

# **Visiting Forces Bill**

Government Bill

As reported from the Foreign Affairs, Defence and  
Trade Committee

## **Commentary**

### **Recommendation**

The Foreign Affairs, Defence and Trade Committee has examined the Visiting Forces Bill and recommends that it be passed with the amendments shown.

### **Introduction**

The Visiting Forces Bill is intended to replace the Visiting Forces Act 1939. The purpose of the bill is to update and amend the law relating to visiting forces to reflect established international practice. To this end, the bill will enable New Zealand to give effect to Status of Forces Agreements (SOFAs) concluded with other States. The bill also includes amendments to the Armed Forces Discipline Act 1971 and the Defence Act 1990 to relocate provisions from the original Visiting Forces Act that are more appropriately dealt with within those Acts and to reflect the approach taken to visiting forces in this bill.

### **Background**

This bill is necessary to overcome limitations in the existing Visiting Forces Act. These limitations presently prevent New Zealand from ratifying its SOFA with Australia. More generally, the existing Act does not take sufficient account of developments in New Zealand and international law and practice. Consequently, the bill will contribute to the enhancement of New Zealand's international defence and

security relationships by providing a clearer and comprehensive legislative basis for the acceptance of visiting forces into New Zealand. It will also minimize the possibility of future problems in New Zealand's relationships with sending States as a consequence of misunderstandings surrounding the status, rights and obligations of visiting forces in New Zealand.

### **Committee consideration**

We received one submission from the New Zealand Law Society containing comments on a number of clauses in the bill. We have considered the society's comments and taken some of their suggestions into account in our recommended amendments to clauses 8 and 15, as discussed below. We have also agreed to some other amendments to clauses 4 and 24.

#### **Clause 8—Criminal and disciplinary jurisdiction**

The most significant amendments we recommend are to clause 8. We accept the New Zealand Law Society's view that as presently drafted, the clause suggests that without an applicable agreement (such as a SOFA) the jurisdiction conferred in subclause (1) cannot be exercised. We recommend the addition of subclauses (1A) and (1B) to address this issue.

The intent of clause 8 is that the exercise of jurisdiction by the service authorities of a visiting force in New Zealand is restricted, unless a SOFA has been negotiated between New Zealand and the sending State that sets out the parameters for the exercise of jurisdiction by the visiting force. This formulation has the benefit that it encourages visiting forces to negotiate SOFAs with New Zealand. It also recognises that Armed Forces from many different countries routinely visit New Zealand and that it is not necessarily desirable for all of them to be treated equally in this regard. There are benefits to having a degree of flexibility, particularly in relation to those offences that involve the local population or property.

Accordingly, clause 8 provides for the delineation of the exercise of concurrent jurisdiction between the sending State and New Zealand to be set out in a SOFA. We note that the default position in subclause (1) would appear to prevent the sending State from exercising jurisdiction in the absence of a SOFA ('applicable agreement'). In this context, the bill as drafted would permit New Zealand to retain greater control over the exercise of jurisdiction by the

service authorities of visiting forces because there would be no other arrangement conceding any jurisdiction to the sending State.

However, we accept that the current formulation may be too restrictive on the visiting force. The proposed addition of subclauses (1A) and (1B) will permit the exercise of primary jurisdiction by the visiting force over a limited range of offences that do not involve the persons or property of New Zealanders, in the circumstances where no SOFA exists between the sending State and New Zealand.

Our proposed amendments to clause 8 (including a minor change to subsection (1)) recognise that visiting forces may deploy to New Zealand without a SOFA and that it may be desirable to conclude a SOFA with certain countries at a particular point in time. We are advised that in cases where agreements are concluded, the amended clause provides flexibility by allowing for either expanded or more restrictive forms of jurisdiction to be negotiated between New Zealand and sending States, depending on country-specific considerations.

### **Clause 15—Proceedings of service tribunals**

We recommend substituting clause 15 with a new clause to clarify precisely what proceedings of sending States' service tribunals cannot be called into question in a New Zealand court.

Clause 15 provides that the proceedings of a service tribunal of a visiting force, including (without limitation) any sentence passed or order made by a tribunal, may not be called into question in any proceedings before a New Zealand court. The purpose of this clause is to oust the jurisdiction of the New Zealand courts in relation to proceedings of a service tribunal of a visiting force.

We agree with the submission of the New Zealand Law Society that the clause currently lacks precision. One interpretation is that no matter relating to the investigation and hearing of a charge against a visiting force member by a visiting force tribunal shall be called into question in a New Zealand court. However, because the scope of the ouster provision is potentially unclear, an alternative interpretation is that it is intended that a New Zealand court, by habeas corpus or review, will have jurisdiction in relation to visiting force criminal or disciplinary proceedings. We believe that it is important to clarify such a fundamental matter.

We also agree that an effect of clause 15, as drafted, permits that if any assistance is provided by a New Zealand authority that is subject

to section 3 of the New Zealand Bill of Rights Act 1990, then that Act applies. This in turn suggests that a breach of the New Zealand Bill of Rights Act in at least that circumstance is justiciable in a New Zealand court.

We understand that it is intended under the bill that nothing done by the service authorities of a visiting force in the exercise of its criminal and disciplinary jurisdiction under clauses 7 or 8 should be called into question before a New Zealand court. The international law doctrine of sovereign immunity applies to all such acts and this is reinforced in clauses 15 and 16. We further understand that if the New Zealand Government was offended by a particular exercise of such a jurisdiction, for example because it violated clause 9 of the bill, then that would be dealt with as a diplomatic matter. In an extreme case, the Government could insist that the sending State withdraw its forces from New Zealand.

Finally, we note that the New Zealand Bill of Rights Act does not apply to the acts of visiting forces. However, if the visiting force's jurisdiction is exercised over, or assisted by, a person or body to whom section 3 of that Act applies (ie not a member of the visiting force), then the New Zealand courts would have jurisdiction in respect of that exercise or assistance.

We believe that our proposed amendments will clarify the intentions of Clause 15.

## **Conclusion**

This bill, as amended, will update New Zealand's law in relation to visiting forces from the provisions of the original Visiting Forces Act that has been in place since the outset of World War II. This will mean that New Zealand's law in this regard is consistent with international law and practice relating to SOFAs. Specifically, it will allow the SOFA negotiated with Australia in 1998 to finally be ratified. The bill will provide a framework for future SOFAs to be ratified more expeditiously.

## **Appendix**

### **Committee process**

The Visiting Forces Bill was referred to the committee on 20 November 2003. We spent one hour and fifty five minutes considering this bill.

The committee was advised by the New Zealand Defence Force.

### **Committee membership**

Hon Peter Dunne (Chairperson)

Luamanuvao Winnie Laban (Deputy Chairperson)

Tim Barnett

Martin Gallagher

Dail Jones

Keith Locke

Simon Power

Hon Matt Robson

Dr the Hon Lockwood Smith

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

**Struck out (unanimous)**

Subject to this Act,

Text struck out unanimously

**New (unanimous)**

Subject to this Act,

Text inserted unanimously

*(Subject to this Act.)*

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

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Hon Mark Burton

# Visiting Forces Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

## 1 Title

This Act is the Visiting Forces Act 2003.

## Part 1 Preliminary provisions

### 2 Commencement

This Act comes into force on **1 July 2004**.

### 3 Purpose

The purpose of this Act is—

- (a) to update and amend the law relating to visiting forces to reflect recognised international practice; and
- (b) to enable New Zealand to give effect to status of forces agreements concluded with other States; and
- (c) to repeal the Visiting Forces Act 1939.

### 4 Interpretation

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

**applicable agreement**, in relation to a visiting force, means *(the)* a status of forces agreement entered into between New Zealand and the sending State (the text of which agreement may, as provided in **subsection (2)**, be set out in regulations made under **section 23**)

**armed forces**, in relation to a sending State, includes any armed forces raised in any territory for whose international relations the government of that State is responsible

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

**civilian component**, in relation to a visiting force, means the civilian personnel who are neither New Zealand citizens nor ordinarily resident in New Zealand, and who—

- (a) are employed by or in the service of the visiting force; or
- (b) are serving with an organisation that, with the approval of the Government of New Zealand, is accompanying the visiting force; or
- (c) are attached to or accompanying the visiting force

**dependant**, in relation to a visiting force, means a person who—

- (a) is not a member of the visiting force or its civilian component; and
- (b) is neither a New Zealand citizen nor ordinarily resident in New Zealand; and

- (c) is accompanying a member of the visiting force or its civilian component and—
  - (i) is the spouse of the member; or
  - (ii) is not married to the member, but is living together with the member in a relationship that is recognised by the visiting force (whether the person is of the same or different sex as the member); or
  - (iii) is wholly or mainly maintained by the member; or
  - (iv) is in the custody, care, or charge of the member; or
  - (v) is one of the family of the member residing with the member

**member of a visiting force—** 15

- (a) means a person who, in accordance with the law of the sending State, is serving as a member of the visiting force; but
- (b) does not include a member of the armed forces of the sending State if—
  - (i) the person is attached to the Armed Forces of New Zealand under **section 23A** of the Defence Act 1990; or
  - (ii) New Zealand and the sending State have mutually determined, under an agreement between them, that the person is not to be regarded as a member of a visiting force

**Registrar** has the same meaning as in section 2 of the Births, Deaths, and Marriages Registration Act 1995

**sending State**, in relation to a visiting force, means the State to which the visiting force belongs 30

**service authorities of a visiting force—**

- (a) means the authorities empowered by the law of the sending State to exercise powers of command, control, discipline, or administration over a visiting force, including (without limitation) any members of the force, members of its civilian component, and dependants; and 35
- (b) includes a service tribunal of a visiting force

**service law**, in relation to a sending State, means the law governing the discipline of, and the administration of justice within, the armed forces of the sending State

**service tribunal of a visiting force**—

- (a) means any officer, court, or other tribunal empowered by or under the law of the sending State to investigate, try, or otherwise dispose of charges brought against persons subject to the service law of the sending State; and 5
- (b) includes— 10
- (i) a court of inquiry; and
- (ii) any officer, court, or other tribunal empowered by or under the law of the sending State to review the proceedings of a service tribunal

**visiting force** means any part of the armed forces of another State that has been granted a right of entry into or passage through or over New Zealand. 15

- (2) For the purpose of **subsection (1)**, regulations made under **section 23** may set out the text of any status of forces agreement entered into between New Zealand and a sending State, but the fact that a status of forces agreement is not set out in regulations made under that section does not affect its validity as an applicable agreement under this Act. 20

Compare: 1939 No 36 s 2; 1950 No 54 s 2; Defence (Visiting Forces) Act 1963 (Aust) s 5 25

## 5 Application

This Act applies in relation to any visiting force, its civilian component, and its dependants.

## 6 Act binds the Crown

This Act binds the Crown. 30

## Part 2 Visiting forces

### *Jurisdiction*

## 7 Command, control, and administration

The service authorities of a visiting force may, within New Zealand, exercise and perform all the functions, duties, and 35

powers conferred or imposed on them by the law of the sending State in relation to the following matters:

- (a) the command of the visiting force:
- (b) the control of the visiting force:
- (c) the administration of the visiting force. 5

Compare: 1939 No 36 s 3(1)

**8 Criminal and disciplinary jurisdiction**

- (1) To the extent permitted by *(the) an* applicable agreement, the service authorities of a visiting force may, within New Zealand, exercise over members of the visiting force, members of its civilian component, and its dependants all criminal and disciplinary jurisdiction conferred on them by the law of the sending State. 10

**New (unanimous)**

- (1A) In the absence of an applicable agreement covering the matter, the service authorities of a visiting force have the primary right to exercise all criminal and disciplinary jurisdiction conferred on them by the law of the sending State in respect of any act or omission that— 15
  - (a) is alleged to have been committed by a member of the visiting force, a member of its civilian component, or a dependant; and 20
  - (b) if proved, would constitute an offence—
    - (i) solely against the property or security of the sending State; or
    - (ii) solely against the person or property of any other members of the visiting force, its civilian component, or dependants; or 25
    - (iii) that arises out of an act or omission done in the performance of official duty.
- (1B) In the absence of an applicable agreement covering the matter, New Zealand courts have the primary right to exercise jurisdiction in respect of any act or omission that— 30
  - (a) is alleged to have been committed by a member of the visiting force, a member of its civilian component, or a dependant; and 35

## New (unanimous)

- |  |   |  |
|--|---|--|
|  | <p>(b) is not covered by <b>subsection (1A)</b>; and</p> <p>(c) if proved, would constitute an offence against New Zealand law.</p> |  |
|--|---|--|
- (2) Nothing in this Act affects or limits any power conferred on the service authorities of a visiting force by the law of the sending State, being a power to— 5
- (a) arrest, identify, detain, or search a member of the visiting force, a member of its civilian component, or a dependant; or
- (b) enter and search any ship, aircraft, vehicle, or premises belonging to or occupied by the visiting force or a person referred to in **paragraph (a)**; or 10
- (c) seize or take possession of any property, article, or thing found on or in the possession of any person referred to in **paragraph (a)** or in or on any ship, aircraft, vehicle, or premises referred to in **paragraph (b)**. 15
- (3) Section 99 of the Armed Forces Discipline Act 1971, with the necessary modifications, applies to property, articles, and things referred to in **subsection (2)(c)** that—
- (a) are seized or taken into possession by the service authorities of a visiting force; and 20
- (b) belong to any person other than a member of the visiting force, a member of its civilian component, or a dependant.
- (4) This section is subject to **section 9**. 25
- Compare: 1939 No 36 s 3(1)

**9 Limits on effect of section 8**

- (1) The service authorities of a visiting force must not—
- (a) impose, or carry out, a sentence of death in New Zealand; or 30
- (b) do any act in New Zealand that would, if done by a member of the Armed Forces of New Zealand, constitute an offence against the Crimes of Torture Act 1989.
- (2) The service authorities of a visiting force must not exercise a power referred to in **section 8(2)(b)** if the ship, aircraft, vehicle, or premises are also occupied by a person who is in New 35

Zealand other than as a member of a visiting force, a member of its civilian component, or a dependant.

- (3) The service authorities of a visiting force must not exercise a power referred to in **section 8(2)(c)** if the property, article, or thing is also in the possession of a person who is in New Zealand other than as a member of a visiting force, a member of its civilian component, or a dependant. 5
- (4) If **subsection (2)** or **subsection (3)** applies, the service authorities of a visiting force may request the Attorney-General to obtain the issue of a search warrant under section 59(1) of the Mutual Assistance in Criminal Matters Act 1992, and the provisions of that Act, with the necessary modifications, apply in relation to the request. 10

## **10 Criminal proceedings in New Zealand against members of visiting forces** 15

- (1) Criminal proceedings may be instituted in a New Zealand court against—
- (a) a member of a visiting force; or
  - (b) a member of its civilian component, or a dependant, who is subject to the service law of the sending State. 20
- (2) However, once instituted those proceedings are stayed and must not proceed except with the consent of the Attorney-General.
- (3) The Attorney-General must, before deciding whether or not to give consent under **subsection (2)**, take into account the terms of any applicable agreement, and may make such inquiries as he or she thinks fit. 25
- (4) **Subsection (2)** does not limit or affect any power exercisable under the law of New Zealand to arrest, identify, detain, or search a member of a visiting force, a member of its civilian component, or a dependant. 30
- (5) The arrest of a member of a visiting force, a member of its civilian component, or a dependant is subject to **section 11**.

Compare: Defence (Visiting Forces) Act 1963 (Aust) ss 9, 10

## *Arrest* 35

### **11 Arrest of members of visiting forces**

- (1) If a person arrests a member of a visiting force, a member of its civilian component, or a dependant, the person making the

arrest (or any of the person's superiors) must notify the service authorities of the visiting force of the arrest as soon as practicable after the arrest.

- (2) If a person charged with an offence against the law of New Zealand appears to the court to be a member of a visiting force, a member of its civilian component, or a dependant,—
- (a) the court must determine the period it considers reasonable to enable inquiries to be made for the purpose of determining the status of the person; and
  - (b) further proceedings in respect of the offence charged are stayed for that period.
- (3) If a person referred to in **subsection (2)** has been remanded in custody by order of the court and the Attorney-General directs that the person be delivered to the custody of the service authorities of the visiting force, the court must revoke the order and order that the person be delivered to the custody of those authorities.

Compare: Defence (Visiting Forces) Act 1963 (Aust) s 12

*Proceedings before service tribunal of visiting force*

**12 Application of provisions of Armed Forces Discipline Act 1971** 20

The following provisions of the Armed Forces Discipline Act 1971, with the necessary modifications, apply in relation to proceedings held in New Zealand by a service tribunal of a visiting force:

- (a) **section 141** (privileges and immunities of judge advocates and members of courts-martial, and protection of witnesses and counsel): 25
- (b) **section 144** (powers of courts-martial in relation to contempt): 30
- (c) **section 146** (witnesses may be compelled to attend courts-martial):
- (d) **section 200(5) to (7)** (privileges and immunities of members of and persons appearing before courts of inquiry). 35

Compare: 1939 No 36 s 3(2), 4(5)

**13 New Zealand courts not to try offenders for offences already disposed of**

Section 21 of the Armed Forces Discipline Act 1971 (which relates to the principle that a person is not to be tried under that Act and under the civil law in respect of the same act or omission) applies in relation to a person who has been charged with an offence before, or had an offence taken into consideration by, a service tribunal of the sending State as if the offence had been dealt with under that Act. 5

Compare: Defence (Visiting Forces) Act 1963 (Aust) s 11 10

*Imprisonment*

**14 Manner in which sentence of imprisonment or detention may be served**

(1) If a member of a visiting force, a member of its civilian component, or a dependant has been sentenced by a service tribunal of the visiting force to imprisonment or detention, the sentence may be served in accordance with Part IX of the Armed Forces Discipline Act 1971. 15

(2) Part IX of the Armed Forces Discipline Act 1971 applies for the purposes of this section as if— 20

(a) the officer in command of the visiting force were a competent service authority; and

(b) the prisoner were a service prisoner or service detainee (as the case may require). 25

Compare: 1939 No 36 s 4(3) 25

*Legal proceedings before New Zealand courts*

**Struck out (unanimous)**

**15 Proceedings of service tribunals**

The proceedings of a service tribunal of a visiting force, including (without limitation) any sentence passed or order made by the tribunal, may not be called into question in any proceedings before a New Zealand court. 30

Compare: 1939 No 36 s 3(3)–(5); 1971 No 53 s 143

**New (unanimous)****15 Proceedings of service tribunals**

The following may not be called into question in any proceedings before a New Zealand court:

- (a) the proceedings of a service tribunal of a visiting force: 5
- (b) any sentence passed or order made by the service tribunal:
- (c) any investigation carried out by the service authorities of the visiting force that is relevant to the service tribunal's proceedings:
- (d) the exercise, by the service authorities, of any power referred to in **section 8(2)** that is relevant to the service tribunal's proceedings. 10

Compare: 1939 No 36 s 3(3)–(5); 1971 No 53 s 143

**16 Proceedings relating to conditions of service of member of visiting force or civilian component** 15

No proceedings in respect of the conditions of service of a member of a visiting force or a member of its civilian component may be brought in a New Zealand court.

Compare: 1939 No 36 s 3(4)

*Application to visiting forces of laws applying to Armed Forces of New Zealand* 20**17 Application of New Zealand laws to visiting forces**

- (1) If an enactment exempts the Armed Forces of New Zealand from all or any of its provisions, or modifies or adapts any of its provisions so far as they apply to the Armed Forces of New Zealand, the exemption, modification, or adaptation applies in relation to a visiting force, subject to such adaptations or modifications as may be necessary. 25
- (2) If an enactment penalises misconduct by any person in relation to the Armed Forces of New Zealand or a member of the Armed Forces of New Zealand, the enactment applies in relation to a visiting force or a member of the visiting force with any necessary modifications. 30
- (3) Any person authorised to perform or exercise any function, duty, or power, in relation to the Armed Forces of New 35

Zealand may perform or exercise that function, duty, or power in relation to a visiting force.

- (4) **Subsection (3)** does not limit any privileges or immunities enjoyed by the sending State under applicable international law. 5
- (5) Without limiting **subsections (1) to (4)**, the Governor-General may, by Order in Council,—
  - (a) exempt a visiting force from all or any of the provisions of any enactment; or
  - (b) modify or adapt any of the provisions of any enactment so far as they apply to a visiting force. 10
- (6) An Order in Council made under **subsection (5)** may be made—
  - (a) in relation to visiting forces generally; or
  - (b) for the purpose of implementing any treaty, agreement, or arrangement between New Zealand and the sending State. 15

Compare: 1939 No 36 s 4(1), (5), (6)

*Application of New Zealand Bill of Rights Act 1990*

- 18 Application of New Zealand Bill of Rights Act 1990 to acts done at request or on behalf of visiting forces** 20
- (1) The New Zealand Bill of Rights Act 1990 applies to acts done in New Zealand at the request or on behalf of a visiting force by a person to whom or body to which section 3 of that Act applies.
- (2) This section is for the avoidance of doubt. 25

*Death of members of visiting forces*

- 19 Inquests relating to members of visiting forces**
- (1) If a death has been reported to a coroner under section 5 of the Coroners Act 1988 and the coroner is satisfied that the person was a member of a visiting force, a member of its civilian component, or a dependant, then, unless the Attorney-General otherwise directs, the following provisions apply:
  - (a) if the coroner has not opened an inquest into the death, he or she must not hold an inquest into the death: 30
  - (b) if an inquest has been opened but is not then completed, the coroner must adjourn the inquest. 35

- (2) As soon as practicable after becoming aware of a death to which **subsection (1)** applies, the Chief of Defence Force must ensure that the Attorney-General is notified of the death.
- (3) The Attorney-General may direct that a coroner or any other authority open or proceed with an inquest or other inquiry into a death to which **subsection (1)** applies. Without limiting the matters the Attorney-General may take into account in deciding whether to give such a direction, the Attorney-General must take into account—
- (a) the wishes of the sending State; and
  - (b) the terms of any applicable agreement.
- (4) When a direction referred to in **subsection (3)** takes effect, the following apply:
- (a) the provisions of the Births, Deaths, and Marriages Registration Act 1995, other than section 42(2)(a) (which requires the notification of a Registrar before a body is removed from New Zealand);
  - (b) the provisions of the Coroners Act 1988, other than **section 24** (which requires the viewing of the body during certain inquests).
- (5) The Births, Deaths, and Marriages Registration Act 1995 applies in relation to a death to which **subsection (1)** applies only to the extent provided in **subsection (4)(a)**.
- (6) If a death has been reported to a coroner under section 5 of the Coroners Act 1988 and the coroner is informed that a member of a visiting force, a member of its civilian component, or a dependant has been or may be charged with an offence against the service law of the sending State relating to the death or its circumstances, then, unless the Attorney-General otherwise directs, the following provisions apply:
- (a) if the coroner has not opened an inquest into the death, he or she must not hold an inquest into the death until the criminal or disciplinary proceedings against the person have been finally concluded;
  - (b) if an inquest has been opened but is not then completed, the coroner must adjourn the inquest until the criminal or disciplinary proceedings against the person have been finally concluded.
- (7) **Subsection (6)** does not prevent a coroner from—

- (a) taking evidence of the fact that the person has died, of the person's identity, and of the place and date of death; or
- (b) providing information to a Registrar for the purpose of registering the death; or 5
- (c) authorising the release of the body.

Compare: Visiting Forces Act 1952 (UK) s 7; Defence (Visiting Forces) Act 1963 (Aust) s 14

## 20 Witnesses at inquest or inquiry

- (1) A member of a visiting force, a member of its civilian component, or a dependant is not a compellable witness for the purposes of an inquest or inquiry opened or proceeded with in accordance with **section 19(2)** or **(5)**. 10
- (2) A witness who is summoned to attend before a coroner or some other authority for the purposes of an inquest or inquiry opened or proceeded with in accordance with **section 19(2)** or **(5)** must not be asked any question the answer to which may prejudice the security or defence of New Zealand or the sending State. 15
- (3) The Chief of Defence Force may give a certificate for the purpose of **subsection (2)** to the effect that any matter may prejudice the security or defence of New Zealand or the sending State. 20
- (4) A certificate given under **subsection (3)** is admissible in any proceedings in a New Zealand court and is, in the absence of proof to the contrary, sufficient evidence of the matters stated in the certificate. 25

## *Claims*

### 21 Claims against visiting forces

- (1) This section applies to any cause of action that arises in New Zealand in respect of— 30
  - (a) the death of or bodily injury to any person; or
  - (b) damage to any property.
- (2) A person (other than a member of a visiting force, a member of its civilian component, or a dependant) is entitled to make a claim or demand against the Crown if— 35
  - (a) the person suffers in New Zealand any damage, loss, or injury by, through, or in connection with the use of any

- ship, vehicle, aircraft, or equipment belonging to a visiting force; or
- (b) the person has or considers that he or she or it has a just claim or demand in respect of a cause of action to which this section applies against a member of a visiting force or a person acting for or on behalf of a visiting force. 5
- (3) The claim or demand must be one that is not barred by section 317 or section 318 of the Injury Prevention, Rehabilitation, and Compensation Act 2001.
- (4) The claim or demand must be one that the person would have been entitled to make under the Crown Proceedings Act 1950 against the Crown if— 10
- (a) the ship, vehicle, or equipment had belonged to the Crown, or the aircraft had been a service aircraft, or the member or the person so acting had been a member of the Armed Forces of New Zealand; and 15
- (b) the Government of the sending State to which the visiting force belongs had been the Crown.
- (5) The Crown has, in relation to the person making the claim or demand, the same rights and liabilities as the Crown would have had if— 20
- (a) the ship, vehicle, or equipment belonging to the visiting force had belonged to the Crown or the aircraft belonging to the visiting force had been a service aircraft; or
- (b) the member of the visiting force or the person acting for or on behalf of the visiting force had been a member of the Armed Forces of New Zealand. 25
- (6) The determination of a claim or demand under this section must have regard to any payment which the person has received or is entitled to receive, whether from the Crown or from any other person or authority, in satisfaction, wholly or partly, of the claim or demand. 30

Compare: 1950 No 54 s 10(1)–(5)

### Part 3

#### Miscellaneous provisions

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#### 22 Evidence

- (1) The Attorney-General may, after making any inquiries he or she thinks fit, give a certificate as to the status under this Act of—

- (a) any force, person, or property; or
  - (b) any matter or thing for the purposes of any of **sections 13, 15, 16, or 21.**
- (2) A certificate given under **subsection (1)** is admissible in any proceedings in a New Zealand court and is, in the absence of proof to the contrary, sufficient evidence of the matters stated in the certificate. 5

Compare: Defence (Visiting Forces) Act 1963 (Aust) s 27

**23 Regulations**

The Governor-General may, by Order in Council, make regulations providing for any matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect. 10

Compare: 1939 No 36 s 10

**Struck out (unanimous)**

- 24 Application to Tokelau** 15

  - (1) This Act is in force in Tokelau.
  - (2) This Act applies in relation to any naval, military, or air forces raised in Tokelau as if those forces were part of the Armed Forces of New Zealand.
  - (3) Subsection (2) is subject to such exemptions, adaptations, and modifications as may be specified by regulations made under section 23. 20

Compare: 1939 No 36 s 7

**New (unanimous)**

- 24 Act not in force in Tokelau** 25

This Act is not in force in Tokelau.

Compare: 1939 No 36 s 7

**25 Repeals and revocations**

- (1) The Visiting Forces Act 1939 is repealed.
- (2) The orders and regulations specified in **Schedule 1** are revoked.

**26 Consequential amendments**

The Acts specified in **Schedule 2** are amended in the manner set out in that schedule.

**27 Saving relating to existing status of forces agreements**

- (1) This section applies to every status of forces agreement between New Zealand and the sending State of a visiting force that had effect immediately before the commencement of this section. 5
- (2) Every status of forces agreement to which this section applies is an applicable agreement under this Act. 10
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**Schedule 1**  
**Revocations**

s 25(2)

<b>Armed Forces Equivalent Ranks Order 1983 (SR 1983/233)</b>	
<b>Visiting Forces (Australian Naval Forces) Order 1978 (SR 1978/164)</b>	5
<b>Visiting Forces (Commonwealth Deserters and Absentees) Order 1983 (SR 1983/8)</b>	
<b>Visiting Forces (Fiji Military Forces) Order 1960 (SR 1960/77)</b>	
<b>Visiting Forces (New Zealand with Australia and United Kingdom) Order 1979 (SR 1979/285)</b>	10
<b>Visiting Forces Order 1980 (SR 1980/20)</b>	
<b>Visiting Forces (Penal Arrangements) Order 1963 (SR 1963/61)</b>	
<b>Visiting Forces (Relative Ranks) Regulations 1985 (SR 1985/342)</b>	15
<b>Visiting Forces (Tongan Forces) Order 1983 (SR 1983/7)</b>	

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s 26

## Schedule 2

### Consequential amendments to other Acts

#### Armed Forces Discipline Act 1971 (1971 No 53)

Repeal the definition of **commanding officer** in section 2(1) and substitute:

“**commanding officer** means—

“(a) an officer for the time being appointed or authorised to be a commanding officer for the purposes of this Act by an officer authorised to convene courts-martial:

“(b) an officer who is named as a commanding officer in accordance with section 16: 10

“(c) the officer who is in command of—

“(i) one of Her Majesty’s New Zealand ships in commission (other than a tender or a boat); or

“(ii) one of Her Majesty’s New Zealand naval establishments in commission; or 15

“(iii) a ship declared by the Chief of Defence Force, the Chief of Naval Staff, the Chief of General Staff, or the Chief of Air Staff to be a service ship; or 20

“(iv) a battalion or regiment:

“(d) an officer 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, who is for the time being appointed or authorised to be a commanding officer for the purposes of this Act by an officer authorised to convene courts-martial”. 25

Repeal the definitions of **New Zealand force** and **force** in section 2(1) and substitute:

“**New Zealand force** or **force** has the same meaning as **New Zealand force** in the section 2(1) of the Defence Act 1990”. 30

Repeal the definition of **superior commander** in section 2(1) and substitute:

“**superior commander** means—

“(a) an officer (not below the rank of captain in the Navy, colonel in the Army, or group captain in the Air Force) who— 35

“(i) is, in accordance with section 119, authorised to convene a general court-martial; or

“(ii) is authorised under the rules of procedure to try summarily or to deal summarily with charges 40

**Armed Forces Discipline Act 1971** (1971 No 53)—continued

- against junior officers and warrant officers of the rank specified in the Fifth Schedule; or
- “(iii) is appointed by the Chief of Defence Force, the Chief of Naval Staff, the Chief of General Staff, or the Chief of Air Staff to try summarily or to deal summarily with charges against junior officers and warrant officers of the rank specified in the Fifth Schedule; or 5
- “(iv) if the force is on active service outside New Zealand, is commanding the force (not being its commanding officer) and any officer (not below the rank of captain in the Navy, colonel in the Army, or group captain in the Air Force) appointed by him or her to try summarily or to deal summarily with charges against junior officers and warrant officers of the rank specified in the Fifth Schedule; or 10 15
- “(b) an officer (not below the relative rank of captain in the Navy, colonel in the Army, or group captain in the Air Force) 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 who— 20
- “(i) is, in accordance with section 119, authorised to convene a general court-martial; or 25
- “(ii) is appointed by the Chief of Defence Force to try summarily or to deal summarily with charges against junior officers and warrant officers of the rank specified in the Fifth Schedule”. 30
- Insert in section 2(1), in their appropriate alphabetical order: 30
- “**relative rank** means the appropriate rank prescribed under **section 17** of the Defence Act 1990
- “**visiting force** has the same meaning as in **section 4** of the Visiting Forces Act **2003**”.
- Add to section 7(2): 35
- “(e) members of the armed forces of other States who are attached to the Armed Forces under **section 23A** of the Defence Act 1990.”
- Repeal section 9 and substitute:

**Armed Forces Discipline Act 1971 (1971 No 53)—continued****“9 Members of other forces attached to Armed Forces under section 23A of Defence Act 1990**

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.” 5

Add to section 88:

“(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.” 10

Insert, after section 89:

**“89A Arrest of members of visiting forces” 15**

“(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. 20

“(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 member of the police 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. 25

“(4) The provisions of this section are in addition to those of **section 92A**.”

Insert, after section 92: 30

**“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,— 35

“(a) a warrant for the arrest of the person may be issued under section 89 as if the person had committed the

**Armed Forces Discipline Act 1971** (1971 No 53)—continued

- 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. 5
- “(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. 10
- “(4) The provisions of subsections (3) to (7) of section 101 do not apply to any person to whom **subsection (2)** applies.” 15
- Omit from section 93(1) the words “sections 89, 91, and 92 of this Act” and substitute the words “sections 89, **89A**, 91, 92, and **92A**”.
- Add to section 93:
- “(3) The provisions of subsection (1), with the necessary modifications, apply to any person arrested under **section 89A** or **section 92A**. 20
  - “(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.” 25
- Insert, after section 93A:
- “**93B Detention in service custody of members of visiting force** 30
- “(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— 35
    - “(a) the service law of the sending State; or
    - “(b) the law of New Zealand.

**Armed Forces Discipline Act 1971** (1971 No 53)—continued

“(3) The provisions of subsections (3) to (7) of section 101 do not apply to any person to whom **subsection (1)** applies.

**“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 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.”

Repeal section 119(1)(d) and substitute:

“(d) an officer 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 in such circumstances and subject to such conditions as may be specified in a warrant issued to the officer by the Chief of Defence Force.”

Repeal section 119(2)(c) and substitute:

“(c) an officer 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 in such circumstances and subject to such conditions as may be specified in a warrant issued to the officer by the Chief of Defence Force.”

Repeal section 124 and substitute:

**“124 Eligibility of officers of other forces to be members of court-martial**

“(1) If it is necessary to convene a court-martial to try an accused at a place where, or in circumstances in which, in the opinion of the convening officer, the minimum requisite number of eligible officers cannot, having regard to the exigencies of the Armed Forces, be appointed as members of the court, any officer of a force of another State that is for the time being declared to be serving together with a New Zealand force

**Armed Forces Discipline Act 1971** (1971 No 53)—continued

under **section 23B** of the Defence Act 1990 is eligible to be appointed as the president or as a member of the court.

- “(2) **Subsection (1)** is subject to **subsections (3)** and **(4)**.
  - “(3) No officer is eligible to be appointed as a member of a court-martial under **subsection (1)** unless—
    - “(a) that officer has served as an officer for one or more periods totalling not less than 3 years; and
    - “(b) the rank held by that officer is not lower than a relative rank to that prescribed by section 120 or section 121 of this Act as a qualification for a member of a court-martial to try the accused.
  - “(4) The number of officers appointed to a court-martial under **subsection (1)** must not exceed the number of officers of the Armed Forces of New Zealand who are appointed to the court.”
- Repeal section 172 and substitute:
- “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 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.

**Armed Forces Discipline Act 1971** (1971 No 53)—continued

- “(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.” 5
- Repeal section 173 and substitute: 10
- “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 15
- “(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— 20
- “(i) in New Zealand; or
- “(ii) in a penal institution, 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). 25
- “(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 court-martial under this Act.” 30

**Arms Act 1983** (1983 No 44)

Insert in section 3(2)(a), after subparagraph (i):

- “(ia) a member of a visiting force under the Visiting Forces Act **2003**; or”.

**Births, Deaths, and Marriages Registration Act 1995** (1995 No 16) 35

Repeal section 34 and substitute:

**Births, Deaths, and Marriages Registration Act 1995**

(1995 No 16)—continued

**“34 Deaths in New Zealand to be notified and registered**

“(1) Every death in New Zealand must be notified and registered in accordance with this Part.

“(2) **Subsection (1)** does not apply to a death to which **section 19(1)** of the Visiting Forces Act **2003** applies.” 5

**Coroners Act 1988** (1988 No 111)Insert in **Part I**, after **section 3**:**“3A Application of Act to deaths of members of visiting forces** 10

This Act is subject to **section 19** of the Visiting Forces Act 2003, which applies to inquests relating to members of visiting forces.”

**Crown Proceedings Act 1950** (1950 No 54)

Repeal section 10. 15

**Defence Act 1990** (1990 No 28)

Insert in section 2(1), in their appropriate alphabetical order:

“**New Zealand force** means a force comprising a part or parts of the Armed Forces or any Service

“**relative rank** means the appropriate rank prescribed under **section 17**”. 20

Repeal section 17 and substitute:

**“17 Relative ranks**

“(1) For the purpose of this Act and the Armed Forces Discipline Act 1971, the Chief of Defence Force may prescribe the relative ranks of the Armed Forces and of the armed forces of other States. 25

“(2) Any order made for the purposes of **subsection (1)** may prescribe the relationship that is to be regarded as existing between relative ranks for the purposes of this Act and the Armed Forces Discipline Act 1971.” 30

Omit from section 22(1) the words “section 6 of the Visiting Forces Act 1939” and substitute the expression “**section 23**”.Repeal **section 22(3)** and substitute:

“(3) A member of the Armed Forces transferred for employment under subsection (1) remains subject to this Act and to the Armed Forces Discipline Act 1971, and to the law applicable to the forces to which the member is transferred.” 35

**Defence Act 1990** (1990 No 28)—continued

Repeal section 23 and substitute:

**“23 Attachment of members of New Zealand Armed Forces to other armed forces**

- “(1) The Chief of Defence Force may place a specified member, or a specified class of members, of the Armed Forces at the disposal of the service authorities of another State for the purpose of being attached by those authorities to the armed forces of that State. 5
- “(2) The power conferred on the Chief of Defence Force by **subsection (1)** may be exercised only in respect of— 10
- “ (a) members of the regular forces; and
- “ (b) members of the territorial or reserve forces who are for the time being—
- “ (i) liable for continuous service under a Proclamation issued under section 39 or section 40; or 15
- “ (ii) liable to serve outside New Zealand under an offer under section 50.
- “ (3) Except in time of war or other like emergency, or in the event of an actual or imminent emergency involving the deployment of members of the Armed Forces outside New Zealand, a member of the Armed Forces may not be dealt with under **subsection (2)(b)(ii)** without that member’s consent. 20
- “ (4) A member of the Armed Forces attached to the armed forces of another State under **subsection (1)** remains subject to this Act and the Armed Forces Discipline Act 1971 and to the law applicable to those forces. 25

**“23A Attachment of members of other armed forces to New Zealand Armed Forces**

- “ (1) The Chief of Defence Force may attach to any of the Services a specified member, or a specified class of members, of the armed forces of another State if that member or class of members is placed at the disposal of the Chief of Defence Force for the purpose of being attached to a Service. 30
- “ (2) If a member of the armed forces of another State is attached to a Service under **subsection (1)**, the member— 35
- “ (a) has, in the Service to which he or she has been attached, the same powers under this Act and the Armed Forces

**Defence Act 1990** (1990 No 28)—continued

Discipline Act 1971 as if he or she were a member of that Service holding a relative rank; and

“(b) must be treated for the purposes of this Act and the Armed Forces Discipline Act 1971 as if he or she were a member of that Service holding a relative rank. 5

“(3) **Subsection (2)** applies subject to such other exemptions or modifications as may be prescribed.

**“23B Mutual powers of command when forces acting together**

“(1) When a New Zealand force and a force of another State are serving together, whether alone or not, members of the other force— 10

“(a) must be treated as if they were members of the Armed Forces of a relative rank; and

“(b) have over members of the New Zealand force the powers of command of a member of the Armed Forces of a relative rank. 15

“(2) For the purpose of **subsection (1)**, a New Zealand force and a force of another State are serving together only if they are declared to be so serving together by order of the Chief of Defence Force.” 20

**Extradition Act 1999** (1999 No 55)

Repeal section 109 and substitute:

**“109 Arrest of deserters from other armed forces**

This Act does not limit or affect **section 92A** or **section 93C** of the Armed Forces Discipline Act 1971.” 25

**Immigration Act 1987** (1987 No 74)

Repeal section 11(1)(b) and substitute:

“(b) a member of a visiting force, a member of its civilian component, or a dependant, or a member of the crew of any craft used to transport them to New Zealand, while— 30

“(i) members of that force are in New Zealand at the request or with the consent of the Government of New Zealand; and

“(ii) that member’s presence in New Zealand is in the ordinary course of that member’s duty or employment, or that person is in New Zealand as 35

**Immigration Act 1987** (1987 No 74)—continued

a member of the civilian component or as a dependant of that force:”.

Add to section 11:

“(4) Terms used in subsection (1)(b) and defined in **section 4** of the Visiting Forces Act **2003** have the same meanings as in that section.” 5

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**Legislative history**

17 November 2003

Introduction (Bill 89–1)

20 November 2003

First reading

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