

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE]

House of Representatives, 5 November 1964

Words struck out by the Committee of the Whole are shown in italics within bold round brackets, or with black rule at beginning and after last line of struck out matter; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line of new matter.

Hon. Mr Eyre

DEFENCE

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A BILL INTITULED

An Act to establish the Ministry of Defence and to provide a unified defence policy for the better defence of New Zealand

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

1. **Short Title and commencement**—(1) This Act may be cited as the Defence Act 1964.

10 *Struck Out*

(2) This Act shall come into force on the first day of October, nineteen hundred and sixty-four.

No. 67—2

Price 1s.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Board” means the Naval Board, the Army Board, or the Air Board, as the case may require:

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“Chiefs of Staff” means the Chief of the Naval Staff, the Chief of the General Staff, and the Chief of the Air Staff:

“Common functions” means functions, activities, services, or policies that are common or capable of being common to two or more Services:

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“Defence Council” or “Council” means the New Zealand Defence Council established by section 9 of this Act:

“Defence Forces” means the New Zealand Naval Forces, the New Zealand Army, and the Royal New Zealand Air Force collectively:

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“Military” shall be interpreted as relating to all or any of the Services:

“Minister” means the Minister of Defence:

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“Ministry” means the Ministry of Defence constituted by section 4 of this Act:

“New Zealand Naval Forces”, “New Zealand Army”, and “Royal New Zealand Air Force” have the same meanings, respectively, as in the Navy Act 1954, the New Zealand Army Act 1950, and the Royal New Zealand Air Force Act 1950:

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“Service Acts” means the Navy Act 1954, the New Zealand Army Act 1950, and the Royal New Zealand Air Force Act 1950:

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“Services” means the New Zealand Naval Forces, the New Zealand Army, and the Royal New Zealand Air Force.

3. Minister of Defence—(1) This Act shall be administered by the Minister of Defence.

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(2) Nothing in this Act shall derogate from any functions, powers, and responsibilities of the Minister in relation to defence.

4. Ministry of Defence—There shall be a department of State, to be known as the Ministry of Defence, which shall consist of—

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- (a) The New Zealand Naval Forces; and
- (b) The New Zealand Army; and

- (c) The Royal New Zealand Air Force; and
(d) Such persons as are appointed to the Ministry under the provisions of the State Services Act 1962 or under regulation 283 of the Air Force Regulations 1952.

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5. Functions of Ministry—The Ministry shall have and undertake such functions as are necessary for the due performance and exercise of the duties and responsibilities for the defence of New Zealand with which the Minister, the Council, the Boards, the committees established pursuant to this Act, or any member of the personnel of the Ministry are charged by or under this Act or any other Act or otherwise.

6. Powers of Governor-General as Commander-in-Chief not affected—Nothing in this Act shall derogate from the powers, duties, and obligations of the Governor-General conferred or imposed on him under any of the Service Acts and appertaining to him by virtue of his appointment as Commander-in-Chief of New Zealand.

7. Secretary of Defence—(1) There shall from time to time be appointed under the State Services Act 1962 a Secretary of Defence, who, subject to the provisions of subsection (2) of this section, shall be deemed to be the Permanent Head of the Ministry for the purposes of the State Services Act 1962, the Public Revenues Act 1953, and any other Act.

(2) The Secretary of Defence shall not be responsible for the command and efficient and economic administration of the Services, but, in matters of such administration, he may carry out inspections of the Services and report to the Minister.

(3) In addition to the functions specified in the preceding provisions of this section and to his functions under any other Act or as a member of the Council, the Secretary of Defence shall have the following functions:

- (a) He shall be the principal civilian adviser to the Minister;
- (b) He shall be responsible for coordinating the business of the Ministry and for making such arrangements as may be necessary for this purpose;

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- (c) Subject to the provisions of the State Services Act 1962, he shall be responsible for the assignment and discipline of the persons appointed to the Ministry under the provisions of that Act;
- (d) He shall be responsible for the direction and control of all civilian or military personnel employed in respect of his functions; and
- (e) He shall be responsible for the coordination of long-term financial planning within the Ministry and for control of the defence programme expenditure in accordance with money appropriated by Parliament for the purpose.

8. Chief of the Defence Staff—(1) An officer of the Defence Forces shall be appointed by the Governor-General in Council to be the Chief of the Defence Staff.

(2) The Chief of Defence Staff shall have the following functions in addition to his functions as a member of the Council:

- (a) He shall be the principal military adviser to the Minister;
- (b) He shall be responsible for the direction and control of all military or civilian personnel employed in respect of his functions; and
- (c) He shall be convenor and chairman of the Chiefs of Staff Committee in existence at the date of the commencement of this Act, and shall convey the advice of the Committee to the Minister.

(3) In the exercise of his functions, the Chief of the Defence Staff may carry out inspections of the Services and report to the Minister.

9. Defence Council—(1) There is hereby established a Council, to be called the New Zealand Defence Council.

(2) The Council shall consist of the following members:

- (a) The Minister;
- (b) The Chief of the Defence Staff;
- (c) The Secretary of Defence, who shall be the Secretary and chief executive officer of the Council:

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(d) The Chiefs of Staff.

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- (d) The Chief of the Naval Staff;
- (e) The Chief of the General Staff;
- (f) The Chief of the Air Staff.

(3) The Council may from time to time co-opt any officer of a department of State to be a member of the Council in the exercise of its functions under paragraph (b) of subsection (2) of section 10 of this Act.

5 **10. Functions of Defence Council**—(1) There are hereby transferred to the Defence Council the functions conferred by any Act, regulations, rules, or orders on the New Zealand Naval Board constituted by the Navy Act 1954 or on the Army Board constituted by the New Zealand Army Act
10 1950 or on the Air Board constituted by the Royal New Zealand Air Force Act 1950.

(2) Subject to the provisions of section 3 of this Act, the Defence Council shall also have the following functions:

15 (a) It shall be responsible for the administration, and, through the Boards or officers appointed for that purpose, the command of the Defence Forces and all matters relating thereto, and shall have such powers, duties, and functions in relation thereto as may
20 from time to time be conferred on it by this Act or any other Act or by any regulations or rules made under this Act or any other Act, and, subject to any such Act or regulations or rules or so far as they do not extend, shall have all such powers as are reasonably necessary for the effective performance of its
25 functions and duties:

(b) It shall be responsible for advising the Minister on important matters of defence policy:

30 (c) It shall constantly examine the possibilities of integrating common functions, and shall proceed to integrate them to the extent deemed practicable and desirable.

(3) Nothing in this section shall affect or limit the responsibilities of the Secretary of Defence or the Chief of the Defence Staff which they are required to discharge under sections 7
35 and 8 of this Act.

11. Procedure of Defence Council—(1) The Minister shall be the Chairman of the Council.

(2) The Chief of the Defence Staff and the Secretary of Defence shall each be a Deputy Chairman of the Council.

40 (3) In the absence of the Minister from any meeting of the Council, the appropriate Deputy Chairman shall preside.

(4) The rules of procedure of the Council shall prescribe the circumstances in which for the purposes of this section the Chief of the Defence Staff is the appropriate Deputy Chairman of the Council and the circumstances in which the Secretary of Defence is the appropriate Deputy Chairman. 5

(5) No business shall be transacted at any meeting of the Council unless all the members (except the Minister and any co-opted members) or their representatives are present.

(6) Subject to the provisions of section 12 of this Act, anything that may be done by resolution passed at a meeting of the Council may, unless any member (not being a co-opted member) requires it to be dealt with at a meeting of the Council, be done by the Council without a meeting by means of a Council memorandum signed by all the members of the Council (other than co-opted members). 10 15

(7) The powers of the Council shall not be affected by any vacancy in its membership.

(8) Subject to the provisions of this Act and of any regulations made under this Act and to any rules of procedure made by the Council for the conduct of its business, the Council may regulate its procedure in such manner as it thinks fit. 20

12. Minister to be a party to important decisions of Defence Council—No decision of the Defence Council on any matter determined by the Minister to be an important matter of principle or policy or administration shall have any force or effect, unless the Minister is a party to the decision or assents thereto in writing, or, in any case where the decision on any such matter is made by Council memorandum, unless the Minister is an assenting signatory to the memorandum. 25

13. Instructions and Orders—(1) In the exercise of its powers, duties, and functions, the Defence Council may from time to time issue Navy Instructions and Orders for the New Zealand Naval Forces, Army Orders for the New Zealand Army, and Air Board Orders for the Royal New Zealand Air Force; and the production of a document that purports to be a copy of such an Instruction or Order and that includes a copy of the signature thereto of the Secretary of Defence or of the Deputy Secretary of Defence or Assistant Secretary who is a member of the Board of the Service concerned shall, in the absence of proof to the contrary, be sufficient evidence of that Instruction or Order in all Courts and in all proceedings. 30 35 40

(2) Every such Instruction or Order shall be promulgated by the Board of the Service concerned.

14. Delegation of powers—(1) The Minister may from time to time, by writing under his hand, delegate to the Defence Council or any member thereof (other than a co-opted member) or to any Board or any member thereof any
5 of his powers under this Act (except this power of delegation).

(2) The Defence Council may from time to time delegate any of its powers (including, in the case of any delegation to a Board but not in any other case, this power of delegation)
10 to any member of the Council (other than a co-opted member) or to any Board or any member of any Board or to any committee established pursuant to this Act.

(3) The Chief of the Defence Staff may from time to time, by writing under his hand, delegate to any member of the Services any of his powers (except this power of delegation).
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(4) The Secretary of Defence may from time to time, by writing under his hand, delegate to any member of the personnel of the Ministry (whether civilian or military) any of his powers (except this power of delegation).

(5) Any other member of the Council (other than a co-opted member) may from time to time, by writing under his hand, delegate to any other officer of the Service to which he belongs any of his powers (except this power of delegation).
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(6) With the approval of the Defence Council, any Board
25 may delegate to any member of the Board any of its powers (including any powers delegated to it by the Council, but excluding this power of delegation).

(7) Any delegation made under this section may be made either as to matters within the general jurisdiction of the
30 body or person making the delegation or in any particular case or matter or class of cases or matters.

(8) A person to whom any delegation is made under this section may be a person referred to by name or the person who for the time being and from time to time holds any
35 specified position.

(9) The body or person to whom any powers have been so delegated may exercise those powers in the same manner and with the same effect as if those powers had been directly conferred on that body or person by this Act and not by
40 delegation.

(10) Any delegation under this section may be made subject to such conditions as are specified by the body or person making the delegation.

(11) Any such delegation may be at any time revoked, in whole or in part, by the body or person making it, but any such revocation shall not affect in any way anything done under the delegated authority.

(12) No such delegation shall prevent the exercise by the body or person making it of its or his powers. 5

(13) The fact that any body or person purports to exercise any power pursuant to any delegation under this section shall, in the absence of proof to the contrary, be sufficient evidence that that body or person is acting within the terms of such a delegation. 10

15. Naval Board—(1) There is hereby established a Board, to be called the Naval Board of the New Zealand Defence Council (in this Act referred to as the Naval Board).

(2) The Naval Board shall consist of— 15

(a) The Minister, who shall be the Chairman of the Board:

(b) The Chief of the Naval Staff:

(c) Not fewer than two nor more than four other members (being officers of any Commonwealth naval forces), to be from time to time appointed as members of the Board by the Governor-General and to hold office as such during his pleasure: 20

(d) A Deputy Secretary of Defence or an Assistant Secretary, to be assigned by the Secretary of Defence. 25

16. Army Board—(1) There is hereby established a Board, to be called the Army Board of the New Zealand Defence Council (in this Act referred to as the Army Board).

(2) The Army Board shall consist of—

(a) The Minister, who shall be the Chairman of the Board: 30

(b) The Chief of the General Staff:

(c) The Vice-Chief of the General Staff:

(d) The Adjutant-General:

(e) The Quartermaster-General:

(f) A Deputy Secretary of Defence or an Assistant Secretary, to be assigned by the Secretary of Defence. 35

(g) One associate member (being an officer of the Territorial Force), to be from time to time appointed by the Governor-General and to hold office as such during his pleasure. 40

(3) The associate member shall not be competent to attend any meeting of the Board as a member except—

- (a) In accordance with the general or special directions of the Minister; or
- 5 (b) In the absence of any such directions or in any case to which they do not apply, with the concurrence of the presiding member.

17. Air Board—(1) There is hereby established a Board, to be called the Air Board of the New Zealand Defence
10 Council (in this Act referred to as the Air Board).

(2) The Air Board shall consist of—

- (a) The Minister, who shall be the Chairman of the Board:
- (b) The Chief of the Air Staff:
- 15 (c) Not fewer than two nor more than four other members (being officers of any Commonwealth air force), to be from time to time appointed as members of the Board by the Governor-General and to hold office as such during his pleasure:
- 20 (d) A Deputy Secretary of Defence or an Assistant Secretary, to be assigned by the Secretary of Defence.

18. Exercise by Boards of functions of Defence Council—
The functions of the Defence Council under any Act, regulations, rules, or orders (whether passed or made before or after the commencement of this Act) may, subject to any
25 directions of the Council, be discharged by the Navy Board, the Army Board, or the Air Board; and for the purposes of any such enactment (including any other provisions of this Act) anything done by or in relation to any of those
30 Boards or in connection with the discharge of any such functions of the Defence Council shall be of the same effect as if done by or in relation to the Defence Council.

19. Functions of Air Board in relation to civil aviation—
(1) Subject to any directions of the Defence Council, it shall be a function of the Air Board from time to
35 time, as it thinks fit, to consider all such matters relating particularly to civil aviation as, in the opinion of the Board, affect or are likely to affect defence, and it shall be the duty of the Board to advise the Defence Council from time to time, as occasion may require, as to the extent
40 to which and the manner in which civil aviation and defence aviation should be coordinated.

(2) In the exercise of the special functions of the Air Board under this section, the Secretary for Civil Aviation shall be associated with the Board and deemed to be a member thereof.

(3) For the purpose of enabling the Air Board to carry out its functions under this section, the Board shall be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and all the provisions of that Act shall apply accordingly. 5

20. Procedure of Boards—(1) At a meeting of any Board a majority of the members for the time being of the Board shall form a quorum. 10

(2) The powers of any Board shall not be affected by any vacancy in the membership thereof, or, in the case of the Army Board, by any failure to comply with subsection (3) of section 16 of this Act. 15

(3) Subject to the provisions of this Act and of any regulations made under this Act and of any directions given by the Defence Council, a Board may regulate its procedure in such manner as it thinks fit. 20

21. Committees—(1) The Council may from time to time establish, reconstitute, or abolish committees and prescribe their functions and to whom they shall be responsible.

(2) Every joint committee having functions in relation to the Defence Forces or to any Service in existence at the commencement of this Act shall remain in existence as if it had been established by the Council under this section, but may be abolished or reconstituted under this section. 25

22. Attendance at meetings of representatives of members of Council, Boards, or committees—(1) In the absence from any meeting of any member of the Council or of any committee established pursuant to this Act, any other person authorised by him either generally or with respect to any specified meeting (being, in the case of a member who is an officer of any Service, an officer of any Service, and, in the case of a member who is an officer of any department of State, an officer of that department) may attend the meeting in his stead. 30 35

(2) In the absence from any meeting of a Board of the Deputy Secretary of Defence or Assistant Secretary who is a member of the Board, any other civilian officer of the Ministry authorised by him, either generally or with respect to any specified meeting, may attend the meeting in his stead.

(3) While any person is attending any meeting under this section, he shall be deemed for all purposes to be a member of the Council or Board or committee, as the case may be:

10 Provided that any person attending any meeting of the Defence Council under this section instead of the Chief of the Defence Staff or of the Secretary of Defence shall not be deemed to be a Deputy Chairman of the Council.

15 (4) Any person authorised under this section to attend meetings of the Council as the representative of any member shall also be authorised to act for that member in relation to decisions by Council memorandum.

20 (5) The fact that any person attends and acts as a member of the Council or of any Board or committee at any such meeting or signs any Council memorandum as the representative of any member shall be conclusive proof of his authority to do so.

23. Deputy Secretaries of Defence and Assistant Secretaries—(1) There may be appointed from time to time under the State Services Act 1962 a Chief Deputy Secretary of Defence and such other Deputy Secretaries of Defence (not exceeding three) and such Assistant Secretaries as may be required, who, subject to the provisions of that Act, shall have all such powers, duties, and functions as may be delegated or assigned to them by the Secretary of Defence.

30 (2) Every Deputy Secretary of Defence or Assistant Secretary who is a member of any Board shall also have such other powers, duties, and functions as may be assigned to him by the Board.

35 **24. Annual report**—(1) The Minister shall, as soon as practicable after the end of each year ending with the thirty-first day of March, cause to be prepared a report of the operations of the Ministry during that year.

40 (2) A copy of the report shall be laid before Parliament within twenty-eight days after its receipt by the Minister if Parliament is then in session, and, if not, shall be laid before Parliament within twenty-eight days after the commencement of the next ensuing session.

25. Regulations—Without limiting any power to make regulations conferred on the Governor-General by any of the Service Acts, the Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) For any purpose for which regulations may be made under section 16 of the Navy Act 1954 or under section 17 of the New Zealand Army Act 1950 or under section 16 of the Royal New Zealand Air Force Act 1950 as if every reference in any of those sections to any Service or the members thereof included a reference to the other Services and the members thereof:

Provided that no regulations shall be made pursuant to this paragraph other than regulations applying in common to all the Services or to any two of them:

- (b) Providing for such matters as are necessary for giving full effect to the provisions of this Act and for the due administration thereof.

26. Consequential amendments—(1) The enactments specified in the First Schedule to this Act are hereby amended in the manner indicated in that Schedule.

(2) Every reference to the New Zealand Naval Board or to the Naval Board of New Zealand in any Act, regulation, rule, order, other enactment, agreement, deed, instrument, application, notice, or other document whatsoever in force at the commencement of this Act shall, unless the context otherwise requires, be read as a reference to the Naval Board of the New Zealand Defence Council.

(3) Every reference to the Army Board in any Act, regulation, rule, order, other enactment, agreement, deed, instrument, application, notice, or other document whatsoever in force at the commencement of this Act shall, unless the context otherwise requires, be read as a reference to the Army Board of the New Zealand Defence Council.

(4) Every reference to the Air Board in any Act, regulation, rule, order, other enactment, agreement, deed, instrument, application, notice, or other document whatsoever in force at the commencement of this Act shall, unless the context otherwise requires, be read as a reference to the Air Board of the New Zealand Defence Council.

(5) Every reference to the Navy Department or to the Army Department or (except in relation to civil aviation) to the Air Department in any Act, regulation, rule, order, other enactment, agreement, deed, instrument, application, notice, 5 or other document whatsoever in force at the commencement of this Act shall, unless the context otherwise requires, be read as a reference to the Ministry of Defence.

(6) Every reference to the Navy Secretary or to the Army Secretary or (except in relation to civil aviation) to the Air 10 Secretary in any Act, regulation, rule, order, other enactment, agreement, deed, instrument, application, notice, or other document whatsoever in force at the commencement of this Act shall, unless the context otherwise requires, be read as a 15 reference to the Secretary of Defence or, as the case may require, to the Deputy Secretary of Defence or Assistant Secretary who is a member of the Board concerned.

27. Repeals and savings—(1) The enactments specified in the Second Schedule to this Act are hereby repealed.

(2) All persons who immediately before the commence- 20 ment of this Act were employees of the Navy Department or of the Army Department or (except in relation to civil aviation) of the Air Department (not being members of the Services) shall be deemed for the purposes of this Act to have been appointed to the Ministry under the provisions 25 of the State Services Act 1962 or, where applicable, of regulation 283 of the Air Force Regulations 1952.

SCHEDULES

Section 26 (1)

FIRST SCHEDULE

CONSEQUENTIAL AMENDMENTS

Enactment Amended	Amendment
1950, No. 39—The New Zealand Army Act 1950 (1957 Reprint, Vol. 11, p. 1)	<p>By adding to the definition of the term “Army Order” in subsection (1) of section 2 the words “or issued by the Defence Council or by the Army Board under the Defence Act 1964 and promulgated by the Army Board”.</p> <p>By repealing the definition of the term “Army Secretary” in the same subsection (which definition was inserted by subsection (1) of section 2 of the New Zealand Army Amendment Act 1954).</p> <p>By omitting from the definition of the term “prescribed” the words “issued under this Act”.</p> <p>By adding to the definition of the term “regulations” in section 2 (1) the words “or made under the Defence Act 1964 and applying to the Army”.</p> <p>By omitting from section 31 (2) the words “made under this Act”.</p>
1950, No. 40 — The Royal New Zealand Air Force Act 1950 (1957 Reprint, Vol. 13, p. 455)	<p>By adding to the definition of the term “Air Board Order” in section 2 the words “or issued by the Defence Council or by the Air Board under the Defence Act 1964 and promulgated by the Air Board”.</p> <p>By repealing the definition of the term “Air Secretary” in section 2 (which definition was inserted by subsection (1) of section 2 of the Royal New Zealand Air Force Amendment Act 1954).</p> <p>By omitting from the definition of the term “prescribed” in section 2 the words “issued under this Act”.</p> <p>By adding to the definition of the term “regulations” in section 2 the words “or made under the Defence Act 1964 and applying to the Air Force”.</p> <p>By omitting from section 31 (2) the words “made under this Act”.</p>

FIRST SCHEDULE—*continued*CONSEQUENTIAL AMENDMENTS—*continued*

Enactment Amended	Amendment
1954, No. 53—The Navy Act 1954 (1957 Reprint, Vol. 10, p. 897)	<p>By adding to the definition of the term "Navy Instruction" in section 2 the words "or issued by the Defence Council or the Naval Board under the Defence Act 1964 and promulgated by the Naval Board".</p> <p>By repealing the definition of the term "Navy Secretary" in section 2.</p> <p>By omitting from the definition of the term "prescribed" in section 2 the words "made or issued under this Act".</p>
1962, No. 10 — The Parliamentary Commissioner (Ombudsman) Act 1962	<p>By omitting from Part I of the Schedule the words "The Air Department", the words "The Army Department", and also the words "The Navy Department".</p> <p>By inserting in Part I of the Schedule, after the reference to the Mines Department, the words "The Ministry of Defence".</p> <p>By inserting in Part II of the Schedule, after the reference to the New Zealand Army, the words "The New Zealand Defence Council".</p>
1962, No. 132—The State Services Act 1962	<p>By omitting from the Second Schedule the words "Air Department", the words "Army Department", and also the words "Navy Department".</p> <p>By omitting from the Second Schedule the words "Department of Defence", and substituting the words "Ministry of Defence".</p> <p>By omitting so much of the Third Schedule as relates to the Ministry of Defence, and substituting the following words: "Defence Secretary of Defence. Chief Deputy Secretary of Defence."</p> <p>By repealing so much of the Third Schedule as relates to the Air Department, to the Army Department, and to the Navy Department.</p>

Section 27 (1)

SECOND SCHEDULE

ENACTMENTS REPEALED

- 1937, No. 7—The Air Department Act 1937. (1957 Reprint, Vol. 1, p. 173.)
- 1950, No. 39—The New Zealand Army Act 1950: Sections 19, 20, 22, and 22A. (1957 Reprint, Vol. 11, p. 1.)
- 1950, No. 40—The Royal New Zealand Air Force Act 1950: Sections 18, 19, 21, and 22. (1957 Reprint, Vol. 13, p. 455.)
- 1954, No. 20—The New Zealand Army Amendment Act 1954: Section 2 (1). (1957 Reprint, Vol. 11, p. 110.)
- 1954, No. 21—The Royal New Zealand Air Force Amendment Act 1954: Section 2 (1). (1957 Reprint, Vol. 13, p. 561.)
- 1954, No. 53—The Navy Act 1954: Sections 9, 10, 11, 13, 14, and 58. (1957 Reprint, Vol. 10, p. 897.)
- 1957, No. 33—The New Zealand Army Amendment Act 1957: Section 5. (1957 Reprint, Vol. 11, p. 113.)
- 1961, No. 29—The New Zealand Army Amendment Act 1961: Sections 4 to 6.