, or manually, or by any other means whatsoever), which is used by or for the purposes of the Armed Forces.

Compare: 1950 No 39 ss 47, 48; 1950 No 40 ss 47, 48; Army Act 1955 s 62 (UK); Air Force Act 1955 s 62 (UK); Naval Discipline Act 1957 s 35 (UK)

56 False statement in order to obtain benefit

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 6 months, who, in or in connection with or in support of an application for any service grant, payment, allotment of money, allowance, leave of absence, travel warrant, or any other benefit, either for himself or for some other person (whether that person is subject to this Act or not)—

- (a) makes to any person any statement, either written or oral, which he knows to be false or misleading in a material particular; or
- (b) without lawful excuse, fails to disclose any material information that it is his duty to disclose.

Compare: 1950 No 39 s 52(b); 1950 No 40 s 52(b)

Offences relating to property

57 Stealing service property or property of comrade

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 7 years, who—
- (a) steals—
- (i) any service property; or
 - (ii) any property belonging to a person subject to service law or in which a person subject to service law has a special property or interest; or
- (b) fraudulently misapplies—
- (i) any service property; or
 - (ii) any property belonging to a person subject to service law or in which a person subject to service law has a special property or interest.
- (2) Where any person is charged with an offence against subsection (1), it shall not be necessary to prove the stealing or fraudulent misapplication of any specific amount of money or any specific goods if, as a result of an examination of any accounts or records, it is proved that there is a general deficiency in any

amount of money or in any quantity of goods for which the accused was responsible, and it is also proved that the accused stole or fraudulently misapplied the amount of money or quantity of goods which was deficient, or any part of it.

Compare: 1950 No 39 ss 37, 38(e), 45(a), 59(c); 1950 No 40 ss 37, 38(e), 45(a), 59(c); Army Act 1955 ss 44(1), 45(a) (UK); Air Force Act 1955 ss 44(1), 45(a) (UK); Naval Discipline Act 1957 s 29(a) (UK)

58 Receiving service property or property of comrade

(1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 7 years, who receives—

- (a) any service property; or
- (b) any property belonging to a person subject to service law or in which a person subject to service law has a special property or interest—

knowing the property to have been stolen or fraudulently misapplied.

(2) The provisions of section 246(2) to (5) of the Crimes Act 1961, with all necessary modifications, shall apply in respect of the receiving by any person subject to this Act of any property to which this section relates.

Compare: 1950 No 39 s 38(e); 1950 No 46 s 38(e); Army Act 1955 ss 44(1)(b), 45(b) (UK); Air Force Act 1955 ss 44(1)(b), 45(b) (UK); Naval Discipline Act 1957 s 29(b) (UK)

Section 58(2): amended, on 1 October 2003, by section 34 of the Crimes Amendment Act 2003 (2003 No 39).

59 Unlawful possession of service property or property of comrade

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 6 months, who, without authority or other lawful excuse, is in possession of—

- (a) any service property; or
- (b) any property belonging to a person subject to service law or in which a person subject to service law has a special property or interest.

60 Conversion of vehicles, etc

(1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who, unlawfully and without claim of right, but not so as to be guilty of stealing, takes or converts to his own use or to the use of any other person—

- (a) any motor vehicle, or other vehicle or carriage of any description, or ship, or aircraft, or aircraft material, which belongs to the Crown or to any person subject to service law or in which any person subject to service law has a special property or interest; or
- (b) any part of any such vehicle, carriage, ship, aircraft, or aircraft material;
or

- (c) any animal (being an animal capable of being stolen) which belongs to the Crown or to any person subject to service law or in which any person subject to service law has a special property or interest.
- (2) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who, unlawfully and without claim of right, interferes with or gets into or upon any vehicle, carriage, ship, or aircraft referred to in paragraph (a) of subsection (1), or interferes with or gets upon any animal, referred to in paragraph (c) of that subsection.

Compare: 1950 No 39 s 60(1)(a); 1950 No 40 s 60(1)(a)

Section 60(1): amended, on 1 October 2003, by section 34 of the Crimes Amendment Act 2003 (2003 No 39).

Section 60(2): amended, on 1 October 2003, by section 34 of the Crimes Amendment Act 2003 (2003 No 39).

61 Destruction of or damage to service property or property of comrade

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 10 years, who, without authority or other lawful excuse, wilfully causes or permits damage to or the destruction of—
- (a) any service property; or
- (b) any property belonging to a person subject to service law or in which a person subject to service law has a special property or interest.
- (2) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who negligently causes or permits damage to or the destruction of—
- (a) any service property; or
- (b) any property belonging to a person subject to service law or in which a person subject to service law has a special property or interest.

Compare: 1950 No 39 ss 45(d), 46, 59(1)(a), (b), (e); 1950 No 40 ss 45(d), 46, 59(1)(a), (b), (e); Army Act 1955 ss 44(1)(c), 45(c), 46(a)–(e) (UK); Air Force Act 1955 ss 44(1)(c), 45(c), 46(a)–(e) (UK); Naval Discipline Act 1957 ss 29, 30(1)(b), (2) (UK)

62 Loss of service property

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who—
- (a) loses; or
- (b) wastefully expends—
- any service property issued for his use or entrusted to his care in connection with his duties.

- (2) In any proceedings in respect of an offence against subsection (1), it is a defence to the charge if the accused proves that he took reasonable steps for the care and preservation of the property to which the proceedings relate.

Compare: 1950 No 39 s 45(a), (b); 1950 No 40 s 45(a), (b); Army Act 1955 s 46(a), (e) (UK); Air Force Act 1955 s 46(a), (e) (UK); Naval Discipline Act 1957 ss 30(1)(a), (c), (2), 31(1)(a), (2) (UK)

63 Improper disposal of decorations and issued property

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 6 months, who, without the authority of the Minister or the Chief of Defence Force, sells, pawns, exchanges, gives away, or otherwise disposes of any military decoration awarded to him by or with the approval of Her Majesty the Queen, whether in right of New Zealand or otherwise.
- (2) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who, without authority, sells, exchanges, pawns, gives away, or otherwise disposes of any clothing, arms, ammunition, or other equipment issued to him for his own use or for service purposes.

Compare: 1950 No 39 s 45(c); 1950 No 40 s 45(c); Army Act 1955 s 46(g) (UK); Air Force Act 1955 s 46(g) (UK); Naval Discipline Act 1957 s 31(1)(b) (UK)

Section 63(1): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Offences involving ships, aircraft, vehicles, etc

64 Losing or hazarding a ship, aircraft, or armoured fighting vehicle

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 10 years, who, while responsible for the navigation, control, operation, or propulsion of a ship, aircraft, or armoured fighting vehicle, wilfully and without authority causes or permits the ship, aircraft, or vehicle, as the case may be, to be lost, stranded, or hazarded.
- (2) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who, while responsible for the navigation, control, operation, or propulsion of a ship, aircraft, or armoured fighting vehicle, negligently causes or permits the ship, aircraft, or vehicle, as the case may be, to be lost, stranded, or hazarded.

Compare: 1950 No 39 s 59(1)(a), (b); 1950 No 40 s 59(1)(a), (b); Army Act 1955 s 46(b), (c) (UK); Air Force Act 1955 s 46(b), (c) (UK); Naval Discipline Act 1957 s 19 (UK)

65 Dangerous acts or omissions

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 10 years, who, while operating, handling, servicing, or storing a ship, aircraft, armoured fighting vehicle, weapon, missile, explosive, or other dangerous thing, which is used by or is under the control of the Armed Forces or an allied force, wilfully and without authority does or omits any act which to his knowledge is likely to cause loss of life or bodily

injury to any person other than an enemy (whether loss of life or bodily injury actually occurs or not).

- (2) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 5 years, who, while operating, handling, servicing, or storing a ship, aircraft, armoured fighting vehicle, weapon, missile, explosive, or other dangerous thing, which is used by or is under the control of the Armed Forces or an allied force, negligently does or omits any act which he knows, or which having regard to all the circumstances of the case he ought to know, is likely to cause loss of life or bodily injury to any person other than an enemy (whether loss of life or bodily injury actually occurs or not).

Compare: 1950 No 39 s 59(1)(d); 1950 No 40 s 59(1)(d); Naval Discipline Act 1957 s 20 (UK)

66 Inaccurate certification

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who—

- (a) gives, makes, or signs; or
(b) makes or signs an entry in—

a certificate, book, record, or other document relating to any matter affecting the safety or efficiency of a service ship, aircraft, armoured fighting vehicle, field gun, or missile which is inaccurate in a material particular, without having taken reasonable care to ensure the accuracy of the certificate, book, record, document, or entry.

Compare: 1950 No 39 s 59(2)(a); 1950 No 40 s 59(2)(a); Army Act 1955 s 50 (UK); Air Force Act 1955 s 50 (UK); Naval Discipline Act 1957 s 25 (UK)

67 Offences in relation to the driving of vehicles

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who, being the driver of a vehicle, whether service property or not—

- (a) drives the vehicle in any place, whether public or otherwise, recklessly or at a speed or in a manner which, having regard to all the circumstances of the case, is or might be dangerous to any person or to the property of any person; or
(b) drives the vehicle while under the influence of alcohol or of a drug (not being a drug administered by or taken in accordance with the directions of a person lawfully authorised to administer that drug) to such an extent as to be incapable of having proper control of the vehicle.

- (2) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 3 months, who drives a vehicle (whether service property or not) in any place (whether public or otherwise)—

- (a) carelessly; or
(b) without consideration for persons in or near that place.

- (3) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 3 months, who uses any service vehicle for an unauthorised purpose.

Compare: 1950 No 39 s 60(1)(b), (c); 1950 No 40 s 60(1)(b), (c); National Defence Act 1950, ss 101, 102 (Canada)

Offences relating to judicial proceedings, etc

68 False accusation

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who—

- (a) makes an accusation against a person subject to service law knowing that accusation to be false; or
- (b) in making a complaint claiming that he has been wronged—
- (i) makes a statement which detrimentally affects the character of a person subject to service law and which he knows to be false; or
- (ii) suppresses a material fact with intent to affect detrimentally the character of a person subject to service law.

Compare: 1950 No 39 s 49; 1950 No 40 s 49; Army Act 1955 s 67 (UK); Air Force Act 1955 s 67 (UK)

69 Delay or denial of justice

- (1) Every person subject to this Act commits an offence who, being under a duty—
- (a) to take steps to bring any person subject to service law (being a person who is under arrest or in custody for an offence alleged to have been committed against this Act) before the proper authority for investigation of the alleged offence; or
- (b) to investigate, try summarily, or otherwise deal under Part 5 with a charge against any such person or bring any such person before the Court Martial—

without lawful excuse, fails to carry out his duty as soon as practicable after that person has been arrested or taken into custody.

- (2) Every person subject to this Act commits an offence who, being under a duty to release or order the release of a person subject to service law who is in custody, without lawful excuse fails to fulfil that duty.
- (2A) Every person subject to this Act commits an offence who influences or attempts to influence, by threats or bribes or other improper means, an election under section 117D or 117M or a decision concerning the withdrawal of an election made under either of those sections.

- (3) Every person who commits an offence against this section is liable to imprisonment for a term not exceeding 2 years.

Compare: 1950 No 39 s 42; 1950 No 40 s 42; Army Act 1955 s 53 (UK); Air Force Act 1955 s 53 (UK); Naval Discipline Act 1957 s 46(1) (UK)

Section 69(1)(b): substituted, on 1 July 2009, by section 16(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 69(2A): inserted, on 1 July 2009, by section 16(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

70 Offences relating to proceedings of military tribunal or court of inquiry

- (1) Every person who is subject to this Act commits an offence if the person—
- (a) fails without reasonable excuse to comply with a summons or order to attend as a witness before a military tribunal or court of inquiry; or
 - (b) refuses to swear an oath when required to do so by a military tribunal or court of inquiry; or
 - (c) refuses to produce any papers, documents, records, or things in that person's possession or under that person's control that a military tribunal or court of inquiry has lawfully required the person to produce; or
 - (d) being a witness, refuses to answer any question that a military tribunal or court of inquiry has lawfully required the person to answer; or
 - (e) disobeys or evades any order or direction made or given by a military tribunal or court of inquiry in the course of the hearing of any proceedings before it; or
 - (f) wilfully publishes any statement in respect of the proceedings before a military tribunal or court of inquiry that—
 - (i) without foundation states or implies that the military tribunal or court of inquiry has not acted or is not acting impartially; or
 - (ii) is likely to interfere with the proper administration of justice; or
 - (g) insults, threatens, or interferes with a disciplinary officer or any member of the Summary Appeal Court, the Court Martial, or a court of inquiry while the disciplinary officer or member is attending, or is on the way to or from, the proceedings before the disciplinary officer, the Summary Appeal Court, the Court Martial, or the court of inquiry; or
 - (h) insults, threatens, or interferes with any witness or other person under a duty to attend the proceedings before a military tribunal or court of inquiry while the witness or other person is attending, or is on the way to or from, the proceedings; or
 - (i) interrupts the proceedings before a military tribunal or court of inquiry or otherwise misbehaves during the proceedings.
- (2) A person who commits an offence under subsection (1) is liable to imprisonment for a term not exceeding 6 months.

- (3) Despite subsection (2), if a person commits an offence against subsection (1)(e) to (i) in relation to the Court Martial, that court may, by order of the Judge, sentence the person for the offence,—
- (a) in the case of a convicted member of the Armed Forces,—
 - (i) to imprisonment for a term not exceeding 21 days; or
 - (ii) except in the case of an officer, to detention for a term not exceeding 21 days; or
 - (iii) to a fine not exceeding the amount of the person’s basic pay for 28 days; or
 - (b) in the case of any other person subject to this Act, to a fine not exceeding \$1,000.

Section 70: substituted, on 1 July 2009, by section 17 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

71 False evidence

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who, having been sworn as a witness or as an interpreter in proceedings before a military tribunal or a court of inquiry, makes a statement in those proceedings which he knows to be false.
- (2) A person shall not be liable to be convicted of an offence against this section on the evidence of only 1 witness as to the falsity of any statement alleged to be false.

Compare: 1950 No 39 s 51; 1950 No 40 s 51; Army Act 1955 s 58 (UK); Air Force Act 1955 s 58 (UK)

Section 71(1): amended, on 1 July 2009, by section 18 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Miscellaneous offences

72 Endangering the health of members of the Armed Forces

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who, without lawful excuse, refuses or fails to submit himself to medical, surgical, or dental treatment or procedures by a medical practitioner or dental practitioner, as the case may require, after being ordered to do so—
- (a) by a medical or dental officer who is a medical practitioner or dental practitioner; or
 - (b) by a competent officer acting on the advice of any such medical or dental officer—

if any such treatment or procedure, whether preventive, protective, or curative, is stated by the medical or dental officer who gives the order or advice to be, in his opinion, essential in the interests of the health of other members of the

Armed Forces, or to be such that refusal or failure to submit thereto would constitute a potential menace to the health of other members of the Armed Forces or would prejudice the operational efficiency of any part of the Armed Forces.

- (2) In any proceedings in respect of an offence against subsection (1), where the order involves curative surgery, it is a defence to the charge if the accused proves that the provisions of Defence Force Orders relating to the right of a member of the Armed Forces to ask for a second opinion in such cases have not been observed.

Compare: 1950 No 39 s 38(d); 1950 No 40 s 38(d)

Section 72(1): amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 72(1)(a): amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 72(2): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

73 Conduct prejudicial to service discipline

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who—
- (a) does or omits any act that is likely to prejudice service discipline; or
 - (b) does or omits any act that is likely to bring discredit on the service of the Armed Forces to which he belongs or, if he is attached to any such service, either to that service or to the service to which he belongs; or
 - (c) negligently fails to perform a duty imposed on him or her by service order, training, or custom; or
 - (d) negligently performs a duty imposed on him or her by service order, training, or custom.
- (2) No person shall be charged with an offence against this section in respect of any act or omission that constitutes an offence against sections 23 to 72 or sections 74 to 77:
- provided that if any person is charged with an offence against this section and is found guilty of the offence, the finding shall not be invalidated by reason only of the charge being in contravention of this subsection, unless it appears that injustice has been done to the person charged by reason of the contravention; but the conduct of the person laying any charge in contravention of this subsection shall not be vindicated by reason of that finding.
- (3) Despite anything to the contrary in any enactment or rule of law, if a person is charged with an offence against this section, the statement of offence may allege in the alternative 1 or more of the following:
- (a) that the person behaved in a manner that was likely to prejudice service discipline:
 - (b) that the person behaved in a manner that was likely to bring discredit on the service to which he or she belongs or is attached, as the case may be:

- (c) that the person has negligently failed to perform a duty imposed on him or her by service order, training, or custom:
- (d) that the person negligently performed a duty imposed on him or her by service order, training, or custom.

Compare: 1950 No 39 s 61; 1950 No 40 s 61; Army Act 1955 s 69 (UK); Air Force Act 1955 s 69 (UK); Naval Discipline Act 1957 s 39 (UK)

Section 73(1)(b): amended, on 1 July 2009, by section 19(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 73(1)(c): added, on 1 July 2009, by section 19(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 73(1)(d): added, on 1 July 2009, by section 19(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 73(3): substituted, on 1 July 2009, by section 19(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

74 Offences against the civil law of New Zealand

- (1) Every person subject to this Act commits an offence against this section who, whether in New Zealand or elsewhere, does or omits any act which would, if done or omitted in New Zealand, be an offence against any Act other than this Act (in this section referred to as a **civil offence**).
- (2) Every person convicted of an offence against this section is liable to be sentenced in accordance with the following provisions:
 - (a) if the civil offence is punishable by a fixed punishment, he shall be sentenced to that punishment:
 - (b) if the civil offence is punishable by a maximum punishment, he may be sentenced to—
 - (i) a punishment not exceeding that maximum; or
 - (ii) a punishment that, under this Act, is less severe than imprisonment:
provided that no person found guilty of an offence against this section shall be liable under this paragraph to a fine exceeding the maximum prescribed in respect of the civil offence.
- (2A) Notwithstanding anything in subsection (2), no person who is convicted of an offence against this section shall be liable to any punishment of a kind that is not specified in clause 1 of Schedule 2, or clause 1 of Schedule 3.
- (3) Where a person is charged with an offence against this section and the corresponding civil offence is one in respect of which, if he were tried for the civil offence before a civil court in New Zealand, that court could convict him of a civil offence other than the one charged, he may nevertheless be convicted of an offence against this section in respect of that other civil offence, and may be sentenced to the punishment prescribed in respect of that other civil offence in accordance with the provisions of subsection (2).

- (4) Except with the consent of the Attorney-General, a person subject to this Act may not be tried by the Court Martial for an offence against this section which is alleged to have been committed in New Zealand if the corresponding civil offence is treason, murder, manslaughter, sexual violation, or bigamy.
- (5) Where the corresponding civil offence is murder or manslaughter, an offence against this section shall be deemed, for the purposes of subsection (4), to have been committed at the place of the commission of the act or occurrence of the neglect which caused the death, irrespective of the place of the death.
- (6) For the purposes of subsections (4) and (5), the term **murder** includes inciting, counselling, procuring, aiding, or abetting suicide.

Compare: 1950 No 39 s 62; 1950 No 40 s 62; Army Act 1955 s 70 (UK); Air Force Act 1955 s 70 (UK); Naval Discipline Act 1957 ss 42, 48 (UK)

Section 74(2A): inserted, on 1 January 1986, by section 18 of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Section 74(4): amended, on 1 July 2009, by section 20 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 74(4): amended, on 27 May 1988, by section 4 of the Armed Forces Discipline Amendment Act 1988 (1988 No 89).

Parties, accessories, and attempts

75 Parties to the commission of offences against this Act

- (1) Every person subject to this Act is a party to an offence against this Act who—
- (a) actually commits the offence; or
 - (b) does or omits any act for the purpose of aiding any person to commit the offence; or
 - (c) abets any person in the commission of the offence; or
 - (d) incites, counsels, or procures any person to commit the offence; or
 - (e) conspires with 1 or more other persons to commit the offence.
- (2) If a person subject to this Act aids, abets, incites, counsels, or procures, or conspires with, any person who is not subject to this Act to do or omit any act which would be an offence against this Act if that person were subject to this Act, the act or omission shall, for the purposes of this section, but for no other purpose, be deemed to be an offence against this Act.
- (3) Where 2 or more persons subject to this Act form a common intention to prosecute an unlawful purpose, and to assist each other in that purpose, and one of them commits an offence against this Act, the other or others of them shall be a party or parties to the offence if the offence was committed in the prosecution of the common purpose and the commission of the offence was known by the last-mentioned person or persons to be a probable consequence of the common purpose.

- (4) Every person subject to this Act who is, by virtue of paragraphs (b) to (e) of subsection (1), a party to an offence against this Act (whether or not the offence is actually committed) commits an offence, and is liable to imprisonment for a term not exceeding 7 years if the maximum punishment for that offence exceeds 7 years' imprisonment, and, in any other case, is liable to the same punishment as if he had actually committed the offence.
- (5) Every person subject to this Act who incites, counsels, or procures any other person subject to this Act to be a party to an offence against this Act of which that other person is afterwards convicted is a party to that offence, although it may have been committed in a way different from that which was incited, counselled, or suggested.
- (6) Every person subject to this Act who incites, counsels, or procures any other person subject to this Act to be a party to an offence against this Act is a party to every offence which that other person commits in consequence of the incitement, counselling, or procurement, and which the first-mentioned person knew to be likely to be committed in consequence thereof.
- (7) For the purposes of this section, a person is capable of conspiring with his or her husband, wife, or civil union partner, or with any of them and any other person.

Compare: Naval Discipline Act 1957 s 41 (UK)

Section 75(7): substituted, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

76 Attempts to commit offences against this Act

- (1) Every person subject to this Act who, having an intent to commit an offence against any provision of this Act, does or omits an act for the purpose of accomplishing his object, is guilty of an attempt to commit the offence intended, whether in the circumstances it was possible to commit the offence or not.
- (2) The question as to whether an act done or omitted with intent to commit an offence against this Act is or is not only preparation for the commission of that offence, and too remote to constitute an attempt to commit it, is a question of law.
- (3) An act done or omitted with intent to commit an offence against this Act may constitute an attempt if it is immediately or proximately connected with the intended offence, whether or not there was any act unequivocally showing intent to commit that offence.
- (4) Every person who is convicted of an attempt to commit an offence against this Act is liable to the same punishment as if that person had actually committed the offence.

Compare: Naval Discipline Act 1957 s 40 (UK)

Section 76(4): substituted, on 26 December 1989, by section 5(6) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

77 Accessories after the fact

- (1) Every person subject to this Act commits an offence who is an accessory after the fact to any other offence against this Act, and—
 - (a) if the maximum punishment for that other offence is imprisonment for life, is liable to imprisonment for a term not exceeding 7 years, and, if the maximum punishment for that other offence is imprisonment for 10 or more years, to imprisonment for a term not exceeding 5 years; and
 - (b) in any other case, is liable to not more than half the maximum to which he could have been liable if he had committed that other offence.
- (2) For the purposes of this section, an accessory after the fact to an offence is one who, knowing any person to have been a party to the offence, receives, comforts, or assists that person or tampers with or actively suppresses any evidence against him, in order to enable him to escape after arrest or to avoid arrest or conviction.
- (3) No person subject to this Act who is married or in a civil union and whose spouse or civil union partner has been a party to an offence becomes an accessory after the fact to that offence by doing any act to which this section applies in order to enable the spouse or civil union partner (or the spouse, civil union partner, and any other person who has been a party to the offence) to escape after arrest or to avoid arrest or conviction.

Section 77(1)(a): amended, on 26 December 1989, by section 5(7) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

Section 77(3): substituted, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Part 3**Jurisdiction of Court Martial and punishment of offenders**

Part 3 heading: amended, on 1 July 2009, by section 21 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

78 Jurisdiction of Court Martial

Subject to the provisions of this Act, the Court Martial has jurisdiction to try any charge against a person subject to this Act in respect of an offence against this Act, whether committed in New Zealand or elsewhere.

Compare: Army Act 1955 s 85(1) (UK); Air Force Act 1955 s 85(1) (UK); Naval Discipline Act 1957 s 48(1) (UK)

Section 78 heading: amended, on 1 July 2009, by section 22(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 78: amended, on 1 July 2009, by section 22(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

79 Court Martial to pass 1 sentence only

Where the Court Martial convicts a person of more than 1 offence or, on convicting a person of 1 or more offences, agrees to take other offences which he admits to have committed into consideration when sentencing him, the Court shall pass only 1 sentence in respect of all the offences of which he has been convicted (including any offences which he has admitted):

provided that the sentence may, subject to the provisions of this Act, include more than 1 of the punishments prescribed by Schedule 2.

Compare: SR 1951/255 r 92; SR 1951/256 r 92

Section 79 heading: amended, on 1 July 2009, by section 23(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 79: amended, on 1 July 2009, by section 23(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 79: amended, on 1 July 2009, by section 23(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

80 Discretion of Court Martial as to punishment

- (1) Where under this Act a person is liable on conviction by the Court Martial to imprisonment for life or for any other term of imprisonment, the Court may sentence him to imprisonment for any shorter term, being, in the case of a person liable to imprisonment for life, a term not exceeding 14 years, or to 1 or more of the less severe punishments specified in Schedule 2.

(2) *[Repealed]*

- (3) No officer may be sentenced by the Court Martial to detention.

Compare: 1950 No 39 s 64(3); 1950 No 40 s 64(3); Naval Discipline Act 1957 s 43 (UK)

Section 80 heading: amended, on 1 July 2009, by section 24(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 80(1): amended, on 1 July 2009, by section 24(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 80(1): amended, on 1 July 2009, by section 24(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 80(2): repealed, on 26 December 1989, by section 5(1) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

Section 80(3): substituted, on 1 December 1983, by section 3(1) of the Armed Forces Discipline Amendment Act 1980 (1980 No 37).

Section 80(3): amended, on 1 July 2009, by section 24(4) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

81 Consent of Governor-General required before sentence of death can be carried out

[Repealed]

Section 81: repealed, on 26 December 1989, by section 5(1) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

81A Effect of period spent in custody before being sentenced

- (1) In determining the length of any sentence of imprisonment or detention the Court Martial shall not take into account any period during which the offender has been held in custody but shall specify any such period on the committal order.
- (2) This section shall not apply in respect of any time spent in custody that is unrelated to any charge before the Court Martial.
- (3) In this section, the term **custody** means detention in civil custody or under close arrest; but does not include open arrest.

Section 81A: inserted, on 27 May 1988, by section 5 of the Armed Forces Discipline Amendment Act 1988 (1988 No 89).

Section 81A heading: amended, on 27 September 2001, by section 3(1) of the Armed Forces Discipline Amendment Act 2001 (2001 No 55).

Section 81A(1): amended, on 1 July 2009, by section 25(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 81A(1): amended, on 27 September 2001, by section 3(2) of the Armed Forces Discipline Amendment Act 2001 (2001 No 55).

Section 81A(2): amended, on 1 July 2009, by section 25(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 81A(2): amended, on 27 September 2001, by section 3(3) of the Armed Forces Discipline Amendment Act 2001 (2001 No 55).

82 Dismissal from service and reduction in rank

- (1) Subject to the provisions of this Part, every officer sentenced by the Court Martial to imprisonment shall be deemed to be dismissed from Her Majesty's Service.
- (2) Where a rating, soldier, or airman is sentenced by the Court Martial to imprisonment, he may also be sentenced to be dismissed from Her Majesty's Service.
- (3) Where a non-commissioned officer is sentenced by the Court Martial to imprisonment or detention (whether or not such sentence includes dismissal from Her Majesty's Service), he shall be deemed to be reduced to the lowest rank to which he can be reduced, being such rank as may be prescribed.
- (4) *[Repealed]*
- (5) If a member of the Armed Forces is sentenced to dismissal from Her Majesty's Service and also to imprisonment or detention, or is dismissed from Her Majesty's Service by virtue of subsection (1), the dismissal shall not take effect until he has served the term of imprisonment or detention and any further sentence of imprisonment or detention imposed in accordance with subsection (1) or subsection (4) of section 178.

Compare: 1950 No 39 ss 64(7), (8), 141(2); 1950 No 40 ss 64(7), (8), 141(2); Army Act 1955 ss 71(7), 72(5), (6) (UK); Air Force Act 1955 ss 71(7), 72(5), (6) (UK); Naval Discipline Act 1957 ss 7, 44(1)–(4) (UK)

Section 82(1): amended, on 1 July 2009, by section 26(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 82(2): amended, on 1 July 2009, by section 26(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 82(3): substituted, on 1 January 1986, by section 19(1) of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Section 82(3): amended, on 1 July 2009, by section 26(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 82(4): repealed, on 1 July 2009, by section 26(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 82(5): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 82(5): amended, on 1 January 1986, by section 19(2) of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

83 Maximum term of detention

In no case shall any person be sentenced by the Court Martial to detention for a term exceeding 2 years.

Compare: Naval Discipline Act 1957 s 44(4) (UK)

Section 83: amended, on 1 July 2009, by section 27 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

84 Reduction in rank and forfeiture and stay of seniority of service

- (1) If the Court Martial sentences a member of the Armed Forces to reduction in rank, forfeiture of seniority, or stay of seniority it may reduce his rank, or forfeit or stay his seniority, to such extent and subject to such conditions as may be prescribed by regulations made under this Act.
- (2) Where the Court Martial reduces the rank of any member of the Armed Forces convicted by it, it shall specify the period of seniority to be credited to him in the rank to which he is reduced.
- (3) Subsections (1) and (2), so far as they are applicable and with any necessary modifications, apply to a reduction in rank or stay of seniority imposed on a person under Part 5 or 5A.

Compare: 1950 No 39 s 64(1)(e), (f), (2)(e), (f), (11); 1950 No 40 s 64(1)(e), (f), (2)(e), (f), (11); Naval Discipline Act 1957 s 44(7) (UK)

Section 84(1): amended, on 1 July 2009, by section 28(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 84(1): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 84(2): amended, on 1 July 2009, by section 28(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 84(2): amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 84(3): added, on 1 July 2009, by section 28(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

85 Punishment by fine

- (1) Every fine imposed for an offence against this Act shall be a specified amount of money.
- (2) Any fine imposed for an offence against this Act may be recovered from the offender—
 - (a) if he is a member of the Armed Forces, by means of deductions from pay in accordance with regulations made under this Act; or
 - (b) in the case of any other person subject to this Act who is paid by the Crown in right of New Zealand, by means of deductions from his salary or wages, or from any other emoluments payable to him.
- (3) Except when imposing punishment on a person convicted of a civil offence under section 74, the Court Martial shall not impose a fine exceeding—
 - (a) in the case of a member of the Armed Forces, an amount equal to his basic pay for 84 days; or
 - (b) in the case of any other person, \$3,000.
- (4) Subsections (1) and (2), so far as they are applicable, apply to a fine imposed on a person by any military tribunal.

Compare: 1950 No 39 s 64(1)(h), (2)(h); 1950 No 40 s 64(1)(h), (2)(h); SR 1951/272 rr 66(2), 67(1)(c); SR 1968/233 rr 14(c), 15(1)(c); Naval Discipline Act 1957 s 43(1)(i) (UK)

Section 85(2)(a): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 85(3): amended, on 1 July 2009, by section 29(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 85(3)(a): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 85(3)(b): amended, on 1 January 1986, by section 20 of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Section 85(4): added, on 1 July 2009, by section 29(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

86 Compensation for loss of or damage to property

- (1) Subject to the provisions of this section, on convicting any person for an offence against this Act, the Court Martial may, in addition to or in substitution for any punishment that it has power to impose, order the offender to pay to any person (including the Crown in right of New Zealand) such sum as it thinks just by way of compensation for any emotional harm, or for any loss or destruction of or damage to property, or for any expense, suffered by the last-mentioned person through or by means of the offence.
- (2) Where on the arrest of the offender any money was found in his possession, the Court Martial may, in its discretion, if it is satisfied that the money was obtained through or by means of the offence, order the whole or any part of the money to be applied to any such payment.

- (3) The provisions of sections 85 (except subsection (3)) and 185 shall apply with respect to any payment ordered under this section as if it were a fine imposed for an offence.
- (3A) When determining the amount of compensation to be paid, the Court Martial must take into account any offer, agreement, response, measure, or action as described in section 10 of the Sentencing Act 2002.
- (4) Except as provided in subsection (2), the total amount of compensation awarded by the Court Martial shall not exceed—
 - (a) in the case of a member of the Armed Forces, an amount equal to his basic pay for 28 days; or
 - (b) in the case of any other person, \$1,000.
- (5) Any order under this section shall not affect the right of any person to recover by civil proceedings any sum in excess of the amount recovered under the order.

Compare: Naval Discipline Act 1957 s 76 (UK)

Section 86(1): amended, on 1 July 2009, by section 30(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 86(1): amended, on 7 May 1999, by section 3 of the Armed Forces Discipline Amendment Act 1999 (1999 No 28).

Section 86(2): amended, on 1 July 2009, by section 30(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 86(3A): inserted, on 1 July 2009, by section 30(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 86(4): amended, on 1 July 2009, by section 30(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 86(4)(a): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 86(4)(b): amended, on 1 January 1986, by section 21 of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

87 Restitution of property

- (1) Where the Court Martial convicts anyone of an offence against sections 57 to 60 and section 74 (being an offence relating to the unlawful acquisition or possession of property), the Court may, in addition to or in substitution for any punishment that it may impose, order the whole or any part of any such property found in his possession, or in the possession of any other person acting on his behalf, to be delivered to such person as appears to be entitled to it.
- (2) If any property (other than money) that appears to the Court Martial to have been obtained by the conversion or exchange of any property unlawfully obtained is found as aforesaid, the Court may order that the property so found be delivered to such person as appears to be entitled to it.
- (3) Where an order is made under subsection (1), and it appears to the Court Martial that a purchaser has bought the property in good faith and without know-

ledge that it was unlawfully acquired or possessed, the Court may order that on the restitution of the property the offender shall pay to the purchaser a sum not exceeding the amount paid by him. The provisions of subsections (2) to (5) of section 86 shall apply to any such order.

- (4) Where anyone is convicted of an offence against sections 57 to 60, and it appears to the Court Martial convicting him that the property has been pawned to a pawnbroker, the Court may order the pawnbroker to deliver it to the person appearing to the Court to be entitled to it, either on payment or without payment to the pawnbroker of the amount of the loan or any part of it, as the Court in all the circumstances of the case thinks just:

provided that before an order is made for the delivery of the property without payment to the pawnbroker, he shall be given the opportunity to be heard.

- (5) If the person in whose favour any order under subsection (4) is made thereby obtains delivery or possession of the property, he shall not afterwards question the validity of the pawn.
- (6) Except as provided in subsection (5), no order made under this section shall have any further effect than to change possession of the property; and no such order shall prejudice any right of property, or any right of action in respect of any property, existing or acquired in it either before or after the offence was committed.
- (7) Subsections (4) and (5) shall apply only in respect of pawnbrokers carrying on business in New Zealand, or in places over which New Zealand is for the time being exercising sovereignty, or in respect of pawnbrokers over which New Zealand or the Armed Forces or any part of the Armed Forces has jurisdiction by virtue of any treaty or agreement with the country in which the pawnbrokers are carrying on business.

Compare: 1950 No 39 s 135; 1950 No 40 s 135; Army Act 1955 s 138(1)–(8) (UK); Air Force Act 1955 s 138(1)–(8) (UK); Naval Discipline Act 1957 s 76 (UK)

Section 87(1): amended, on 1 July 2009, by section 31(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 87(1): amended, on 1 July 2009, by section 31(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 87(2): amended, on 1 July 2009, by section 31(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 87(2): amended, on 1 July 2009, by section 31(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 87(2): amended, on 1 December 1983, by section 4 of the Armed Forces Discipline Amendment Act 1980 (1980 No 37).

Section 87(3): amended, on 1 July 2009, by section 31(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 87(3): amended, on 1 July 2009, by section 31(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 87(4): amended, on 1 July 2009, by section 31(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 87(4): amended, on 1 July 2009, by section 31(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

87A Suspension of compensation and restitution orders made by Court Martial, etc

- (1) Where the Court Martial makes an order for compensation under section 86, or an order for restitution under section 87 (with or without compensation under subsection (3) of that section), or convicts anyone of an offence to which section 152(1) of the Contract and Commercial Law Act 2017 applies, the operation of that order or the provisions of that subsection shall be suspended to such extent as may be prescribed in the rules of procedure pending—
 - (a) the completion of such proceedings; or
 - (b) the expiration of such period; or
 - (c) the giving of such consent; or
 - (d) the occurrence of such event or circumstance—as may be so prescribed.
- (2) Without limiting section 160 of this Act or section 19 of the Court Martial Appeals Act 1953, where the operation of any such order or the operation of the said provisions is so suspended, the order or provisions shall not take effect if the conviction is quashed on review or appeal.
- (3) Subsection (1), with any necessary modifications, applies to—
 - (a) a finding of guilty made by a disciplinary officer, being a finding to which section 152(1) of the Contract and Commercial Law Act 2017 applies:
 - (b) an order for compensation or restitution made by a disciplinary officer under section 86 or 87.
- (4) If the operation of an order for compensation or restitution or the operation of section 152(1) of the Contract and Commercial Law Act 2017 is suspended by virtue of subsection (3), the order or provisions must not take effect if the finding of guilty is quashed on appeal.
- (5) Subsection (4) does not limit section 134.

Section 87A: inserted, on 1 December 1983, by section 5 of the Armed Forces Discipline Amendment Act 1980 (1980 No 37).

Section 87A heading: amended, on 1 July 2009, by section 32(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 87A(1): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

Section 87A(1): amended, on 1 July 2009, by section 32(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 87A(2): amended, on 1 July 2009, by section 32(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 87A(3): added, on 1 July 2009, by section 32(4) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 87A(3)(a): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

Section 87A(4): added, on 1 July 2009, by section 32(4) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 87A(4): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

Section 87A(5): added, on 1 July 2009, by section 32(4) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Part 4

Arrest and search

88 Arrest without warrant

- (1) A member of the Armed Forces may, without warrant, arrest a person subject to this Act whom he is empowered to arrest in accordance with this section if—
 - (a) he finds the person committing an offence against this Act; or
 - (b) he has reasonable grounds to suspect that the person is committing or has committed such an offence.
- (2) For the purposes of this section—
 - (a) an officer is empowered to arrest—
 - (i) a rating, soldier, or airman; or
 - (ii) an officer who is not his superior officer; or
 - (iii) any officer (though of higher rank), if the offence or suspected offence is mutiny or the officer is behaving in a disorderly or violent manner:
 - (b) a non-commissioned officer is empowered to arrest—
 - (i) a rating, soldier, or airman who is not his superior officer; or
 - (ii) any rating, soldier, or airman (though of higher rank) if the offence or suspected offence is mutiny or the rating, soldier, or airman is behaving in a disorderly or violent manner:
 - (c) a provost officer, or a person lawfully exercising authority under or on behalf of a provost officer, is empowered to arrest any person subject to this Act:

provided that an officer may be arrested under paragraph (c) only by or on the order of a provost officer.
- (3) In the exercise of his power of arrest over a person, a member of the Armed Forces may—
 - (a) arrest the person himself; or
 - (b) order that person into arrest; or
 - (c) give an order for that person's arrest,—

and it shall be the duty of every member of the Armed Forces to whom any such order has been given to carry out the order forthwith.

- (4) A member of a force of another State that is for the time being declared to be serving together with a New Zealand force under section 23B of the Defence Act 1990 has over members of the New Zealand force the powers of arrest of a member of the Armed Forces of a relative rank.

Compare: 1950 No 39 s 65; 1950 No 40 s 65; Army Act 1955 s 74 (UK); Air Force Act 1955 s 74 (UK); Naval Discipline Act 1957 s 45 (UK)

Section 88(1): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 88(3): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 88(4): added, on 1 July 2004, by section 26 of the Visiting Forces Act 2004 (2004 No 59).

89 Arrest under warrant

- (1) Where the commanding officer of any person subject to this Act, or an officer superior in command to that officer, has reasonable grounds to suspect that that person has committed an offence against this Act, that commanding officer or officer superior in command, as the case may be, may issue a warrant for the arrest of that person.
- (2) Every warrant issued under subsection (1) shall specify the name of the person to be arrested and the offence that he is alleged to have committed.
- (3) A constable may, in the execution of a warrant issued under subsection (1), arrest the person named in it.
- (4) On making any such arrest, the constable shall, as soon as practicable, deliver that person into service custody to be dealt with in accordance with this Act.
- (5) Any such warrant may be addressed to all constables and shall be valid if it purports to be issued pursuant to this section.
- (6) Any such warrant may be executed by a constable whether it has been delivered to him or not, and on any day of the week.
- (7) The provisions of this section are in addition to those of sections 90 to 92.

Compare: 1950 No 39 s 66; 1950 No 40 s 66; Naval Discipline Act 1957 s 103 (UK)

Section 89(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 89(4): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 89(5): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 89(6): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

89A Arrest of members of visiting forces

- (1) If the officer commanding a visiting force has reasonable grounds to suspect that a member of the force, a member of its civilian component, or a dependant

has committed an offence against the service law of the sending State, the officer may issue a warrant for the arrest of that person.

- (2) If a warrant is issued under subsection (1),—
 - (a) subsections (2), (3), (5), and (6) of section 89 apply; and
 - (b) the warrant must specify the maximum punishment for the offence under the service law of the sending State.
- (3) A constable who arrests a person in execution of a warrant issued under subsection (1) must, as soon as practicable, deliver that person into the custody of the visiting force.
- (4) The provisions of this section are in addition to those of section 92A.

Section 89A: inserted, on 1 July 2004, by section 26 of the Visiting Forces Act 2004 (2004 No 59).

Section 89A(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

90 Arrest of spies, etc, abroad

- (1) Where any provost officer or any other member of the Armed Forces, or any person exercising authority under a provost officer or on his behalf, finds any person outside New Zealand committing an offence against section 26 or section 27 (which sections relate to spying and seduction from allegiance), or whom he has reasonable grounds to suspect is committing or has committed any such offence, he may arrest that person without warrant.
- (2) On making an arrest under subsection (1), the provost officer, member of the Armed Forces, or person exercising authority under a provost officer shall, as soon as practicable, deliver the arrested person into service custody to be dealt with in accordance with this Act.

Compare: Naval Discipline Act 1957 s 95 (UK)

Section 90(1): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 90(2): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

91 Arrest of person unlawfully at large

- (1) Where a constable has reasonable grounds to suspect that a person who has been sentenced under this Act to imprisonment or detention is unlawfully at large, he may arrest that person without warrant.
- (2) Where any person serving a sentence of imprisonment or detention imposed under this Act has been temporarily released from that imprisonment or detention in accordance with orders issued by or under the authority of the Chief of Defence Force and a constable has reasonable cause to suspect that that person has failed to comply with any of the conditions subject to which his release was ordered, the constable may arrest him without warrant.
- (3) On making any such arrest, the constable shall as soon as practicable deliver the arrested person into service custody or to the officer in charge of the place

where he was imprisoned or detained before he escaped or was temporarily released.

Compare: 1950 No 39 s 73(6); 1950 No 40 s 73(6); Naval Discipline Act 1957 s 104 (UK)

Section 91(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 91(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 91(2): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 91(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

92 Arrest of deserters and absentees

- (1) Where a constable has reasonable grounds to suspect that any member of the Armed Forces is committing the offence of desertion or absence without leave, he may arrest that member without warrant.
- (2) On making an arrest under subsection (1), the constable shall as soon as practicable deliver the member into service custody to be dealt with in accordance with this Act.

Compare: 1950 No 39 s 67(a); 1950 No 40 s 67(a); Army Act 1955 s 186 (UK); Air Force Act 1955 s 186 (UK); Naval Discipline Act 1957 s 105 (UK)

Section 92(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 92(1): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 92(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 92(2): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

92A Arrest of deserters from other armed forces

- (1) If the Government of a State has specifically requested that a person (other than a New Zealand citizen) who is alleged to be illegally absent from the armed forces of the State be apprehended or dealt with under this section by New Zealand authorities,—
 - (a) a warrant for the arrest of the person may be issued under section 89 as if the person had committed the offence of desertion or absence without leave under this Act;
 - (b) section 89 applies with the necessary modifications;
 - (c) the warrant must specify the maximum punishment for the offence under the service law of the sending State.
- (2) A person who is delivered into service custody under a warrant issued under subsection (1) must, as soon as practicable, be handed over to the authorities of the other State at such place in New Zealand as may be agreed.
- (3) The authorities of the other State into whose custody a person is delivered under this section may detain the person and may remove the person from New

Zealand, but nothing in this subsection limits any other powers that the authority may have in relation to the person.

- (4) Section 101(3) to (5) does not apply to any person to whom subsection (2) applies.

Section 92A: inserted, on 1 July 2004, by section 26 of the Visiting Forces Act 2004 (2004 No 59).

Section 92A(4): amended, on 7 July 2010, by section 5 of the Armed Forces Discipline Amendment Act 2010 (2010 No 48).

93 Detention in civil custody of arrested persons

- (1) Notwithstanding anything to the contrary in sections 89, 89A, 91, 92, and 92A, where a constable arrests any person in accordance with any of those sections, he may detain the arrested person at a Police station, or some other place provided for the holding of persons in custody, for such period, but no longer, as may be reasonably necessary to enable the arrested person to be delivered into service custody or, if the arrested person is one to whom section 91 relates, to the officer in charge of the place where he was imprisoned or detained before he escaped or was temporarily released.
- (2) Where a person is in service custody when charged with, or with a view to his being charged with, an offence against this Act, it shall be the duty of the prison manager of a prison, or of the person having charge of any Police station or other place in which prisoners may be lawfully detained, upon delivery to him of a written order purporting to be signed by the commanding officer of the person in custody, to receive that person into his custody for a period not exceeding 7 days.
- (3) The provisions of subsection (1), with the necessary modifications, apply to any person arrested under section 89A or section 92A.
- (4) The provisions of subsection (2), with the necessary modifications, apply to a member of a visiting force, a member of its civilian component, or a dependant who is in the custody of a visiting force when charged with, or with a view to being charged with, an offence against the service law of the sending State.

Compare: Army Act 1955 ss 190, 202 (UK); Air Force Act 1955 ss 190, 202 (UK); Naval Discipline Act 1957 s 103 (UK)

Section 93(1): amended, on 1 July 2004, by section 26 of the Visiting Forces Act 2004 (2004 No 59).

Section 93(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 93(2): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 93(3): added, on 1 July 2004, by section 26 of the Visiting Forces Act 2004 (2004 No 59).

Section 93(4): added, on 1 July 2004, by section 26 of the Visiting Forces Act 2004 (2004 No 59).

93A Detention in service custody of person charged by civil authority

- (1) In this section—

treaty means an agreement between New Zealand and any other country requiring, providing for, or relating to the presence in that country of any persons subject to this Act

treaty country, in relation to a treaty, means any country (other than New Zealand) that is a party to the treaty.

- (2) This section applies to every case where any person subject to this Act (in this section referred to as the defendant)—
- (a) is to be tried for an offence by any court of competent jurisdiction in a treaty country, and, by virtue of the treaty or of any order of the court made in accordance with the terms of the treaty, the defendant is to be held in service custody pending his trial; or
 - (b) is to be tried for an offence by any court of competent jurisdiction in New Zealand or elsewhere, and the court has ordered the release of the defendant from civil custody pending his trial on an undertaking given by any person authorised in that behalf in accordance with Defence Force Orders to ensure that the defendant appears before the court at the appointed time to answer the charge against him.
- (3) In any case to which this section applies, the defendant may be arrested and delivered into service custody, and detained in service custody pending his trial.
- (4) Nothing in subsections (3) to (7) of section 101 shall apply in respect of any case to which this section applies.
- (5) Except as provided in subsection (4), the provisions of this Part, with all necessary modifications, shall apply where any person is arrested, delivered into service custody, and detained in service custody under this section.

Section 93A: inserted, on 1 December 1983, by section 7 of the Armed Forces Discipline Amendment Act 1981 (1981 No 48).

Section 93A(2)(b): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

93B Detention in service custody of members of visiting force

- (1) A person to whom this subsection applies may be delivered into service custody and detained in service custody pending his or her trial.
- (2) Subsection (1) applies to a member of a visiting force, a member of its civilian component, or a dependant who has been arrested for an offence against—
- (a) the service law of the sending State; or
 - (b) the law of New Zealand.
- (3) The provisions of subsections (3) to (7) of section 101 do not apply to any person to whom subsection (1) applies.

Section 93B: inserted, on 1 July 2004, by section 26 of the Visiting Forces Act 2004 (2004 No 59).

93C Police not to deliver custody of arrested person without consent of Minister of Justice in certain cases

- (1) This section applies if a person is arrested or held in custody by the Police under section 89A or section 92A or section 93B in respect of an offence against the law of another State that is subject to—
 - (a) a sentence of death; or
 - (b) a punishment that would, if carried out by a member of the Armed Forces of New Zealand, constitute an offence against the Crimes of Torture Act 1989.
- (2) If this section applies, the Police must not deliver that person into the custody of the visiting force or, as the case may be, the authorities of the other State without the written consent of the Minister of Justice.

Section 93C: inserted, on 1 July 2004, by section 26 of the Visiting Forces Act 2004 (2004 No 59).

94 Reasonable force may be used to arrest or search

Where any person arrests or searches any person pursuant to this Act, he may use only such force as may be reasonably necessary to carry out the arrest or search.

95 Search in connection with suspected offence

- (1) If a commanding officer has reasonable grounds to suspect that a person subject to this Act has in his possession any property which has been unlawfully obtained or any article or thing which is or may be evidence relating to the commission of an offence (whether against this Act or otherwise), the commanding officer may—
 - (a) detain and search that person; or
 - (b) search any premises within the limits of his command occupied or used by that person; or
 - (c) take possession of any property or any article or thing previously referred to in this subsection, in which event the property, article, or thing shall, subject to this section, be disposed of in accordance with section 99.
- (2) The powers conferred on a commanding officer by subsection (1) may be exercised by him personally or by any person authorised or ordered by him in that behalf.
- (3) Where any person is authorised or ordered by or under this section to search any premises, he may, so far as it is necessary to do so (but no further), break into those premises and seize any property or any article or thing referred to in subsection (1), and for that purpose may break open any container found on those premises which he has reasonable grounds to suspect contains any such property, article, or thing.

- (4) Where, as the result of a search of premises, a person has suffered economic loss by reason of damage to or destruction or loss of any property belonging to him or in which he has a special property or interest, and—
- (a) no evidence of an offence against this Act is found; or
 - (b) the suspected offender is acquitted or not proceeded against; or
 - (c) the property belongs to a person other than the suspected offender; or
 - (d) a person other than the suspected offender has a special property or interest in the property—

the Chief of Defence Force shall, at his option and without further appropriation than this section, either cause the property to be repaired or replaced, or pay to the person suffering the economic loss such amount as he considers necessary to enable that person to have the property repaired or replaced.

- (5) For the purposes of this section, the term **premises** includes any defence area, ship, vehicle, or aircraft.

Section 95(4): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

96 Searches to prevent smuggling, etc

- (1) Where any commanding officer has, in order to discourage smuggling, or trafficking in duty-free goods or in controlled drugs, or illegal possession of controlled drugs, established a checking area or checkpoint within the limits of his command and ordered any member of the Armed Forces under his command to carry out searches, that member may detain and search—
- (a) any person subject to this Act (including any clothing or any other article of any description worn by him) who is within the checking area or about to pass through the checkpoint, as the case may be; or
 - (b) any ship, vehicle, or aircraft, or any container, receptacle, or parcel, or any other thing whatsoever, that is in the possession or under the control of any such person who is within the checking area or about to pass through the checkpoint.

- (2) If on any such search a member of the Armed Forces has reasonable grounds to suspect that any goods in the possession of the person searched are being smuggled or trafficked, or are controlled drugs, he may take possession of them, in which event they shall be disposed of in accordance with section 99.

Section 96(1): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 96(1): amended, on 1 January 1986, by section 22 of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Section 96(2): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 96(2): amended, on 27 May 1988, by section 8 of the Armed Forces Discipline Amendment Act 1988 (1988 No 89).

97 Customary powers of search not affected

The powers conferred on commanding officers by sections 95 and 96 are in addition to the inherent powers of search exercisable by commanding officers under service custom.

98 Search of person in service custody, etc

- (1) Where any person has been arrested in accordance with this Act, the person making the arrest, or any person acting under his direction, may search the arrested person and take from him any thing found on him or in his possession.
- (2) Where any person subject to this Act is in service custody, a provost officer, or any other member of the Armed Forces to whose charge that person has been committed, or any person acting under the direction of any such provost officer or other member of the Armed Forces, may search the person in custody and take from him any thing found on him or in his possession.
- (3) Subject to subsection (4), where an officer is to be searched pursuant to this Part, that search may be carried out only by or on the order of another officer.
- (4) Where a woman is to be searched pursuant to this Part, that search may be carried out only by another woman; and where a man is to be searched pursuant to this Part, that search may be carried out only by another man.

Section 98(2): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

99 Disposal of property taken in search

- (1) Where any property is taken from the possession of any person as the result of a search carried out under this Part, the following provisions shall apply:
 - (a) if the property is not required as evidence in proceedings in respect of an offence against this Act, or if the Court Martial or, as the case may be, a disciplinary officer finds that the property was not used in the commission of any such offence, it shall be returned to the person from whose possession it was taken or to such other person as may lawfully be entitled to it:
 - (b) subject to section 87 and except as provided in section 52, any property found by the Court Martial or, as the case may be, a disciplinary officer to be used in the commission of an offence against this Act and appearing to that court or officer to belong to the offender or to be in his possession with the consent of its owner shall, if the Court or officer so directs, be forfeited to the Crown; and in that event the Chief of Defence Force shall cause the property to be sold either by public auction or private contract, and, on the completion of any such sale, shall cause the proceeds of the sale to be paid into a Crown Bank Account:

provided that if it would, apart from this section, be unlawful to sell the property, or if it appears to the Chief of Defence Force that the property has no

value, he shall cause it to be destroyed or to be otherwise disposed of in such manner as he thinks fit.

- (2) An order of forfeiture made under subsection (1)(b) must be treated, for the purposes of—
- (a) Part 5A, as a punishment imposed on the offender; and
 - (b) an appeal to the Court Martial Appeal Court, as part of the sentence imposed on the offender.

Section 99(1)(a): amended, on 1 July 2009, by section 33(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 99(1)(b): amended, on 1 July 2009, by section 33(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 99(1)(b): amended, on 1 July 2009, by section 33(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 99(1)(b): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

Section 99(1)(b): amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 99(1) proviso: amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 99(2): substituted, on 1 July 2009, by section 33(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

100 Duty of persons arresting

Where a person subject to this Act has been placed under arrest pursuant to this Part, the person ordering the arrest, or, if no such order has been given, the person making the arrest, shall ensure that, as soon as practicable after the arrest, and in any event not later than 24 hours thereafter, the person arrested is informed of the offence for which the arrest was made.

101 Delay in dealing with person after arrest

- (1) Where any person has been committed to service custody, the person who committed him shall cause to be delivered at the time of the committal, or, if it is not practicable to do so at that time, not later than 24 hours afterwards, to the person to whose custody the arrested person has been committed a report signed by himself stating the offence that the arrested person is alleged to have committed.
- (2) The person to whose custody any such arrested person is committed shall, as soon as practicable after the time of committal, or, if it is not practicable to do so at that time, not later than 24 hours afterwards, notify in writing to the officer to whom it is his duty to report—
- (a) so far as may be known to him,—
 - (i) the name of the arrested person and the offence that he is alleged to have committed; and

- (ii) the name and the rank or other description of the person who is making the allegation; and
 - (b) if he has received it, the report required by subsection (1).
- (3) Where a person subject to this Act has been placed under arrest in respect of any alleged offence, his commanding officer shall, within 48 hours after the arrest, unless it is impracticable to do so, ensure either—
 - (a) that proceedings for the hearing and determination of the allegation are set in motion; or
 - (b) that he is released from arrest.
- (4) If any person subject to this Act remains in service custody after the expiration of 4 days from the date of his or her arrest without the alleged offence being referred to the Director of Military Prosecutions for trial by the Court Martial or without him or her being tried summarily, or otherwise dealt with, under Part 5, his or her commanding officer must make a report in writing to the Judge Advocate General stating the reasons for the delay.
- (5) The commanding officer must make a report in writing to the Judge Advocate General stating the reasons for the delay at the conclusion of each subsequent period of 8 days, if the person is still held in service custody without the alleged offence being referred to the Director of Military Prosecutions for trial by the Court Martial or without him or her being tried summarily, or otherwise dealt with, under Part 5.
- (6) *[Repealed]*
- (7) *[Repealed]*

Compare: 1950 No 39 s 65; 1950 No 40 s 65; Army Act 1955 s 75 (UK); Air Force Act 1955 s 75 (UK); Naval Discipline Act 1957 s 46 (UK)

Section 101(4): substituted, on 1 July 2009, by section 34 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 101(5): substituted, on 1 July 2009, by section 34 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 101(6): repealed, on 1 July 2009, by section 34 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 101(7): repealed, on 1 July 2009, by section 34 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

101A Judge Advocate General may grant bail pending trial

- (1) This section applies to a person in service custody in relation to whom the Judge Advocate General has received a report under section 101.
- (2) The person in service custody is not entitled to bail as of right.
- (3) The Judge Advocate General may—
 - (a) grant bail to the person in service custody:
 - (b) impose any conditions of bail that the Judge Advocate General thinks fit.

- (4) In determining whether to grant bail under this section, the Judge Advocate General—
- (a) must take into account the considerations set out in section 8(1) of the Bail Act 2000 and all of the following considerations:
 - (i) the seriousness of the alleged offence;
 - (ii) whether there are urgent and exceptional circumstances that favour the grant of bail;
 - (iii) the effect on service discipline of remanding the person on bail; and
 - (aa) must take into account any views of a victim to which Part 10A applies that are conveyed in accordance with section 198D; and
 - (b) may take into account the considerations set out in section 8(2) of the Bail Act 2000; and
 - (c) must not grant bail unless satisfied on the balance of probabilities that it would be in the interests of justice in the particular case to do so.

Section 101A: inserted, on 1 July 2009, by section 35 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 101A(4)(a): amended, on 30 November 2018, by section 6(1) of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Section 101A(4)(a): amended, on 5 December 2013, by section 4 of the Armed Forces Discipline Amendment Act 2013 (2013 No 108).

Section 101(4)(aa): inserted, on 30 November 2018, by section 6(2) of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

101B Issue of warrant to arrest person absconding or breaching bail condition

- (1) A Judge may issue a warrant in the prescribed form for the arrest of a person who has been released on bail under section 101A if—
- (a) the Judge is satisfied by evidence on oath that—
 - (i) for the person has absconded or is about to abscond for the purpose of evading justice; or
 - (ii) the person has contravened or failed to comply with any condition of bail; or
 - (b) the person—
 - (i) does not attend personally at the time and place specified in the grant of bail; or
 - (ii) does not attend personally at any time and place to which, during the course of the proceedings, the hearing has been adjourned.
- (2) The warrant—
- (a) must be directed to every provost officer and every constable; and
 - (b) may be executed by—

- (i) a provost officer;
 - (ii) a person lawfully exercising authority under or on behalf of a provost officer;
 - (iii) a constable.
- (3) For the purpose of executing the warrant, a person referred to in subsection (2)(b) may, at any time, enter on to any premises, by force if necessary, if he or she has reasonable grounds to believe that the person against whom the warrant is issued is on those premises.
- (4) The person executing the warrant—
- (a) must have the warrant with him or her; and
 - (b) must produce it on initial entry and, if requested, at any subsequent time; and
 - (c) if he or she is not in uniform, produce evidence that he or she is one of the persons referred to in subsection (2)(b).

Section 101B: inserted, on 1 July 2009, by section 35 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

101C Person arrested under warrant for absconding or breaching bail condition must be brought before Judge Advocate General

- (1) A person who is arrested under a warrant issued under section 101B must be brought before the Judge Advocate General as soon as possible.
- (2) The Judge Advocate General must reconsider the question of bail if satisfied that the person—
- (a) had absconded or was about to abscond; or
 - (b) had contravened or failed to comply with any condition of bail.

Section 101C: inserted, on 1 July 2009, by section 35 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

101D Restrictions in relation to midshipmen, officer cadets, and chaplains

- (1) A midshipman, an officer cadet, or a chaplain may not—
- (a) exercise the powers of arrest conferred by section 88 or 90; or
 - (b) issue or execute a warrant for arrest under section 89.
- (2) A chaplain may not be—
- (a) ordered to arrest a person subject to this Act under any of sections 88, 89, and 90; or
 - (b) ordered to carry out a search under section 96; or
 - (c) directed to search any arrested person under section 98.
- (3) A chaplain may not be authorised or ordered by a commanding officer to exercise any of the powers conferred on a commanding officer by section 95(1).

Section 101D: inserted, on 1 July 2009, by section 35 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Part 4A

Director of Military Prosecutions

Part 4A: inserted, on 1 July 2009, by section 36 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

101E Appointment of Director of Military Prosecutions

- (1) The Governor-General may, by warrant, appoint the Director of Military Prosecutions.
- (2) A person must not be appointed under subsection (1) unless he or she—
 - (a) is an officer; and
 - (b) has held a practising certificate as a barrister or solicitor of the High Court for at least 7 years.
- (3) The Chief of Defence Force must arrange for notice of an appointment under subsection (1) to be published in the *Gazette* as soon as practicable after the appointment.

Section 101E: inserted, on 1 July 2009, by section 36 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

101F Functions and duties of Director of Military Prosecutions

The functions and duties of the Director of Military Prosecutions are—

- (a) to determine whether an accused is to be committed for trial in the Court Martial:
- (b) to decide on what charge an accused should be tried:
- (c) to prepare and certify the charge sheet or charge sheets against an accused:
- (d) to give a copy of the certified charge sheet to the accused (including any amended charge sheet so certified):
- (e) to lay the charge sheet or charge sheets before the Registrar of the Court Martial:
- (f) if 2 or more persons are accused, to direct whether they are to be tried jointly or separately:
- (g) to appoint counsel for the prosecution:
- (h) to perform any other functions or duties imposed by this Act or any other enactment.

Section 101F: inserted, on 1 July 2009, by section 36 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

101G Power of Director of Military Prosecutions to direct investigation

- (1) The Director of Military Prosecutions may direct a provost officer to—
 - (a) investigate any matter that the Director considers to be relevant to a charge referred to the Director; or
 - (b) arrange the investigation of that matter.
- (2) A provost officer must comply with a direction given under subsection (1).

Section 101G: inserted, on 1 July 2009, by section 36 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

101H Power of Director of Military Prosecutions to stay proceedings

- (1) The Director of Military Prosecutions may, on the application of a disciplinary officer or on his or her own motion, issue an order that the proceedings against an accused under this Act be stayed for the period that he or she thinks fit.
- (2) The Director of Military Prosecutions must provide a copy of the order, together with his or her written reasons for the stay, to—
 - (a) the Solicitor-General; and
 - (b) the disciplinary officer; and
 - (c) the accused in question.

Section 101H: inserted, on 1 July 2009, by section 36 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

101I Director of Military Prosecutions to perform functions and duties, and exercise powers, independently of ministerial control and of command

- (1) In performing his or her functions and duties, and exercising his or her powers, the Director of Military Prosecutions is not subject to—
 - (a) the control of the Minister; or
 - (b) the command of any other officer.
- (2) Subsection (1) applies despite sections 7 and 8 of the Defence Act 1990.
- (3) To avoid doubt, subsection (1) does not limit or affect the command relationship that exists between the Director of Military Prosecutions and any member of the Armed Forces in respect of any of the Director's functions and duties other than those that are specified in section 101F.

Section 101I: inserted, on 1 July 2009, by section 36 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

101J Director of Military Prosecutions must report annually to Attorney-General on performance of functions and duties, and exercise of powers

The Director of Military Prosecutions must, not later than 30 June in each year, report to the Attorney-General on the performance of any functions and duties, and the exercise of any powers, imposed or conferred on the Director under this Act.

Section 101J: inserted, on 1 July 2009, by section 36 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

101K Director of Military Prosecutions must act under general supervision of Solicitor-General

- (1) In performing functions or duties, or exercising powers, imposed or conferred by this Act, by the Court Martial Act 2007, or by the Court Martial Appeals Act 1953, the Director of Military Prosecutions must act under the general supervision of the Solicitor-General in the same manner and to the same extent as a Crown Solicitor.
- (2) However, subsection (1) does not apply if the Director of Military Prosecutions considers that compliance with that subsection is or would be inconsistent with any provisions of this Act, the Court Martial Act 2007, or the Court Martial Appeals Act 1953.

Section 101K: inserted, on 1 July 2009, by section 36 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

101L Delegation of functions, duties, or powers of Director of Military Prosecutions

- (1) The Director of Military Prosecutions may, in writing, either generally or particularly, delegate any of the functions, duties, and powers of the Director under this Act, except this power of delegation, to a person who—
 - (a) is an officer; and
 - (b) has held a practising certificate as a barrister or solicitor of the High Court for at least 7 years.
- (2) Subject to any general or special directions given or conditions imposed by the Director of Military Prosecutions, the person to whom any functions, duties, or powers are delegated under this section may perform and exercise them in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by delegation.
- (3) The power of the Director of Military Prosecutions to delegate under this section does not limit any power of delegation conferred on the Director by any other Act or prevent the Director delegating to any other person, under that power, any of the functions, duties, and powers of the Director under this Act.
- (4) Every person who appears to be acting under a delegation under this section is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.
- (5) A delegation under this section does not—
 - (a) affect or prevent the exercise of any power or the performance of any function or duty by the Director of Military Prosecutions; or
 - (b) affect the responsibility of the Director of Military Prosecutions for the actions of any person acting under the delegation.

Section 101L: inserted, on 1 July 2009, by section 36 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Part 5

Investigation and summary trial of charges

Part 5: substituted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Subpart 1—General provisions

Subpart 1: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

102 Investigation of charges

- (1) If it is alleged that a person subject to this Act has committed an offence against this Act, the commanding officer of that person must, unless he or she considers that the allegation is not well founded, either—
 - (a) cause the allegation to be recorded in the form of a charge and to be investigated in the prescribed manner; or
 - (b) cause the allegation to be referred to the appropriate civil authority for investigation.
- (2) In this Part, a matter or thing is done in the **prescribed manner** if it is done in accordance with, and in the manner prescribed by, this Part and the rules of procedure.

Section 102: substituted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

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.
- (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,—
 - (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
 - (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.
- (5) In this section, **specified offence** and **victim** have the meanings given in section 198B.

Compare: 2002 No 39 s 29A

Section 102A: inserted, on 30 November 2018, by section 7 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

103 Disposal of charges by commanding officers

- (1) Every commanding officer must investigate and dispose of a charge before him or her in the prescribed manner.
- (2) However, a commanding officer may stay proceedings on a charge before him or her, or before a detachment commander or a subordinate commander, for any time that he or she considers necessary if satisfied that proceedings for the matters to which the charge relates could be, and in the interests of the better administration of justice should be, taken against the accused otherwise than under this Act.

Section 103: substituted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

104 Disposal of charges by superior commanders

- (1) Every superior commander must investigate and dispose of a charge before him or her in the prescribed manner.
- (2) However, a superior commander may stay proceedings on a charge before him or her for any time that he or she considers necessary if satisfied that proceedings for the matters to which the charge relates could be, and in the interests of the better administration of justice should be, taken against the accused otherwise than under this Act.

Section 104: substituted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

105 Disposal of charges by detachment commanders

- (1) A detachment commander may exercise all or any of the powers conferred on commanding officers under this Part.
- (2) Subsection (1) is subject to any limitations or restrictions that may be imposed by, or in accordance with, orders of the Chief of Defence Force.

Section 105: substituted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

106 Disposal of charges by subordinate commanders

- (1) A commanding officer may, by written notice, delegate all or any of his or her powers to act as a disciplinary officer under this Part to an officer or class of officers under his or her command as may be specified in the notice.
- (2) A commanding officer may not delegate any powers under this section to a midshipman or an officer cadet.
- (3) A subordinate commander must not act as a disciplinary officer for an offence alleged to have been committed by a member of the Armed Forces holding a rank above that of petty officer in the Navy or sergeant in the Army or the Air Force.
- (4) The exercise of any powers by a subordinate commander under this section is subject to the limitations and restrictions (if any) as may be specified—
 - (a) in orders issued by the Chief of Defence Force; and
 - (b) in the notice given by the delegating commanding officer (in so far as the notice is consistent with any Defence Force Orders); and
 - (c) in this Part.

Section 106: substituted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

106A Suspension of compensation and restitution orders made summarily, etc

[Repealed]

Section 106A: repealed, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

107 Effect of delegation

- (1) A subordinate commander may exercise the powers delegated under section 106 in the same manner and to the same extent as if they had been conferred on him or her directly by this Act and not by delegation.
- (2) A subordinate commander who appears to be acting under a delegation under section 106 is, in the absence of proof to the contrary, presumed to be acting under its terms.
- (3) A delegation under section 106 does not prevent a commanding officer from exercising his or her powers to act as a disciplinary officer in relation to charges not otherwise disposed of.
- (4) A power delegated under section 106 may be revoked by the commanding officer of the subordinate commander.

Section 107: substituted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

When officer is empowered to act as disciplinary officer

Heading: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

108 Officer is empowered to act as disciplinary officer

- (1) For the purposes of this Part, an officer is empowered to act as a disciplinary officer in relation to a charge if—
 - (a) the officer is a superior commander, a commanding officer, a detachment commander, or a subordinate commander; and
 - (b) the officer holds a rank at least 2 rank grades above that of the accused; and
 - (c) the officer holds a certificate of competency as a disciplinary officer, as prescribed by the Chief of Defence Force; and
 - (d) in the case of a subordinate commander, the officer holds a delegation under section 106 that authorises him or her to so act.
- (2) However, for the purposes of this Part, an officer is not empowered to act as a disciplinary officer in relation to a charge if—
 - (a) the officer considers, at the relevant time, that it is necessary for the maintenance of discipline, or in the interests of justice, that the charge be referred to another person; or
 - (b) the officer is personally interested in the charge; or
 - (c) an order made under section 206(1)(ab) specifies that the offence alleged by the charge may not be tried summarily, or otherwise dealt with, under this Part by the officer.
- (3) For the purposes of this section, **relevant time** means,—
 - (a) in relation to sections 109 to 111, immediately before the officer begins to act as the disciplinary officer;
 - (b) in any other case, the time at which the officer is considering under this Part whether he or she is empowered to act as a disciplinary officer in relation to the charge.
- (4) For the purposes of this Part, an officer is **personally interested** in a charge if—
 - (a) the charge alleges an offence against the officer himself or herself; or
 - (b) the charge alleges an offence against any member of his or her family; or
 - (c) the charge alleges an offence by any member of his or her family; or
 - (d) the charge is one in respect of which the officer or any member of his or her family is the sole witness to any material ingredient of the offence; or
 - (e) the officer otherwise has a personal interest in the charge that is likely to influence his or her judgment.

Section 108: substituted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Subpart 2—Preliminary procedures and investigation of charges

Subpart 2: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Initial referral of charges

Heading: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

109 Charge must be referred to subordinate commander in certain circumstances

- (1) This section applies if—
 - (a) an allegation has been recorded in the form of a charge; and
 - (b) the accused is below the rank of chief petty officer in the Navy, staff sergeant in the Army, or flight sergeant in the Air Force; and
 - (c) the accused has a subordinate commander who is empowered to act as a disciplinary officer in relation to the charge.
- (2) The charge against the accused must be referred to the subordinate commander.
- (3) The subordinate commander must act under this subpart as the disciplinary officer in relation to the charge.
- (4) Subsection (3) is subject to any other provision of this Part that provides for—
 - (a) the referral of the charge to another person; or
 - (b) another person to act as the disciplinary officer in relation to the charge.

Section 109: substituted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

110 Charge must be referred to commanding officer, superior commander, or detachment commander in certain circumstances

- (1) This section applies if—
 - (a) an allegation has been recorded in the form of a charge; and
 - (b) either or both of the following apply:
 - (i) the accused is of or above the rank of chief petty officer in the Navy, staff sergeant in the Army, or flight sergeant in the Air Force;
 - (ii) the accused does not have a subordinate commander who is empowered to act as a disciplinary officer in relation to the charge.
- (2) The charge against the accused must be referred to—
 - (a) his or her detachment commander or commanding officer if that officer is empowered to act as a disciplinary officer in relation to the charge; or

- (b) a superior commander in the accused's chain of command who is empowered to act as a disciplinary officer in relation to the charge.
- (3) The detachment commander, commanding officer, or superior commander must act under this subpart as the disciplinary officer in relation to the charge.
- (4) Subsection (3) is subject to any other provision of this Part that provides for—
 - (a) the referral of the charge to another person; or
 - (b) another person to act as the disciplinary officer in relation to the charge.

Section 110: substituted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

111 Accused must be remanded for trial in Court Martial and charge must be referred to Director of Military Prosecutions in certain circumstances

If there is no person who is empowered to act as a disciplinary officer in relation to a charge,—

- (a) the accused must be remanded for trial in the Court Martial; and
- (b) the charge must be referred to the Director of Military Prosecutions.

Section 111: substituted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Certification and amendment of charges

Heading: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

112 Charge must be certified if disciplinary officer may impose certain punishments or make certain compensation orders

- (1) A disciplinary officer must, after a charge is referred to him or her under section 109 or 110 but before the accused is brought before him or her, consider whether he or she may, if the accused were found guilty,—
 - (a) impose a punishment consisting of or including 1 or more of the following:
 - (i) detention:
 - (ii) reduction in rank:
 - (iii) a fine of an amount that exceeds the accused's basic pay for a period of 7 days; or
 - (b) order the accused to pay an amount by way of compensation that exceeds the accused's basic pay for a period of 7 days.
- (2) In considering the matter under subsection (1), the disciplinary officer—
 - (a) must have regard to the charge referred to him or her (including the nature of the offence alleged by the charge); and
 - (b) is not required to have regard to any other information or document, or to make any further inquiries.

- (3) The disciplinary officer must stay the proceedings until a specified certificate is received if—
- (a) he or she considers that, if the accused were found guilty,—
 - (i) a punishment consisting of or including 1 or more of the punishments referred to in subsection (1)(a) may be imposed; or
 - (ii) an order for compensation referred to in subsection (1)(b) may be made; and
 - (b) he or she has not yet received a specified certificate.
- (4) The accused must be brought before the disciplinary officer and the disciplinary officer must proceed in relation to the charge in accordance with this subpart if—
- (a) the proceedings are not stayed under subsection (3); or
 - (b) the disciplinary officer receives a specified certificate after the proceedings are stayed under subsection (3).
- (5) For the purposes of this Part, **specified certificate**, in relation to a charge, means a certificate issued by an officer who is a member of a specialist legal branch or corps in the Armed Forces that certifies that, in the opinion of the officer, the charge—
- (a) discloses an offence against this Act; and
 - (b) is drawn in accordance with the rules of procedure; and
 - (c) is otherwise correct in law.

Section 112: substituted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 112 heading: amended, on 7 July 2010, by section 6(1) of the Armed Forces Discipline Amendment Act 2010 (2010 No 48).

Section 112(1): substituted, on 7 July 2010, by section 6(2) of the Armed Forces Discipline Amendment Act 2010 (2010 No 48).

Section 112(3)(a): substituted, on 7 July 2010, by section 6(3) of the Armed Forces Discipline Amendment Act 2010 (2010 No 48).

113 Amendment of charge

- (1) A disciplinary officer may, after an accused is brought before him or her on a charge, amend that charge, substitute for it a different charge, or add a new charge, if the disciplinary officer considers that it is in the interests of justice to do so.
- (2) Section 112 applies, with all necessary modifications, in relation to the amended, substituted, or additional charge as if that charge had been referred to the disciplinary officer under section 109 or 110.
- (3) If the disciplinary officer exercises his or her powers under subsection (1) after investigating the original charge under this subpart, that investigation must be treated as an investigation under this subpart of the amended, substituted, or

additional charge unless the accused requires a new investigation to be conducted.

- (4) If the amended, substituted, or additional charge differs substantially from the original charge, the disciplinary officer must—
- (a) explain the amended, substituted, or additional charge to the accused; and
 - (b) advise the accused of his or her right to seek an adjournment to consider the charge; and
 - (c) if requested by the accused to do so, adjourn the proceedings for that purpose.

Section 113: substituted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Assignment of defending and presenting officers

Heading: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

114 Assistance to accused

- (1) If an accused is brought before a disciplinary officer under this Part, that officer must ensure that a defending officer is assigned—
- (a) to assist the accused in the preparation and presentation of his or her case; and
 - (b) to act on behalf of the accused.
- (2) Subsection (1) does not apply if the accused states in writing that he or she does not require the assistance referred to in that subsection.
- (3) The officer or non-commissioned officer assigned to act as defending officer—
- (a) must hold an appropriate certificate of competency, as prescribed by the Chief of Defence Force; and
 - (b) must not be a lawyer.
- (4) The officer or non-commissioned officer assigned to act as defending officer for the accused may be changed by the disciplinary officer at any time if—
- (a) the accused so requests; or
 - (b) the disciplinary officer considers that it is necessary to do so, having regard to the exigencies of the service.

Section 114: substituted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

115 Assignment of presenting officer

- (1) If an accused is brought before a disciplinary officer under this Part, that officer must ensure that a presenting officer is assigned to—
- (a) assemble the evidence in support of the charge; and

- (b) present the case in support of the charge, to the extent required by the disciplinary officer.
- (2) The officer or non-commissioned officer assigned to act as presenting officer—
 - (a) must hold an appropriate certificate of competency, as prescribed by the Chief of Defence Force; and
 - (b) must not be a lawyer.
- (3) The officer or non-commissioned officer assigned as presenting officer may be changed at any time by the disciplinary officer if the disciplinary officer considers that it is necessary or desirable to do so.

Section 115: substituted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

115A Punishments of detention may be suspended

[Repealed]

Section 115A: repealed, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Arraignment

Heading: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

116 Arraignment by disciplinary officer

When the accused is brought before a disciplinary officer under this Part, the disciplinary officer must—

- (a) inform the accused that the disciplinary officer is going to hear the charge; and
- (b) ensure that the accused is correctly described in the record of proceedings; and
- (c) read the charge to the accused; and
- (d) ensure that the evidence in support of the charge has been adequately disclosed to the accused in the manner prescribed by the rules of procedure; and
- (e) ask the accused whether he or she pleads guilty or not guilty to the charge.

Section 116: substituted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Plea of guilty

Heading: substituted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117 Plea of guilty

- (1) If the accused pleads guilty to the charge, the disciplinary officer must enter the plea on the record of proceedings if the disciplinary officer is satisfied that the accused—
 - (a) understands the nature of the charge; and
 - (b) has made the plea voluntarily; and
 - (c) understands the consequences of the plea.
- (2) The disciplinary officer must proceed under this subpart as if the accused had pleaded not guilty if—
 - (a) the accused refuses to plead; or
 - (b) the accused pleads unintelligibly; or
 - (c) the disciplinary officer is not satisfied of any of the matters referred to in subsection (1)(a) to (c).

Section 117: substituted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117A Subordinate commander may punish accused or refer charge to commanding officer or detachment commander

- (1) If the disciplinary officer is a subordinate commander and he or she enters a guilty plea on the record of proceedings under section 117,—
 - (a) the presenting officer must inform the subordinate commander of the facts that are relevant to the charge; and
 - (b) the subordinate commander may hear all or any of the evidence relating to the charge if he or she considers that it is in the interests of justice or discipline to do so; and
 - (c) the subordinate commander must consider whether, in his or her opinion, he or she—
 - (i) has sufficient powers of punishment in relation to the charge; and
 - (ii) is empowered to act as a disciplinary officer in relation to the charge.
- (2) If the subordinate commander considers under subsection (1) that he or she has sufficient powers of punishment and is empowered to act as a disciplinary officer in relation to the charge, he or she must—
 - (a) record a finding of guilty on the charge; and
 - (b) inform the accused of that finding; and
 - (c) proceed under subpart 4.

- (3) If the subordinate commander considers under subsection (1) that he or she has insufficient powers of punishment or is not empowered to act as a disciplinary officer in relation to the charge, he or she must refer the charge to the accused's commanding officer or detachment commander without recording a finding of guilty on the charge.
- (4) After a charge is referred to a commanding officer or detachment commander under subsection (3), he or she becomes the disciplinary officer in relation to the charge.
- (5) This section is subject to sections 117G and 117H.

Section 117A: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117B Commanding officer, detachment commander, or superior commander who receives guilty plea or receives referral must consider certain matters

- (1) This section applies if—
 - (a) the disciplinary officer is a commanding officer, a detachment commander, or a superior commander, and he or she enters a guilty plea on the record of proceedings under section 117; or
 - (b) a charge has been referred to a commanding officer or a detachment commander under section 117A.
- (2) The presenting officer must inform the commanding officer, detachment commander, or superior commander of the facts that are relevant to the charge.
- (3) The commanding officer, detachment commander, or superior commander may hear all or any of the evidence relating to the charge if he or she considers that it is in the interests of justice or discipline to do so.
- (4) The commanding officer, detachment commander, or superior commander must consider whether, in his or her opinion,—
 - (a) he or she has sufficient powers of punishment in relation to the charge; and
 - (b) he or she is empowered to act as a disciplinary officer in relation to the charge.

Section 117B: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117C Consideration of whether accused who pleads guilty should be given right to elect trial by Court Martial

- (1) If the commanding officer, detachment commander, or superior commander considers under section 117B that he or she has sufficient powers of punishment and is empowered to act as a disciplinary officer in relation to the charge, he or she must consider whether the accused should be given the right to elect trial by the Court Martial.

- (2) The commanding officer, detachment commander, or superior commander must, in making a decision under subsection (1),—
- (a) consider the punishment, or combination of punishments, that he or she would be likely to impose if he or she were to act under subpart 4; and
 - (b) consider the orders for compensation or restitution (or both) that he or she would be likely to make if he or she were to act under subpart 4; and
 - (c) have regard to sections 117W and 117ZA.

Section 117C: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117D Accused who pleads guilty must be informed if he or she has right to elect trial by Court Martial

- (1) If the commanding officer, detachment commander, or superior commander considers under section 117C that he or she should give the accused the right to elect trial by the Court Martial, he or she must—
- (a) inform the accused that the accused has the right to elect either—
 - (i) trial by the Court Martial; or
 - (ii) for the commanding officer, detachment commander, or superior commander to proceed under subpart 4; and
 - (b) adjourn the hearing and give the accused a reasonable period to consider the accused's election; and
 - (c) give the accused the opportunity to consult a lawyer in respect of the accused's election if it is reasonably practicable to do so.
- (2) The period of adjournment under subsection (1)(b) must be at least 24 hours if the accused wishes it.

Section 117D: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117E Accused who pleads guilty must be punished in certain circumstances

- (1) This section applies if—
- (a) a commanding officer, detachment commander, or superior commander considers, under section 117C, that an accused who has pleaded guilty should not be given the right to elect trial by the Court Martial; or
 - (b) an accused is given the right to an election under section 117D and elects—
 - (i) for the commanding officer, detachment commander, or superior commander to proceed under subpart 4; or
 - (ii) trial by the Court Martial, but withdraws his or her election in the prescribed manner.
- (2) The commanding officer, detachment commander, or superior commander must—

- (a) record a finding of guilty on the charge; and
 - (b) inform the accused of that finding; and
 - (c) proceed under subpart 4.
- (3) This section is subject to sections 117G and 117H.

Section 117E: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117F Accused must be remanded for trial in Court Martial and charge must be referred to Director of Military Prosecutions in certain circumstances

- (1) A commanding officer, detachment commander, or superior commander must remand the accused for trial in the Court Martial and refer the charge to the Director of Military Prosecutions if—
- (a) he or she considers under section 117B that he or she has insufficient powers of punishment or is not empowered to act as a disciplinary officer in relation to the charge; or
 - (b) the accused is given the right to an election under section 117D and either—
 - (i) the accused elects trial by the Court Martial and does not withdraw his or her election in the prescribed manner; or
 - (ii) the accused does not make an election when asked to do so by the commanding officer, detachment commander, or superior commander.
- (2) However, if the accused is given the right to an election under section 117D and elects trial by the Court Martial, the disciplinary officer must not act under subsection (1) during the 24 hours following the accused's election.

Section 117F: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Other matters relating to pleas

Heading: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117G Procedure following mixed pleas

- (1) This section applies if—
- (a) there is more than 1 charge against the accused contained in the same charge report; and
 - (b) the accused pleads guilty to 1 or more but not all of the charges.
- (2) The disciplinary officer—
- (a) must proceed under sections 117 to 117F in respect of each charge to which the accused pleads guilty; but

- (b) must not proceed to punish the accused under subpart 4 in respect of those charges until a finding under this Part is recorded for the other charges against the accused contained in the same charge report.
- (3) However, if the disciplinary officer is to refer a charge to the Director of Military Prosecutions under section 117ZF, the disciplinary officer must not record a finding of guilty on the charge under sections 117 to 117F.
- (4) Each charge to which the accused has pleaded not guilty must be proceeded with in accordance with this Act.
- (5) This section is subject to section 117ZF and the rules of procedure.

Section 117G: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117H Change or amendment of plea

- (1) If the accused pleads not guilty to the charge, he or she may withdraw his or her plea of not guilty and substitute a plea of guilty at any time before the disciplinary officer records the finding on the charge.
- (2) If the accused substitutes a plea of guilty under subsection (1), the disciplinary officer must, so far as is necessary, proceed as if the accused had originally pleaded guilty.
- (3) If the accused pleads guilty to the charge, he or she may withdraw his or her plea of guilty and substitute a plea of not guilty at any time before the disciplinary officer records the finding on the charge.
- (4) If the accused substitutes a plea of not guilty under subsection (3), the disciplinary officer must, so far as is necessary, proceed as if the accused had originally pleaded not guilty.
- (5) If the accused pleads guilty to the charge and the disciplinary officer accepts the plea, the disciplinary officer may, if at any time during the proceedings it appears to him or her that he or she should not have accepted the plea, amend the record and substitute a plea of not guilty.
- (6) If the disciplinary officer acts under subsection (5), the disciplinary officer must, so far as is necessary, proceed as if the accused had originally pleaded not guilty.

Section 117H: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Investigation following plea of not guilty

Heading: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117I Procedure following plea of not guilty

- (1) If the accused pleads not guilty to the charge, the disciplinary officer must—
 - (a) enter the plea on the record of proceedings; and

- (b) ask the accused if he or she has had adequate time and facilities to prepare a defence.
- (2) If the disciplinary officer considers, after acting under subsection (1)(b), that the accused has not had adequate time or facilities (or both) to prepare a defence, the disciplinary officer must adjourn the proceedings to allow the accused—
 - (a) adequate time to prepare a defence; and
 - (b) a reasonable opportunity to obtain adequate facilities to prepare a defence.

Section 117I: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117J Disciplinary officer must determine whether prima facie case is made out after hearing of evidence in support of charge

- (1) When the case is ready to proceed, the disciplinary officer—
 - (a) must ask the accused whether he or she requires oral evidence to be given on oath; and
 - (b) may ask the presenting officer to outline the case in support of the charge; and
 - (c) must ask the presenting officer—
 - (i) to call each witness in support of the charge who is to give evidence orally to give evidence in the presence of the accused; and
 - (ii) to produce, and to read aloud to the accused, any written statement that the disciplinary officer has decided to admit in evidence in support of the charge.
- (2) The disciplinary officer—
 - (a) must give the accused an opportunity to cross-examine each witness who gives evidence orally in support of the charge; and
 - (b) may allow the presenting officer an opportunity to re-examine each witness who has been cross-examined; and
 - (c) may put questions to each witness who gives evidence orally in support of the charge that the disciplinary officer considers are necessary to ensure that he or she fully understands the witness's evidence.
- (3) After the disciplinary officer has heard the evidence in support of the charge, he or she must determine whether a prima facie case has been made out.
- (4) If the disciplinary officer is not satisfied that a prima facie case has been made out, he or she must dismiss the charge, record the finding, and inform the accused.

Section 117J: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Disciplinary officer must consider certain matters

Heading: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117K Disciplinary officer must consider whether he or she has sufficient powers of punishment and whether he or she can act as disciplinary officer

- (1) If the disciplinary officer is satisfied that a prima facie case has been made out, the disciplinary officer must consider whether, in his or her opinion, he or she—
 - (a) has sufficient powers of punishment in relation to the charge; and
 - (b) is empowered to act as a disciplinary officer in relation to the charge.
- (2) If the disciplinary officer is a subordinate commander who considers under this section that he or she—
 - (a) has sufficient powers of punishment and is empowered to act as a disciplinary officer in relation to the charge, he or she must proceed to act as a disciplinary officer in relation to the charge under subpart 3:
 - (b) has insufficient powers of punishment or is not empowered to act as a disciplinary officer in relation to the charge, he or she must refer the charge to the accused's commanding officer or detachment commander without recording a finding.
- (3) After a charge is referred to a commanding officer or detachment commander under subsection (2)(b), he or she—
 - (a) becomes the disciplinary officer in relation to the charge; and
 - (b) must investigate the charge under section 117J as if the subordinate commander had not begun to investigate the charge; and
 - (c) must, after acting under paragraph (b), act under subsection (1) if he or she is satisfied that a prima facie case has been made out.
- (4) If the disciplinary officer is a commanding officer, a detachment commander, or a superior commander who considers under this section that he or she has insufficient powers of punishment or is not empowered to act as a disciplinary officer in relation to the charge, he or she must remand the accused for trial in the Court Martial and refer the charge to the Director of Military Prosecutions.

Section 117K: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Right to elect trial by Court Martial

Heading: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117L Disciplinary officer must consider whether accused should be given right to elect trial by Court Martial

- (1) If the disciplinary officer is a commanding officer, a detachment commander, or a superior commander who considers under section 117K that he or she has sufficient powers of punishment and is empowered to act as a disciplinary officer in relation to the charge, he or she must consider whether the accused should be given the right to elect trial by the Court Martial.
- (2) The disciplinary officer must, in making a decision under subsection (1),—
 - (a) consider the punishment, or combination of punishments, that he or she would be likely to impose if the accused were found guilty; and
 - (b) consider the orders for compensation or restitution (or both) that he or she would be likely to make if the accused were found guilty; and
 - (c) have regard to sections 117W and 117ZA.
- (3) If the disciplinary officer considers that he or she should not give the accused the right to elect trial by the Court Martial, he or she must try the accused summarily under subpart 3.

Section 117L: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117M Disciplinary officer must inform accused if accused has right to elect trial by Court Martial

- (1) If the disciplinary officer considers under section 117L that he or she should give the accused the right to elect trial by the Court Martial, he or she must—
 - (a) inform the accused that the accused has the right to elect either—
 - (i) trial by the Court Martial; or
 - (ii) summary trial by the disciplinary officer; and
 - (b) adjourn the hearing and give the accused a reasonable period to consider the accused's election; and
 - (c) give the accused the opportunity to consult a lawyer in respect of the accused's election if it is reasonably practicable to do so.
- (2) The period of adjournment under subsection (1)(b) must be at least 24 hours if the accused wishes it.

Section 117M: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117N Disciplinary officer must remand accused for trial in Court Martial or try charge summarily

- (1) The disciplinary officer must remand the accused for trial in the Court Martial and refer the charge to the Director of Military Prosecutions if, after having been given the right to an election under section 117M,—
 - (a) the accused elects trial by the Court Martial and does not withdraw his or her election in the prescribed manner; or
 - (b) the accused does not make an election when asked to do so by the disciplinary officer.
- (2) However, if the accused is given the right to an election under section 117M and elects trial by the Court Martial, the disciplinary officer must not act under subsection (1) during the 24 hours following the accused's election.
- (3) The disciplinary officer must try the accused summarily under subpart 3 if, after having been given the right to an election under section 117M, the accused elects—
 - (a) summary trial by the disciplinary officer; or
 - (b) trial by the Court Martial, but withdraws his or her election in the prescribed manner.

Section 117N: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Subpart 3—Trying charges summarily

Subpart 3: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117O Disciplinary officer must advise accused and hear evidence on behalf of accused

- (1) If the disciplinary officer is to try the accused summarily, the disciplinary officer must, in accordance with the rules of procedure, briefly advise the accused of the procedure to be followed in the summary trial.
- (2) After advising the accused under subsection (1), the disciplinary officer must ask the accused—
 - (a) to outline the case on behalf of the accused; and
 - (b) to tell the disciplinary officer whether or not the accused wishes to put forward evidence in reply and, if so, what form the evidence will take; and
 - (c) to give evidence orally if he or she wishes to give evidence orally; and
 - (d) to call each witness on behalf of the accused who is to give evidence orally (following the accused if he or she wishes to give evidence) to give his or her evidence in the presence of the accused.

- (3) The disciplinary officer must, after complying with subsection (2), read aloud any written statement that the disciplinary officer has decided to admit in evidence on behalf of the accused.
- (4) If evidence is put forward on behalf of the accused, the disciplinary officer—
 - (a) may allow the presenting officer to cross-examine each witness who gives evidence orally; and
 - (b) if the presenting officer cross-examines a witness, must allow the accused an opportunity to re-examine the witness.
- (5) The disciplinary officer may put questions to each witness that the disciplinary officer considers necessary to ensure that he or she fully understands the witness's evidence.

Section 117O: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117P Presenting officer and disciplinary officer may call or recall witnesses

- (1) If evidence is put forward on behalf of the accused, the presenting officer may, at the conclusion of the evidence on behalf of the accused, with the leave of the disciplinary officer, call or recall any witness to give evidence on any matter raised by, or on behalf of, the accused in his or her defence—
 - (a) that the presenting officer could not properly have put before the disciplinary officer before the accused's defence was disclosed; or
 - (b) that the presenting officer could not reasonably have foreseen.
- (2) The disciplinary officer may, at any time before he or she determines whether he or she finds the accused guilty or not guilty on the charge, call or recall any witness if he or she considers that it is in the interests of justice to do so.
- (3) If the disciplinary officer calls or recalls a witness under subsection (2), the disciplinary officer may allow the presenting officer, the accused, or both to put questions to the witness that the disciplinary officer may allow as proper.

Section 117P: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117Q Disciplinary officer must determine whether accused is guilty or not guilty

After the disciplinary officer has received all the evidence under subpart 2 and this subpart, he or she must—

- (a) determine whether the accused is guilty or not guilty on the charge; and
- (b) record the finding; and
- (c) inform the accused.

Section 117Q: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Subpart 4—Punishment

Subpart 4: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117R Procedures to be followed before imposing punishment

- (1) If the disciplinary officer records a finding of guilty on the charge, he or she must, before imposing a punishment,—
 - (a) examine the offender’s conduct sheets; and
 - (b) if a victim of the offence so wishes, read aloud a written statement from the victim setting out—
 - (i) any physical injury or emotional harm suffered by the victim through, or by means of, the offence; and
 - (ii) any loss of, or damage to, property suffered by the victim through, or by means of, the offence; and
 - (iii) any other effects of the offence on the victim; and
 - (c) give the offender a reasonable opportunity to make an explanation or plea in mitigation of punishment; and
 - (d) if the offender so wishes, give any witness on behalf of the offender a reasonable opportunity to give evidence in support of the explanation or plea in mitigation of punishment.
- (2) If the disciplinary officer records a finding of guilty on the charge, he or she may, before imposing a punishment, obtain from the presenting officer—
 - (a) a report on the offender’s record and general conduct in the service; and
 - (b) details of any period during which the offender was held in custody awaiting trial; and
 - (c) details of any information in the possession of the service authorities relating to the offender’s circumstances that may be relevant in considering punishment.
- (3) The disciplinary officer must ensure that he or she has received a specified certificate if he or she intends to impose a punishment consisting of or including 1 or more of the following:
 - (a) detention:
 - (b) reduction in rank:
 - (c) a fine of an amount that exceeds the offender’s basic pay for a period of 7 days.
- (4) In this section, **victim** has the same meaning as in section 4 of the Victims’ Rights Act 2002.

Section 117R: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 117R(3)(c): amended, on 7 July 2010, by section 7 of the Armed Forces Discipline Amendment Act 2010 (2010 No 48).

117S Disciplinary officer may impose punishment, order offender to appear for punishment if called on, or discharge offender

- (1) The disciplinary officer may, after acting under section 117R,—
 - (a) impose on the offender any 1 or more of the punishments that he or she is authorised under this Part to impose and considers just; or
 - (b) make an order under section 117T; or
 - (c) discharge the offender without acting under paragraph (a) or (b).
- (2) The disciplinary officer must give reasons for his or her action under subsection (1).
- (3) Subsection (1) does not limit section 117ZA (which relates to orders for compensation and restitution).
- (4) The disciplinary officer must, after acting under subsection (1),—
 - (a) record the details of any forfeitures incurred by or under this Act, and any cancellation of the whole or any part of those forfeitures, and inform the offender; and
 - (b) notify the offender of the offender's right of appeal under Part 5A.

Section 117S: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117T Order to come up for punishment if called on

- (1) The disciplinary officer may, instead of imposing a punishment on an offender, order the offender to appear for punishment if called on to do so within the period specified in subsection (2).
- (2) The period referred to in subsection (1) is a period not exceeding 1 year, commencing with the date on which the finding of guilty is recorded, that the disciplinary officer may specify in the order.
- (3) If the disciplinary officer makes an order under subsection (1), he or she must record and attach to the record of proceedings a statement of his or her findings of fact in relation to the charge.
- (4) The disciplinary officer may make orders under section 117ZA in combination with an order under subsection (1).

Section 117T: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117U Offender to come up for punishment

- (1) This section applies if an offender in respect of whom an order is made under section 117T—

- (a) is convicted, or found guilty summarily, of a subsequent offence against this Act or any other Act; or
 - (b) fails to comply with any other order referred to in section 117T(4); or
 - (c) fails to comply with any agreement, or fails to take any measure or action, of a kind referred to in section 10(1)(b), (d), or (e) of the Sentencing Act 2002 that was brought to the attention of the disciplinary officer at the time the disciplinary officer made the order under section 117T.
- (2) An offender's commanding officer may, at any time within the period specified in the order made under section 117T, order the offender to appear before the commanding officer or another disciplinary officer to be dealt with for the original offence.
- (3) After an order is given under subsection (2), the offender must be placed in close arrest and brought before the commanding officer or other disciplinary officer at a time and place directed by the commanding officer or disciplinary officer.
- (4) If a person appears before a commanding officer or another disciplinary officer under this section and the commanding officer or disciplinary officer is satisfied of any of the matters specified in subsection (1), the commanding officer or disciplinary officer—
- (a) must inquire into the circumstances of the original offence and the conduct of the offender since the order under section 117T was made (including, if appropriate, the circumstances and seriousness of the subsequent offence (if any)); and
 - (b) may impose a punishment, or a combination of punishments, on the offender for the original offence.
- (5) This section is subject to section 117X.

Section 117U: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Summary punishments

Heading: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117V Types and maximum amounts of summary punishments

- (1) The punishments that may be imposed on an offender tried summarily, or otherwise dealt with, under this Part are those specified in Schedule 3.
- (2) The maximum amount of any one punishment that may be imposed on an offender in relation to a charge tried summarily, or otherwise dealt with, under this Part by—

- (a) a commanding officer or a detachment commander is that specified in Schedule 4 in relation to the rank of the offender as specified in that schedule:
 - (b) a subordinate commander is that specified in column 3 of Schedule 4 in relation to the rank of the offender as specified in that schedule:
 - (c) a superior commander is that specified in Schedule 5.
- (3) A disciplinary officer who finds a person guilty of 1 or more offences may, if he or she thinks it is just to do so, impose on that person more than 1 of the punishments authorised by this Part.
- (4) Subsection (3) does not limit the power of a disciplinary officer to discharge an offender without imposing a punishment on him or her or to order that person to appear for punishment if called on to do so.

Section 117V: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117W Certain punishments must not be imposed unless offender was given right to elect trial by Court Martial

- (1) This section applies if the disciplinary officer is a commanding officer, a detachment commander, or a superior commander.
- (2) If the offender was given the right to elect trial by the Court Martial under section 117D or 117M, the disciplinary officer may,—
- (a) in the case of a commanding officer or a detachment commander, impose on the offender, to the extent authorised by column 2 of Schedule 4, any punishment or punishments that the commanding officer or detachment commander considers just:
 - (b) in the case of a superior commander, impose on the offender, to the extent authorised by column 2 of Schedule 5, any punishment or punishments that the superior commander considers just.
- (3) If the offender was not given the right to elect trial by the Court Martial under section 117D or 117M, the disciplinary officer may,—
- (a) in the case of a commanding officer or a detachment commander, impose on the offender, to the extent authorised by column 3 of Schedule 4, any punishment or punishments that the commanding officer or detachment commander considers just:
 - (b) in the case of a superior commander, impose on the offender, to the extent authorised by column 3 of Schedule 5, any punishment or punishments that the superior commander considers just.

Section 117W: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117X Punishment must be imposed for all offences of which person is found guilty

If a person tried summarily, or otherwise dealt with, under this Part in respect of 2 or more charges contained in the same charge report is found guilty of the offences charged, or at least 2 of them if there are more than 2, any punishment or punishments imposed on him or her must be in respect of all of the offences of which he or she has been found guilty.

Section 117X: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117Y Provisions relating to punishment of detention

- (1) In determining the period of any detention to be imposed, a disciplinary officer must not take into account any period during which the offender has been held in custody but must specify any such period on the committal order.
- (2) Subsection (1) does not apply in respect of any time spent in custody that is unrelated to any charge before the disciplinary officer.
- (3) A disciplinary officer must not impose the punishment of detention on an officer (including a midshipman or an officer cadet).
- (4) A disciplinary officer must not, except with the prior approval of a superior commander, impose the punishment of detention on a member of the Armed Forces who had, at the time that the offence was committed, attained the age of 17 years but was, at that time, under the age of 18 years.
- (5) In this section, **custody**—
 - (a) means detention in civil custody or under close arrest; but
 - (b) does not include open arrest.

Section 117Y: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117Z Reduction of punishments

- (1) When a disciplinary officer has imposed a punishment, or a combination of punishments, for an offence against this Act, he or she—
 - (a) may not subsequently increase the punishment for that offence; but
 - (b) may reduce the punishment for the offence at any time before it has been completely carried out.
- (2) A commanding officer may reduce, but not increase, a punishment imposed by a detachment commander or by a subordinate commander.

Section 117Z: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Compensation and restitution

Heading: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117ZA Orders for compensation and restitution

- (1) Every disciplinary officer who finds an offender guilty of an offence may, in addition to or in substitution for any punishment or punishments that he or she may impose on the offender, order the offender, in the same manner and to the same extent as the Court Martial,—
 - (a) to pay compensation in accordance with section 86; or
 - (b) to make restitution in accordance with section 87 (with or without compensation under section 87(3)); or
 - (c) both to pay compensation and make restitution.
- (2) However,—
 - (a) if the offender was given the right to elect trial by the Court Martial under section 117D or 117M, he or she may not be ordered under this section to pay an amount by way of compensation exceeding his or her basic pay for a period of 28 days:
 - (b) if the offender was not given the right to elect trial by the Court Martial under section 117D or 117M, he or she may not be ordered to pay an amount by way of compensation exceeding his or her basic pay for a period of 14 days.
- (3) The disciplinary officer must ensure that he or she has received a specified certificate if he or she intends to order the offender to pay an amount by way of compensation that exceeds the offender's basic pay for a period of 7 days.

Section 117ZA: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 117ZA(3): added, on 7 July 2010, by section 8 of the Armed Forces Discipline Amendment Act 2010 (2010 No 48).

Subpart 5—Miscellaneous matters

Subpart 5: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Rights under New Zealand Bill of Rights Act 1990

Heading: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117ZB Accused deemed to have waived certain rights in certain circumstances

- (1) An accused is deemed to have irrevocably waived, in relation to a charge, the rights referred to in subsection (2) if, having been given the right to an election under—
 - (a) section 117D, the accused elects—

- (i) for the commanding officer, detachment commander, or superior commander to proceed under subpart 4; or
 - (ii) trial by the Court Martial, but withdraws his or her election in the prescribed manner:
- (b) section 117M, the accused elects—
 - (i) summary trial by the disciplinary officer; or
 - (ii) trial by the Court Martial, but withdraws his or her election in the prescribed manner.
- (2) The rights are—
 - (a) the right that the accused had or has under section 24(c) of the New Zealand Bill of Rights Act 1990 to the extent that it relates to the right to legal representation; and
 - (b) the right that the accused had or has under section 25(a) of that Act to the extent that it relates to the right to a hearing by an independent court.

Section 117ZB: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117ZC Implications of election must be explained to accused

- (1) When the accused appears before the disciplinary officer to indicate his or her election under section 117D or 117M, the disciplinary officer must, before the election is made, take reasonable steps to ensure that the implications of the election have been fully explained to the accused by—
 - (a) his or her defending officer; or
 - (b) an officer or a non-commissioned officer who holds a certificate of competency as a defending officer.
- (2) The implications referred to in subsection (1) must include any matters prescribed by the rules of procedure.
- (3) The accused's election under section 117D or 117M must be recorded in writing in the prescribed form.
- (4) The disciplinary officer must take reasonable steps to ensure that the accused has read the election before the accused signs it.

Section 117ZC: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117ZD Accused does not have certain rights if accused is tried summarily or otherwise dealt with under this Part

If a disciplinary officer tries an accused summarily or an accused is otherwise dealt with under this Part,—

- (a) the accused does not have, in relation to the relevant charge, the right to legal representation; and

- (b) the accused does not have, in relation to the relevant charge, the right to a hearing by an independent court.

Section 117ZD: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Recording of proceedings

Heading: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117ZE Recording proceedings before disciplinary officer

A disciplinary officer must comply with any requirements of the rules of procedure to ensure that an audio recording, or a written summary, is made of the proceedings before the disciplinary officer.

Section 117ZE: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Referral of charges

Heading: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117ZF Referral of charge must include referral of related charges

If a disciplinary officer is required to refer a charge against an accused to another person, he or she must also refer to that person—

- (a) any charge against another person for an offence arising from the same incident or series of incidents; and
- (b) any other charge against the accused for an offence arising from the same incident or series of incidents.

Section 117ZF: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117ZG Documents and information to be provided to accused and Director of Military Prosecutions

- (1) If a charge is to be referred to the Director of Military Prosecutions by a disciplinary officer, the disciplinary officer must, within 7 days of deciding that the charge is to be referred to the Director of Military Prosecutions,—
- (a) ensure that the accused is provided with the information or documents that are prescribed by the rules of procedure for the purposes of this subsection; and
- (b) inform the accused that he or she has 7 days from the date of being informed in which to provide to the disciplinary officer any signed written statements in his or her defence for referral to the Director of Military Prosecutions.
- (2) A disciplinary officer (other than a superior commander) must, within 14 days of deciding that a charge is to be referred to the Director of Military Prosecu-

tions, send to his or her superior commander the documents that are prescribed by the rules of procedure for the purposes of this subsection.

- (3) A superior commander who receives documents under subsection (2) must, within 7 days of receiving those documents, send to the Director of Military Prosecutions—
 - (a) those documents; and
 - (b) a statement containing the superior commander’s opinion as to whether prosecution of the charge is in the interests of the service.
- (4) If the disciplinary officer is a superior commander, he or she must, within 14 days of deciding that the charge is to be referred to the Director of Military Prosecutions, send to the Director of Military Prosecutions—
 - (a) the documents that are prescribed by the rules of procedure for the purposes of this subsection; and
 - (b) a statement containing the superior commander’s opinion as to whether prosecution of the charge is in the interests of the service.

Section 117ZG: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117ZH Reference back of charge by Director of Military Prosecutions

- (1) If a charge is referred by a disciplinary officer to the Director of Military Prosecutions under section 117F(1)(a) or 117K(4), the Director of Military Prosecutions may, after giving due consideration to the circumstances of the case, refer the charge (together with all or any other charges referred under section 117ZF) back to the disciplinary officer with a direction that the officer must—
 - (a) continue to act as a disciplinary officer in relation to the charge or charges; or
 - (b) dismiss the charge or charges.
- (2) If, after a charge is referred by a disciplinary officer to the Director of Military Prosecutions under section 117F(1)(b) or 117N(1), the accused withdraws, in the prescribed manner, his or her election for trial by the Court Martial, the Director of Military Prosecutions may, after giving due consideration to the circumstances of the case, refer the charge (together with all or any other charges referred under section 117ZF) back to the disciplinary officer with a direction that the officer must—
 - (a) continue to act as a disciplinary officer in relation to the charge or charges; or
 - (b) dismiss the charge or charges.
- (3) A direction under subsection (1) or (2) may include—
 - (a) a direction to give the accused the right to elect trial by the Court Martial; and

- (b) any other procedural directions that the Director of Military Prosecutions thinks fit.
- (4) If a charge is referred by a disciplinary officer to the Director of Military Prosecutions under section 117F(1)(b) or 117N(1), the Director of Military Prosecutions may, after giving due consideration to the circumstances of the case, refer the charge (together with all or any other charges referred under section 117ZF) back to the disciplinary officer with a direction that the officer must dismiss the charge or charges.
- (5) On reference back of a charge under this section, the disciplinary officer must dispose of the charge in accordance with the directions.
- (6) Reference back of a charge to a disciplinary officer under this section is without prejudice to the power of the disciplinary officer to prefer another charge if—
 - (a) the Director of Military Prosecutions so directs; or
 - (b) the disciplinary officer thinks fit.
- (7) The Director of Military Prosecutions must inform the accused of any action that is taken in respect of the accused under this section.

Section 117ZH: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117ZI Director of Military Prosecutions may lay charge before Court Martial

- (1) If a charge is referred to the Director of Military Prosecutions under this Part, he or she may lay the charge before the Registrar of the Court Martial.
- (2) If the accused pleaded guilty under section 116 in relation to a charge referred to the Director of Military Prosecutions under this Part, that plea must not be taken into account by the Court Martial when making a finding on the charge.

Section 117ZI: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

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—
 - (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.
- (4) In this section, **specified offence** and **victim** have the meanings given in section 198B.

Compare: 2002 No 39 s 29A

Section 117ZIA: inserted, on 30 November 2018, by section 8 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Procedures for certain persons

Heading: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117ZJ Procedures for prisoners of war, spies, midshipmen, officer cadets, and chaplains

- (1) If the accused is subject to this Act by virtue of section 12 or 13, the following provisions apply:
 - (a) if the accused holds a rank in an armed force, the same procedure for dealing with the charge under this Part must be followed, with any necessary modifications, as if the accused held the corresponding rank in the Armed Forces of New Zealand:
 - (b) in any other case, the same procedure for dealing with the charge under this Part must be followed, with any necessary modifications, as if the accused were a rating of able rank in the Navy or a private in the Army or a leading aircraftman in the Air Force, as the case may be.
- (2) If the accused is a midshipman or an officer cadet, the same procedure for dealing with the charge under this Part must be followed, with any necessary modifications, as if the accused were a rating of able rank in the Navy or a private in the Army or a leading aircraftman in the Air Force, as the case may be.
- (3) If the accused is a chaplain, the same procedure for dealing with the charge under this Part must be followed, with any necessary modifications, as if the accused,—
 - (a) in the case of a chaplain Class I, were a captain in the Navy, a colonel in the Army, or a group captain in the Air Force:
 - (b) in the case of a chaplain Class II, were a commander in the Navy, a lieutenant colonel in the Army, or a wing commander in the Air Force:
 - (c) in the case of a chaplain Class III, were a lieutenant commander in the Navy, a major in the Army, or a squadron leader in the Air Force:
 - (d) in the case of a chaplain Class IV, were a lieutenant in the Navy, a captain in the Army, or a flight lieutenant in the Air Force.

Section 117ZJ: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Evidence

Heading: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117ZK Relevant evidence admissible unless excluded

- (1) All relevant evidence is admissible in proceedings under this Part and Part 5A except evidence that is excluded under subsection (4).
- (2) Evidence that is not relevant is not admissible in proceedings under this Part or Part 5A.
- (3) Evidence is relevant in proceedings if it has a tendency to prove or disprove anything that is of consequence to the determination of the proceedings.
- (4) The disciplinary officer or the Summary Appeal Court must exclude evidence if its probative value is outweighed by the risk that the evidence will—
 - (a) have an unfairly prejudicial effect on the outcome of the proceedings; or
 - (b) needlessly prolong the proceedings.
- (5) The disciplinary officer or the Summary Appeal Court may, subject to subsections (1) to (4) and section 150B, require a witness to answer a question that is put to them in proceedings under this Part or Part 5A (whether by the disciplinary officer, the court, a presenting officer, a defending officer, or any other counsel appearing in the proceedings).

Section 117ZK: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117ZL Taking of evidence on oath

- (1) In proceedings before—
 - (a) a disciplinary officer, oral evidence must not be given on oath unless the accused so requires;
 - (b) the Summary Appeal Court, oral evidence must be given on oath.
- (2) For the purposes of subsection (1)(a), if the accused requires the oral evidence to be given on oath, all witnesses who are to give evidence orally in the proceedings (including the accused if he or she gives evidence orally) must be sworn.
- (3) However, if the disciplinary officer or Summary Appeal Court considers that a child who is called as a witness does not understand the nature of an oath, the child's evidence may be received even though it is not given on oath so long as the officer or court is of the opinion that the child—
 - (a) has sufficient intelligence to justify the reception of the evidence; and
 - (b) understands the duty of speaking the truth.
- (4) If any person referred to in subsection (1) or (2) objects to being sworn or it is not reasonably practicable to administer an oath to that person in a manner

appropriate to his or her religious belief, the person may be permitted to make a solemn affirmation instead of swearing an oath.

- (5) The making of an affirmation under subsection (4) has the same force and effect and has the same consequences as the taking of an oath.
- (6) Every oath or affirmation required to be administered under this Part or Part 5A must be administered in accordance with the rules of procedure.

Section 117ZL: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117ZM Admission in evidence of written statements instead of oral evidence

- (1) A written statement of a person's evidence is, with the consent of the accused and the disciplinary officer or the appellant and the Director of Military Prosecutions (as the case may be), admissible in evidence instead of calling that person to give his or her evidence orally.
- (2) However, a written statement of a person's evidence is admissible only to the same extent and for the same purpose as that evidence would have been admissible in the proceedings if given orally by the maker of the statement.
- (3) Despite subsection (1), a disciplinary officer or the Summary Appeal Court may require the person to attend and give his or her evidence orally.
- (4) In proceedings before a disciplinary officer, the accused and the presenting officer must each be given—
 - (a) a copy of every written statement that the other party proposes to tender in evidence; and
 - (b) a copy of every exhibit (if any) referred to in that statement or information that is sufficient to enable the recipient to inspect the exhibit or a copy of it.
- (5) In proceedings before the Summary Appeal Court, the appellant and the Director of Military Prosecutions must each be given—
 - (a) a copy of every written statement that the other party proposes to tender in evidence; and
 - (b) a copy of every exhibit (if any) referred to in that statement or information that is sufficient to enable the recipient to inspect the exhibit or a copy of it.
- (6) A document or object accompanying a written statement tendered as evidence and referred to in the statement as an exhibit must be treated as if it had been produced as an exhibit and identified in evidence by the maker of the statement.

Section 117ZM: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117ZN Disciplinary officers and Summary Appeal Court to take judicial notice of certain matters

- (1) Every disciplinary officer and the Summary Appeal Court must take judicial notice of—
 - (a) all matters of common knowledge; and
 - (b) all other matters of which judicial notice would be taken by the High Court.
- (2) The disciplinary officer may also take judicial notice of matters that may fairly be regarded as being within the general service knowledge of the disciplinary officer.

Section 117ZN: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Other miscellaneous matters

Heading: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117ZO General power to make orders or give directions

A disciplinary officer may, in respect of any proceedings under this Part, make or give any order or direction, not inconsistent with this Act or the rules of procedure, that seems to him or her best calculated to do justice.

Section 117ZO: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117ZP Construction of charges

- (1) In the construction of a charge sheet or charge there must be presumed in favour of supporting it every proposition that may reasonably be presumed to be impliedly included, though not expressed in it.
- (2) In respect of a charge, the statement of the alleged offence and the statement of the particulars of every act or omission constituting the alleged offence must be read and construed together.

Section 117ZP: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117ZQ Replacement of disciplinary officer

- (1) If at any time a disciplinary officer has begun to act under this Part in relation to a charge, and, because of death, illness, or any other reason, he or she is unable to continue to act as the disciplinary officer in relation to the charge, the officer who becomes the disciplinary officer in his or her place may act under this Part in relation to the charge as if the officer whom he or she replaced had not commenced to do so.
- (2) Despite subsection (1), if the disciplinary officer who has become incapacitated had, before his or her incapacity, found the accused guilty, the disciplinary offi-

cer who becomes the disciplinary officer in his or her place must not try the charge summarily but may instead, after inquiring into the circumstances of the charge, act under subpart 4 as if he or she had found the accused guilty himself or herself.

- (3) The rules of procedure may contain further provisions concerning how—
 - (a) an officer becomes the disciplinary officer in place of an officer who is unable to continue to act in relation to a charge; and
 - (b) the officer who becomes the disciplinary officer must deal with the charge.
- (4) This section does not apply if—
 - (a) the disciplinary officer is unable to continue to act as the disciplinary officer in relation to the charge because, in accordance with this Part, the disciplinary officer is required to refer the charge to another person; or
 - (b) this Part otherwise provides for a different procedure to be followed in the event that the disciplinary officer is unable to continue to act as the disciplinary officer in relation to the charge.

Section 117ZQ: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

117ZR Objection relating to personal interest

- (1) If an accused, during the proceedings before a disciplinary officer, raises an objection that the disciplinary officer is personally interested in the charge, the disciplinary officer must ensure that the objection is recorded in the record of proceedings.
- (2) If, after an objection is made under subsection (1), a disciplinary officer considers that he or she is personally interested in the charge,—
 - (a) he or she must not continue to act as the disciplinary officer in relation to the charge; and
 - (b) section 117ZQ applies.
- (3) However, subsection (2) does not apply if a provision of this Part provides for a different procedure to be followed in the event that a disciplinary officer considers that he or she is personally interested in a charge or is otherwise not empowered to act as a disciplinary officer in relation to a charge.

Section 117ZR: inserted, on 1 July 2009, by section 37 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Part 5A

Summary Appeal Court of New Zealand

Part 5A: inserted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Establishment of Summary Appeal Court of New Zealand

Heading: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

118 Summary Appeal Court of New Zealand established

- (1) A court of record called the Summary Appeal Court of New Zealand is established.
- (2) In addition to the jurisdiction and powers specially conferred on the Summary Appeal Court by this or any other Act, the court has all the powers inherent in a court of record.
- (3) The Summary Appeal Court is to have a seal, which is to be judicially noticed by all courts and for all purposes.

Section 118: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

119 Constitution of Summary Appeal Court

- (1) The Summary Appeal Court comprises the Judges of the Court Martial.
- (2) The Summary Appeal Court's jurisdiction is not affected by a vacancy in the number of Judges of the Court Martial.

Section 119: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

120 Summary Appeal Court must sit in divisions

- (1) For the purposes of any proceedings in the Summary Appeal Court, the court must sit in divisions each comprising 1 Judge assigned by the Chief Judge.
- (2) Each division of the Summary Appeal Court may exercise all of the powers of the court.
- (3) A division of the Summary Appeal Court may exercise any powers of the court even though 1 or more divisions of the court is exercising any powers of the court at the same time.

Section 120: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

121 Registrar, clerks, and other officers of Summary Appeal Court

- (1) The Judge Advocate General must appoint a person to act as the Registrar of the Summary Appeal Court.
- (2) The Registrar may appoint clerks and any other officers of the Summary Appeal Court as may be required.

- (3) An appointment under this section must be made by written notice to the person concerned.
- (4) A person appointed under this section must not undertake any other paid employment or hold any other office (whether paid or not) unless the Judge Advocate General or Registrar (as the case may be) is satisfied that the employment or other office is compatible with that person's appointment.

Section 121: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

122 Chief Judge may delegate to Registrar duty to assign Judges

- (1) The Chief Judge may, either generally or particularly, delegate to the Registrar the Chief Judge's duty under section 120(1) to assign a Judge for any proceedings of the Summary Appeal Court.
- (2) A delegation—
 - (a) must be in writing; and
 - (b) may be made subject to any restrictions that the Chief Judge thinks fit; and
 - (c) is revocable at any time, in writing; and
 - (d) does not prevent the performance or exercise of a function, duty, or power by the Chief Judge.
- (3) The Registrar may perform any duties delegated under subsection (1) in the same manner and with the same effect as if they had been conferred on him or her directly by this Act and not by delegation.
- (4) If the Registrar appears to act under subsection (1), he or she is presumed to be acting in accordance with the terms of delegation in the absence of evidence to the contrary.

Section 122: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

123 Registrar may delegate functions, duties, or powers to clerk or officer of Summary Appeal Court

- (1) The Registrar may, either generally or particularly, delegate to a clerk or any other officer of the Summary Appeal Court appointed under section 121(2) any of the Registrar's functions, duties, and powers, except—
 - (a) any function, duty, or power delegated to the Registrar by the Chief Judge; and
 - (b) this power of delegation.
- (2) A delegation—
 - (a) must be in writing; and
 - (b) may be made subject to any restrictions and conditions that the Judge Advocate General or the Registrar thinks fit; and

- (c) is revocable at any time, in writing; and
 - (d) does not prevent the performance or exercise of a function, duty, or power by the Registrar.
- (3) A clerk or any other officer of the Summary Appeal Court to whom any functions, duties, or powers are delegated may perform and exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.
- (4) A clerk or any other officer of the Summary Appeal Court who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.

Section 123: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Right of appeal

Heading: inserted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

124 Right of appeal

Every person found guilty of an offence by a disciplinary officer may appeal to the Summary Appeal Court against 1 or more of the following:

- (a) the finding of guilty;
- (b) the punishment, or the combination of punishments, imposed in relation to that finding;
- (c) an order of compensation or restitution (or both) made in relation to that finding;
- (d) an order made under section 117T.

Section 124: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

125 Notice of appeal

- (1) An appeal under section 124 must be made by lodging a notice of appeal, in the prescribed form, with the Registrar within—
- (a) the prescribed period; or
 - (b) any further time that the Summary Appeal Court may allow on application made before or after the expiration of that period.
- (2) An application under subsection (1)(b) must—
- (a) be in the prescribed form; and
 - (b) be lodged with the Registrar with the notice of appeal if made after the expiration of the prescribed period.
- (3) Every notice of appeal must specify—

- (a) the finding, punishment, combination of punishments, or order appealed from; and
 - (b) the grounds of appeal in sufficient detail to fully inform the Summary Appeal Court of the issues in the appeal; and
 - (c) any other particulars that are prescribed by the rules of procedure for the purposes of this section.
- (4) If the time for lodging a notice of appeal with the Registrar expires on a day on which the office of the Registrar is closed, and by reason of that closure the notice cannot be lodged on that day, the notice is deemed to be lodged in time if it is lodged on the day on which the office is next open.
- (5) In this section, **prescribed period** means—
- (a) a period of 35 days commencing with the day after the day on which the finding of guilty by the disciplinary officer is recorded if the charge is tried summarily, or otherwise dealt with, under Part 5 outside New Zealand;
 - (b) a period of 21 days commencing with the day after the day on which the finding of guilty by the disciplinary officer is recorded if the charge is tried summarily, or otherwise dealt with, under Part 5 in New Zealand.

Section 125: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

126 Registrar and disciplinary officer must provide copies of documents

- (1) The Registrar must, as soon as practicable after receiving a notice of appeal, provide a copy of the notice of appeal to the disciplinary officer who made the finding of guilty and to the Director of Military Prosecutions.
- (2) The disciplinary officer must, within 14 days of receiving a copy of the notice of appeal under subsection (1), send to the Registrar the documents that are prescribed by the rules of procedure for the purposes of this section.
- (3) The Registrar must, within 7 days of receiving the documents under subsection (2), send a copy of those documents to the Director of Military Prosecutions and to the appellant.

Section 126: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

127 Abandonment of appeal

- (1) An appellant may, at any time after he or she has lodged a notice of appeal, abandon the appeal by giving to the Registrar notice of abandonment in the prescribed form.
- (2) If it is contended on the appellant's behalf that the appellant is insane, a notice of abandonment may be given and signed by the appellant's representative.
- (3) The signature of the appellant or his or her representative to a notice of abandonment must be witnessed by a member of a specialist legal branch or corps

in the Armed Forces, or the appellant's commanding officer, or an officer not below the rank of lieutenant commander in the Navy, major in the Army, or squadron leader in the Air Force.

Section 127: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Sittings, etc, of courts-martial

[Repealed]

Heading: repealed, on 1 July 2009, by section 86 of the Court Martial Act 2007 (2007 No 101).

128 Effect of appeal on punishments and orders

A punishment, a combination of punishments, or an order appealed against under this Part is not suspended by reason of the appeal unless—

- (a) the rules of the Summary Appeal Court specify that the punishment, the combination of punishments, or the order is suspended; or
- (b) the Summary Appeal Court directs that the punishment, the combination of punishments, or the order is suspended.

Section 128: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Special reference by Judge Advocate General

Heading: inserted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

129 Special references to Summary Appeal Court

- (1) The Judge Advocate General may refer 1 or more of the following matters to the Summary Appeal Court if the Judge Advocate General considers that it is in the interests of justice or discipline to do so:
 - (a) a finding of guilty by a disciplinary officer:
 - (b) the punishment, or the combination of punishments, imposed in relation to a finding of guilty by a disciplinary officer:
 - (c) an order of compensation or restitution (or both) made in relation to a finding of guilty by a disciplinary officer:
 - (d) an order made under section 117T.
- (2) For the purposes of this Part, a referral under this section must, with all necessary modifications, be treated as an appeal by the person found guilty of the offence.
- (3) A reference under this section must—
 - (a) be lodged with the Registrar; and
 - (b) specify the finding, punishment, combination of punishments, or order concerned; and

- (c) specify the reasons for the reference in sufficient detail to fully inform the Summary Appeal Court of the issues in the appeal; and
 - (d) specify any other particulars that are prescribed by the rules of procedure for the purposes of this section.
- (4) If a person has been found guilty of an offence by a disciplinary officer, any person (including the person found guilty) may, in the prescribed manner, petition the Judge Advocate General to refer to the Summary Appeal Court under this section 1 or more of the matters referred to in subsection (1)(a) to (d).

Section 129: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

130 Person found guilty must be informed of reference and may comment

- (1) The Registrar must, as soon as practicable after receiving a reference from the Judge Advocate General, send to the person found guilty of the offence—
- (a) a copy of the reference; and
 - (b) a notice, in the prescribed form, that—
 - (i) asks for the person’s written views on the finding of guilty, the punishment, the combination of punishments, or the order concerned to be sent to the Registrar within the prescribed period; and
 - (ii) asks for the person’s written advice as to whether he or she wants to be legally represented at an oral hearing of the matter to be sent to the Registrar within the prescribed period; and
 - (iii) advises him or her of the effect of subsection (2).
- (2) The Summary Appeal Court may deal with a reference from the Judge Advocate General by way of a hearing on the papers if the person who is sent a notice under subsection (1)—
- (a) indicates that he or she does not want to be legally represented at an oral hearing of the matter; or
 - (b) otherwise indicates that he or she does not require an oral hearing of the matter; or
 - (c) does not provide written advice under subsection (1)(b)(ii) within the prescribed period.
- (3) In this section, **prescribed period** means a period of 21 days commencing on the day after the day that the notice under subsection (1)(b) is sent to the person found guilty of the offence.

Section 130: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Powers of Summary Appeal Court

Heading: inserted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

131 Appeals to proceed by way of rehearing and general power of Summary Appeal Court

- (1) Appeals to the Summary Appeal Court proceed by way of rehearing.
- (2) The Summary Appeal Court has, for the purposes of this Act, full power to determine, under this Act, any question necessary to be determined for the purpose of doing justice in any case before the court.

Section 131: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

131A Special provisions in cases involving sexual violation

[Repealed]

Section 131A: repealed, on 1 July 2009, by section 86 of the Court Martial Act 2007 (2007 No 101).

132 Power of Summary Appeal Court in respect of finding of guilty

- (1) The Summary Appeal Court must, on an appeal against a finding that a person is guilty of an offence,—
 - (a) allow the appeal if it considers that—
 - (i) the finding of the disciplinary officer should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence; or
 - (ii) the finding of the disciplinary officer involves a wrong decision on a question of law; or
 - (iii) there was, on any ground, a miscarriage of justice; or
 - (iv) the summary trial was a nullity; and
 - (b) dismiss the appeal in any other case.
- (2) However, the Summary Appeal Court may dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred even though it considers that the point raised in the appeal might be decided in favour of the appellant.
- (3) If the Summary Appeal Court allows an appeal under subsection (1), the court—
 - (a) must quash the finding of guilty; and
 - (b) may do any of the following:
 - (i) direct a finding of not guilty of having committed the offence to be entered; or
 - (ii) direct a new trial to be held by the disciplinary officer or by the Court Martial; or

- (iii) make any other order that justice requires.
- (4) In making an order under subsection (3)(b)(ii), the Summary Appeal Court must—
 - (a) advise the disciplinary officer or the Court Martial (as the case may be) of its reasons for so doing; and
 - (b) give to the disciplinary officer or the Court Martial (as the case may be) any directions that it thinks fit.
- (5) In conducting a new trial of the charge, the disciplinary officer or the Court Martial (as the case may be) must have regard to the Summary Appeal Court's reasons for making an order under subsection (3)(b)(ii), and to the court's directions under subsection (4).

Section 132: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Findings, etc, of courts-martial

[Repealed]

Heading: repealed, on 1 July 2009, by section 86 of the Court Martial Act 2007 (2007 No 101).

133 Power of Summary Appeal Court in respect of punishments

- (1) The Summary Appeal Court may, on an appeal against a punishment or a combination of punishments,—
 - (a) quash the punishment, or the combination of punishments, if—
 - (i) all of the findings of guilty in relation to the punishment, or the combination of punishments, have been quashed; or
 - (ii) the court considers that the disciplinary officer did not have the power to impose the punishment or the combination of punishments; or
 - (iii) the court considers that the punishment, or the combination of punishments, is too severe; or
 - (b) vary the punishment, or the combination of punishments, if—
 - (i) the court considers that the disciplinary officer did not have the power to impose the punishment or the combination of punishments; or
 - (ii) the court considers that the punishment, or the combination of punishments, is too severe; or
 - (c) dismiss the appeal.
- (2) The Summary Appeal Court may vary the punishment, or the combination of punishments, under subsection (1)(b) by substituting a punishment, or combination of punishments, that—
 - (a) the disciplinary officer would have had the power to impose; and

- (b) in the opinion of the Summary Appeal Court, is no more severe than the punishment, or the combination of punishments, originally imposed.
- (3) If the punishment, or the combination of punishments, is varied, the varied punishment, or combination of punishments,—
 - (a) is deemed to have been imposed by the disciplinary officer; and
 - (b) has effect as if imposed on the day on which the original punishment, or combination of punishments, was imposed.

Section 133: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

134 Power of Summary Appeal Court in respect of orders for compensation and restitution and orders to come up for punishment if called on

- (1) The Summary Appeal Court may, on an appeal against an order of compensation or restitution (or both) or an order under section 117T,—
 - (a) quash the order if—
 - (i) all of the findings of guilty in relation to the order have been quashed; or
 - (ii) the court considers that the disciplinary officer did not have the power to make the order; or
 - (iii) the court considers that the order is too severe; or
 - (iv) in the case of an order under section 117T, the court considers that quashing the order is necessary for the maintenance of discipline or in the interests of justice; or
 - (b) vary the order if the court—
 - (i) considers that the order is too severe; or
 - (ii) otherwise considers that a variation is necessary for the maintenance of discipline or in the interests of justice; or
 - (c) dismiss the appeal.
- (2) If an order under section 117T is quashed under subsection (1)(a)(iv),—
 - (a) the Summary Appeal Court may impose a punishment, or combination of punishments, that the disciplinary officer would have had the power to impose; and
 - (b) that punishment, or combination of punishments,—
 - (i) is deemed to have been imposed by the disciplinary officer; and
 - (ii) has effect as if imposed on the day on which the order under section 117T was made.
- (3) The Summary Appeal Court may vary the order under subsection (1)(b) by substituting an order—
 - (a) that the disciplinary officer would have had the power to make; and

- (b) that, in the case of an order requiring the payment of compensation,—
 - (i) reduces the amount of compensation to be paid; or
 - (ii) increases the amount of compensation to be paid; and
 - (c) that, in the case of an order requiring restitution,—
 - (i) requires property additional to or different from that specified in the order to be restored to the person who appears to the court to be entitled to it; or
 - (ii) excludes part of the property that is specified in the order if the court considers that the person to whom property is to be restored is not entitled to that part.
- (4) If an order is varied under this section, the varied order—
- (a) is deemed to have been made by the disciplinary officer; and
 - (b) has effect as if made on the day on which the original order was made.

Section 134: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

135 Supplementary powers of Summary Appeal Court

For the purposes of any proceedings in the Summary Appeal Court, the court may—

- (a) order that all necessary steps be taken to obtain from the disciplinary officer who tried, or otherwise dealt with, the charge against the appellant a report that—
 - (i) sets out the disciplinary officer's opinion on the case or on any point arising in the case; or
 - (ii) contains a statement of any facts that the court considers to be in need of clarification because they appear to the court to be material for the purpose of the determination of the case:
- (b) appoint any person with special expert knowledge to act as an assessor to the court in any case if it appears to the court that special knowledge is required for the proper determination of the case:
- (c) issue any warrants necessary for enforcing the orders of, or punishments imposed by, the court.

Section 135: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Decisions of Summary Appeal Court

Heading: inserted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

136 Decisions of Summary Appeal Court final

- (1) The decision of the Summary Appeal Court on any appeal under this Part is final and conclusive, and there is no right of appeal against the court's decision.
- (2) The Summary Appeal Court must state its reasons in writing for a decision on any appeal under this Part.

Section 136: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Sittings of Summary Appeal Court

Heading: inserted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

137 Sittings of Summary Appeal Court

- (1) The Summary Appeal Court—
 - (a) must sit in open court unless section 138 or 139 applies; and
 - (b) may sit in any place that the Judge Advocate General may direct, whether in New Zealand or elsewhere; and
 - (c) may conduct its proceedings by teleconference or by any means of communication that allows individuals a reasonable opportunity to participate in the proceedings.
- (2) Subsection (1)(c) is subject to the rules of procedure.
- (3) A sitting of the Summary Appeal Court may be adjourned from time to time and from place to place.

Section 137: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

138 When Summary Appeal Court must hold proceedings in closed court

- (1) The Summary Appeal Court must hold its proceedings in closed court while deliberating on whether to allow an appeal.
- (2) The Summary Appeal Court may hold its proceedings in closed court on any other deliberation.
- (3) When the Summary Appeal Court holds its proceedings in closed court, only the following persons may be present:
 - (a) the Judge;
 - (b) any other persons authorised by the Judge.

Section 138: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

139 Summary Appeal Court may limit scope of open court

- (1) In any proceedings in the Summary Appeal Court, the court may make any of the orders specified in subsection (2) limiting the scope of open court if the court considers that—
 - (a) a statement may be made or evidence given in the course of those proceedings that might lead to the disclosure of information that would or might—
 - (i) be directly or indirectly useful to the enemy or any foreign country; or
 - (ii) be otherwise harmful to New Zealand; or
 - (b) the making of the order—
 - (i) is necessary in the interests of justice; or
 - (ii) is desirable in the interests of public morality; or
 - (iii) is necessary for the protection of the reputation of a victim of an alleged sexual offence or offence of extortion.
- (2) The orders referred to in subsection (1) are as follows:
 - (a) an order forbidding publication of any report or account of the whole or any part of the proceedings, including any evidence adduced or submissions made:
 - (b) an order forbidding the publication of the name of any person connected, whether as a witness or otherwise, with the proceedings or of any name or particulars likely to lead to the identification of that person:
 - (c) an order excluding all or any persons, except the following:
 - (i) the Director of Military Prosecutions or any person acting on behalf of the Director:
 - (ii) the appellant's counsel:
 - (iii) the Registrar or any other officer of the Summary Appeal Court:
 - (iv) an interpreter required in the proceedings:
 - (v) a person expressly permitted by the Summary Appeal Court to be present.
- (3) However, the Summary Appeal Court may make an order specified in subsection (2)(c) that has the effect of excluding any accredited news media reporter from the proceedings only on the grounds specified in subsection (1)(a), but not on any of the grounds specified in subsection (1)(b).
- (4) An order specified in subsection (2)—
 - (a) may be made for a limited period or permanently; and

- (b) if it is made for a limited period, may be renewed for a further period or periods or made permanent by the Summary Appeal Court at any time; and
- (c) if it is made permanently, may be reviewed by the Summary Appeal Court at any time.

Section 139: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Miscellaneous procedural provisions

Heading: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

140 Right of appellant to present his or her case in writing and restricted right of appellant to be present

- (1) An appellant under this Part may, instead of having his or her case presented orally, have it presented in writing.
- (2) If subsection (1) applies, the Summary Appeal Court may deal with the appellant's case by way of a hearing on the papers.
- (3) An appellant under this Part is not entitled to be present at the hearing of an appeal under this Part or at any proceedings preliminary or incidental to that appeal.
- (4) Subsection (3) does not apply if—
 - (a) the rules of procedure provide that the appellant has the right to be present; or
 - (b) the Summary Appeal Court gives the appellant leave to be present.
- (5) A power of the Summary Appeal Court under this Part may be exercised despite the absence of the appellant.

Section 140: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

141 Defence of appeals and representation of appellant

- (1) The Director of Military Prosecutions must undertake the defence of an appeal to the Summary Appeal Court.
- (2) An appellant under this Part may be represented by a lawyer.

Section 141: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

142 Costs of appeal

- (1) On the hearing and determination of an appeal or any proceedings preliminary or incidental to the appeal under this Part, no costs may be allowed on either side.
- (2) The following expenses must be defrayed in the same manner as the expenses of a trial of a criminal case in the High Court:

- (a) the expenses of any witnesses attending on the order of the Summary Appeal Court or examined in any proceedings preliminary or incidental to the appeal under this Part:
- (b) the expenses of, and incidental to, the appearance of the appellant on the hearing of his or her appeal under this Part or on any proceedings preliminary or incidental to that appeal:
- (c) all expenses of, and incidental to, any examination of witnesses conducted by any person appointed by the Summary Appeal Court for the purpose:
- (d) the expenses of any person appointed as assessor to the Summary Appeal Court.

Section 142: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

143 Removal of prisoners for purposes of proceedings under this Part

Provision may be made by orders made by the Chief of Defence Force, or by regulations made under the Corrections Act 2004, as to the manner in which an appellant, when in custody, is to be—

- (a) taken to, kept in custody at, and brought back from any place at which he or she is entitled to be present for the purposes of this Part; or
- (b) taken to any place to which the Summary Appeal Court may order him or her to be taken for the purpose of any hearing or proceedings of the court.

Section 143: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Contempt of courts-martial

[Repealed]

Heading: repealed, on 1 July 2009, by section 86 of the Court Martial Act 2007 (2007 No 101).

144 Duties of Registrar with respect to appeals

- (1) The Registrar must—
 - (a) take all necessary steps for obtaining the determination of an appeal under this Part; and
 - (b) obtain and lay before the Summary Appeal Court in proper form all documents, exhibits, and other things relating to the relevant summary trial that appear necessary for the proper determination of the appeal; and
 - (c) provide the necessary forms and instructions relating to notices of appeal under this Part to any person who asks for them, to persons in charge of places where persons punished by a disciplinary officer may lawfully be detained, and to any other persons that the Registrar thinks fit.

- (2) Every person in charge of a place referred to in subsection (1)(c) must cause the forms and instructions to be placed at the disposal of persons detained in that place who desire to lodge a notice of appeal under this Part.

Section 144: substituted, on 1 July 2009, by section 38 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Part 6

Courts-martial

[Repealed]

Part 6: repealed, on 1 July 2009, by section 86 of the Court Martial Act 2007 (2007 No 101).

Part 7

Other provisions relating to proceedings generally

Part 7 heading: substituted, on 1 July 2009, by section 39 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

145 Application of subpart 3 of Part 5 of the Criminal Procedure Act 2011 to proceedings under this Act

Subpart 3 of Part 5 of the Criminal Procedure Act 2011 applies to the extent that it is applicable and with all necessary modifications, to proceedings under this Act and to proceedings on appeal from any decision under this Act.

Section 145: substituted, on 1 July 2009, by section 40 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 145 heading: amended, on 5 March 2012 (applying in relation to a proceeding for an offence that was commenced before that date), by section 393 of the Criminal Procedure Act 2011 (2011 No 81).

Section 145: amended, on 5 March 2012 (applying in relation to a proceeding for an offence that was commenced before that date), by section 393 of the Criminal Procedure Act 2011 (2011 No 81).

146 Witnesses may be compelled to attend courts-martial, etc

[Repealed]

Section 146: repealed, on 1 July 2009, by section 41 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

147 Evidence in proceedings under this Act

[Repealed]

Section 147: repealed, on 1 July 2009, by section 41 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

148 Evidence of civil conviction or acquittal

- (1) If any person subject to this Act has been tried by any civil court, the Registrar of that court or his deputy, or any other officer having the custody of the records of the court, shall, if required by the commanding officer of that person, or by any other officer, and without payment of any fee, transmit to him a

certificate signed by the Registrar or deputy or other officer and stating all or any of the following matters:

- (a) that the said person has been tried before the court for an offence specified in the certificate:
 - (b) the result of the trial:
 - (c) what judgment or order was given or made by the court.
- (2) Any such certificate shall be evidence of the matters specified in it.

Compare: 1950 No 39 s 119; 1950 No 40 s 119; Army Act 1955 s 199(1) (UK); Air Force Act 1955 s 199(1) (UK)

149 Evidence of proceedings of court-martial

[Repealed]

Section 149: repealed, on 1 July 2009, by section 42 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Rules of procedure

Heading: inserted, on 1 July 2009, by section 43 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

150 Rules of procedure

- (1) The Governor-General may, by Order in Council, make rules of procedure for all or any of the following purposes:
- (a) providing for the drawing of charges:
 - (b) providing for the procedures for bringing charges before disciplinary officers:
 - (c) providing for the manner in which charges brought before disciplinary officers are to be investigated or otherwise dealt with under Part 5:
 - (d) providing for the replacement of a disciplinary officer in the event of the officer being unable to continue to act:
 - (e) providing for the advice that must be given under section 117O:
 - (f) providing for the withdrawal of an election for trial by the Court Martial, including providing for when and how that withdrawal may be made and how that withdrawal must be dealt with:
 - (g) prescribing information, documents, and forms for the purposes of any provision of this Act, the rules of procedure, or the Court Martial Act 2007:
 - (h) authorising the Chief of Defence Force to prescribe the information, documents, and forms referred to in paragraph (g):
 - (i) providing for the recording of proceedings before disciplinary officers (including providing for the authentication, storage, and control of, and access to, those records):

- (j) providing for adequate disclosure to be made to an accused or an appellant in connection with a proceeding before a military tribunal:
 - (k) providing for the payment of fees, allowances, and expenses of witnesses and interpreters giving evidence before a military tribunal or a court of inquiry and prescribing the amount of the fees, allowances, and expenses payable or the method by which they are to be calculated:
 - (l) providing for the procedure to be observed in proceedings before the Summary Appeal Court:
 - (m) providing for the procedure to be observed in trials by the Court Martial:
 - (n) providing for the recording of pleas in relation to charges before the Court Martial (including the recording of a plea of guilty before a Judge sitting alone) and the circumstances in which a plea may be accepted:
 - (o) providing for the procedure to be observed in new trials by disciplinary officers or the Court Martial directed to be held under any provision of this Act or of the Court Martial Appeals Act 1953:
 - (p) empowering the Director of Military Prosecutions, with the leave of a Judge, in such cases and to such extent as the rules specify, to amend a charge before the Court Martial:
 - (q) specifying any matter referred to in section 87A(1) in relation to the suspension of orders for compensation; and providing for the retention of deductions from pay made pursuant to any order for compensation while the order is suspended:
 - (r) specifying any matter referred to in section 87A(1) in relation to the suspension of orders for restitution and the suspension in certain cases of the provisions of section 152(1) of the Contract and Commercial Law Act 2017; and providing for the retention and safe custody of any property to which any order for restitution or those provisions apply while the order or the operation of those provisions is suspended:
 - (s) *[Repealed]*
 - (t) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect, in relation to the investigation, trial, and punishment of offences against this Act.
- (2) Rules under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 150(1): substituted, on 1 July 2009, by section 43 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 150(1)(k): substituted, on 7 July 2010, by section 9(1) of the Armed Forces Discipline Amendment Act 2010 (2010 No 48).

Section 150(1)(r): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

Section 150(1)(s): repealed, on 7 July 2010, by section 9(2) of the Armed Forces Discipline Amendment Act 2010 (2010 No 48).

Section 150(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Protection from civil liability, privileges, and immunities

Heading: inserted, on 1 July 2009, by section 43 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

150A Protection from civil liability

No civil proceedings may be brought against a military tribunal or court of inquiry and, as the case may be, any of its members for anything done or omitted to be done, or for any words spoken or written, in good faith, at, or for the purposes of, any proceedings before that tribunal or court of inquiry under this Act.

Section 150A: inserted, on 1 July 2009, by section 43 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

150B Privileges and immunities of witnesses and of certain other persons appearing before military tribunals and courts of inquiry

The following persons have the same privileges and immunities as witnesses, counsel, and interpreters in the High Court:

- (a) every witness attending and giving evidence before a military tribunal or court of inquiry; and
- (b) every defending officer and every presenting officer appearing before a disciplinary officer; and
- (c) the Director of Military Prosecutions and every counsel appearing before the Court Martial or the Summary Appeal Court; and
- (d) every counsel appearing before a court of inquiry; and
- (e) every interpreter appearing before a military tribunal or court of inquiry.

Section 150B: inserted, on 1 July 2009, by section 43 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Power to summon witnesses

Heading: inserted, on 1 July 2009, by section 43 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

150C Power to summon witnesses

- (1) The persons referred to in subsection (2) may issue a summons requiring any person to—
 - (a) attend at the time and place specified in the summons; and
 - (b) give evidence; and
 - (c) produce any papers, documents, records, or things in that person's possession or under that person's control that are relevant to the subject of the relevant proceedings.
- (2) The persons are—
 - (a) a disciplinary officer (for the purposes of any proceedings before the disciplinary officer);
 - (b) the Judge or the Registrar of the Summary Appeal Court (for the purposes of any proceedings in the Summary Appeal Court).
- (3) A summons—
 - (a) must be in the prescribed form; and
 - (b) may be issued—
 - (i) on the initiative of the disciplinary officer, Judge, or Registrar of the Summary Appeal Court; or
 - (ii) on the application of the presenting officer, the Director of Military Prosecutions, the accused, or the appellant.

Section 150C: inserted, on 1 July 2009, by section 43 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

150D Service of summons

- (1) A summons to a witness may be served—
 - (a) by delivering it to the person summoned; or
 - (b) by posting it by registered letter addressed to the person summoned at that person's usual place of residence.
- (2) The summons must,—
 - (a) if it is served under subsection (1)(a), be served at least 24 hours before the attendance of the witness is required;
 - (b) if it is served under subsection (1)(b), be served at least 10 days before the date on which the attendance of the witness is required.
- (3) If the summons is posted by registered letter, it is deemed for the purposes of subsection (2)(b) to be served at the time when the letter would be delivered in the ordinary course of post.

Section 150D: inserted, on 1 July 2009, by section 43 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Contempt

Heading: inserted, on 1 July 2009, by section 43 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

150E Contempt of military tribunal or court of inquiry

A person who is not subject to this Act commits a contempt of a military tribunal or court of inquiry if the person—

- (a) fails without reasonable excuse to comply with a summons or order to attend as a witness before the military tribunal or court of inquiry; or
- (b) refuses to swear an oath when required to do so by the military tribunal or court of inquiry; or
- (c) refuses to produce any papers, documents, records, or things in that person's possession or under that person's control that the military tribunal or court of inquiry has lawfully required the person to produce; or
- (d) being a witness, refuses to answer any question that the military tribunal or court of inquiry has lawfully required the person to answer; or
- (e) disobeys or evades any order or direction made or given by the military tribunal or court of inquiry in the course of the hearing of any proceedings before it; or
- (f) wilfully publishes any statement in respect of the proceedings of the military tribunal or court of inquiry that—
 - (i) without foundation states or implies that the military tribunal or court of inquiry has not acted or is not acting impartially; or
 - (ii) is likely to interfere with the proper administration of justice; or
- (g) insults, threatens, or interferes with a disciplinary officer or any member of the Summary Appeal Court, the Court Martial, or the court of inquiry while the disciplinary officer or member is attending, or is on the way to or from, the proceedings before the disciplinary officer, the Summary Appeal Court, the Court Martial, or the court of inquiry; or
- (h) insults, threatens, or interferes with any witness or other person under a duty to attend the proceedings of the military tribunal or court of inquiry while the witness or other person is attending, or is on the way to or from, the proceedings of the military tribunal or court of inquiry; or
- (i) interrupts the proceedings of the military tribunal or court of inquiry or otherwise misbehaves during the proceedings.

Section 150E: inserted, on 1 July 2009, by section 43 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

150F District Court may deal with person who has committed contempt

- (1) This section applies if a military tribunal or court of inquiry considers that a person who is not subject to this Act has committed a contempt of the military tribunal or court of inquiry.
- (2) The military tribunal or court of inquiry may order any constable or provost officer, or any person subject to this Act directed by that tribunal or court, to take either of the actions specified in subsection (3) against the person who is considered to be in contempt of that tribunal or court.
- (3) The actions referred to in subsection (2) are—
 - (a) to remove the person from the place where the proceedings are being held and to prevent that person from re-entering that place until the military tribunal or court of inquiry has risen; or
 - (b) if the military tribunal or court of inquiry is held in New Zealand, to arrest the person and take him or her before the nearest office of the District Court.
- (4) If a person alleged to have committed contempt of a military tribunal or court of inquiry is brought before the District Court under subsection (3)(b), the District Court Judge—
 - (a) must inquire into the alleged contempt; and
 - (b) may find the person guilty of the contempt after hearing—
 - (i) any witnesses against or on behalf of the person; and
 - (ii) any statement that may be offered in defence.
- (5) The penalty for contempt of a military tribunal or court of inquiry is imprisonment for a term not exceeding 1 month or a fine not exceeding \$1,000, or both.

Section 150F: inserted, on 1 July 2009, by section 43 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 150F(3)(b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 150F(4): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

150G Contempt by counsel

- (1) If counsel appears at any hearing before a military tribunal or court of inquiry, the following provisions apply:
 - (a) any conduct of counsel that would be liable to censure or would constitute contempt of court if it took place before the High Court is similarly liable to censure by the military tribunal or court of inquiry or, as the case may be, similarly constitutes contempt of the military tribunal or court of inquiry:

- (b) the rules of procedure and any rules prescribed for the guidance of counsel appearing before the military tribunal or court of inquiry are binding on counsel:
 - (c) counsel—
 - (i) is guilty of professional misconduct if he or she disobeys any of those rules; and
 - (ii) commits a contempt of the military tribunal or court of inquiry if he or she perseveres in the disobedience:
 - (d) if counsel is alleged to have committed conduct liable to censure, or a contempt of the military tribunal or court of inquiry, he or she may be dealt with in the same manner as a person who is alleged to have committed a contempt of the military tribunal or court of inquiry under section 150E.
- (2) This section does not limit sections 150E and 150F.

Section 150G: inserted, on 1 July 2009, by section 43 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Part 8

Reconsideration of sentences of imprisonment or detention

Part 8: substituted, on 1 July 2009, by section 44 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

151 Reconsidering Authority established

- (1) The Reconsidering Authority is established.
- (2) The Authority consists of—
 - (a) a Judge appointed to the Authority by the Chief Judge; and
 - (b) 2 or more superior commanders appointed to the Authority by or on behalf of the Judge Advocate General.
- (3) An appointment under this section must be made by written notice to the person concerned.
- (4) The powers of the Authority are not affected by any vacancy in its membership.

Section 151: substituted, on 1 July 2009, by section 44 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

152 Functions and powers of Authority

- (1) The Authority—
 - (a) must reconsider every sentence of imprisonment or detention imposed by the Court Martial that is for a term of 6 months or more; and
 - (b) may reconsider any other sentence of imprisonment or detention imposed by the Court Martial.

- (2) The Authority must reconsider each sentence of imprisonment or detention at least once every 6 months while the sentence is being served.
- (3) Delay in complying with subsection (1) does not affect or invalidate any sentence of imprisonment or detention imposed under this Act.
- (4) For the purpose of determining the date on which a sentence should be reconsidered, an offender must be taken to have been serving the sentence during the whole of any period that the offender was held in custody.
- (5) Subsection (4) does not limit or affect section 177 or 179.

Section 152: substituted, on 1 July 2009, by section 44 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

153 Petition for reconsideration

- (1) A service prisoner or detainee may lodge a petition against his or her sentence with the Authority.
- (2) The petition—
 - (a) must be in the prescribed form; and
 - (b) must be handed to the officer in charge of the place where the service prisoner or detainee is confined.
- (3) The officer in charge of that place must forward the petition to the Authority as soon as practicable after receiving it.

Section 153: substituted, on 1 July 2009, by section 44 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

154 Authority must consider petition for reconsideration

- (1) The Authority must consider every petition it receives under section 153 in accordance with this Part.
- (2) However, if the Authority remits a punishment or part of a punishment, it must not make a decision that has the effect of imposing a punishment more severe than the punishment that had effect before that remission.

Section 154: substituted, on 1 July 2009, by section 44 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 154(2): substituted, on 7 July 2010, by section 10 of the Armed Forces Discipline Amendment Act 2010 (2010 No 48).

155 Procedure for reconsideration

- (1) The Authority must give a service prisoner or detainee whose sentence is to be reconsidered at least 14 days' written notice of the reconsideration.
- (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.
- (2) The service prisoner or detainee may—
 - (a) request a hearing before the Authority; and
 - (b) be legally represented at the hearing.
- (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
 - (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.
- (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,—
 - (i) speak in support of the victim; and
 - (ii) with the permission of the victim, speak on behalf of the victim.
- (4) If the service prisoner or detainee does not request a hearing under subsection (2)(a), the Authority must conduct the reconsideration of the sentence by way of a hearing on the papers.
- (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.

Section 155: substituted, on 1 July 2009, by section 44 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 155(1A): inserted, on 30 November 2018, by section 9(1) of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Section 155(1B): inserted, on 30 November 2018, by section 9(1) of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Section 155(3): replaced, on 30 November 2018, by section 9(2) of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Section 155(3A): inserted, on 30 November 2018, by section 9(2) of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Section 155(5): inserted, on 30 November 2018, by section 9(3) of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

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:
 - (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.
- (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—
 - (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

Section 155A: inserted, on 30 November 2018, by section 10 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

156 Authority may call for written reports and hear evidence

The Authority—

- (a) may call for any written reports that it thinks fit in respect of a service prisoner or detainee serving a sentence of imprisonment or detention that is before it for reconsideration:
- (b) may hear evidence if a hearing is held.

Section 156: substituted, on 1 July 2009, by section 44 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

157 Authority may regulate its procedure

- (1) The Authority may regulate its own procedure as it sees fit.
- (2) If it is necessary for the Authority to vote on any matter in order to reach a decision, each member of the Authority has 1 vote and the matter must be decided by a majority of votes.

Section 157: substituted, on 1 July 2009, by section 44 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

158 Power of Authority to remit whole or part of sentence

- (1) At the conclusion of a reconsideration of a sentence of imprisonment or detention, the Authority may remit the whole or any part of the sentence that remains to be served on any of the following grounds:
 - (a) good conduct by the service prisoner or detainee during the term of the sentence:
 - (b) compassionate grounds:
 - (c) any other grounds that the Authority thinks proper.
- (2) Whether or not the Authority remits the whole or any part of the sentence that remains to be served, the Authority must arrange for particulars of its decision to be promulgated in the manner that may be prescribed in the rules of procedure.
- (3) A decision of the Authority takes effect from the date of its promulgation.

Section 158: substituted, on 1 July 2009, by section 44 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

159 Chief Judge may delegate to Registrar of Court Martial duty to appoint Judge to Authority

- (1) The Chief Judge may, either generally or particularly, delegate to the Registrar of the Court Martial the Chief Judge's duty under section 151(2)(a) to appoint a Judge to the Authority.
- (2) A delegation—
 - (a) must be in writing; and
 - (b) may be made subject to any restrictions that the Chief Judge thinks fit; and
 - (c) is revocable at any time, in writing; and
 - (d) does not prevent the performance or exercise of a function, duty, or power by the Chief Judge.
- (3) The Registrar of the Court Martial may perform any duties delegated under subsection (1) in the same manner and with the same effect as if they had been conferred on him or her directly by this Act and not by delegation.
- (4) If the Registrar of the Court Martial appears to act under subsection (1), he or she is presumed to be acting in accordance with the terms of delegation in the absence of evidence to the contrary.

Section 159: substituted, on 1 July 2009, by section 44 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Part 8A

Armed Forces Discipline Committee

Part 8A: inserted, on 1 July 2009, by section 44 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Establishment of Armed Forces Discipline Committee

Heading: inserted, on 1 July 2009, by section 44 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

160 Armed Forces Discipline Committee established

- (1) The Armed Forces Discipline Committee is established.
- (2) The Discipline Committee consists of the following 9 members:
 - (a) the Chief of Defence Force, who will be the chairperson of the Committee; and
 - (b) the Vice Chief of Defence Force; and
 - (c) the Chief of Navy; and
 - (d) the Chief of Army; and
 - (e) the Chief of Air Force; and
 - (f) the Commander Joint Forces New Zealand; and
 - (g) the Judge Advocate General; and
 - (h) the Director of Military Prosecutions; and
 - (i) a representative of the Armed Forces Defence Counsel Panel who is appointed by the Judge Advocate General.
- (3) The Judge Advocate General must—
 - (a) make an appointment under subsection (2)(i) by written notice to the person concerned; and
 - (b) provide a copy of the notice to the Chief of Defence Force.
- (4) The notice must—
 - (a) state the date on which the appointment takes effect, which must not be earlier than the date on which the notice is received; and
 - (b) state the term of the appointment.
- (5) The powers of the Discipline Committee are not affected by any vacancy in its membership.

Section 160: substituted, on 1 July 2009, by section 44 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

160A Reviewing authority to review decision to take other offences into consideration

[Repealed]

Section 160A: repealed, on 1 July 2009, by section 44 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

161 Purpose of Discipline Committee

The purpose of the Discipline Committee is to produce sentencing guidelines for offences against this Act in order to ensure consistency in sentencing practice.

Section 161: substituted, on 1 July 2009, by section 44 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 161: amended, on 30 November 2018, by section 11 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

162 Functions of Discipline Committee

- (1) The functions of the Discipline Committee are—
 - (a) to produce sentencing guidelines on the following in relation to offences against this Act:
 - (i) sentencing principles:
 - (ii) sentencing levels:
 - (iii) particular types of sentences:
 - (iv) other matters relating to sentencing practice:
 - (v) grounds for departure from the sentencing guidelines; and
 - (b) any functions that are incidental and related to, or consequential on, its functions set out in paragraph (a).
- (2) In performing its functions, the Discipline Committee must ensure that any sentencing guidelines it produces are, to the extent that it is applicable, consistent with the Sentencing Act 2002.
- (3) The Discipline Committee must carry out its functions independently of the Minister.

Section 162: substituted, on 1 July 2009, by section 44 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 162(2): replaced, on 3 June 2017, by section 4(2) of the Statutes Repeal Act 2017 (2017 No 23).

163 Chief of Defence Force must publish sentencing guidelines

The Chief of Defence Force must publish any sentencing guidelines produced by the Discipline Committee under this Part as Defence Force Orders.

Section 163: substituted, on 1 July 2009, by section 44 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Administrative provisions relating to Discipline Committee

Heading: inserted, on 1 July 2009, by section 44 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

164 Appointed member

- (1) A person who is appointed under section 160(2)(i) to be a member of the Discipline Committee (an **appointed member**) holds office for a term of up to 5 years as stated in the notice of appointment.
- (2) An appointed member may be reappointed for 1 further term, but the total of the further term together with the initial term must not exceed 7 years.
- (3) An appointed member continues in office despite the expiry of his or her term of office until—
 - (a) the member is reappointed; or
 - (b) the member's successor is appointed.
- (4) An appointed member may resign from office by written notice to the Judge Advocate General.
- (5) An appointed member may at any time be removed from office by written notice from the Judge Advocate General for inability to perform the functions of office, neglect of duty, or misconduct.

Section 164: substituted, on 1 July 2009, by section 44 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

165 Remuneration of members

- (1) A person who is a member of the Discipline Committee because of his or her office is not entitled to receive any fees, allowances, or expenses for services as a member in addition to his or her remuneration in respect of that office.
- (2) An appointed member is entitled to receive the fees, allowances, and expenses for services as a member that are fixed or determined by or in accordance with regulations made under section 205(1)(c).

Section 165: substituted, on 1 July 2009, by section 44 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

166 Procedure of Discipline Committee generally

The Discipline Committee may regulate its own procedures.

Section 166: substituted, on 1 July 2009, by section 44 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

166A Quorum for meetings

- (1) A quorum for a meeting of the Discipline Committee—
 - (a) is the number that is half the number of members; and
 - (b) must include the Chief of Defence Force and the Judge Advocate General.

- (2) No business may be transacted at a meeting of the Discipline Committee if a quorum is not present.

Section 166A: inserted, on 1 July 2009, by section 44 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

166B Other procedure at meetings

Every written report submitted by the senior military member of the Court Martial under section 34 of the Court Martial Act 2007 must be presented to the Discipline Committee at its next meeting after the date of the report.

Section 166B: inserted, on 1 July 2009, by section 44 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

166C Voting at meetings

- (1) Each member of the Discipline Committee has 1 vote.
- (2) In addition to his or her general vote, the chairperson has, in the case of an equality of votes, a casting vote.
- (3) A decision whether or not to finalise any sentencing guidelines must be decided by a majority vote of the Chief of Defence Force, the Judge Advocate General, and any other members present.

Section 166C: inserted, on 1 July 2009, by section 44 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

166D Protection from liability

No member of the Discipline Committee is personally liable for any act done or omitted to be done by the Committee in good faith in the performance or intended performance of its functions.

Section 166D: inserted, on 1 July 2009, by section 44 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Part 9

Provisions relating to the carrying out of punishments

Death

[Repealed]

Heading: repealed, on 26 December 1989, pursuant to section 5(1) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

167 Execution of sentences of death

[Repealed]

Section 167: repealed, on 26 December 1989, by section 5(1) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

*Imprisonment and detention***168 Manner in which sentences of imprisonment and detention are to be served**

- (1) Every service prisoner sentenced to imprisonment under this Act shall serve the sentence in a prison, a service prison, detention quarter, or other service custody, or partly in one and partly in another.
- (2) The Parole Act 2002 does not apply to a service prisoner serving a sentence of imprisonment in a prison, except that section 55 of that Act, which relates to deportation, does apply to such a service prisoner.
- (2A) The sentence of a service prisoner who is serving a sentence of imprisonment in a prison must be reconsidered from time to time in accordance with Part 8.
- (3) Subject to the provisions of orders made by the Chief of Defence Force in accordance with section 175, every service detainee shall serve the term of his detention—
 - (a) in a detention quarter; or
 - (b) in service custody; or
 - (c) in the case of a detainee who is for the time being attached to any part of the Army or Air Force which is on active service or who is a soldier or airman on active service, as field punishment if so ordered by the Court Martial or disciplinary officer that sentenced him—

or partly in one way and partly in another:

provided that a service detainee who has once been transferred to a detention quarter after having served part of the term of his detention as field punishment shall not be subsequently required to serve as field punishment any further part of that term of detention or the term or part of the term of a concurrent or consecutive sentence of detention.

Compare: 1950 No 39 s 68(2), (3); 1950 No 40 s 68(2), (3); Naval Discipline Act 1957 s 81(1), (2) (UK)

Section 168(1): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 168(2): substituted, on 30 June 2002, by section 125 of the Parole Act 2002 (2002 No 10).

Section 168(2): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 168(2A): inserted, on 30 June 2002, by section 125 of the Parole Act 2002 (2002 No 10).

Section 168(2A): amended, on 1 July 2009, by section 45(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 168(2A): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 168(3): amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 168(3)(c): amended, on 1 July 2009, by section 45(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

169 Committal, removal, release, etc, of members of the Armed Forces serving imprisonment or detention

- (1) An order of a competent service authority shall be sufficient authority for the committal—
 - (a) of a service prisoner to a service prison or to a detention quarter or, if the order so specifies, to a prison; or
 - (b) of a service detainee to a detention quarter.
- (2) An order of a disciplinary officer in respect of a sentence which he himself imposed shall be sufficient authority for the committal of a service detainee to a detention quarter.
- (3) An order of a competent service authority shall be sufficient authority—
 - (a) for the transfer of a service prisoner—
 - (i) from a service prison or prison to a detention quarter; or
 - (ii) from a detention quarter to a service prison or a prison; or
 - (iii) from a service prison to a prison; or
 - (iv) from a prison to a service prison; or
 - (v) from one service prison, prison, or detention quarter to another such prison, institution, or quarter; or
 - (b) for the transfer of a service detainee from one detention quarter to another; or
 - (c) for the delivery into service custody of a service prisoner or service detainee.
- (4) Without limiting the provisions of subsections (1) to (3), where any person has been convicted by the Court Martial under this Act and sentenced to imprisonment or detention or to be punished in any other manner, the Chief of Defence Force may, on the production to him of the original record of the proceedings of the Court Martial or of any copy certified in accordance with section 76 of the Court Martial Act 2007, by warrant under his hand, order the person so convicted to be imprisoned, detained, or otherwise punished in accordance with the sentence.
- (5) Where the sentence of any service prisoner or detainee is remitted, he shall be released as soon as practicable thereafter by order of a competent service authority.
- (6) A service prisoner or detainee may during his transfer from one place to another, whether on board a ship, aircraft, or other means of transport, be subjected only to such restraint as may be necessary to ensure his safe conduct and removal.

Compare: 1950 No 39 ss 71, 120; 1950 No 40 ss 71, 120; Naval Discipline Act 1957 ss 81(3), 84 (UK)

Section 169 heading: amended, on 1 April 1990, pursuant to section 105(1) of the Defence Act 1990 (1990 No 28).

Section 169(1): substituted, on 1 December 1983, by section 14 of the Armed Forces Discipline Amendment Act 1980 (1980 No 37).

Section 169(1)(a): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 169(2): amended, on 1 July 2009, by section 46(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 169(3)(a)(i): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 169(3)(a)(ii): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 169(3)(a)(iii): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 169(3)(a)(iv): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 169(3)(a)(v): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 169(4): amended, on 1 July 2009, by section 46(2)(a) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 169(4): amended, on 1 July 2009, by section 46(2)(b) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 169(4): amended, on 1 July 2009, by section 46(2)(c) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 169(4): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

170 Duty of prison managers, etc, to receive service prisoners

- (1) It is the duty of the prison manager of every prison to receive any prisoner sent to that prison in accordance with this Act and to confine him until execution of the sentence is completed or the prisoner is discharged or delivered over in due course of law.
- (2) Where a prisoner is in service custody pursuant to a sentence of imprisonment or detention imposed on him under this Act, then on receipt of a written order in that behalf purporting to be signed by the prisoner's commanding officer, it shall be the duty of any such prison manager, or the constable in charge of a Police station, or of any other person in charge of any place in which prisoners may be lawfully confined to keep that prisoner in custody for a period not exceeding 7 days, unless the prisoner is earlier discharged or delivered in due course of law.

Compare: 1950 No 39 s 72; 1950 No 40 s 72; Army Act 1955 s 129 (UK); Air Force Act 1955 s 129 (UK); Naval Discipline Act 1957 s 107 (UK)

Section 170 heading: amended, on 1 June 2005, pursuant to section 206 of the Corrections Act 2004 (2004 No 50).

Section 170(1): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 170(2): amended, on 1 October 2008, pursuant to section 116(a)(iv) of the Policing Act 2008 (2008 No 72).

Section 170(2): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

171 Places in which sentences of imprisonment or detention may be served

- (1) Subject to the provisions of this section and of section 172, a service prisoner or detainee who has been sentenced, or is serving his sentence, in New Zealand shall not be removed to a prison or detention quarter outside New Zealand:

provided that if—

- (a) he was enlisted in any territory administered by Her Majesty the Queen in right of New Zealand; and
- (b) he belongs to a class of persons enlisted from any such territory; and
- (c) the Governor-General has arranged for any person of that class sentenced to imprisonment or detention under this Act to be transferred to that territory to serve his sentence there—

he may be removed to a prison or detention quarter in that territory to serve his sentence.

- (2) A competent service authority may give directions for delivery into service custody of any service prisoner or detainee, and for the removal of any such prisoner or detainee, whether separately or with the part of the force to which he belongs, to any place outside New Zealand where the part of the force to which he belongs for the time being is serving or is under orders to serve.
- (3) A service prisoner or detainee shall, if he was sentenced outside New Zealand, serve his sentence either in the country in which he was sentenced or in accordance with the provisions of subsection (4):

provided that, if the term of his sentence exceeds 12 months, he shall be transferred as soon as practicable after being sentenced to a prison, service prison, or detention quarter in New Zealand, unless the Court Martial, for stated special reasons, otherwise orders.

- (4) Subject to the provisions of this section—

- (a) a service prisoner who has been sentenced to imprisonment in any place outside New Zealand may be committed or, if he has been committed to prison, be removed, if the occasion arises, to a service prison or a detention quarter wherever situated:

provided that this paragraph shall not authorise his removal from a prison or service prison in New Zealand to a prison or other place of detention outside New Zealand:

- (b) a service detainee sentenced to detention in any place outside New Zealand may be committed, or if he has been committed to a detention quarter, be removed, if the occasion arises, to a detention quarter wherever situated:

provided that this paragraph shall not authorise his removal from a detention quarter in New Zealand to a detention quarter outside New Zealand.

Compare: 1950 No 39 s 69; 1950 No 40 s 69; Army Act 1955 s 127 (UK); Air Force Act 1955 s 127 (UK); Naval Discipline Act 1957 s 81 (UK)

Section 171(3) proviso: amended, on 1 July 2009, by section 47 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 171(3) proviso: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 171(4)(a) proviso: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

172 Imprisonment and detention of members of other forces attached to Armed Forces

- (1) This section applies if—
 - (a) a member of the armed forces of another State is attached to any Service under section 23A of the Defence Act 1990 and is sentenced by the Court Martial under this Act to imprisonment or detention; and
 - (b) an arrangement is for the time being in force with the appropriate authority of that State that enables the return of the member for the purpose of serving any such sentence in that State.
- (2) A competent service authority may give directions for the delivery of the member so sentenced into the custody of the forces of that State (whether in New Zealand or elsewhere) and his or her removal to that State for the purpose of serving the sentence.
- (3) Any member of the forces of any State in respect of whom any such directions are given by a competent service authority may, until that member is delivered into the custody of those forces, be kept in service custody or civil custody, or partly in service custody or partly in civil custody.
- (4) Any such member may, by order of a competent service authority, from time to time be transferred from service custody to civil custody or from civil custody to service custody, as the occasion may require.
- (5) Any such member may during his or her transfer from one place to another, whether on board a ship or an aircraft or other means of transport, be subjected only to such restraint as may be necessary to ensure his or her safe conduct and removal.

Section 172: substituted, on 1 July 2004, by section 26 of the Visiting Forces Act 2004 (2004 No 59).

Section 172(1)(a): amended, on 1 July 2009, by section 48 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

173 Imprisonment and detention of members of Armed Forces attached to other forces

- (1) This section applies if—

- (a) a member of the Armed Forces is attached to the forces of another State under section 23 of the Defence Act 1990 and is sentenced by court-martial of those forces to imprisonment or detention; and
 - (b) an arrangement is for the time being in force with the appropriate authority in that State that enables the return of the member to serve his or her sentence—
 - (i) in New Zealand; or
 - (ii) in a prison, or in a service prison or detention quarter established under this Act (whether in New Zealand or elsewhere); and
 - (c) under that arrangement the member is received into the custody of a New Zealand force (whether in New Zealand or elsewhere).
- (2) The provisions of this Act apply to that member in all respects, with the necessary modifications, as if the member had been sentenced by the Court Martial under this Act.

Section 173: substituted, on 1 July 2004, by section 26 of the Visiting Forces Act 2004 (2004 No 59).

Section 173(1)(b)(ii): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 173(2): amended, on 1 July 2009, by section 49 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

174 Interim custody of member of Armed Forces serving imprisonment or detention

A service prisoner or a service detainee may, until he is delivered to the prison or service penal establishment in which he is to serve his sentence, be kept (whether in New Zealand or elsewhere) in service custody or in civil custody, or partly in service custody and partly in civil custody, and may, by order of a competent service authority, from time to time be transferred from service custody to civil custody, or from civil custody to service custody, as the occasion requires.

Compare: 1950 No 39 s 70; 1950 No 40 s 70; Naval Discipline Act 1957 s 81(3) (UK)

Section 174 heading: amended, on 1 April 1990, pursuant to section 105(1) of the Defence Act 1990 (1990 No 28).

Section 174: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

175 Establishment and regulation of service prisons and detention quarters

- (1) The Chief of Defence Force may from time to time—
- (a) set apart any building or part of a building as a service prison or as a detention quarter; or
 - (b) declare any place or ship, or any part of any such place or ship, to be a service prison or detention quarter.

- (2) Without limiting the powers of the Chief of Defence Force to issue orders under section 206, orders may be issued under that section for all or any of the following purposes:
- (a) for the carrying into effect of sentences of the Court Martial:
 - (b) for the provision, classification, regulation, and management of service prisons and detention quarters:
 - (c) for the appointment, removal from office, and powers and duties of inspectors, visitors, superintendents, and commandants, and of officers and other members of the staff of service penal establishments:
 - (d) for the classification, treatment, employment, discipline, and control of any offenders serving sentences of imprisonment or detention in service penal establishments or otherwise in custody in service penal establishments and for the remission of part of any such sentence for good work and conduct:
 - (e) for any offender sentenced to undergo detention as field punishment, whether in his unit or at a field punishment centre—
 - (i) to perform such drills or duties (in addition to those which the offender might reasonably be expected to perform if he were not undergoing field punishment); and
 - (ii) to suffer the loss of such privileges; and
 - (iii) to be confined in such manner; and
 - (iv) to be subjected to such personal restraint to prevent his escape—
as may be prescribed in the orders, in addition to suffering such forfeiture of pay as may be provided for in regulations made under this Act:
 - (f) for the procedure for the reception and confinement in a service penal establishment of any offender sentenced to imprisonment or detention under this Act:
 - (g) for the procedure for the removal of an offender from one country or place to another and from one prison or service penal establishment or form of custody to another:
 - (h) for the release of an offender, or for the temporary or conditional release of an offender:
 - (i) for the removal of a person serving a sentence of imprisonment or detention from the place where he is imprisoned or detained to a psychiatric hospital if he becomes mentally disordered while serving the sentence:
 - (j) for the retaking into custody of any such offender after temporary release or removal to a psychiatric hospital or on his breaking the conditions of his release:
 - (k) for such matters as are contemplated by or necessary for the administration of any service penal establishment.

- (3) All the provisions of the regulations made under the Corrections Act 2004 as to the duties of prison managers and medical officers, and all the provisions of that Act and of the Coroners Act 2006 and of any regulations made under those Acts as to the duties of coroners with respect to inquests in prisons, shall be contained in orders made under this section, so far as they can be made applicable.

Compare: 1950 No 39 s 73; 1950 No 40 s 73; Army Act 1955 s 122 (UK); Air Force Act 1955 s 122 (UK); Naval Discipline Act 1957 s 82 (UK)

Section 175(1): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 175(2): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 175(2)(a): amended, on 1 July 2009, by section 50 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 175(2)(g): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 175(3): amended, on 1 July 2007, by section 146 of the Coroners Act 2006 (2006 No 38).

Section 175(3): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

176 Provisions as to service prisons and detention quarters outside New Zealand

When any part of the Armed Forces is serving outside New Zealand, the powers of the Chief of Defence Force in respect of service prisons and detention quarters specified in section 175 shall be exercisable by the officer appointed to command that part of the Armed Forces.

Compare: 1950 No 39 s 74; 1950 No 40 s 74

Section 176: amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

177 Commencement of sentences

- (1) A term of imprisonment or detention to which an offender is sentenced under this Act begins to run from the beginning of the day on which the sentence was passed, whether the sentence was passed by the Court Martial or by a disciplinary officer.
- (1A) Subsection (1) is subject to the provisions of this Part.
- (2) Where any person has been sentenced to imprisonment or detention under this Act and there is no appropriate prison or service penal establishment in which he may serve the sentence at or near the place where he was sentenced, a competent service authority may direct that the term or period of the sentence shall begin to run from the beginning of the day on which he is delivered to the prison manager or other person in charge of the prison or establishment at which the authority has decided that he shall serve his sentence; and in that event he shall serve his sentence accordingly notwithstanding that he may previously have returned to duty or become entitled to be discharged:
- provided that any such term of imprisonment or detention shall be reduced by deducting any period for which he has been kept in confinement in respect of the sentence before being delivered as aforesaid.

- (3) Where—
- (a) a sentence of imprisonment or detention is passed by the Court Martial on the conviction of any person; and
 - (b) that conviction is subsequently quashed and a new trial ordered; and
 - (c) following the new trial the person is again convicted and sentenced to imprisonment or detention,—

the term of the new sentence shall be deemed to have commenced or shall commence on the date on which the term of the original sentence commenced or would have commenced; but the period commencing with the quashing of the conviction and ending with the imposition of the new sentence shall not count as part of the new sentence.

Compare: 1950 No 39 s 68; 1950 No 40 s 68; Army Act 1955 s 118 (UK); Air Force Act 1955 s 118 (UK); Naval Discipline Act 1957 s 85 (UK)

Section 177(1): substituted, on 1 July 2009, by section 51(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 177(1A): inserted, on 1 July 2009, by section 51(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 177(2): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 177(3): added, on 1 January 1986, by section 32 of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Section 177(3)(a): amended, on 1 July 2009, by section 51(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

177A Effect of period spent in custody before being sentenced

- (1) For the purpose of determining the date on which an offender will become eligible for remission of sentence, the offender shall be deemed to have been serving the sentence during the whole of any period that the offender was held in custody, as is required to be specified on the committal order by the Court Martial under section 81A or by a disciplinary officer under section 117Y.
- (2) Nothing in this section shall limit or affect the provisions of section 177 or section 179.

Section 177A: inserted, on 27 May 1988, by section 19(1) of the Armed Forces Discipline Amendment Act 1988 (1988 No 89).

Section 177A heading: amended, on 27 September 2001, by section 7(1) of the Armed Forces Discipline Amendment Act 2001 (2001 No 55).

Section 177A(1): amended, on 1 July 2009, by section 52 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 177A(1): amended, on 27 September 2001, by section 7(2) of the Armed Forces Discipline Amendment Act 2001 (2001 No 55).

178 Consecutive sentences

- (1) Where a person who is already serving a term of imprisonment, whether imposed under this Act or otherwise, is sentenced to a further term of imprison-

ment by the Court Martial under this Act, the Court may order that the further term shall run from the expiration of the term already being served.

- (2) Where, in any case to which subsection (1) applies,—
- (a) the earlier sentence is quashed on appeal or is otherwise set aside; and
 - (b) no other sentence of imprisonment is substituted for that earlier sentence,—

the sentence imposed by the Court Martial shall be deemed to have commenced or shall commence on the date when the term of the earlier sentence commenced or would have commenced.

- (3) Where, in any case to which subsection (1) applies,—
- (a) the earlier sentence is quashed on appeal or is otherwise set aside; and
 - (b) another sentence of imprisonment is substituted for that earlier sentence,—

the sentence imposed by the Court Martial shall commence or shall be deemed to have commenced on the date on which the substituted sentence will expire or is deemed to have expired.

- (4) Where a person who is already serving a sentence of detention is sentenced to a further term of detention by the Court Martial or a disciplinary officer, the Court or that officer may order that the further term shall run from the expiration of the sentence already being served.

- (5) Where, in any case to which subsection (4) applies,—
- (a) the earlier sentence is quashed on appeal or is otherwise set aside; and
 - (b) no other sentence of detention is substituted for that earlier sentence,—
- the sentence imposed by the Court Martial or the disciplinary officer shall be deemed to have commenced or shall commence on the date when the term of the earlier sentence commenced or would have commenced.

- (6) Where, in any case to which subsection (4) applies,—
- (a) the earlier sentence is quashed on appeal or is otherwise set aside; and
 - (b) another sentence of detention is substituted for that earlier sentence,—
- the sentence imposed by the Court Martial or the disciplinary officer shall be deemed to have commenced or shall commence on the date on which the substituted sentence will expire or is deemed to have expired.

Section 178: substituted, on 1 January 1986, by section 33 of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Section 178(1): amended, on 1 July 2009, by section 53(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 178(1): amended, on 1 July 2009, by section 53(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 178(2): amended, on 1 July 2009, by section 53(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 178(2)(a): amended, on 1 July 2009, by section 53(4) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 178(3): amended, on 1 July 2009, by section 53(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 178(3)(a): amended, on 1 July 2009, by section 53(4) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 178(4): amended, on 1 July 2009, by section 53(5) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 178(5): amended, on 1 July 2009, by section 53(6) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 178(5)(a): amended, on 1 July 2009, by section 53(4) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 178(6): amended, on 1 July 2009, by section 53(6) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 178(6)(a): amended, on 1 July 2009, by section 53(4) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

179 Limitation of term of detention under 1 or more sentences

- (1) Notwithstanding anything to the contrary in this Act—
 - (a) a detainee shall not be kept continuously in detention for a period exceeding 2 years under 2 or more sentences of detention; and
 - (b) a detainee shall not be made to undergo field punishment for a continuous period exceeding 90 days under 1 or more sentences of detention.
- (2) Subsection (1) shall not affect the validity of an order under section 178 ordering a sentence of detention to run from the expiration of another sentence of detention:

provided that so much of any term of detention to which the order relates as would prolong the total of the terms of detention beyond 2 years shall be deemed to be remitted.
- (3) Where a person sentenced to detention is subsequently sentenced to imprisonment under this Act, any part of the term of detention that has not been served shall be deemed to be remitted, whether the sentence of imprisonment is suspended or not.

Compare: 1950 No 39 s 64(5); 1950 No 40 s 64(5); Army Act 1955 s 72(10), (11) (UK); Air Force Act 1955 s 72(10), (11) (UK); Naval Discipline Act 1957 s 89 (UK)

Section 179(2): amended, on 1 July 2009, by section 54 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

180 Periods of unlawful absence

Where a person sentenced under this Act to imprisonment or detention escapes or becomes unlawfully at large during the currency of the sentence, then, except in respect of any period during which he is in custody under some other

enactment or rule of law, the period for which he is unlawfully at large shall not be reckoned as time spent in serving the sentence.

Compare: 1950 No 39 s 68(4); 1950 No 40 s 68(4); Army Act 1955 s 119 (UK); Air Force Act 1955 s 119 (UK); Naval Discipline Act 1957 s 88 (UK)

Suspended sentences

[Repealed]

Heading: repealed, on 1 July 2009, by section 55 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

181 Effect of suspension of sentences

[Repealed]

Section 181: repealed, on 1 July 2009, by section 55 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

182 Termination of suspension of sentence

[Repealed]

Section 182: repealed, on 1 July 2009, by section 55 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

183 Offender under suspended sentence convicted or found guilty of further offence

[Repealed]

Section 183: repealed, on 1 July 2009, by section 55 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Prison officers, etc

184 Indemnity for prison officers, etc

No action for damages shall lie in respect of any act done or omitted unlawfully but in good faith by any prison officer, constable, provost officer, or any other person while exercising authority over any person sentenced to imprisonment or detention under this Act if the act done or omitted would have been lawful but for a defect in a warrant or other instrument made for the purposes of that sentence.

Compare: Army Act 1955 s 142 (UK); Air Force Act 1955 s 142 (UK)

Section 184: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Fines

185 Recovery in District Court of fines imposed under this Act

- (1) If a fine has been imposed by the Court Martial, or by a disciplinary officer, on a person for an offence against this Act (whether in New Zealand or elsewhere), a certificate purporting to be signed by a competent service authority

specifying particulars of the conviction and the fine imposed may be filed in the District Court in New Zealand (without payment of any fee).

- (1A) Subsection (1) does not limit section 85.
- (2) Once a certificate under subsection (1) is filed, the fine may be enforced in accordance with Part 3 of the Summary Proceedings Act 1957.

Compare: 1950 No 39 s 156; 1950 No 40 s 156; 1954 No 53 s 56

Section 185 heading: amended, on 1 April 1980, pursuant to section 18(2) of the District Courts Amendment Act 1979 (1979 No 125).

Section 185(1): substituted, on 1 July 2009, by section 56(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 185(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 185(1A): inserted, on 1 July 2009, by section 56(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 185(2): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

186 Fines to be paid into Crown Bank Account

Subject to section 186A all fines imposed under this Act shall, when recovered, be paid into a Crown Bank Account.

Compare: 1950 No 39 s 157(1); 1950 No 40 s 157; 1954 No 53 s 57

Section 186 heading: amended (with effect from 1 July 1989), on 26 July 1989, pursuant to section 83(7) of the Public Finance Act 1989 (1989 No 44).

Section 186: amended, on 25 January 2005, pursuant to section 83(7) of the Public Finance Act 1989 (1989 No 44).

Section 186: amended, on 1 December 1983, by section 2(2) of the Armed Forces Discipline Amendment Act 1976 (1976 No 13).

186A Compensation to victims of offences causing physical harm

- (1) If any accused is found guilty, whether summarily or by the Court Martial, of any offence arising out of any act or omission that caused physical harm to any other person (whether a member of the Armed Forces or a civilian and whether or not causing the physical harm constitutes a necessary element of the offence at law) and the accused is punished by a fine, then the disciplinary officer or the Court Martial, as the case may require, may, in his, her, or its discretion, award by way of compensation to the victim a portion of the fine, not exceeding one half, as he, she, or it thinks fit.
- (2) However, no award of compensation may be made under subsection (1) unless the disciplinary officer or the Court Martial, as the case may be, is of the opinion that the act or omission—
- (a) was unprovoked; and
 - (b) caused bodily injury to the victim.

- (3) An order made under this section shall be sufficient authority for the paying officer of the unit deducting the fine from the accused's pay to pay the portion specified in the order to the person entitled to it under the order.
- (4) An award of compensation under this section shall not affect the right of the person entitled to it—
 - (a) to receive compensation under the Injury Prevention, Rehabilitation, and Compensation Act 2001; and
 - (b) subject to section 317 of that Act, to recover by civil proceedings damages in excess of the amount of the award.

Section 186A: inserted, on 1 December 1983, by section 2(1) of the Armed Forces Discipline Amendment Act 1976 (1976 No 13).

Section 186A heading: amended, on 1 July 2009, by section 57(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 186A(1): substituted, on 1 July 2009, by section 57(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 186A(2): substituted, on 1 July 2009, by section 57(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 186A(4)(a): amended, on 1 April 2002, by section 337(1) of the Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49).

Section 186A(4)(b): amended, on 1 April 2002, by section 337(1) of the Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49).

Part 10

Special provisions for dealing with mentally impaired persons

Part 10 heading: amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Part 10 heading: amended, on 1 January 1986, by section 35 of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

187 Interpretation of terms used in this Part

- (1) In this Part, unless the context otherwise requires,—

compulsory treatment order means a compulsory treatment order made under Part 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992

health assessor means a person who is—

 - (a) a practising psychiatrist who is a medical practitioner; or
 - (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

mentally disordered has the same meaning as it has in the Mental Health (Compulsory Assessment and Treatment) Act 1992

patient means a person who is, or is deemed to be, subject to a compulsory treatment order

- (1A) For the purposes of this Part, **unfit to stand trial**—
- (a) means an inability of the accused, due to mental impairment, to conduct a defence or to instruct counsel, or the member of the Armed Forces who is to defend the accused, to do so; and
 - (b) includes an inability of the accused, due to mental impairment, to do any 1 or more of the following:
 - (i) to plead:
 - (ii) to adequately understand the nature or purpose or possible consequences of the proceedings:
 - (iii) to communicate adequately, for the purposes of conducting a defence, with counsel or the member of the Armed Forces who is to defend the person.
- (2) Where any person is ordered or directed under the provisions of this Act to be detained as a special patient or as a patient, the provisions of the Mental Health (Compulsory Assessment and Treatment) Act 1992 shall, subject to section 192 of this Act, apply to that person as if that person were a special patient or a patient within the meaning of that Act.

Section 187(1) **compulsory treatment order**: inserted, on 1 November 1992, by section 140(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Section 187(1) **health assessor**: inserted, on 30 November 2018, by section 12(1) of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Section 187(1) **mentally disordered**: substituted, on 1 November 1992, by section 140(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Section 187(1) **patient**: inserted, on 1 November 1992, by section 140(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Section 187(1) **psychiatric hospital**: repealed, on 1 November 1992, by section 140(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Section 187(1) **qualified medical practitioner**: repealed, on 30 November 2018, by section 12(2) of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Section 187(1) **under disability**: repealed, on 1 December 1983, by section 16(1) of the Armed Forces Discipline Amendment Act 1980 (1980 No 37).

Section 187(1A): substituted, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 187(2): substituted, on 1 November 1992, by section 140(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

187A Court Martial to act through Judge alone

- (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).

Section 187A: inserted, on 30 November 2018, by section 13 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

188 When Court may find accused unfit to stand trial

- (1) The Court Martial may, at any time before or during a trial, determine in accordance with section 188A whether an accused is unfit to stand trial.

(2) *[Repealed]*

(3) *[Repealed]*

(4) *[Repealed]*

(5) *[Repealed]*

(6) *[Repealed]*

Section 188: substituted, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 188 heading: amended, on 1 July 2009, by section 59(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 188(1): amended, on 1 July 2009, by section 59(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 188(2): repealed, on 30 November 2018, by section 14 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Section 188(3): repealed, on 30 November 2018, by section 14 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Section 188(4): repealed, on 30 November 2018, by section 14 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Section 188(5): repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 188(6): repealed, on 30 November 2018, by section 14 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

188A Determining if accused unfit to stand trial

- (1) In order to determine whether an accused is unfit to stand trial, the Court Martial must receive the evidence of at least 2 health assessors as to whether the accused is mentally impaired.

- (2) If the Court is satisfied on the evidence given under subsection (1) that the accused is mentally impaired, the Court must record a finding to that effect and—

(a) give the prosecutor and the accused an opportunity to be heard and to present evidence as to whether the accused is unfit to stand trial; and

(b) find whether the accused is unfit to stand trial; and

(c) record the finding made under paragraph (b).

- (3) If the Court records a finding under subsection (2) that the accused is fit to stand trial, the Court must continue the proceedings.

(3) *[Repealed]*

- (4) The standard of proof required for a finding under this section is the balance of probabilities.
- (5) The jurisdiction conferred on the Court Martial by this section and by section 188 may be exercised by the Court in the absence of the accused if the Court is satisfied by medical evidence that the accused is too mentally impaired to be brought before the Court Martial.

Section 188A: inserted, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 188A(1): amended, on 30 November 2018, by section 15(1) of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Section 188A(1): amended, on 30 November 2018, by section 15(2) of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Section 188A(2): amended, on 1 July 2009, by section 60(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 188A(3): inserted, on 30 November 2018, by section 15(3) of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Section 188A(3): repealed, on 1 July 2009, by section 60(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 188A(5): amended, on 1 July 2009, by section 60(4)(a) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 188A(5): amended, on 1 July 2009, by section 60(4)(b) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

188B Court Martial may postpone finding as to unfitness to stand trial

- (1) The Court Martial may, if in its opinion it is in the interests of the accused to do so, postpone a finding as to whether the accused is unfit to stand trial until any time up to the stage at which all the evidence is concluded.
- (2) In any case where a finding is postponed under subsection (1), the Court may not make a finding on the matter if the accused is acquitted of every offence with which he or she is charged.

Section 188B: inserted, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 188B heading: amended, on 1 July 2009, by section 61(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 188B(1): amended, on 1 July 2009, by section 61(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 188B(2): amended, on 1 July 2009, by section 61(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

188C Inquiry before trial into accused's involvement in offence

- (1) This section applies if, before trial, the accused is found unfit to stand trial.
- (2) The Court Martial must decide whether the Court is satisfied, on the balance of probabilities, that the evidence against the accused is sufficient to establish that the accused caused the act or omission that forms the basis of the offence with which the accused is charged.

- (3) A special hearing must be held to ascertain whether the Court Martial is satisfied of the matter specified in subsection (2).

Section 188C: inserted, on 30 November 2018, by section 16 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

188D Inquiry during trial into accused's involvement in offence

- (1) This section applies if, during a trial, the accused is found unfit to stand trial.
- (2) The Court Martial must decide whether the Court is satisfied, on the balance of probabilities, that the evidence against the accused is sufficient to establish that the accused caused the act or omission that forms the basis of the offence with which the accused is charged.
- (3) For the purposes of subsection (2), the Court Martial may (whether on the application of a party or on the Court's own initiative) do either or both of the following:
- (a) consider any evidence presented at the trial:
 - (b) hear any new evidence.

Section 188D: inserted, on 30 November 2018, by section 16 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

188E Outcome of consideration of accused's involvement

- (1) If the Court Martial is not satisfied of the matter specified in section 188C(2) or 188D(2),—
- (a) the Court must record a finding of not guilty on the charge;
 - (b) the finding that the accused is unfit to stand trial is deemed for all legal purposes to have been quashed.
- (2) If the Court Martial is satisfied of the matter specified in section 188C(2) or 188D(2), the Court must—
- (a) record a finding to that effect; and
 - (b) proceed to deal with the accused under section 191.

Section 188E: inserted, on 30 November 2018, by section 16 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

189 When plea of not guilty may be substituted for plea of guilty

[Repealed]

Section 189: repealed, on 1 January 1986, by section 37 of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

190 Finding of insanity

- (1) If, on the trial by the Court Martial of any person charged with an offence, the accused person pleads insanity and the Court finds him not guilty on account of his insanity, the Court shall direct a finding to that effect to be recorded.

- (1A) The Court Martial must record a finding that the accused is not guilty on account of his or her insanity if—
- (a) the accused indicates that he or she intends to raise the defence of insanity; and
 - (b) the prosecution agrees that the only reasonable verdict is not guilty on account of insanity; and
 - (c) the Court Martial is satisfied on the basis of expert evidence that the accused was insane within the meaning of section 23 of the Crimes Act 1961 at the time of the commission of the offence.
- (2) If, on the trial by the Court Martial of any person charged with an offence, the accused person pleads insanity and the Court finds him not guilty, the Court shall be required to declare whether or not it has acquitted the accused person on account of his insanity.
- (2A) Section 55 of the Court Martial Act 2007 applies to a finding under this section.
- (3) Nothing in this section shall limit or affect the power of the Judge to leave to the military members the question of whether an accused person was insane (within the meaning of section 23 of the Crimes Act 1961) notwithstanding that the accused person has not pleaded insanity nor put the question of his sanity in issue, where it appears in evidence that he may have been insane at the time of the commission of the offence.

Section 190: substituted, on 1 January 1986, by section 38 of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Section 190(1): amended, on 1 July 2009, by section 62(1)(a) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 190(1): amended, on 1 July 2009, by section 62(1)(b) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 190(1A): inserted, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 190(1A): amended, on 1 July 2009, by section 62(2)(a) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 190(1A)(c): amended, on 1 July 2009, by section 62(2)(b) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 190(2): amended, on 1 July 2009, by section 62(3)(a) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 190(2): amended, on 1 July 2009, by section 62(3)(b) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 190(2A): inserted, on 30 November 2018, by section 17 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Section 190(3): amended, on 1 July 2009, by section 62(4)(a) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 190(3): amended, on 1 July 2009, by section 62(4)(b) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

191 Order to be made if person unfit to stand trial or insane

- (1) Subject to subsections (2) and (4), if any person tried by the Court Martial (whether in New Zealand or elsewhere)—
 - (a) is found unfit to stand trial; or
 - (b) is acquitted on account of his insanity,—the Court shall make an order that he be detained in a hospital as a special patient.
- (2) In any case to which subsection (1) applies, the Court, having regard to all the circumstances of the case, and being satisfied, after hearing the evidence of 1 or more health assessors, that it would be safe in the interests of the public, or of any person or class of person who may be affected by the Court's decision, to make an order under this subsection, may, instead of making an order under subsection (1),—
 - (a) make an order that the person be detained in a hospital as a patient; or
 - (b) make an order for his immediate release; or
 - (c) if the person is subject to a sentence of imprisonment or detention (whether imposed under this Act or otherwise) decide not to make an order under this section.
- (3) In the exercise of its powers under subsection (2), the Court may take into account any undertaking given by or on behalf of the person that the person will undergo or continue to undergo a particular course of treatment.
- (4) Where a person is found unfit to stand trial or is acquitted on account of his or her insanity, the Court may, instead of exercising immediately any of its powers under subsections (1) and (2), adjourn and refer the matter to the Director of Military Prosecutions for the purpose of having enquiries made to determine the most suitable method of dealing with the case pursuant to this section.
- (4A) An order made by the Court under subsection (2)(a) shall be deemed for the purposes of the Mental Health (Compulsory Assessment and Treatment) Act 1992 to be a compulsory treatment order, and the provisions of that Act shall apply accordingly.
- (5) Where, in respect of any person found unfit to stand trial, the Court makes an order under paragraph (a) or paragraph (b) of subsection (2), or decides under paragraph (c) of that subsection not to make any order under this section, the proceedings against that person in the course of which the finding was made shall be stayed, and no further proceedings shall be taken against the person in respect of any offence charged in those proceedings.
- (6) Subject to the provisions of this Part, where a person is found unfit to stand trial, or is acquitted on account of his insanity, he shall be kept in strict custody in accordance with Defence Force Orders pending his removal to a hospital.

- (7) A person found unfit to stand trial shall be removed to a hospital as soon as practicable after the finding, or if he has been acquitted on account of his insanity, as soon as practicable after that acquittal.
- (8) If an order is made under subsection (1) in respect of a person who is subject to a sentence of imprisonment or detention, whether imposed before or after the making of the order, the term of that sentence shall, except during any period while he is unlawfully at large, continue to run during the currency of the order and any period spent as a patient; and, on his discharge from the hospital in which he is detained pursuant to the order or as a patient, he may, unless the sentence has sooner expired, be removed to and received in a prison, service prison, or detention quarter in New Zealand, as the case may require, to undergo the remainder of the sentence.

Section 191: substituted, on 1 January 1986, by section 38 of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Section 191 heading: amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 191(1): amended, on 1 July 2009, by section 63(1)(a) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 191(1): amended, on 1 July 2009, by section 63(1)(b) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 191(1): amended, on 1 November 1992, by section 140(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Section 191(1)(a): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 191(2): amended, on 30 November 2018, by section 18 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Section 191(2): amended, on 1 July 2009, by section 63(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 191(2): amended, on 1 July 2009, by section 63(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 191(2): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 191(2)(a): amended, on 1 November 1992, by section 140(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Section 191(3): amended, on 1 July 2009, by section 63(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 191(4): amended, on 1 July 2009, by section 63(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 191(4): amended, on 1 July 2009, by section 63(4) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 191(4): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 191(4A): inserted, on 1 November 1992, by section 140(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Section 191(4A): amended, on 1 July 2009, by section 63(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 191(5): amended, on 1 July 2009, by section 63(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 191(5): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 191(6): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 191(6): amended, on 1 November 1992, by section 140(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Section 191(6): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 191(7): amended, on 1 July 2009, by section 63(5) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 191(7): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 191(7): amended, on 1 November 1992, by section 140(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Section 191(8): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 191(8): amended, on 1 November 1992, by section 140(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

192 Duration of order for detention as special patient where defendant unfit to stand trial

- (1) In this section the expression **maximum period of detention as a special patient**, in relation to any accused person who has been found by the Court Martial to be unfit to stand trial means—
 - (a) 10 years from the date of the making of the order pursuant to section 191(1), in a case where any offence charged was punishable by imprisonment for life; or
 - (b) a period from the date of the making of the order pursuant to section 191(1) equal to half the maximum term of imprisonment to which the accused person was liable on conviction of the offence charged or (if the defendant was charged with more than 1 offence) of the offence punishable by the longer or longest term of imprisonment, in any other case.
- (2) If an order is made by the Court Martial pursuant to section 191(1) in respect of an accused person who has been found to be unfit to stand trial, the order shall, subject to sections 84 and 128 of the Mental Health (Compulsory Assessment and Treatment) Act 1992, continue in force until—
 - (a) he is brought before the Court Martial pursuant to a direction given under this section; or
 - (b) a direction is given under this section that he shall thereafter be held as a patient.
- (3) Notwithstanding anything in subsection (1), where, in any case to which that subsection applies, every charge against the person concerned is withdrawn, the order made by the Court under section 191(1)(a) shall be deemed to be cancelled.

- (4) If at any time before the expiry of the maximum period of detention as a special patient a certificate of clinical review is given by the responsible clinician under section 77 of the Mental Health (Compulsory Assessment and Treatment) Act 1992, or a certificate of Tribunal review is given by the Review Tribunal under section 80 of that Act, that the person is no longer unfit to stand trial, the Attorney-General shall either direct that the person be placed in service custody for trial by the Court Martial or direct that the person shall thereafter be held as a patient.
- (5) If at any time before the expiry of the maximum period of detention as a special patient a certificate of clinical review is given by the responsible clinician under section 77 of the Mental Health (Compulsory Assessment and Treatment) Act 1992, or a certificate of Tribunal review is given by the Review Tribunal under section 80 of that Act, that it is no longer necessary that the person, though still unfit to stand trial, should be subject to the order, the Minister of Health, acting with the concurrence of the Attorney-General, may direct that the person shall thereafter be held as a patient.
- (6) If no direction is given under subsection (4) or subsection (5) before the expiry of the maximum period of detention as a special patient, the following provisions shall apply on the expiry of that period:
 - (a) if a certificate of clinical review is given by the responsible clinician under section 77 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or a certificate of Tribunal review is given under section 80 of that Act, that the defendant is no longer unfit to stand trial, the Attorney-General shall either direct that the person be placed in service custody for trial by the Court Martial or direct that the person shall thereafter be held as a patient; or
 - (b) if no such certificate is given, the Attorney-General shall direct that the person shall thereafter be held as a patient.
- (6A) A direction that the person shall be held as a patient shall be deemed for the purposes of the Mental Health (Compulsory Assessment and Treatment) Act 1992 to be a compulsory treatment order, and the provisions of that Act shall apply accordingly.
- (7) On the giving under this section of any direction that the person shall be held as a patient, the proceedings in which the order for detention was made shall be stayed, and no further proceedings shall be taken against the person in respect of any offence charged in those proceedings.
- (8) The powers and duties conferred and imposed on the Attorney-General by any of the provisions of this section shall not be capable of being exercised or performed by the Solicitor-General.

Section 192: substituted, on 1 January 1986, by section 38 of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Section 192 heading: amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 192(1): amended, on 1 July 2009, by section 64(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 192(1): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 192(1)(a): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 192(2): amended, on 1 July 2009, by section 64(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 192(2): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 192(2): amended, on 1 November 1992, by section 140(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Section 192(2)(a): amended, on 1 July 2009, by section 64(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 192(2)(b): amended, on 1 November 1992, by section 140(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Section 192(3): amended, on 1 July 2009, by section 64(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 192(4): substituted, on 1 November 1992, by section 140(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Section 192(4): amended, on 1 July 2009, by section 64(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 192(4): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 192(5): substituted, on 1 November 1992, by section 140(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Section 192(5): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 192(6): substituted, on 1 November 1992, by section 140(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Section 192(6)(a): amended, on 1 July 2009, by section 64(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 192(6)(a): amended, on 1 July 2009, by section 64(4) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 192(6)(a): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 192(6A): inserted, on 1 November 1992, by section 140(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Section 192(7): amended, on 1 November 1992, by section 140(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

193 Duration of order for detention as special patient when person acquitted on account of his insanity

- (1) If an order is made by the Court Martial pursuant to section 191(1) in respect of an accused person who has been acquitted on account of his insanity, the order shall continue in force until—

- (a) a direction is given under this section that that person shall thereafter be held as a patient; or
 - (b) that person is discharged pursuant to a direction given under this section.
- (2) If at any time while the order continues in force a certificate of clinical review is given by the responsible clinician under section 77 of the Mental Health (Compulsory Assessment and Treatment) Act 1992, or a certificate of Tribunal review is given under section 80 of that Act, that the person's mental condition no longer requires, either in the person's own interest or for the safety of any person or class of person or the public, that he or she should be subject to the order, the Minister of Health may direct that the person shall thereafter be held as a patient, or that the person be discharged.
- (3) A direction that the person shall be held as a patient shall be deemed for the purposes of the Mental Health (Compulsory Assessment and Treatment) Act 1992 to be a compulsory treatment order, and the provisions of that Act shall apply accordingly.

Section 193: substituted, on 1 January 1986, by section 38 of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Section 193(1): amended, on 1 July 2009, by section 65 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 193(1)(a): amended, on 1 November 1992, by section 140(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Section 193(2): substituted, on 1 November 1992, by section 140(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Section 193(2): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 193(3): added, on 1 November 1992, by section 140(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

194 Power of Court Martial to commit to hospital on conviction

- (1) If the Court Martial (whether in New Zealand or elsewhere) convicts a person of an offence that is punishable by imprisonment, the Court may, if satisfied of the matters specified in subsection (1A),—
- (a) sentence the person to a term of imprisonment and also order that the person be detained in a hospital as a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
 - (b) instead of passing sentence, order that the person be treated as a patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992.
- (1A) For the purposes of subsection (1), the Court must be satisfied, on the evidence of 1 or more health assessors,—
- (a) that the person is mentally disordered; and

- (b) that the person's mental impairment requires that the person should be detained either in the person's interest or for the safety of the public or for the safety of a person or class of person.
- (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.
- (2) No order shall be made under this section in respect of a person who is, at the time of the conviction, subject to a sentence of imprisonment or detention.
- (2A) An order made under subsection (1)(b) shall be deemed for the purposes of the Mental Health (Compulsory Assessment and Treatment) Act 1992 to be a compulsory treatment order, and the provisions of that Act shall apply accordingly.
- (3) Every such person shall be removed to a hospital as soon as practicable thereafter.

Section 194: substituted, on 1 January 1986, by section 38 of the Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Section 194 heading: amended, on 1 July 2009, by section 66(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 194(1): substituted, on 1 July 2009, by section 66(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 194(1A): inserted, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 194(1A): amended, on 30 November 2018, by section 19(1) of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Section 194(1A): amended, on 1 July 2009, by section 66(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 194(1B): inserted, on 30 November 2018, by section 19(2) of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Section 194(2A): inserted, on 1 November 1992, by section 140(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Section 194(2A): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 194(3): amended, on 1 July 2009, by section 66(4) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 194(3): amended, on 1 November 1992, by section 140(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

195 Notice to be sent to Public Trustee of certain orders

[Repealed]

Section 195: repealed, on 1 November 1992, by section 140(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

196 Insanity of certain persons while serving sentences of imprisonment under this Act

- (1) Notwithstanding anything to the contrary in the Mental Health (Compulsory Assessment and Treatment) Act 1992, every service penal establishment in

New Zealand shall be deemed to be a prison for the purposes of section 45 of that Act.

- (2) If a person under sentence of imprisonment or detention under this Act who is serving his sentence outside New Zealand becomes mentally disordered, then, without prejudice to any other provision for dealing with him, the Attorney-General may, on a certificate to that effect by a health assessor, order his removal to a hospital in New Zealand; and every such order shall have effect for the purposes of the Mental Health (Compulsory Assessment and Treatment) Act 1992 as if it were a compulsory treatment order under that Act.

Section 196(1): substituted, on 1 November 1992, by section 140(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Section 196(1): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 196(2): amended, on 30 November 2018, by section 20 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Section 196(2): amended, on 1 November 1992, by section 140(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

197 Substitution of finding and quashing of sentence where accused was insane

[Repealed]

Section 197: repealed, on 1 July 2009, by section 67 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

198 Powers of reviewing authority if person found unfit to stand trial

[Repealed]

Section 198: repealed, on 1 July 2009, by section 67 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Part 10A Victims' rights

Part 10A: inserted, on 30 November 2018, by section 21 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

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).

Section 198A: inserted, on 30 November 2018, by section 21 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

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

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).

Section 198B: inserted, on 30 November 2018, by section 21 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

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.

Section 198C: inserted, on 30 November 2018, by section 21 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

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

Heading: inserted, on 30 November 2018, by section 21 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

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.
- (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).

Compare: 2002 No 39 s 30

Section 198D: inserted, on 30 November 2018, by section 21 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Right to receive notice of certain matters and to appoint representative

Heading: inserted, on 30 November 2018, by section 21 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

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.
- (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
 - (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
 - (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)—
 - (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.
- (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):
 - (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—
 - (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.

Compare: 2002 No 39 ss 31, 33C

Section 198E: inserted, on 30 November 2018, by section 21 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

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

Heading: inserted, on 30 November 2018, by section 21 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

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.
- (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

Section 198F: inserted, on 30 November 2018, by section 21 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

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

Compare: 2002 No 39 s 33B

Section 198G: inserted, on 30 November 2018, by section 21 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

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

- (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);
- (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
- (b) any other necessary modifications.

Section 198H: inserted, on 30 November 2018, by section 21 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

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

Heading: inserted, on 30 November 2018, by section 21 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

198I Application of sections 198J to 198N

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

- (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

Section 198I: inserted, on 30 November 2018, by section 21 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Notice of certain matters to be given to victim

Heading: inserted, on 30 November 2018, by section 21 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

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—
 - (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—
 - (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
 - (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.
- (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:
 - (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.

Compare: 2002 No 39 s 34

Section 198J: inserted, on 30 November 2018, by section 21 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

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:
 - (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.
- (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

Section 198K: inserted, on 30 November 2018, by section 21 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

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).

Compare: 2002 No 39 s 36

Section 198L: inserted, on 30 November 2018, by section 21 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

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.
- (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.
- (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.

Compare: 2002 No 39 ss 37, 38

Section 198M: inserted, on 30 November 2018, by section 21 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

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
 - (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.
- (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.

Compare: 2002 No 39 s 39

Section 198N: inserted, on 30 November 2018, by section 21 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Submissions on deportation of offender

Heading: inserted, on 30 November 2018, by section 21 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

198O Victim may make submission on consideration of cancellation or suspension of liability for deportation, or offender's appeal against deportation

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

Section 198O: inserted, on 30 November 2018, by section 21 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Part 11

Miscellaneous provisions

Prerogative of mercy

199 Royal prerogative of mercy

Nothing in this Act shall affect the Royal prerogative of mercy.

*Courts of inquiry***200 Interpretation**

In sections 200A to 200T, unless the context otherwise requires,—

assembling authority means—

- (a) the Chief of Defence Force; or
- (b) the officer in command of any part of the Armed Forces

member—

- (a) means a member of a court of inquiry; and
- (b) includes the president

president means the president of a court of inquiry

record of proceedings, in relation to a court of inquiry, includes—

- (a) the record of the evidence collected; and
- (b) any report or comment made by the court and attached to the record of the evidence.

Section 200: substituted, on 1 July 2009, by section 68 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

200A Courts of inquiry may be assembled

- (1) An assembling authority may assemble 1 or more courts of inquiry.
- (2) A court of inquiry—
 - (a) may be assembled for the purpose of collecting and recording evidence on any matters that the assembling authority has referred to the court; and
 - (b) must report and comment on those matters, if required to do so by the assembling authority.
- (3) A court of inquiry may be assembled to perform the functions and duties, and exercise the powers, of a competent tribunal under Article 5 of Schedule 3 of the Geneva Conventions Act 1958.

Section 200A: inserted, on 1 July 2009, by section 68 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

200B Composition of court of inquiry

- (1) A court of inquiry must consist of not less than 2 members, of whom at least 1 must be an officer and the other or others must be officers, warrant officers, or members of the Civil Staff (within the meaning of section 2(1) of the Defence Act 1990) of equivalent standing.
- (2) The assembling authority must appoint one of the members who is an officer to be president of the court of inquiry.
- (3) The assembling authority—

- (a) may appoint an officer who is a barrister or solicitor of the High Court as counsel to assist the court; and
- (b) must do so if the assembling authority considers that—
 - (i) the character or reputation of any person may be affected by the inquiry; or
 - (ii) the inquiry is likely to involve complex or serious issues of fact or law, or both.
- (4) A counsel appointed under subsection (3) is not a member of the court of inquiry, but may advise the court on questions of law and procedure and may ask questions of witnesses attending before the court for the purpose of assisting the court.

Section 200B: inserted, on 1 July 2009, by section 68 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

200C Order assembling court of inquiry

- (1) The order assembling a court of inquiry must—
 - (a) be in the form prescribed by the Chief of Defence Force; and
 - (b) specify the composition of the court, the place and time at which the court is to assemble, and the terms of reference of the court.
- (2) The assembling authority may, at any time, revoke, vary, or suspend the order.

Section 200C: inserted, on 1 July 2009, by section 68 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

200D Rank and seniority of members

If a court of inquiry is appointed to inquire into the conduct of an officer or warrant officer,—

- (a) every member must be of at least equal rank and seniority to that officer or warrant officer; and
- (b) at least 1 member must be of superior rank.

Section 200D: inserted, on 1 July 2009, by section 68 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

200E Terms of reference

The assembling authority must—

- (a) provide the court of inquiry with appropriate terms of reference; and
- (b) state whether any report or comment is required upon the matter under investigation.

Section 200E: inserted, on 1 July 2009, by section 68 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

200F Court of inquiry to sit in private

- (1) A court of inquiry must sit in private, and no person may attend a sitting of the court except—
 - (a) the members:
 - (b) a counsel appointed under section 200B(3):
 - (c) a witness giving evidence:
 - (d) if section 200N applies,—
 - (i) the person who is affected or is likely to be affected by the inquiry:
 - (ii) that person's legal representative if the president approves the person being legally represented at the inquiry:
 - (e) any other persons who may be authorised by the president to be present.
- (2) A person may not be represented at the inquiry and may not have an adviser present to assist him or her at the inquiry, unless—
 - (a) section 200N applies; and
 - (b) the president approves the person who is affected or is likely to be affected by the inquiry being legally represented.

Section 200F: inserted, on 1 July 2009, by section 68 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

200G Assembly and procedure

- (1) A court of inquiry must assemble at the time and place specified in the order assembling the court.
- (2) However, if the court is unable for any reason to assemble at the time or place so specified, it must—
 - (a) assemble as soon as possible after that time or, as the case may be, as near to that place as possible; and
 - (b) note in the record of proceedings its reasons for being unable to assemble at the time or place specified.
- (3) The president must lay the order and the terms of reference before the court and the court must then proceed to collect and record evidence in accordance with section 200K.

Section 200G: inserted, on 1 July 2009, by section 68 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

200H Sittings of court of inquiry

- (1) A court of inquiry must sit at the times and in the places that the president appoints.
- (2) The president may adjourn the court.

- (3) Despite subsections (1) and (2), the assembling authority may, at any time, direct the court to reassemble for any purpose that the assembling authority may specify.

Section 200H: inserted, on 1 July 2009, by section 68 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

200I Attendance of witnesses

- (1) The president may direct a witness to attend before the court—
- (a) by an order given by the president, if the witness is subject to this Act; or
 - (b) by a summons signed by the president, if the witness is not subject to this Act.
- (2) Every summons to a witness issued under subsection (1)(b) must—
- (a) be in the form prescribed by the Chief of Defence Force; and
 - (b) be served on the witness in one of the following ways:
 - (i) by being delivered to the witness personally, or by being brought to his or her notice if he or she refuses to accept it;
 - (ii) by being left for the witness with some other person at the witness's usual place of residence at least 24 hours before his or her attendance is required;
 - (iii) by being sent to the witness by registered letter addressed to the witness's last known or usual place of residence or place of business.
- (3) The president may order or summon any person whom the court thinks fit to attend to give evidence before the court.
- (4) Subsection (3) is subject to section 200N.

Section 200I: inserted, on 1 July 2009, by section 68 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

200J Witness to be sworn

- (1) Every witness must be sworn by a member in the form and manner prescribed by the Chief of Defence Force before giving evidence.
- (2) If a court of inquiry considers that a child who is called as a witness does not understand the nature of an oath, the child's evidence may be received even though it is not given on oath, so long as the court is of the opinion that the child—
- (a) has sufficient intelligence to justify the reception of the evidence; and
 - (b) understands the duty of speaking the truth.
- (3) If any person referred to in subsection (1) objects to being sworn, or it is not reasonably practicable to administer an oath to that person in a manner appropriate to his or her religious belief, the person may be permitted to make a solemn affirmation instead of swearing an oath.

- (4) The making of an affirmation under subsection (3) has the same force and effect, and has the same consequences, as the taking of an oath.

Section 200J: inserted, on 1 July 2009, by section 68 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

200K Collecting and recording of evidence

- (1) A court of inquiry is not bound by the ordinary rules relating to the admissibility of evidence and may admit in evidence any matter of hearsay or any other matter that would not be admissible in a court of law.
- (2) If a court of inquiry admits evidence of that kind, it is for the court to determine the weight to be attached to that evidence.
- (3) A court of inquiry must put any questions to a witness that it considers desirable—
- (a) to test the truth or accuracy of any evidence given by the witness; and
 - (b) to elicit any further information that may be necessary to determine the truth.
- (4) A court of inquiry must record, or arrange to be recorded in writing, the evidence of every witness—
- (a) in narrative form as nearly as possible in the words used; or
 - (b) if the court considers it expedient, in the form of questions and answers.
- (5) Each witness may read over the record of his or her evidence and may ask that any necessary corrections be made to it.
- (6) Each witness must initial all alterations and must then sign the record of his or her evidence at the end and initial each page of it.

Section 200K: inserted, on 1 July 2009, by section 68 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

200L Interpreters and recorders

- (1) A competent and impartial person or persons may be appointed at any time during the course of the inquiry by either the assembling authority or the president to act as interpreter, shorthand writer, typist, or operator of a recording machine to assist the court in collecting and recording the evidence.
- (2) Before an interpreter commences his or her duties, a member must administer an oath to the interpreter in the form and manner prescribed by the Chief of Defence Force.
- (3) If an interpreter objects to being sworn, or it is not reasonably practicable to administer an oath to that person in a manner appropriate to his or her religious belief, the person may be permitted to make a solemn affirmation instead of swearing an oath.
- (4) The making of an affirmation under subsection (3) has the same force and effect, and has the same consequences, as the taking of an oath.

Section 200L: inserted, on 1 July 2009, by section 68 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

200M Procedure if conduct of superior officer may be in question

- (1) The president must adjourn the court of inquiry and report to the assembling authority if at any time it appears to the court that the conduct of an officer or a warrant officer who is senior or superior in rank to a member is, or is likely to be, called into question in the course of the inquiry.
- (2) On receiving the president's report, the assembling authority must consider the matter and, if satisfied that the conduct of the person is or is likely to be called into question, may dissolve the court and assemble a new court, having regard to the requirements of section 200D.
- (3) If the assembling authority does not dissolve the court, the assembling authority must direct it to continue its inquiry even though the conduct of an officer or a warrant officer senior or superior in rank to a member is, or is likely to be, called into question.
- (4) Subsection (3) does not affect the power of the president to make a further report under subsection (1) if the evidence justifies that course of action.

Section 200M: inserted, on 1 July 2009, by section 68 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

200N Rights of person who may be affected by inquiry

- (1) If at any time it appears to an assembling authority or to a court of inquiry that an inquiry affects or is likely to affect the character or the reputation of any person (whether or not the person is subject to this Act), the president must—
 - (a) ensure that the person is given adequate notice of the time, place, date, and nature of the inquiry; and
 - (b) give the person a reasonable opportunity to exercise the rights set out in subsection (2).
- (2) The rights referred to in subsection (1) are as follows:
 - (a) the person may read or have read or played back to him or her any evidence that has already been given;
 - (b) the person may require any witness who has already given evidence to be recalled to enable him or her to question the witness;
 - (c) the person may be present during the proceedings or the remainder of the proceedings (as the case may be) while the court is hearing evidence, and may question any witness who gives evidence that he or she considers affects his or her character or reputation;
 - (d) the person may give evidence himself or herself, or call any witness to give evidence, to rebut or explain any evidence that has been given that he or she considers affects his or her character or reputation;

- (e) the person may seek and, if the exigencies of the case permit, must be granted an adjournment to enable him or her to obtain advice:
 - (f) the person may be legally represented at the inquiry if the president approves.
- (3) If the person notifies the court that he or she does not wish to exercise the rights set out in subsection (2), the president must note the record of proceedings to that effect.
- (4) This section does not apply to an inquiry under section 201 into the absence of a member of the Armed Forces.

Section 200N: inserted, on 1 July 2009, by section 68 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

200O Matters president must take into account in determining whether person affected by inquiry may be legally represented

For the purposes of section 200N(2)(f), the president must take into account the following matters in determining whether a person who is affected or is likely to be affected by an inquiry should be legally represented at the inquiry:

- (a) the seriousness of any allegations made against, or any potential penalty that may be imposed on, that person:
- (b) whether any questions of law are likely to arise:
- (c) the capacity of that person to present his or her own case:
- (d) any procedural difficulties that are likely to arise:
- (e) the need for reasonable speed in completing the inquiry:
- (f) the need for fairness as between that person and all persons who may appear before the court.

Section 200O: inserted, on 1 July 2009, by section 68 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

200P What happens if person affected by inquiry wishes to call witness

- (1) If the person who is affected or is likely to be affected by an inquiry wishes to call a witness to give evidence under section 200N(2)(d), the president must take the necessary steps under the rules of procedure to secure the attendance of the witness, unless it is impracticable to do so.
- (2) If it is impracticable to secure the attendance of a witness, the president must note that fact in the record of proceedings.
- (3) Despite subsection (1), if the attendance of a witness is requested by the person affected or likely to be affected and the court of inquiry is satisfied that the attendance of that witness is not properly required by that person, any cost incurred by the Crown in procuring the attendance of the witness may be charged to, and recovered as a debt due by, the person affected or likely to be affected.

Section 200P: inserted, on 1 July 2009, by section 68 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

200Q Exhibits

- (1) Every document or thing produced in evidence at an inquiry must be made an exhibit.
- (2) However, if an original document or book is produced in evidence, a court of inquiry may, instead of making it an exhibit, compare a copy of, or an extract from, the document or book with the original and, if the court is satisfied that the copy or extract is correct,—
 - (a) the president must endorse on the copy or extract a certificate to that effect in the form prescribed by the Chief of Defence Force; and
 - (b) the court may return the original document or book to the witness, and attach the certified copy or extract to the record of proceedings as an exhibit.
- (3) Every exhibit must—
 - (a) either be marked with a number or letter in sequence and signed by the president, or have attached to it a label so marked and signed; and
 - (b) be attached to or kept with the record of proceedings unless, in the opinion of the president, it is not expedient to do so.
- (4) If an exhibit is not attached to or kept with the record of proceedings, the president must ensure its safe custody pending the directions of the assembling authority for the ultimate disposal of the exhibit.

Section 200Q: inserted, on 1 July 2009, by section 68 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

200R Signing and dispatch of record of proceedings

- (1) The record of proceedings must, at the conclusion of the inquiry, be signed at the end by each member, who must add his or her rank and unit.
- (2) If there is a difference of opinion among the members on any material matter, the grounds of difference must be stated in the record.
- (3) After the record of proceedings has been signed, the president must forward it to the assembling authority, who must—
 - (a) record on the record his or her own opinion of the findings; and
 - (b) sign the record; and
 - (c) if necessary, forward the record to a superior commander.
- (4) The record of proceedings must be given an appropriate security classification according to the nature of the inquiry and the evidence collected and recorded.
- (5) However, if the content of the record of proceedings does not warrant a security classification, the record of proceedings must be given an appropriate In Confidence privacy marking.

Section 200R: inserted, on 1 July 2009, by section 68 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

200S Admissibility of record of proceedings, etc

- (1) The record of proceedings and any evidence in respect of the proceedings, including any confession, statement, or answer to a question made or given by a person during the proceedings, must not be admitted in evidence against any person in any other proceedings, judicial or otherwise.
- (2) If a member of the Armed Forces is charged under section 47 with desertion, or under section 48 with being absent without leave, the record of the declaration of the court under section 201 relating to the member of the Armed Forces is prima facie evidence of the matters stated in it.
- (3) The record of proceedings and any evidence in respect of the proceedings, including any confession, statement, or answer to a question made or given by a person during the proceedings, may be given in evidence against that person if he or she is charged—
 - (a) under section 71 with making a false statement; or
 - (b) under section 109 of the Crimes Act 1961 with perjury.
- (4) Subsection (1) is subject to subsections (2) and (3).

Section 200S: inserted, on 1 July 2009, by section 68 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

200T Record of proceedings not to be disclosed

The record of proceedings of a court of inquiry must not be disclosed to—

- (a) people who are not members of the Defence Force (within the meaning of section 2(1) of the Defence Act 1990), unless the disclosure is authorised by a superior commander of the service concerned; or
- (b) members of the Defence Force unless—
 - (i) the members need to be aware of the contents of the record to enable them to perform their service or employment duties; or
 - (ii) the members are entitled to a copy of the record under the rules of procedure; or
 - (iii) the disclosure is authorised by a superior commander of the service concerned.

Section 200T: replaced, on 24 October 2019, by section 8 of the Statutes Amendment Act 2019 (2019 No 56).

201 Inquiry on absence of member of the Armed Forces

- (1) Where any member of the Armed Forces has been absent without leave for a period of 21 days, a court of inquiry shall be assembled to inquire in the prescribed manner into the fact of that absence, and the deficiency (if any) in the arms, ammunition, equipment, or clothing of that member, or in any other ser-

vice property issued to him for his use or entrusted to his care for the purposes of the Armed Forces.

- (2) If the court of inquiry is satisfied that the member absented himself without leave or other sufficient reason, the court shall make a declaration that the member is an absentee. Every such declaration shall specify the period of absence and the extent to which the arms, ammunition, or clothing of that member, or the other service property issued or entrusted to him, are deficient; and a record of the declaration in the prescribed form shall be signed by the commanding officer of the absent member in duplicate and shall then be filed with and form part of the service records.
- (3) If the absent member does not within 6 months after the date on which he absented himself surrender or is not apprehended within that period, that record shall, for the purposes of section 202, have the legal effect of a conviction by the Court Martial for desertion.

Compare: 1950 No 39 s 138; 1950 No 40 s 138; Army Act 1955 s 155 (UK); Air Force Act 1955 s 155 (UK)

Section 201 heading: amended, on 1 April 1990, pursuant to section 105(1) of the Defence Act 1990 (1990 No 28).

Section 201(1): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 201(2): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 201(3): amended, on 1 July 2009, by section 69 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 201(3): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Pay, etc, of deserters and absentees

202 Pay, service, and effects of deserters and absentees

- (1) A person subject to this Act who is convicted by the Court Martial or as provided in section 201, or is found guilty by a disciplinary officer, of desertion or absence without leave forfeits 1 day's pay and allowances for each day during which he or she was in desertion or absent without leave.
 - (1A) However, if the period of absence is less than 24 hours, the Court Martial or the disciplinary officer may cancel the forfeiture under subsection (1), in whole or in part, as the Court Martial or disciplinary officer thinks just.
 - (2) Any period in respect of which pay and allowances are forfeited under subsection (1) shall, to such extent as may be prescribed, not be counted as service towards promotion, increments in pay, leave, medals, badges, grants, completion of engagement, or any other benefit or condition of service.
 - (2A) The pay and allowances that are to be forfeited under subsection (1) may, without limiting any other mode of recovery, be recovered from such person by the Crown—
 - (a) by deduction from any pay and allowances that would otherwise have been payable to him in respect of the whole or any part of the period

- during which he was in desertion or absent without leave, but which have been withheld from him in accordance with regulations made under the Defence Act 1990; and
- (b) to the extent that such pay and allowances (if any) are insufficient to meet the pay and allowances that are to be forfeited, by deduction from any other pay and allowances or other money due, owing, or payable to such person by the Crown in relation to his service in the Armed Forces, not being an amount due, owing, or payable to him or on his death under the Government Superannuation Fund Act 1956.
- (3) Subject to any regulations or Defence Force Orders made under this Act, where any person subject to this Act is absent without leave and any of that person's personal belongings are in the possession or custody, or come into the possession, of the Armed Forces, those belongings shall be disposed of as follows:
- (a) all money standing to that person's credit at the date of the commencement of that person's absence shall be held on that person's behalf by the Chief of Defence Force for a period of 6 months from and including that date; and, if the person remains absent at the expiration of that period, the Chief of Defence Force shall cause the money to be deposited with the Treasury, and subsections (2) to (6) of section 74 of the Public Finance Act 1989 shall apply to any money so deposited as if it were so deposited pursuant to subsection (1) of that section:
- (b) all returnable service property in the possession or custody of that person shall, unless sooner required for the purposes of the Armed Forces, be kept in safe custody on that person's behalf for a period of 6 months from and including the date of the commencement of that person's absence, and shall then, if that person remains absent at the expiration of that period, be returned to service stores and be disposed of in the same manner as if that person had been discharged from the service to which that person belongs:
- (c) all chattels belonging to or reputedly belonging to that person shall be kept in safe custody on that person's behalf for a period of 6 months from and including the date of the commencement of that person's absence; and, if that person remains absent at the expiration of that period, the Chief of Defence Force may cause the chattels to be sold by auction, and the proceeds of sale shall be deposited with the Treasury, and subsections (2) to (6) of section 74 of the Public Finance Act 1989 shall apply to any money so deposited as if it were so deposited pursuant to subsection (1) of that section:

provided that, if the person ceases to be absent before the expiration of that period of 6 months, the Chief of Defence Force shall forthwith cause the chattels referred to in this paragraph to be returned to that person.

- (4) Notwithstanding the provisions of paragraph (c) of subsection (3), the Chief of Defence Force may, if he thinks fit, instead of causing the chattels referred to in that paragraph to be sold, deliver them to any person (other than the absentee) who appears to him to be entitled to or have a claim on them.
- (5) In calculating the number of days of desertion or absence without leave for the purposes of this section, if such period, being a continuous period of absence, calculated in hours,—
 - (a) is less than 24 hours, it must be counted (except for the purposes of subsection (1A)) as 1 day; or
 - (b) is more than 24 hours, each multiple of 24 hours shall be counted as 1 day and any remaining number of hours shall be counted as a further day.

Compare: Naval Discipline Act 1957 s 75 (UK)

Section 202(1): substituted, on 1 July 2009, by section 70(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 202(1A): inserted, on 1 July 2009, by section 70(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 202(2A): inserted, on 1 December 1983, by section 19(2) of the Armed Forces Discipline Amendment Act 1980 (1980 No 37).

Section 202(2A)(a): amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 202(3): substituted, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 202(3) proviso: amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 202(4): amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 202(5): added, on 1 December 1983, by section 19(3) of the Armed Forces Discipline Amendment Act 1980 (1980 No 37).

Section 202(5)(a): substituted, on 1 July 2009, by section 70(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Judge Advocate General

203 Appointment and functions of Judge Advocate General

- (1) The Governor-General may from time to time by warrant appoint a barrister or solicitor of the High Court who has held a practising certificate as such for not less than 7 years, whether or not he holds or has held any judicial office, to be Judge Advocate General of the Armed Forces.
- (2) The Judge Advocate General may not be removed from office except in accordance with section 16 of the Court Martial Act 2007; and that section applies accordingly with any necessary modifications.
- (2A) The Judge Advocate General must retire from office on attaining the age of 75 years.

(3) *[Repealed]*

Compare: Army Act 1955 s 117 (UK); Air Force Act 1955 s 117 (UK); Naval Discipline Act 1957 s 73 (UK)

Section 203(1): amended, on 1 December 1983, by section 20 of the Armed Forces Discipline Amendment Act 1980 (1980 No 37).

Section 203(2): substituted, on 1 July 2009, by section 71(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 203(2A): inserted, on 1 July 2009, by section 71(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 203(3): repealed, on 1 July 2009, by section 71(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

203A Deputy Judge Advocate General

- (1) The Governor-General may from time to time by warrant appoint a barrister or solicitor of the High Court who has held a practising certificate for not less than 7 years, whether or not the person holds or has held any judicial office, to be Deputy Judge Advocate General of the Armed Forces.
- (2) The Deputy Judge Advocate General may not be removed from office except in accordance with section 16 of the Court Martial Act 2007; and that section applies accordingly with any necessary modifications.
- (2A) The Deputy Judge Advocate General must retire from office on attaining the age of 70 years.
- (3) The Deputy Judge Advocate General shall have and may exercise such of the powers, duties, and functions of the Judge Advocate General as the Judge Advocate General may from time to time delegate to the Deputy Judge Advocate General, but no such delegation shall prevent the exercise of any power, duty, or function by the Judge Advocate General.
- (4) On the occurrence from any cause of a vacancy in the office of Judge Advocate General, and in the case of the absence from duty of the Judge Advocate General (from whatever cause arising), and for so long as any such vacancy or absence continues, the Deputy Judge Advocate General shall have and may exercise all the powers, duties, and functions of the Judge Advocate General.
- (5) The fact that the Deputy Judge Advocate General exercises any power, duty, or function of the Judge Advocate General shall be conclusive evidence of the Deputy Judge Advocate General's authority to do so.

Section 203A: inserted, on 15 December 1988, by section 2 of the Armed Forces Discipline Amendment Act (No 2) 1988 (1988 No 176).

Section 203A(2): substituted, on 1 July 2009, by section 72 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 203A(2A): inserted, on 1 July 2009, by section 72 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Discipline in respect of convoys

204 Orders by convoy commanders and commanding officers of escorting ships

- (1) Where any vessel forms part of a convoy which is under the command of an officer of the Navy or which is under the command of any other person appointed by the Chief of Defence Force for the purpose, the master or other person for the time being in command of the vessel shall obey—
- (a) if the convoy is escorted by any naval ship, any directions relating to the navigation or security of the convoy given by the commanding officer of the ship; or
 - (b) in any other case, any directions relating to the navigation or security of the convoy given by the officer or other person in command of the convoy—

and shall take such precautions for avoiding the enemy (if any) as may be required by any such directions.

- (2) If the master or other person in command of a vessel fails to obey any such directions, the commanding officer of the escorting naval ship, or, as the case may be, the officer or other person in command of the convoy, may compel obedience to his directions by force of arms; and neither he nor any person acting under his orders shall be criminally or civilly responsible for any injury or loss of life, or for any damage to or loss of property, resulting from the use of that force.

Compare: Naval Discipline Act 1957 s 131 (UK)

Section 204(1): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Regulations and Defence Force Orders

205 Regulations

- (1) The Governor-General may from time to time, by Order in Council, make regulations, not inconsistent with this Act, for all or any of the following purposes:
- (a) providing, in cases where a person subject to this Act (whether a member of the Armed Forces or any other person subject to this Act who is paid by the Crown in right of New Zealand) is convicted of any offence by a civil court or the Court Martial or is found guilty of an offence by a disciplinary officer, for all or any of the following:
 - (i) the forfeiture of the whole or part of 1 day's pay and allowances for each day or part of a day during which he or she is held in civil or service custody (including imprisonment or detention) after being convicted or found guilty:

- (ii) the forfeiture of the whole or part of 1 day's pay and allowances for each day or part of a day during which he or she is held in civil custody before being convicted or found guilty:
 - (iii) the forfeiture of the whole or part of 1 day's allowances for each day or part of a day during which he or she is suspended from duty by reason of the offence:
 - (iv) the continuance or withholding of pay and allowances pending his or her conviction or acquittal:
- (aa) if regulations are made for the purposes of paragraph (a), providing for the recovery of any pay and allowances that are to be forfeited under those regulations—
- (i) in the case of any member of the Armed Forces, by deduction from, or withholding or delaying payment of, any money due, owing, or payable to him or her by the Crown in relation to his or her service in the Armed Forces; and
 - (ii) in the case of any other person subject to this Act who is paid by the Crown in right of New Zealand, by deduction from the pay or allowances payable to him or her:
- (b) providing, in cases where a person subject to this Act has been convicted by the Court Martial or found guilty by a disciplinary officer of an offence against this Act, for deductions from, or withholding or delaying payment of, any money, due, owing, or payable to him by the Crown in relation to his service in the Armed Forces for the purpose of paying any fine, or compensation, or other payment for which he may be liable under this Act:
- (c) providing for the payment of such fees, allowances, and expenses as may be fixed or determined by or in accordance with the regulations to the following persons (other than members of the Armed Forces) in respect of matters arising out of or relating to service law:
- (i) counsel appointed to advise a person who is being questioned by the service authorities or is being held under close arrest:
 - (ii) counsel appointed to appear for the Crown in the Summary Appeal Court, the Court Martial, the Court Martial Appeal Court, or any other court or tribunal that makes, or will make, a determination that may affect service discipline or the operations of the Armed Forces:
 - (iii) counsel appointed to appear for an accused or an appellant who is on legal aid in the Summary Appeal Court, the Court Martial, the Court Martial Appeal Court, the Court of Appeal, or the Supreme Court:

- (iv) persons engaged by or under the authority of the Chief of Defence Force to lecture on any matter of service law:
 - (v) the person appointed as a member of the Discipline Committee under section 160(2)(i):
 - (vi) counsel appointed to assist a court of inquiry under section 200B(3):
 - (ca) determining the nature and content of the punishments of reduction of rank, forfeiture of seniority, and stay of seniority:
 - (d) providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.
- (1A) In subsection (1)(a) the term **civil court**, in relation to any offence, means a court exercising ordinary criminal jurisdiction whether in New Zealand or elsewhere; and includes a court of summary jurisdiction.
- (1B) No regulations made under subsection (1) shall make any provision contrary to or inconsistent with section 92 of the Government Superannuation Fund Act 1956.
- (2) *[Repealed]*
- (3) Any such regulations may make different provision for different services, commands, branches, corps, formations, units, and ranks in the Armed Forces.
- (4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1950 No 39 s 17; 1950 No 40 s 16

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 205(1)(a): substituted, on 1 July 2009, by section 74(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 205(1)(aa): substituted, on 1 July 2009, by section 74(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 205(1)(b): substituted, on 1 December 1983, by section 21(1) of the Armed Forces Discipline Amendment Act 1980 (1980 No 37).

Section 205(1)(b): amended, on 1 July 2009, by section 74(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 205(1)(c): substituted, on 15 December 1988, by section 3 of the Armed Forces Discipline Amendment Act (No 2) 1988 (1988 No 176).

Section 205(1)(c): amended, on 3 June 1998, by section 2(a) of the Armed Forces Discipline Amendment Act 1998 (1998 No 27).

Section 205(1)(c): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 205(1)(c)(i): substituted, on 1 July 2009, by section 74(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 205(1)(c)(ii): substituted, on 1 July 2009, by section 74(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 205(1)(c)(iii): substituted, on 1 July 2009, by section 74(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 205(1)(c)(iv): substituted, on 1 July 2009, by section 74(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 205(1)(c)(v): substituted, on 1 July 2009, by section 74(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 205(1)(c)(vi): added, on 1 July 2009, by section 74(3) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 205(1)(ca): inserted, on 1 July 2009, by section 74(4) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 205(1A): inserted, on 1 December 1983, by section 17 of the Armed Forces Discipline Amendment Act 1981 (1981 No 48).

Section 205(1B): inserted, as section 205(1A), on 1 December 1983, by section 21(2) of the Armed Forces Discipline Amendment Act 1980 (1980 No 37).

Section 205(1B) subsection number: substituted, on 1 December 1983, by section 17 of the Armed Forces Discipline Amendment Act 1981 (1981 No 48).

Section 205(2): repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 205(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

206 Defence Force Orders

- (1) The Chief of Defence Force may from time to time issue orders, not inconsistent with this Act or the Defence Act 1990, for all or any of the following purposes:
 - (a) determining the nature and content of the punishments of stay of seniority, confinement to ship or barracks, extra work and drill, stoppage of leave, and extra duty:
 - (ab) limiting the types of offences that a disciplinary officer may try summarily, or otherwise deal with, under Part 5:
 - (ac) limiting the amount that a disciplinary officer may, under section 117ZA, order an offender to pay:
 - (ad) restricting, by fixing the limitations as to rank as the Chief of Defence Force considers necessary, the exercise of powers under Part 5 by disciplinary officers:
 - (ae) providing for the designation of classes of certificates of competency that may be issued to members of the Armed Forces who are to be appointed disciplinary officers, presenting officers, or defending officers:
 - (af) providing for the issue, revocation, suspension, expiry, and renewal of those certificates of competency:

- (ag) providing for the minimum standards for the issue of those certificates of competency (including standards relating to required competence, qualifications, and experience) that must be met for each class of certificate:
 - (ah) providing for the terms and conditions subject to which certificates of competency are issued:
 - (b) providing for the attendance at trials by the Court Martial of officers and warrant officers attending the proceedings of the Court for the purpose of being instructed in the Court's procedure:
 - (c) *[Repealed]*
 - (d) providing for the assembling and constitution of courts of inquiry:
 - (e) providing for legal aid to be granted at public expense in respect of—
 - (i) proceedings in the Court Martial (whether in New Zealand or elsewhere):
 - (ii) appeals to the Summary Appeal Court or the Court Martial Appeal Court (whether in New Zealand or elsewhere):
 - (ea) prescribing the conditions subject to which any legal aid referred to in paragraph (e) may be granted:
 - (eb) providing for legal aid to be granted at public expense to any unrepresented person who (whether in New Zealand or elsewhere)—
 - (i) is being questioned by the service authorities, or is wanted by the service authorities for questioning, in relation to the commission or possible commission of an offence by that person and is advised by the service authorities, before or in the course of questioning, that he or she may consult a lawyer; or
 - (ii) is under close arrest:
 - (ec) prescribing the conditions subject to which any legal aid referred to in paragraph (eb) may be granted:
 - (f) providing for legal aid to be granted at public expense, either generally or in prescribed cases, to persons subject to this Act tried by civil courts outside New Zealand, and prescribing the conditions subject to which any such legal aid may be granted:
 - (g) providing for the removal of a person unfit to stand trial within the meaning of Part 10, or acquitted on account of his insanity, from an overseas country to New Zealand, or from one place of custody to another, or from a place of custody to a hospital:
 - (h) providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.
- (2) All Defence Force Orders issued under this Act shall come into force on the date of their issue or on such later date as may be specified in the orders.

(3) Any such orders may make different provision for different services, commands, branches, corps, formations, units, and ranks of the Armed Forces.

Section 206 heading: amended, on 1 July 2009, by section 75(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 206 heading: amended, on 1 April 1990, pursuant to section 105(1) of the Defence Act 1990 (1990 No 28).

Section 206(1): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 206(1): amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 206(1): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 206(1)(a): substituted, on 1 July 2009, by section 75(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 206(1)(ab): inserted, on 1 July 2009, by section 75(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 206(1)(ac): inserted, on 1 July 2009, by section 75(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 206(1)(ad): inserted, on 1 July 2009, by section 75(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 206(1)(ae): inserted, on 1 July 2009, by section 75(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 206(1)(af): inserted, on 1 July 2009, by section 75(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 206(1)(ag): inserted, on 1 July 2009, by section 75(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 206(1)(ah): inserted, on 1 July 2009, by section 75(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 206(1)(b): amended, on 30 November 2018, by section 22(1) of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Section 206(1)(b): amended, on 1 July 2009, by section 75(3)(a) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 206(1)(b): amended, on 1 July 2009, by section 75(3)(b) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 206(1)(b): amended, on 1 July 2009, by section 75(3)(c) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 206(1)(c): repealed, on 30 November 2018, by section 22(2) of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Section 206(1)(e): substituted, on 1 July 2009, by section 75(5) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 206(1)(ea): inserted, on 1 July 2009, by section 75(5) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 206(1)(eb): inserted, on 1 July 2009, by section 75(5) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 206(1)(ec): inserted, on 1 July 2009, by section 75(5) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 206(1)(g): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 206(1)(g): amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Section 206(2): amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

206A Application of Legislation Act 2019 to Defence Force Orders

- (1) A Defence Force Order under section 206 is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless the order applies only to 1 or more named persons.
- (2) A Defence Force Order commences in accordance with section 206(2), even if it is not yet published.

Legislation Act 2019 requirements for secondary legislation referred to in this section

Publication	It is not required to be published	LA19 s 73(2)
Presentation	It is not required to be presented to the House of Representatives because a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 206A: inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Repeals, amendments, and savings

Heading: substituted, on 28 July 1997, by section 3 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

207 Transitional provisions

[Repealed]

Section 207: repealed, on 28 July 1997, by section 3 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).

208 Repeals, amendments, and savings

- (1) The enactments specified in Schedule 7 are hereby consequentially amended in the manner indicated in that schedule.
- (2) The enactments specified in Schedule 8 are hereby repealed.
- (3) All districts, offices, appointments, commissions, Proclamations, Orders in Council, regulations, orders, warrants, contracts, instruments, and all acts of authority that originated under or by virtue of any of the enactments repealed by this section, and are subsisting or in force at the commencement of this Act, shall continue for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated; but so that in the case of current appointments for specified terms each such term shall be computed from the date of its commencement.
- (4) Notwithstanding the repeal of any enactment by subsection (2), all matters and proceedings commenced under any such enactment, and pending or in progress

at the commencement of this Act, may be continued and completed under this Act.

- (5) The Naval Discipline Act 1957 of the Parliament of the United Kingdom, and all Acts amending or continuing that Act, and all rules and regulations made under that Act, shall at the commencement of this Act cease to have effect as part of the law of New Zealand.

Schedule 1AA

Transitional, savings, and related provisions

s 5A

Schedule 1AA: inserted, on 30 November 2018, by section 23 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Part 1

Provisions relating to Part 1 of Military Justice Legislation Amendment Act 2018

1 Interpretation in this Part

In this Part,—

amendment Act means Part 1 of the Military Justice Legislation Amendment Act 2018

commencement means the commencement of the amendment Act

other amendments means the amendments made by sections 12 to 20 of the amendment Act

proceeding means the disposal of a charge recorded under this Act, and includes any appeals

victims' rights amendments means the amendments made by sections 6 to 10 and 21 of the amendment Act.

2 Burden of proof amendment

- (1) Despite its repeal by section 4 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.
- (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.

3 Victims' rights amendments

- (1) The victims' rights amendments do not apply in relation to a proceeding in which the charge is recorded under section 102 before commencement.
- (2) Despite subclause (1), the victims' rights amendments apply in relation to a proceeding described in that subclause if—
 - (a) any further charges for an offence arising from the same incident or series of incidents are recorded after commencement; or
 - (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.

Schedule 1

Civilians subject to this Act

s 16(3)

Provisions relating to civilians outside New Zealand

- 1 Persons serving outside New Zealand, or otherwise employed, in such capacities connected with the Navy, the Army, or the Air Force as are specified for the purposes of this schedule by Defence Force Orders, being persons serving or employed under Her Majesty's Government in New Zealand.
Schedule 1 clause 1: amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).
- 2 Persons who are employed by, or in the service of, any naval, army, or air force organisation so specified to which Her Majesty's Government in New Zealand is a party and are employed by or in the service of that organisation by reason of that Government being a party thereto.
- 3 Persons belonging to or employed by any other organisation so specified which operates in connection with the Navy, the Army, or the Air Force.
- 4 Persons who, for the purposes of their profession or employment, are attached to or accompany any part of the Navy, the Army, or the Air Force, pursuant to an authorisation granted by or on behalf of the Chief of Defence Force.
Schedule 1 clause 4: amended, on 28 July 1997, by section 4 of the Armed Forces Discipline Amendment Act 1997 (1997 No 34).
- 5 Persons forming part of the family of members of any part of the Navy, the Army, or the Air Force and residing with those members or about to reside or departing after residing with them.
- 6 Persons forming part of the family of persons falling within clauses 1 to 4 and residing with them or about to reside or departing after residing with them.
- 7 Persons employed by members of any part of the Navy, the Army, or the Air Force.
- 8 Persons employed by persons falling within clauses 1 to 6.
- 9 Persons forming part of the family of persons falling within either clause 7 or clause 8 and residing with them or about to reside or departing after residing with them.

Schedule 2

Scale of punishments which may be imposed by Court Martial

ss 79, 80

Schedule 2 heading: amended, on 1 July 2009, by section 76(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

- 1 The punishments that may be imposed on an offender convicted by the Court Martial are as follows:
- (a) *[Repealed]*
 - (b) imprisonment:
 - (c) dismissal from Her Majesty's Service:
 - (d) detention:
 - (e) reduction in rank:
 - (f) forfeiture of seniority:
 - (g) stay of seniority:
 - (h) a fine:
 - (i) a severe reprimand:
 - (j) a reprimand.

Schedule 2 clause 1: amended, on 1 July 2009, by section 76(2) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Schedule 2 clause 1(a): repealed, on 26 December 1989, by section 5(10) of the Abolition of the Death Penalty Act 1989 (1989 No 119).

- 2 Except as provided in clauses 3 and 4, a punishment specified in any paragraph of the scale prescribed by clause 1 shall be regarded as less severe than any of the punishments that are specified in the preceding paragraphs of that scale.
- 3 Detention shall be deemed not to be a less severe punishment than imprisonment if the term of detention is longer than the term of imprisonment.
- 4
- (1) One combination of punishments shall be regarded as being less severe than any other combination of punishments if the most or more severe punishment of the first-mentioned combination is less severe than the most or more severe punishment of the other combination.
 - (2) In comparing any 2 combinations of punishments as provided in subclause (1), there shall be excluded from each combination any punishment that is the same in kind and amount as a punishment included in the other combination.
- 5 A combination of punishments shall be regarded as being less severe than a single punishment if the most or more severe punishment of the combination is less severe than the single punishment.

Schedule 3

Scale of authorised summary punishments

s 117V

Schedule 3 heading: amended, on 1 July 2009, by section 77(1) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

- 1 The punishments that may be imposed on an offender by a disciplinary officer are as follows:
- (a) detention:
 - (b) reduction in rank:
 - (c) stay of seniority:
 - (d) a fine:
 - (e) a reprimand:
 - (f) confinement to ship or barracks (including extra work and drill for a period equal to the period of the confinement):
 - (g) extra work and drill:
 - (h) stoppage of leave:
 - (i) *[Repealed]*
 - (j) extra duty not exceeding 2 hours a day:
 - (k) a caution.

Schedule 3 clause 1: amended, on 1 July 2009, by section 77(2)(a) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Schedule 3 clause 1(i): repealed, on 1 July 2009, by section 77(2)(b) of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

- 2 Except as provided in clauses 3 and 4, a punishment specified in any paragraph of the scale prescribed by clause 1 shall be regarded as less severe than any of the punishments that are specified in the preceding paragraphs of that scale.
- 3
- (1) One combination of punishments shall be regarded as less severe than any other combination of punishments if the most or more severe punishment of the first-mentioned combination is less severe than the most or more severe of the other combination of punishments.
 - (2) In comparing any 2 combinations of punishments as provided in subclause (1), there shall be excluded from each combination any punishment that is the same in kind and amount as a punishment included in the other combination.
- 4 A combination of punishments shall be regarded as less severe than a single punishment if the most or more severe punishment of the combination is less severe than the single punishment.

Schedule 4
**Summary punishments that may be imposed by commanding officer,
detachment commander, or subordinate commander acting as
disciplinary officer under Part 5**

ss 117V, 117W

Schedule 4: substituted, on 1 July 2009, by section 78 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Column 1	Column 2	Column 3
	Punishments and jurisdictional circumstances	
	If offender was given right to elect trial by Court Martial	If offender was not given right to elect trial by Court Martial
Rank of offender		
1	An officer or a warrant officer	Stay of seniority for a period not exceeding 12 months A fine, not exceeding 28 days' basic pay A reprimand
2	A senior non-commissioned officer	A fine, not exceeding 7 days' basic pay A reprimand
3	A junior non-commissioned officer	Reduction in rank (this punishment may be imposed only on a petty officer or a sergeant who, at the time of the disposal of the charge, is on active service or sea service) Stay of seniority for a period not exceeding 12 months A fine, not exceeding 28 days' basic pay A reprimand Stoppage of leave, not exceeding 21 days
3	A junior non-commissioned officer	Reduction in rank A fine, not exceeding 28 days' basic pay A reprimand Stoppage of leave, not exceeding 21 days Extra duty for a period not exceeding 21 days A caution
		A fine, not exceeding 7 days' basic pay A reprimand Stoppage of leave, not exceeding 21 days A reprimand Stoppage of leave, not exceeding 21 days Extra duty for a period not exceeding 21 days A caution

Column 1	Column 2	Column 3
	Punishments and jurisdictional circumstances	
	If offender was given right to elect trial by Court Martial	If offender was not given right to elect trial by Court Martial
Rank of offender		
4	<p>A rating of able rank, a private, or a leading air-craftman, or a rating, soldier, or airman of lower rank</p>	<p>Detention for a period not exceeding 60 days (this punishment may be of an offence committed on active service or sea service)</p> <p>Detention for a period not exceeding 28 days</p> <p>A fine, not exceeding 28 days' basic pay</p> <p>A reprimand</p> <p>Confinement to ship or barracks for a period not exceeding 21 days</p> <p>Extra work and drill for a period not exceeding 21 days</p> <p>Stoppage of leave, not exceeding 21 days</p> <p>Extra duty for a period not exceeding 21 days</p> <p>A caution</p>
		<p>A fine, not exceeding 7 days' basic pay</p> <p>A reprimand</p> <p>Confinement to ship or barracks for a period not exceeding 21 days</p> <p>Extra work and drill for a period not exceeding 21 days</p> <p>Stoppage of leave, not exceeding 21 days</p> <p>Extra duty for a period not exceeding 21 days</p> <p>A caution</p>

Notes

For the purposes of clause 1, a disciplinary officer is not empowered to impose a punishment on an officer if the disciplinary officer holds a rank of less than 2 rank grades above that of the officer.

For the purposes of clause 2, a senior non-commissioned officer is one who holds the rank of—

- (a) chief petty officer or petty officer in the Navy; or
- (b) staff sergeant or sergeant in the Army; or
- (c) flight sergeant aircrew, flight sergeant, sergeant aircrew, or sergeant in the Air Force.

For the purposes of clause 3, a junior non-commissioned officer is one who is—

- (a) a rating of leading rank in the Navy; or
- (b) a bombardier, corporal, lance bombardier, or lance corporal in the Army; or
- (c) a corporal in the Air Force.

For the purposes of this schedule, a person is on sea service if that person is a member of the crew of a ship that is at sea or of a ship whose commanding officer has been ordered to keep the ship at less than 48 hours' notice for sea.

Schedule 5
**Summary punishments that may be imposed by superior
commander acting as disciplinary officer under Part 5**

ss 117V, 117W

Schedule 5: substituted, on 1 July 2009, by section 78 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Rank of offender	If offender was given right to elect trial by Court Martial	If offender was not given right to elect trial by Court Martial
Punishments and jurisdictional circumstances		
Column 1	Column 2	Column 3
An officer	Stay of seniority for a period not exceeding 12 months A fine, not exceeding 28 days' basic pay A reprimand	A fine, not exceeding 7 days' basic pay A reprimand

Note

For the purposes of this schedule, a superior commander is not empowered to impose a punishment on the officer if the superior commander holds a rank of less than 2 rank grades above that of the officer.

Schedule 6
Alternative offences of which accused may be convicted by court-
martial

[Repealed]

s 135(4)

Schedule 6: repealed, on 1 July 2009, by section 79 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Schedule 7
Enactments amended

s 208(1)

Courts Martial Appeals Act 1953 (1953 No 100)

Amendment(s) incorporated in the Act(s).

Crimes Act 1961 (1961 No 43)

Amendment(s) incorporated in the Act(s).

Geneva Conventions Act 1958 (1958 No 19)

Amendment(s) incorporated in the Acts(s).

Police Offences Act 1927 (1927 No 35)

Amendment(s) incorporated in the Act(s).

Wills Amendment Act 1955 (1955 No 94)

Amendment(s) incorporated in the Act(s).

Schedule 8

Enactments repealed

s 208(2)

Part 1

Repeal of enactments relating to the Naval Forces

Navy Act 1954 (1954 No 53) (1957 Reprint, Vol 10, p 897)

Navy Amendment Act 1958 (1958 No 22)

Navy Amendment Act 1967 (1967 No 28)

Police Offences Amendment Act 1958 (1958 No 87)

Amendment(s) incorporated in the Act(s).

Part 2

Repeal of enactments relating to the Army

New Zealand Army Act 1950 (1950 No 39) (1957 Reprint, Vol 11, p 1)

New Zealand Army Amendment Act 1954 (1954 No 20) (1957 Reprint, Vol 11, p 110)

New Zealand Army Amendment Act 1957 (1957 No 33) (1957 Reprint, Vol 11, p 112)

New Zealand Army Amendment Act 1959 (1959 No 26)

New Zealand Army Amendment Act 1961 (1961 No 29)

New Zealand Army Amendment Act 1963 (1963 No 105)

New Zealand Army Amendment Act 1965 (1965 No 54)

New Zealand Army Amendment Act 1967 (1967 No 26)

Part 3

Repeal of enactments relating to the Air Force

Royal New Zealand Air Force Act 1950 (1950 No 40) (1957 Reprint, Vol 13, p 455)

Royal New Zealand Air Force Amendment Act 1954 (1954 No 21) (1957 Reprint, Vol 13, p 561)

Royal New Zealand Air Force Amendment Act 1957 (1957 No 34) (1957 Reprint, Vol 13, p 563)

Royal New Zealand Air Force Amendment Act 1959 (1959 No 27)

Royal New Zealand Air Force Amendment Act 1960 (1960 No 88)

Royal New Zealand Air Force Amendment Act 1961 (1961 No 97)

Royal New Zealand Air Force Amendment Act 1965 (1965 No 55)

Royal New Zealand Air Force Amendment Act 1967 (1967 No 27)

Royal New Zealand Air Force Amendment Act 1968 (1968 No 58)

Armed Forces Discipline Amendment Act (No 2) 2007

Public Act	2007 No 98
Date of assent	13 November 2007
Commencement	see section 2

1 Title

This Act is the Armed Forces Discipline Amendment Act (No 2) 2007.

2 Commencement

This Act comes into force on a date to be appointed by the Governor-General by Order in Council, and 1 or more orders may be made appointing different dates for different provisions.

Section 2: Armed Forces Discipline Amendment Act (No 2) 2007 brought into force, on 1 July 2009, by the Armed Forces Discipline Amendment Act (No 2) 2007 Commencement Order 2008 (SR 2008/232).

Amendments to preliminary provisions of principal Act

5 Special provisions relating to the interpretation, etc, of Part 2

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Despite subsection (1), section 104 of the Sentencing Act 2002 does not apply to the sentencing of an offender under the principal Act if the offender is sentenced on or after the commencement of this section for the crime of murder committed before that commencement.

Transitional provisions

82 Continuation of proceedings under Part 5

- (1) All investigations and proceedings under Part 5 of the principal Act that have been commenced before the commencement of this section and that have not been completed before that commencement are to be continued and completed as if this Act had not been enacted.
- (2) However, if, in the course of proceedings continued under subsection (1) and after the commencement of this section, an accused elects to be tried by court-martial and does not withdraw that election in the prescribed manner, or is otherwise remanded for trial by court-martial,—
 - (a) the charge must be referred to the Director of Military Prosecutions; and
 - (b) the accused may be remanded for trial in the Court Martial (as established by the Court Martial Act 2007); and
 - (c) the charge must then be dealt with in accordance with the principal Act (as amended by this Act) and the Court Martial Act 2007; and

- (d) sections 117ZF to 117ZI of the principal Act (as substituted by this Act) apply with all necessary modifications for the purpose of giving effect to paragraphs (a) to (c).
- (3) If a person subject to the principal Act is found guilty of an offence against the principal Act by an officer exercising summary powers in proceedings continued under subsection (1), the finding and any punishment imposed on him or her may be reviewed under section 117 of the principal Act as if this Act had not been enacted.
- (4) Every officer exercising summary powers and every reviewing authority continues to have and may exercise all his, her, or its powers, functions, and duties under the principal Act (as in force immediately before the commencement of this section) for the purpose of giving effect to subsections (1) and (3).
- (5) In this section, **officer exercising summary powers** and **reviewing authority** have the same meanings as in the principal Act as in force immediately before the commencement of this section.

83 Charges in relation to conduct before commencement of this section

- (1) Conduct that is alleged to have occurred before the commencement of this section may be dealt with under the principal Act, as amended by this Act, if the disciplinary officer concerned is satisfied that an investigation and proceeding under Part 5 of the principal Act, as it was in force immediately before the commencement of this section, has not been commenced in relation to the conduct before that commencement.
- (2) This section does not limit section 82.

Notes

1 *General*

This is a consolidation of the Armed Forces Discipline Act 1971 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Secondary Legislation Act 2021 (2021 No 7): section 3
Statutes Amendment Act 2019 (2019 No 56): Part 2
Military Justice Legislation Amendment Act 2018 (2018 No 36): Part 1
Statutes Repeal Act 2017 (2017 No 23): section 4(2)
Contract and Commercial Law Act 2017 (2017 No 5): section 347
District Court Act 2016 (2016 No 49): section 261
Armed Forces Discipline Amendment Act 2013 (2013 No 108)
Sale and Supply of Alcohol Act 2012 (2012 No 120): section 417(1)
Criminal Procedure Act 2011 (2011 No 81): sections 393, 413
Armed Forces Discipline Amendment Act 2010 (2010 No 48)
Policing Act 2008 (2008 No 72): section 116(a)(ii), (iv)
Court Martial Act 2007 (2007 No 101): section 86
Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98)
Coroners Act 2006 (2006 No 38): section 146
Relationships (Statutory References) Act 2005 (2005 No 3): section 7
Visiting Forces Act 2004 (2004 No 59): section 26
Corrections Act 2004 (2004 No 50): section 206
Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115): section 51
Health Practitioners Competence Assurance Act 2003 (2003 No 48): section 175(1)
Crimes Amendment Act 2003 (2003 No 39): section 34

Parole Act 2002 (2002 No 10): section 125
Armed Forces Discipline Amendment Act 2001 (2001 No 55)
Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49): section 337(1)
Armed Forces Discipline Amendment Act 1999 (1999 No 28)
Armed Forces Discipline Amendment Act 1998 (1998 No 27)
Armed Forces Discipline Amendment Act 1997 (1997 No 34)
Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46): section 140
Defence Act 1990 (1990 No 28): section 105(1)
Abolition of the Death Penalty Act 1989 (1989 No 119): section 5(1)–(7), (10)
Public Finance Act 1989 (1989 No 44): sections 65R(3), 83(7)
Armed Forces Discipline Amendment Act (No 2) 1988 (1988 No 176)
Armed Forces Discipline Amendment Act 1988 (1988 No 89)
Constitution Act 1986 (1986 No 114): section 29(2)
Armed Forces Discipline Amendment Act 1985 (1985 No 199)
Armed Forces Discipline Act Commencement Order 1983 (SR 1983/232)
Armed Forces Discipline Amendment Act 1981 (1981 No 48)
Armed Forces Discipline Amendment Act 1980 (1980 No 37)
District Courts Amendment Act 1979 (1979 No 125): section 18(2)
Armed Forces Discipline Amendment Act 1976 (1976 No 13)