

Reprint
as at 20 September 2007

Armed Forces Discipline Act 1971

Public Act 1971 No 53
Date of assent 12 November 1971

Contents

	Page
Title	11
1 Short Title and commencement	12
2 Interpretation	12
3 Special provisions relating to the interpretation, etc, of Part 2	25
4 Extraterritorial operation of this Act	25
5 Active service	26
Part 1	
Jurisdiction	
6 Persons in the Navy, the Army, and the Air Force	26
7 Provisions of Act may be modified, etc, in relation to certain classes of persons	30
8 Members of the Armed Forces attached to forces of another country remain subject to this Act	31

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

This Act is administered in the Ministry of Defence.

9	Members of other forces attached to Armed Forces under section 23A of Defence Act 1990	31
10	Volunteers	31
11	Trainees	32
12	Prisoners of war	33
13	Spies, etc	34
14	Commanding officer in relation to prisoners of war and spies	34
15	Application of Act to passengers in HM ships, aircraft, and vehicles	34
16	Certain civilians closely associated with Armed Forces subject to this Act	35
17	Certain persons sentenced under this Act to remain subject to this Act	37
18	Trial and punishment of person who has ceased to be subject to this Act	38
19	Status and rank of person deemed to be subject to this Act when imprisoned or detained	39
20	Limitation of time within which charges may be dealt with summarily or tried under this Act	40
21	Person may not be tried under this Act and under the civil law in respect of same act or omission	43
22	Persons not to be tried under this Act for offences already disposed of	45

Part 2
Offences

Offences involving treachery, cowardice, and looting

23	Aiding the enemy	47
24	Communication with the enemy	49
25	Unauthorised disclosure of information	50
26	Spying in ships or establishments abroad	50
27	Seduction from duty or allegiance	50
28	Cowardly behaviour	51
29	Offence to create alarm or despondency	51
30	Offences in relation to capture by the enemy	52
31	Looting	52

Offences involving mutiny

32	Mutiny	53
33	Failure to suppress or report mutiny	53

<i>Offences involving guard duty, violence, and insubordination</i>		
34	Offences by or in relation to a person on guard duty or on watch	53
35	Violence to a superior officer	55
36	Insubordinate behaviour	55
37	Obstruction of provost officers	55
38	Disobeying a lawful command	56
39	Failure to comply with written orders	56
40	Failure to comply with directions given by the captain of a ship or aircraft	57
41	Ill-treatment of person of lower rank	57
42	Cruel or disgraceful conduct	57
43	Fighting or causing a disturbance	58
<i>Offences relating to arrest and escape from custody</i>		
44	Resisting arrest	58
45	Escape from custody	59
46	Permitting the escape of prisoners	59
<i>Desertion, absence, and malingering</i>		
47	Desertion	60
48	Absence without leave	60
49	Avoidance of duty	60
50	Malingering	61
<i>Offences involving alcoholic liquor and drugs</i>		
51	Drunkenness and being under the influence of drugs	61
52	Being in possession of alcoholic liquor in a ship, establishment, camp, or base	62
<i>False statements, documents, and corruption</i>		
53	False statements on appointment or enlistment	63
54	Official corruption	63
55	Falsification of service documents	64
56	False statement in order to obtain benefit	64
<i>Offences relating to property</i>		
57	Stealing service property or property of comrade	65
58	Receiving service property or property of comrade	65
59	Unlawful possession of service property or property of comrade	66
60	Conversion of vehicles, etc	66

61	Destruction of or damage to service property or property of comrade	67
62	Loss of service property	68
63	Improper disposal of decorations and issued property	68
	<i>Offences involving ships, aircraft, vehicles, etc</i>	
64	Losing or hazarding a ship, aircraft, or armoured fighting vehicle	69
65	Dangerous acts or omissions	69
66	Inaccurate certification	70
67	Offences in relation to the driving of vehicles	70
	<i>Offences relating to judicial proceedings, etc</i>	
68	False accusation	71
69	Delay or denial of justice	71
70	Offences relating to proceedings of courts-martial, etc	72
71	False evidence	74
	<i>Miscellaneous offences</i>	
72	Endangering the health of members of the Armed Forces	74
73	Conduct prejudicial to service discipline	75
74	Offences against the civil law of New Zealand	76
	<i>Parties, accessories, and attempts</i>	
75	Parties to the commission of offences against this Act	78
76	Attempts to commit offences against this Act	79
77	Accessories after the fact	80
	Part 3	
	Jurisdiction of courts-martial and punishment of offenders	
78	Jurisdiction of courts-martial	80
79	Court-martial to pass one sentence only	81
80	Discretion of court-martial as to punishment	81
81A	Effect of period spent in custody before being sentenced	82
82	Dismissal from service and reduction in rank	82
83	Maximum term of detention	83
84	Reduction in rank and forfeiture and stay of seniority of service	83
85	Punishment by fine	84
86	Compensation for loss of or damage to property	84
87	Restitution of property	85

87A	Suspension of compensation and restitution orders made by courts-martial, etc	87
-----	---	----

Part 4

Arrest and search

88	Arrest without warrant	88
89	Arrest under warrant	89
89A	Arrest of members of visiting forces	90
90	Arrest of spies, etc, abroad	90
91	Arrest of person unlawfully at large	91
92	Arrest of deserters and absentees	91
92A	Arrest of deserters from other armed forces	92
93	Detention in civil custody of arrested persons	93
93A	Detention in service custody of person charged by civil authority	94
93B	Detention in service custody of members of visiting force	95
93C	Police not to deliver custody of arrested person without consent of Minister of Justice in certain cases	95
94	Reasonable force may be used to arrest or search	96
95	Search in connection with suspected offence	96
96	Searches to prevent smuggling, etc	97
97	Customary powers of search not affected	98
98	Search of person in service custody, etc	98
99	Disposal of property taken in search	99
100	Duty of persons arresting	100
101	Delay in dealing with person after arrest	100

Part 5

Investigation and summary disposal of charges

102	Summary punishments	101
103	Investigation of charges	103
104	Disposal of charges by commanding officers	103
105	Disposal of charges by superior commanders	104
106	Orders for compensation and restitution	105
106A	Suspension of compensation and restitution orders made summarily, etc	105
107	Additional limitations on powers of a commanding officer or superior commander	106
108	Reference back of a charge by a convening officer	107
109	Replacement of officer investigating or disposing of charge	107
110	Confession of desertion	108
111	Reduction in rank	109

112	Fines	109
113	Chief of Defence Force may make orders in respect of certain summary punishments	109
114	Powers and functions of a detachment commander	109
115	Delegation of powers by commanding officers	110
115A	Punishments of detention may be suspended	112
116	Reduction of punishments	112
<i>Review of summary proceedings</i>		
117	Summary findings and punishments to be reviewed by reviewing authorities	112

Part 6
Courts-martial

Constitution of courts-martial

118	General courts-martial and restricted courts-martial	118
119	Authority to convene courts-martial	119
120	Constitution of general courts-martial	121
121	Constitution of restricted courts-martial	122
122	Disqualifications for membership of court-martial or appointment as judge advocate	122
123	Additional factors governing the composition of courts-martial	123
124	Eligibility of officers of other forces to be members of court-martial	124
125	Recording of opinion of convening officer	124
126	Waiting members	125
127	Judge advocate	126

Sittings, etc, of courts-martial

128	Sittings and adjournments of courts-martial	126
129	Challenges by the accused	127
130	Administration of oaths	128
131	Courts-martial to sit in open court	129
131A	Special provisions in cases involving sexual violation	131
132	Dissolution of court-martial	133

Findings, etc, of courts-martial

133	Decisions of courts-martial	134
134	Rulings by judge advocate	135
135	Power to convict of an offence other than that charged	135
136	Recording of finding on alternative charges	136
137	Announcement of finding and sentence	137

138	Certain sentences may be suspended	137
139	Other offences may be taken into consideration in passing sentence	137

Evidential and procedural matters

140	Court to take judicial notice of certain matters	138
141	Privileges and immunities of judge advocates and members of courts-martial, and protection of witnesses and counsel	138
142	Defence of accused	139
143	Proceedings not invalid for want of form	139

Contempt of courts-martial

144	Powers of courts-martial in relation to contempt	139
-----	--	-----

Part 7

Provisions relating to evidence and procedure generally

145	Records of court-martial proceedings	142
146	Witnesses may be compelled to attend courts-martial, etc	143
147	Evidence in proceedings under this Act	144
148	Evidence of civil conviction or acquittal	149
149	Evidence of proceedings of court-martial	149
150	Rules of procedure	150

Part 8

Review of convictions and sentences of courts-martial

151	Constitution of reviewing authorities	152
152	Review of proceedings	154
153	Power to quash convictions and order a new trial	154
154	Revision of sentence on quashing of conviction	155
155	Substitution of convictions and sentences	156
156	Substitution of a valid for an invalid sentence	157
157	Variation, postponement, and suspension of sentences	157
158	Two or more punishments may be imposed in certain cases	157
159	Substituted conviction or sentence deemed to be conviction or sentence of court-martial	158
160	Reviewing authority may make an order for the payment of compensation or restitution of property	159
160A	Reviewing authority to review decision to take other offences into consideration	160
161	Decision of reviewing authority to be promulgated	160

162	Further reviews	161
163	Fresh evidence	161
164	New trial procedure	162
165	Effect of appeal	162
	<i>Reconsideration of sentences of imprisonment and detention</i>	
166	Constitution and powers of reconsidering authorities	163
	Part 9	
	Provisions relating to the carrying out of punishments	
	<i>Death</i>	
167	Execution of sentences of death [<i>Repealed</i>]	165
	<i>Imprisonment and detention</i>	
168	Manner in which sentences of imprisonment and detention are to be served	165
169	Committal, removal, release, etc, of members of the Armed Forces serving imprisonment or detention	167
170	Duty of superintendents of prisons, etc, to receive service prisoners	168
171	Places in which sentences of imprisonment or detention may be served	169
172	Imprisonment and detention of members of other forces attached to Armed Forces	171
173	Imprisonment and detention of members of Armed Forces attached to other forces	171
174	Interim custody of member of the Armed Forces serving imprisonment or detention	172
175	Establishment and regulation of service prisons and detention quarters	173
176	Provisions as to service prisons and detention quarters outside New Zealand	175
177	Commencement of sentences	175
177A	Effect of period spent in custody before being sentenced	176
178	Consecutive sentences	177
179	Limitation of term of detention under one or more sentences	178
180	Periods of unlawful absence	179
	<i>Suspended sentences</i>	
181	Effect of suspension of sentences	179
182	Termination of suspension of sentence	181

183	Offender under suspended sentence convicted or found guilty of further offence	181
	<i>Prison officers, etc</i>	
184	Indemnity for prison officers, etc	183
	<i>Fines</i>	
185	Recovery in District Court of fines imposed under this Act	183
186	Fines to be paid into Crown Bank Account	184
186A	Compensation to victims of offences occasioning physical harm	184

Part 10
Special provisions for dealing with mentally impaired persons

187	Interpretation of terms used in this Part	186
188	When court may find accused unfit to stand trial	188
188A	Determining if accused unfit to stand trial	189
188B	Court may postpone finding as to unfitness to stand trial	190
189	When plea of not guilty may be substituted for plea of guilty [<i>Repealed</i>]	190
190	Finding of insanity	190
191	Order to be made if person unfit to stand trial or insane	191
192	Duration of order for detention as special patient where defendant unfit to stand trial	194
193	Duration of order for detention as special patient when person acquitted on account of his insanity	197
194	Power of court-martial to commit to hospital on conviction	198
195	Notice to be sent to Public Trustee of certain orders [<i>Repealed</i>]	199
196	Insanity of certain persons while serving sentences of imprisonment under this Act	199
197	Substitution of finding and quashing of sentence where accused was insane	200
198	Powers of reviewing authority if person found unfit to stand trial	201

Part 11
Miscellaneous provisions

	<i>Prerogative of mercy</i>	
199	Royal prerogative of mercy	203

<i>Courts of inquiry</i>		
200	Courts of Inquiry	204
201	Inquiry on absence of member of the Armed Forces	205
<i>Pay, etc, of deserters and absentees</i>		
202	Pay, service, and effects of deserters and absentees	206
<i>Judge Advocate General</i>		
203	Appointment and functions of Judge Advocate General	209
203A	Deputy Judge Advocate General	209
<i>Discipline in respect of convoys</i>		
204	Orders by convoy commanders and commanding officers of escorting ships	210
<i>Regulations and Chief of Defence Force orders</i>		
205	Regulations	211
206	Chief of Defence Force orders	213
<i>Repeals, amendments, and savings</i>		
207	Transitional provisions [<i>Repealed</i>]	215
208	Repeals, amendments, and savings	215

Schedule 1	216
Civilians subject to this Act	
Schedule 2	218
Scale of punishments which may be imposed by court-martial	
Schedule 3	219
Scale of authorised summary punishments	
Schedule 4	220
Summary punishments which may be imposed by a commanding officer exercising summary powers under Part 5 of this Act	
Schedule 5	224
Summary punishments which may be imposed by a superior commander exercising summary powers under Part 5 of this Act	
Schedule 6	226
Alternative offences of which accused may be convicted by court-martial	
Schedule 7	230
Enactments amended	
Schedule 8	231
Enactments repealed	

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

The reference to the Parliament of New Zealand was substituted for a reference to the General Assembly of New Zealand pursuant to section 29(2) Constitution Act 1986 (1986 No 114).

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 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.

2 Interpretation

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

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

Able rank: this definition was substituted, as from 1 January 1986, by section 2(1) Armed Forces Discipline Amendment Act 1985 (1985 No 199).

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

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

Aircraft: this definition was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “section 2(1) of the Defence Act 1990” for “section 2 of the Defence Act 1971”.

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:

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

Air Force: this definition was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “section 11(5) of the Defence Act 1990” for “section 5 of the Defence Act 1971”.

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

Air Force Base: this definition was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “section 2(1) of the Defence Act 1990” for “section 2 of the Defence Act 1971”.

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

Airman: this definition was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “section 2(1) of the Defence Act 1990” for “section 2 of the Defence Act 1971”.

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: this definition was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “section 11(4) of the Defence Act 1990” for “section 5 of the Defence Act 1971”.

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

Army camp: this definition was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “section 2(1) of the Defence Act 1990” for “section 2 of the Defence Act 1971”.

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

Basic pay: this definition was amended, as from 1 January 1985, by section 2(2) Armed Forces Discipline Amendment Act 1985 (1985 No 199) by omitting “and badge pay”.

Basic pay: this definition was substituted, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28).

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

Cadet Forces: this definition was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “Part 6 of the Defence Act 1990” for “Part 3 of the Defence Act 1971”.

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

Chief of Defence Force: this definition was inserted, as from 28 July 1997, by section 2 Armed Forces Discipline Amendment Act 1997 (1997 No 34).

Civil court in relation to any offence, means a court exercising ordinary criminal jurisdiction in New Zealand; and includes a court of summary jurisdiction

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.

claim of right: this definition was inserted, as from 1 October 2003, by section 34 Crimes Amendment Act 2003 (2003 No 39).

Colour of right*[Repealed]*

Colour of right: this definition was repealed, as from 1 October 2003, by section 34 Crimes Amendment Act 2003 (2003 No 39).

[Repealed]

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:
- (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
 - (iii) 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;
 - (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.

Commanding officer: paragraph (a) of this definition was amended, as from 1 January 1986, by section 2(3) Armed Forces Discipline Amendment Act 1985 (1985 No 199) by inserting "other than a tender or a boat".

Commanding officer: paragraph (d) was substituted, and paras (e) to (h) were repealed, as from 7 May 1999, by section 2 Armed Forces Discipline Amendment Act 1999 (1999 No 28).

Commanding officer: paragraph (i) was repealed, as from 1 December 1983, by section 2 Armed Forces Discipline Amendment Act 1980 (1980 No 37).

Commanding officer: this definition was substituted, as from 1 July 2004, by section 26 Visiting Forces Act 2004 (2004 No 59).

commanding officer: paragraph (c)(iii) of this definition was substituted, as from 17 May 2005, by section 3(1) Armed Forces Discipline Amendment Act 2005 (2005 No 46).

Commonwealth force means a naval, military, or air force raised in any part of the Commonwealth

Competent service authority means every superior commander; and also includes any officer, not below the rank of lieutenant-commander, major, or squadron leader, appointed as a competent service authority by a superior commander

Constable*[Repealed]*

Constable: this definition was omitted, as from 15 December 1988, by Armed Forces Discipline Amendment Act 1988 (1988 No 176).

[Repealed]

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

Controlled drug: this definition was inserted, as from 1 January 1985, by section 2(4) Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Convening officer means—

- (a) In relation to a general court-martial, a person authorised under subsection (1) of section 119 of this Act to convene a general court-martial; and
- (b) In relation to a restricted court-martial, a person authorised under subsection (2) of that section to convene a restricted court-martial:

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

Corps: this definition was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Force” for “Council”.

Court-martial, or **court**, means a court-martial constituted under Part 6 of this Act

Deal summarily with, in relation to the summary disposal of any charge, means to deal summarily with the charge in the manner prescribed by, and in accordance with the provisions of, the rules of procedure; and **dealt with summarily** has a corresponding meaning

Deal summarily with: this definition was inserted, as from 1 December 1983, by section 2(1) Armed Forces Discipline Amendment Act 1981 (1981 No 48).

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 Area: this definition was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “section 2(1) of the Defence Act 1990” for “section 2 of the Defence Act 1971”.

Defence Council*[Repealed]*

Defence Council: this definition was repealed, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28).

[Repealed]

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

dental practitioner: this definition was inserted, as from 18 September 2004, by section 175(1) Health Practitioners Competence Assurance Act 2003 (2003 No 48). *See* sections 178 to 227 of that Act as to the transitional provisions.

Detachment commander,—

- (a) In relation to the Navy, means an officer who is for the time being posted, or authorised by his 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:
- (b) In relation to the Army and the Air Force, means an officer who is for the time being authorised by his commanding officer to act as detachment commander of a part of a unit stationed or employed at a distance from its unit headquarters:

Detachment commander: this definition was substituted, as from 1 December 1983, by section 2(2) Armed Forces Discipline Amendment Act 1981 (1981 No 48).

Detainee means a person under a sentence that includes the punishment of detention imposed pursuant to this Act by a court-martial or an officer exercising summary powers

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

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

Dismissed from Her Majesty's Service: this definition was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting "member of the Armed Forces" for "serviceman".

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

Enemy: this definition was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting "section 2(1) of the Defence Act 1990" for "section 2 of the Defence Act 1971".

Is liable means is liable on conviction by court-martial

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

Joint force: this definition was inserted, as from 15 December 1988, by section 2(2) Armed Forces Discipline Amendment Act 1988 (1988 No 176).

Joint force: this definition was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “section 12(1)(a) of the Defence Act 1990” for “section 5A(1)(a) of the Defence Act 1971”.

Joint force: this definition was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by omitting “(a)”.

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

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

Leading aircraftman: this definition was substituted, as from 1 January 1986, by section 2(5) Armed Forces Discipline Amendment Act 1985 (1985 No 199).

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.

medical practitioner: this definition was inserted, as from 18 September 2004, by section 175(1) Health Practitioners Competence Assurance Act 2003 (2003 No 48). *See* sections 178 to 227 of that Act as to the transitional provisions.

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 of this Act

Member of the Armed Forces: this definition was inserted, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28).

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

Narcotic*[Repealed]*

Narcotic: this definition was repealed, as from 1 January 1986, by section 2(6) Armed Forces Discipline Amendment Act 1985 (1985 No 199).

[Repealed]

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

Naval establishment and naval ship: these definitions were amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “section 2(1) of the Defence Act 1990” for “section 2 of the Defence Act 1971”.

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

Navy: this definition was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “section 11(3) of the Defence Act 1990” for “section 5 of the Defence Act 1971”.

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

New Zealand force or force: this definition was substituted, as from 1 July 2004, by section 26 Visiting Forces Act 2004 (2004 No 59).

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

Non-commissioned officer: this definition was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “section 2(1) of the Defence Act 1990” for “section 2 of the Defence Act 1971”.

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

Officer: this definition was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “section 2(1) of the Defence Act 1990” for “section 2 of the Defence Act 1971”.

Officer exercising summary powers means any officer authorised to exercise the summary powers of discipline under Part 5 of this Act

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

Penal institution*[Repealed]*

Penal institution: this definition was repealed, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50). See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

[Repealed]

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

Prescribed: this definition was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Force Orders” for “Council Orders”.

Prescribed: this definition was substituted, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34).

President means the president of a court-martial or, as the case may be, of a court of inquiry

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

prison: this definition was inserted, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50). See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Private includes a gunner, trooper, sapper, signalman, driver, or craftsman

Private: this definition was amended, as from 1 January 1986, by section 2(7) Armed Forces Discipline Amendment Act 1985 (1985 No 199) by omitting “; and includes the equivalent woman’s ranks in the Army”.

Provost officer means a provost marshal, assistant provost marshal, or other officer of the Navy, the Army, or the Air Force duly appointed to exercise the functions conferred by this Act on a provost officer; and includes a person duly attached or lent as a provost officer to or seconded for service or appointed for duty as a provost officer 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

Rank: this definition was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman”.

Rating has the meaning assigned to that term by section 2 of the Defence Act 1971

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

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

relative rank: this definition was inserted, as from 1 July 2004, by section 26 Visiting Forces Act 2004 (2004 No 59).

Reviewing authority means—

- (a) In relation to any proceedings before an officer exercising summary powers, a reviewing authority within the meaning of subsection (1) of section 117 of this Act; and
- (b) In relation to court-martial proceedings, a reviewing authority constituted under section 151 of this Act:

Rules of procedure means rules of procedure made under section 150 of this Act

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

Service: this definition was amended, as from 15 December 1988, by section 2(3) Armed Forces Discipline Amendment Act 1988 (1988 No 176) by inserting “or any part of one 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

Serviceman*[Repealed]*

Serviceman: this definition was repealed, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28).

[Repealed]

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 penal establishment: this definition was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “members of the Armed Forces” for “servicemen”.

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 a 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 of the Defence Act 1971

Soldier has the meaning assigned to that term by section 2 of the Defence Act 1971

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

Stealing: this definition was amended, as from 1 October 2003, by section 34 Crimes Amendment Act 2003 (2003 No 39) by substituting “section 219” for “section 220”.

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

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—
 - (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 against junior officers and warrant officers of the rank specified in Schedule 5; or
 - (iii) is appointed by the Chief of Defence Force, the Chief of Navy, the Chief of Army, or the Chief of

- Air Force to try summarily or to deal summarily with charges against junior officers and warrant officers of the rank specified in Schedule 5; or
- (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 Schedule 5; or
- (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—
- (i) is, in accordance with section 119, authorised to convene a general court-martial; or
- (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 Schedule 5.

Superior commander: paragraphs (b), (c), and (d) of this definition were amended, as from 1 December 1983, by section 2(3) Armed Forces Discipline Amendment Act 1981 (1981 No 48), by inserting “to try summarily or”.

Superior commander: paragraph (c) was amended, as from 15 December 1988, by section 2(4) Armed Forces Discipline Amendment Act 1988 (1988 No 89) by inserting, after the words “appointed by”, the words “the Chief of Defence Staff”. The words the Chief of Defence Force were substituted for “the Chief of Defence Staff”, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28).

Superior commander: this definition was substituted, as from 1 July 2004, by section 26 Visiting Forces Act 2004 (2004 No 59).

superior commander: paragraph (a)(iii) of this definition was amended, as from 17 May 2005, by section 3(2) Armed Forces Discipline Amendment Act 2005 (2005 No 46) by substituting “the Chief of Navy, the Chief of Army, or the Chief of Air Force” for “the Chief of Naval Staff, the Chief of General Staff, or the Chief of Air Staff”.

Superior officer, in relation to any member of the Armed Forces, means another member holding a higher rank (not

being an honorary rank); and includes another member of equal rank (not being an honorary rank) who is entitled to exercise powers of command over him or her

Superior officer: this definition was amended, as from 27 May 1988, by section 2(5) Armed Forces Discipline Amendment Act 1988 (1988 No 89) by omitting “in the same service”.

Superior officer: this definition was substituted, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28).

Try summarily, in relation to the summary disposal of any charge, means to try that charge summarily in the manner prescribed by, and in accordance with the provisions of, the rules of procedure; and **tried summarily** has a corresponding meaning

Try summarily: this definition was inserted, as from 1 December 1983, by section 2(4) Armed Forces Discipline Amendment Act 1981 (1981 No 48).

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

visiting force: this definition was inserted, as from 1 July 2004, by section 26 Visiting Forces Act 2004 (2004 No 59).

Warrant officer has the meaning assigned to that term by section 2 of the Defence Act 1971.

- (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.

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

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) Section 6 of the Sentencing Act 2002 (which provides that penal enactments are not to have retrospective effect to the disadvantage of an offender) shall apply to proceedings under this Act and to proceedings on appeal from any decision under this Act.

- (2) Where an accused charged with an offence against this Act relies for his defence on any excuse, exception, exemption, or qualification contained in the provision creating the offence, whether or not the excuse, exception, exemption, or qualification accompanies the description of the offence charged, the accused shall, in order to establish the defence, prove the excuse, exception, exemption, or qualification on a balance of probabilities; and this subsection shall apply notwithstanding that the charge contains an allegation negating the excuse, exception, exemption, or qualification.

Subsection (1A) was inserted, as from 15 December 1988, by section 3 Armed Forces Discipline Amendment Act 1988 (1988 No 176).

Subsection (1A) was amended, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9) by substituting “Section 6 of the Sentencing Act 2002” for “Section 4 of the Criminal Justice Act 1985”. See sections 148 to 160 of that Act for the transitional and savings provisions. See clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

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 of this Act, 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; Naval Discipline Act 1957, s 134 (UK); Army Act 1955, s 224 (UK); Air Force Act 1955, s 224 (UK)

Subsection (1)(b) and (c) was substituted, as from 1 January 1986, by section 4 Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Subsection (2) was substituted, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28).

Subsection (4) was substituted, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28).

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; Naval Discipline Act 1957, s 111 (UK); Army Act 1955, ss 205, 211 (UK); Air Force Act 1955, ss 205, 211 (UK)

Subsection (1)(a) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “section 11(3)(e) of the Defence Act 1990” for “paragraph (e) of subsection (2) of section 5 of the Defence Act 1971”.

Subsection (1)(c)(vi) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “section 39 or section 40 of the Defence Act 1990” for “section 43 or section 44 of the Defence Act 1971”.

Subsection (1)(d) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “section

11(3)(e) of the Defence Act 1990” for “paragraph (e) of subsection (2) of section 5 of the Defence Act 1971”.

Subsection (2)(a) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “section 11(4)(d) of the Defence Act 1990” for “paragraph (d) of subsection (3) of section 5 of the Defence Act 1971”.

Subsection (2)(c)(vi) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “section 39 or section 40 of the Defence Act 1990” for “section 43 or section 44 of the Defence Act 1971”.

Subsection (2)(d) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “section 11(4)(d) of the Defence Act 1990” for “paragraph (d) of subsection (3) of section 5 of the Defence Act 1971”.

Subsection (3)(a) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “section 11(5)(d) of the Defence Act 1990” for “paragraph (d) of subsection (4) of section 5 of the Defence Act 1971”.

Subsection (3)(c)(vi) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “section 39 or section 40 of the Defence Act 1990” for “section 43 or section 44 of the Defence Act 1971”.

Subsection (3)(d) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “section 11(5)(d) of the Defence Act 1990” for “paragraph (d) of subsection (4) of section 5 of the Defence Act 1971” for “paragraph (e) of subsection (2) of section 5 of the Defence Act 1971”.

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

- (1) Notwithstanding anything to the contrary in this Act, the Governor-General may from time to time, by Order in Council,—
 - (a) Exempt all or any of the classes of persons specified in subsection (2) of this section from all or any of the provisions of this Act; or
 - (b) Modify any such provisions so far as they relate to those classes of persons or any of those classes.
- (2) The classes of persons to which subsection (1) of this section relates are as follows:
 - (a) Chaplains in the Armed Forces;
 - (b) Women in the Armed Forces;
 - (c) Members of the Armed Forces who are under 18 years of age;
 - (d) Midshipmen and officer cadets.

- (e) members of the armed forces of other States who are attached to the Armed Forces under section 23A of the Defence Act 1990.

Compare: 1950 No 40 s 4(3); 1954 No 53 s 15; Naval Discipline Act 1957, s 111 (UK); Army Act 1955, s 213 (UK); Air Force Act 1955, s 213 (UK)

Subsection (2)(c) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Members of the Armed Forces” for “Servicemen”.

Subsection (2)(d) was inserted, as from 1 January 1986, by section 5 Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Subsection (2)(e) was inserted, as from 1 July 2004, by section 26 Visiting Forces Act 2004 (2004 No 59).

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 was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman”.

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.

Section 9 was substituted, as from 1 July 2004, by section 26 Visiting Forces Act 2004 (2004 No 59).

10 Volunteers

- (1) Subject to subsection (2) of this section, 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)

Subsection (1) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Chief of Defence Force” for “Defence Council”.

Subsection (1) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “Defence Force Order” for “order of the Chief of Defence Force”.

Subsection (2) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Chief of Defence Force” for “Defence Council”.

Subsection (2) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “Defence Force Order” for “order of the Chief of Defence Force”.

11 Trainees

- (1) Subject to subsection (2) of this section, 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)

Subsection (1) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Chief of Defence Force” for “Defence Council”.

Subsection (1) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “Defence Force Order” for “order of the Chief of Defence Force”.

Subsection (2) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Chief of Defence Force” for “Defence Council”.

Subsection (2) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “Defence Force Order” for “order of the Chief of Defence Force”.

12 Prisoners of war

- (1) Subject to the provisions of the Geneva Conventions Act 1958 and of subsection (2) of this section, 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 of this Act, 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 an officer exercising summary powers; or
- (b) Until that person is acquitted by a 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 was substituted, as from 1 January 1986, by section 6 Armed Forces Discipline Amendment Act 1985 (1985 No 199).

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 of this Act 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) (Can)

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) of this section, 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) of this section shall be deemed to be on active service.
- (3) Without limiting the provisions of subsection (1) of this section, but subject to subsections (4) to (7) of this section, any member of a class of persons specified in Schedule 1 to this Act 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 of this Act shall not apply to persons who are subject to this Act by virtue only of subsection (3) of this section 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) of this section 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 of this Act, shall, subject to the modifications specified in subsection (7) of this section, 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) of this section refers are as follows:
- (a)
 - (b)
 - (c)
 - (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 dealt with summarily, no punishment other than a fine not exceeding \$1,000, may be imposed:
 - (e) Where an officer exercising summary powers finds an accused guilty of a charge, he shall not record a finding until the accused has been given an opportunity of electing to be tried by court-martial. If the accused so elects

a finding shall not be recorded, but the officer shall take such steps as may be necessary to have the charge tried by court-martial:

- (f) The amount of compensation which any such person may be ordered to pay under section 86 of this Act shall not exceed \$1,000, whether the order is made by a court-martial or an officer exercising summary powers:
- (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; Naval Discipline Act 1957, s 118 (UK); Army Act 1955, s 209 (UK); Air Force Act 1955, s 209 (UK)

Subsection (4)(c) was amended, as from 1 December 1983, by section 4 Armed Forces Discipline Amendment Act 1981 (1981 No 48) by substituting “87A” for “87”.

Subsection (6) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Chief of Defence Force” for “Defence Council”.

Subsection (7)(a) to (c) were repealed, as from 27 May 1988, by section 3 Armed Forces Discipline Amendment Act 1988 (1988 No 89).

Subsection (7)(d) was amended, as from 1 January 1986, by section 7(a) Armed Forces Discipline Amendment Act 1985 (1985 No 199) by substituting “\$3,000” for “\$500”. The proviso was amended, as from 1 December 1983, by section 3 Armed Forces Discipline Amendment Act 1981 (1981 No 48) by inserting “tried summarily or”, and the expression “\$1,000” was substituted for “\$200” by section 7(b) Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Subsection (7)(f) was amended, as from 1 January 1986, by section 7(c) Armed Forces Discipline Amendment Act 1985 (1985 No 199) by substituting “\$1,000” for “\$200”.

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 a court-martial or to a term of detention by an officer exercising summary powers; 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 of this Act 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 a 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); Naval Discipline Act 1957, s 119 (UK); Army Act 1955, s 131 (UK); Air Force Act 1955, s 131 (UK)

Subsection (1) was amended, as from 1 January 1986, by section 8 Armed Forces Discipline Amendment Act 1985 (1985 No 199) by inserting “or any further(4) of section 178 of this Act”.

Subsections (1) and (2) were amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman”.

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 of this Act, be charged under this Act with the commission of that offence, and the charge may be tried by 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 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); Naval Discipline Act 1957, s 51 (UK); Army Act 1955, s 131 (UK); Air Force Act 1955, s 131 (UK)

Subsection (3)(b) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Chief of Defence Force” for “Defence Council”.

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

Section 19(a), (b), and (c) were amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting "member of the Armed Forces, that person was a member" for "serviceman, he was a serviceman".

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

- (1) Subject to subsections (2) to (6) of this section, no charge alleging that a person has committed an offence against this Act may be tried summarily or dealt with summarily under this Act or tried by a court-martial, unless the charge is so tried or dealt with, or an application for the trial is made, within 3 years after the alleged commission of the offence.
- (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 of this Act to have been absent without leave or other sufficient reason or was serving a sentence of im-

prisonment in a civil prison or other civil prison shall not be counted towards completion of the period of 3 years referred to in subsection (1) of this section.

(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 of this Act 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 an indictment or information may be laid 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 of this Act, 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 court-martial unless—

(a) An application for his trial is made within 6 months after he 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 dealt with summarily under this Act or be tried by court-martial unless—

- (a) He is so tried or dealt with or an application for the trial is made within 6 months after he 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)—
- of this Act may be tried by court-martial at any time after the alleged commission of the offence.

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

Subsection (1) was amended, as from 1 December 1983, by section 3 Armed Forces Discipline Amendment Act 1981 (1981 No 48) by inserting “tried summarily or” and “tried or”.

Subsection (2) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (5) was amended, as from 1 December 1983, by section 3 Armed Forces Discipline Amendment Act 1981 (1981 No 48) by inserting “tried summarily or”.

Subsection (5) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman”.

Subsection (5)(a) was amended, as from 1 December 1983, by section 3 Armed Forces Discipline Amendment Act 1981 (1981 No 48) by inserting “tried or”.

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 a court-martial and has been acquitted or convicted of the offence; or
 - (b) Has been charged with an offence before an officer exercising summary powers 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 a 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) of this section, 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) Where, 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 of any allied force, of an offence against a law in force in the country or place in which that court or court-martial has jurisdiction; or
 - (b) Has had an offence taken into consideration by that court or court-martial in sentencing him for another offence; or

- (c) Has been found by that court or court-martial to be unfit to stand trial and the proceedings against that person in the course of which the finding was made have been stayed,—

he shall not subsequently be charged before a court-martial constituted under this Act or before an officer exercising summary powers with having committed an offence against this Act that is substantially the same as the offence of which he was acquitted or convicted, or that is substantially the same as the offence taken into consideration, as the case may be.

- (4) For the purposes of this section—

- (a) A reference to an offence that is substantially the same as another offence means 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 a court-martial includes a reference to a person in respect of whom that court found the charge proved but did not convict him:
- (c) A reference to a person having been convicted by a competent court of ordinary criminal jurisdiction or by a court-martial of an allied force includes a reference to a person in respect of whom that court or court-martial found the charge proved but did not convict him:
- (d) A person shall not be deemed to have had an offence taken into consideration if the sentence passed on him is subsequently quashed, or where the decision to take the offence into consideration has been annulled by a reviewing authority:
- (e) A person shall be deemed to have been found guilty of an offence by an officer exercising summary powers notwithstanding that the finding made by that officer has been quashed or that the punishment imposed and any order made by the officer was quashed or varied on review.

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

Subsection (1) was amended, as from 1 January 1986, by section 9(1) Armed Forces Discipline Amendment Act 1985 (1985 No 199) by inserting “or that is substantially was dismissed”.

Subsection (1)(b) was amended, as from 1 December 1983, by section 5(1) Armed Forces Discipline Amendment Act 1981 (1981 No 48) by substituting “the charge was, on investigation, dismissed, or he was” for “has been”.

Subsection (3)(b) was amended, as from 1 January 1986, by section 9(2) Armed Forces Discipline Amendment Act 1985 (1985 No 199) by inserting “; or”.

Subsection (3)(c) was inserted, as from 1 January 1986, by section 9(2) Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Subsection (3)(c) was amended, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115) by substituting “unfit to stand trial” for “under disability”. See clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

Subsection (4)(a) was amended, as from 1 December 1983, by section 5(2) Armed Forces Discipline Amendment Act 1981 (1981 No 48) by substituting “, under this Act or otherwise, on the same facts” for “on the charge on which he was tried”.

Subsection (4)(d) was amended, as from 1 December 1983, by section 16(2) Armed Forces Discipline Amendment Act 1981 (1981 No 48) by inserting “, or where the decision annulled by a reviewing authority”.

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

(1) Where—

- (a) A person has been charged with having committed an offence against this Act and the charge was, on investigation, dismissed, or he was acquitted or found guilty of the offence by an officer exercising summary powers; or
- (b) A person has been acquitted or convicted of an offence by a court-martial; or
- (c) A person has had an offence taken into consideration by a court-martial which sentenced him on his conviction of having committed another offence; or
- (d) A person has had an alleged offence condoned by his commanding officer; 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,—

a subsequent charge alleging that he committed the offence so disposed of shall not be tried by any court-martial or tried summarily or dealt with summarily under Part 5 of this Act.

- (2) For the purposes of this section—
- (a) Where a person was convicted of an offence by a court-martial or found guilty of an offence by an officer exercising summary powers and the conviction or finding was quashed on review, he shall be deemed to have been acquitted of the offence by the court-martial or the officer exercising summary powers, unless a new trial of the charge of having committed that offence was ordered by a reviewing authority:
 - (b) A person shall not be regarded as having had another offence taken into consideration if the sentence passed on him is subsequently quashed, or where the decision to take the offence into consideration has been annulled by a reviewing authority:
 - (c) An alleged offence shall be regarded as having been condoned by the commanding officer of the person alleged to have committed the offence if, and only if, the commanding officer—
 - (i) Has, after consideration of the allegation and all the relevant circumstances, informed the alleged offender that he will not be charged with having committed that offence; and
 - (ii) Has recorded in writing the fact of his having so informed the alleged offender.
- (3) In paragraphs (b) and (c) of subsection (1) and paragraph (a) of subsection (2) of this section the term **court-martial** includes a court-martial of any Commonwealth force or allied force.

Compare: 1950 No 39 s 126; 1950 No 40 s 126; Naval Discipline Act 1957, s 129 (UK); Army Act 1955, s 134 (UK); Air Force Act 1955, s 134 (UK)

Subsection (1) was amended, as from 1 December 1983, by section 3 Armed Forces Discipline Amendment Act 1981 (1981 No 48) by inserting “tried summarily or”.

Subsection (1)(d) was amended, as from 1 January 1986, by section 10 Armed Forces Discipline Amendment Act 1985 (1985 No 199) by inserting “; or”.

Subsection (1)(e) was inserted, as from 1 January 1986, by section 10 Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Subsection (1)(e) was amended, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115) by sub-

stituting “unfit to stand trial” for “under disability”. See clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

Subsection (2)(b) was amended, as from 1 December 1983, by section 16(3) Armed Forces Discipline Amendment Act 1981 (1981 No 48) by inserting “, or where the decision by a reviewing authority”.

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); Naval Discipline Act 1957, ss 2(b)-(e), 3, 5(c) (UK); Army Act 1955, s 24 (UK); Air Force Act 1955, s 24 (UK)

Subsection (1) was amended, as from 26 December 1989, by section 5(2) Abolition of the Death Penalty Act 1989 (1989 No 119) by substituting “imprisonment for life” for “be sentenced to death”.

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

Subsection (1) was amended, as from 26 December 1989, by section 5(3) Abolition of the Death Penalty Act 1989 (1989 No 119) by substituting “imprisonment for life” for “be sentenced to death”.

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 was substituted, as from 1 January 1986, by section 11 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 was amended, as from 1 January 1986, by section 12 Armed Forces Discipline Amendment Act 1985 (1985 No 199) by omitting “subject to this Act”.

Section 26 was amended, as from 26 December 1989, by section 5(4) Abolition of the Death Penalty Act 1989 (1989 No 119) by substituting “imprisonment for life” for “be sentenced to death”.

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, se-

duces 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 was amended, as from 1 January 1986, by section 13 Armed Forces Discipline Amendment Act 1985 (1985 No 199) by omitting “subject to this Act”.

Section 27 was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman”.

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 s 24(a), (b), s 25(a), (i); 1950 No 40 s 24(a), (b), s 25(a), (i); Naval Discipline Act 1957, ss 3, 6 (UK); Army Act 1955, s 26 (UK); Air Force Act 1955, s 26 (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) of this section; 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); Naval Discipline Act 1957, s 24 (UK); Army Act 1955, s 12 (UK); Air Force Act 1955, s 12 (UK); Air Force Act 1955, s 12 (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 was substituted, as from 26 December 1989, by section 5(5) 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); Naval Discipline Act 1957, s 10 (UK); Army Act 1955, s 31 (UK); Air Force Act 1955, s 31 (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 pa-

- trol, 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) of this section, 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) of this section 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) of this section 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) of this section, 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); Naval Discipline Act 1957, s 11 (UK); Army Act 1955, s 33 (UK); Air Force Act 1955, s 33 (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) of this section, 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); Naval Discipline Act 1957, s 12(b) (UK); Army Act 1955, s 33 (UK); Air Force Act 1955, s 33 (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) of this section, 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); Naval Discipline Act 1957, s 14 (UK); Army Act 1955, s 35 (UK); Air Force Act 1955, s 35 (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) of this section, 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; Naval Discipline Act 1957, s 12(a) (UK); Army Act 1955, s 34 (UK); Air Force Act 1955, s 34 (UK)

Subsection (2) was inserted, as from 1 January 1986, by section 15 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; Naval Discipline Act 1957, s 7 (UK); Army Act 1955, s 36 (UK); Air Force Act 1955, s 36 (UK)

Section 39(a) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Force” for “Council”.

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(b) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman”.

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; Naval Discipline Act 1957, ss 36, 39 (UK); Army Act 1955, s 65 (UK); Air Force Act 1955, s 65 (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); Naval Discipline Act 1957, ss 36, 37 (UK); Army Act 1955, s 66 (UK); Air Force Act 1955, s 66 (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)

Subsections (1) and (2)(c) were amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman”.

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)

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 institution 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; Naval Discipline Act 1957, s 17(1) (UK); Army Act 1955, s 54 (UK); Air Force Act 1955, s 54 (UK)

Subsection (2)(c) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

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; Naval Discipline Act 1957, ss 15, 16 (UK); Army Act 1955, s 37 (UK); Air Force Act 1955, s 37 (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; Naval Discipline Act 1957, s 17 (UK); Army Act 1955, s 38 (UK); Air Force Act 1955, s 38 (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) of this section, the term **unfit** includes temporarily unfit.

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

Offences involving alcoholic liquor and drugs

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) of this section, 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; Naval Discipline Act 1957, s 28 (UK); Army Act 1955, s 43 (UK); Air Force Act 1955, s 43 (UK)

52 Being in possession of alcoholic liquor 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 alcoholic liquor 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) of this section, the liquor 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

Subsection (1) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “members of the Armed Forces” for “servicemen”.

Subsection (2) was amended, as from 1 April 1978, by section 114(6) Public Finance Act 1977 (1977 No 65) by substituting a reference to the “Consolidated Account” for a reference to the “Consolidated Revenue Account”.

Subsection (2) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “an appropriate bank account in accordance with the Public Finance Act 1989” for “the Consolidated Account”, and by substituting “Chief of Defence Force” for “Secretary of Defence”.

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; Naval Discipline Act 1957, s 35 (UK); Army Act 1955, s 62 (UK); Air Force Act 1955, s 62 (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) of this section, 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); Naval Discipline Act 1957, s 29(a) (UK); Army Act 1955, ss 44(1), 45(a) (UK); Air Force Act 1955, ss 44(1), 45(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 mis-applied.

- (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); Naval Discipline Act 1957, s 29(b) (UK); Army Act 1955, ss 44(1)(b), 45(b) (UK); Air Force Act 1955, ss 44(1)(b), 45(b) (UK)

Subsection (2) was amended, as from 1 October 2003, by section 34 Crimes Amendment Act 2003 (2003 No 39) by substituting “section 246(2) to (5)” for “sections 260 and 261 and subsections (2) and (3) of section 258”.

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) of this section, 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 was amended, as from 1 October 2003, by section 34 Crimes Amendment Act 2003 (2003 No 39) by substituting “claim of right” for “colour of right” in both places where they appear.

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); Naval Discipline Act 1957, ss 29, 30(1)(b), (2) (UK); 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)

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) of this section, 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); Naval Discipline Act 1957, ss 30(1)(a), (c), (2), 31(1)(a), (2) (UK); Army Act 1955, s 46(a), (e) (UK); Air Force Act 1955, s 46(a), (e) (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); Naval Discipline Act 1957; s 31(1)(b) (UK); Army Act 1955, s 46(g) (UK); Air Force Act 1955, s 46(g) (UK)

Subsection (1) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Chief of Defence Force” for “Secretary of Defence”.

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); Naval Discipline Act 1957, s 19 (UK); Army Act 1955, s 46(b), (c) (UK); Air Force Act 1955, s 46(b), (c) (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); Naval Discipline Act 1957, s 25 (UK); Army Act 1955, s 50 (UK); Air Force Act 1955, s 50 (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 or try summarily or deal summarily with a charge against any such person or bring any such person before a 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.
- (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; Naval Discipline Act 1957, s 46(1) (UK); Army Act 1955, s 53 (UK); Air Force Act 1955, s 53 (UK)

Subsection (1)(b) was amended, as from 1 January 1986, by section 16 Armed Forces Discipline Amendment Act 1985 (1985 No 199) by substituting “or” for “and”, and the words “try summarily or” were inserted, as from 1 December 1983, by section 3 Armed Forces Discipline Amendment Act 1981 (1981 No 48).

70 Offences relating to proceedings of courts-martial, etc

- (1) Every person subject to this Act commits an offence, and, except as provided in subsection (2) of this section, is liable on conviction by a court-martial (other than the court-martial in respect of or before which the offence was committed) to imprisonment for a term not exceeding 6 months, who—
- (a) Having been duly summoned or ordered to attend as a witness before a court-martial or a court of inquiry, fails to comply with the summons or order; or
 - (b) Refuses to swear an oath when duly required by a court-martial or a court of inquiry to do so; or
 - (c) Refuses to produce any document in his custody or under his control which a court-martial or a court of inquiry has lawfully required him to produce; or
 - (d) Being a witness, refuses to answer any question which a court-martial or a court of inquiry has lawfully required him to answer; or
 - (e) Disobeys or evades any order or direction made or given—
 - (i) By a convening officer under section 131 of this Act; or
 - (ii) By a court-martial or court of inquiry in the course of the hearing of any proceedings before the court-martial or court of inquiry; or
 - (iii) By a reviewing authority under paragraph (b) or paragraph (c) of section 131(5) of this Act; or

- (f) Wilfully publishes any statement in respect of the proceedings of a court-martial or court of inquiry which—
 - (i) States or implies that the court 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 any member of a court-martial or a court of inquiry while he is attending or going to or returning from the proceedings of the court-martial or court of inquiry, as the case may be; or
 - (h) Insults, threatens, or interferes with any witness or other person under a duty to attend the proceedings of a court-martial or court of inquiry while he is attending or is going to or returning from the proceedings of the court-martial or court of inquiry, as the case may be; or
 - (i) Interrupts the proceedings of a court-martial or court of inquiry or otherwise misbehaves during any such proceedings.
- (2) Where an offence against any of the provisions of paragraphs (e) to (i) of subsection (1) of this section is committed in relation to a court-martial, that court-martial if it thinks fit, instead of the offender being tried by another court-martial, may, by order under the hand of the president, sentence him for each such 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 his 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.
- (3) For the purposes of subsection (1) of this section—
- (a) The term **court-martial** includes—
 - (i) A court-martial held pursuant to the law of any part of the Commonwealth; and

- (ii) A commissioner appointed to take evidence, or an officer taking a summary of evidence, in accordance with the rules of procedure; and
- (b) Every reference to a member of a court of inquiry includes a reference to a commissioner appointed to take evidence, or an officer taking a summary of evidence, in accordance with the rules of procedure.

Compare: 1950 No 39 s 50; 1950 No 40 s 50; Naval Discipline Act 1957, s 38 (UK); Army Act 1955, s 57 (UK); Air Force Act 1955, s 57 (UK)

Subsection (1)(e) was substituted, as from 1 January 1986, by section 17(1) Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Subsection (2)(a) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman”.

Subsection (2)(a)(ii) was amended, as from 1 December 1983, by section 6 Armed Forces Discipline Amendment Act 1981 (1981 No 48) by omitting “or servicewoman”.

Subsection (2)(b) was amended, as from 1 January 1986, by section 17(2) Armed Forces Discipline Amendment Act 1985 (1985 No 199) by substituting “\$1,000” for “\$200”.

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 court-martial or before any court of inquiry or person having power by virtue of this Act to administer oaths, 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 one 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)

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 med-

ical 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) of this section, 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)

Subsection (1) was amended, as from 18 September 2004, by section 175(1) Health Practitioners Competence Assurance Act 2003 (2003 No 48) by substituting “medical practitioner or dental practitioner” for “duly registered medical or dental practitioner” in both places where they occur. *See* sections 178 to 227 of that Act as to the transitional provisions.

Subsection (2) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Defence Force Orders relating to the right of a member of the Armed Forces” for “Defence Council Orders relative to the right of a serviceman”.

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.

- (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 of this Act:
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) Notwithstanding 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 that he behaved in a manner that was likely to prejudice service discipline or that was likely to bring discredit on the service to which he belongs or is attached, as the case may be.
Compare: 1950 No 39 s 61; 1950 No 40 s 61; Naval Discipline Act 1957, s 39 (UK); Army Act 1955, s 69 (UK); Air Force Act 1955, s 69 (UK)

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) of this section, 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, to this Act.
- (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) of this section.
- (4) Except with the consent of the Attorney-General, a person subject to this Act may not be tried by 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) of this section, 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) of this section, the term **murder** includes inciting, counselling, procuring, aiding, or abetting suicide.

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

Subsection (2A) was inserted, as from 1 January 1986, by section 18 Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Subsection (4) was amended, as from 27 May 1988, by section 4 Armed Forces Discipline Amendment Act 1988 (1988 No 89) by substituting “sexual violation” for “rape”.

*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 one 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) of this section, 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)

Subsection (7) was substituted, as from 26 April 2005, by section 7 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)

Subsection (4) was substituted, as from 26 December 1989, by section 5(6) Abolition of 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.

Subsection (1)(a) was amended, as from 26 December 1989, by section 5(7) Abolition of Death Penalty Act 1989 (1989 No 119) by omitting “death or”.

Subsection (3) was substituted, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3).

Part 3

Jurisdiction of courts-martial and punishment of offenders

78 Jurisdiction of courts-martial

Subject to the provisions of this Act, a duly constituted court-martial shall have jurisdiction to try any charge against a per-

son subject to this Act in respect of an offence against this Act, whether committed in New Zealand or elsewhere.

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

79 Court-martial to pass one sentence only

Where a court-martial convicts a person of more than one offence or, on convicting a person of one or more offences, agrees to take other offences which he admits to have committed into consideration when sentencing him, the court shall pass only one 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 one of the punishments prescribed by Schedule 2 to this Act.

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

80 Discretion of court-martial as to punishment

(1) Where under this Act a person is liable on conviction by 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 one or more of the less severe punishments specified in Schedule 2 to this Act.

(2)

(3) No officer may be sentenced by a court-martial to detention.

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

Subsection (2) was repealed, as from 26 December 1989, by section 5(1) Abolition of Death Penalty Act 1989 (1989 No 119).

Subsection (3) was substituted, as from 1 December 1983, by section 3(1) Armed Forces Discipline Amendment Act 1980 (1980 No 37).

81

Section 81 was repealed, as from 26 December 1989, by section 5(1) Abolition of 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 a 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 was inserted, as from 27 May 1988, by section 5 Armed Forces Discipline Amendment Act 1988 (1988 No 89).

The heading to section 81A was amended, as from 27 September 2001, by section 3 Armed Forces Discipline Amendment Act 2001 (2001 No 55), by substituting “before being sentenced” for “awaiting trial”.

Section 81A(1) was amended, as from 27 September 2001, by section 3 Armed Forces Discipline Amendment Act 2001 (2001 No 55), by substituting “has been held in custody” for “was held in custody awaiting trial”.

Section 81A(2) was amended, as from 27 September 2001, by section 3 Armed Forces Discipline Amendment Act 2001 (2001 No 55), by substituting “that is unrelated to any charge before the court-martial” for “while the offender was already serving a sentence of imprisonment or detention”.

82 Dismissal from service and reduction in rank

- (1) Subject to the provisions of this Part of this Act, every officer sentenced by a 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 a 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 a 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) Where a member of the Armed Forces is sentenced to be dismissed from Her Majesty’s Service, or is sentenced to imprisonment involving dismissal pursuant to subsection (1) of this section, the dismissal shall not take effect until the sentence has been approved by a reviewing authority.

- (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) of this section, 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 of this Act.

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

Subsection (3) was substituted, as from 1 January 1986, by section 19(1) Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Subsection (4) was substituted, as from 27 May 1988, by section 6 Armed Forces Discipline Amendment Act 1988 (1988 No 89).

Subsection (5) was amended, as from 1 January 1986, by section 19(2) Armed Forces Discipline Amendment Act 1985 (1985 No 199) by inserting "and any further sentence of imprisonment or detention imposed in accordance with subsection (1) or subsection (4) of section 178 of this Act".

Subsections (4) and (5) were amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting "member of the Armed Forces" for "serviceman".

83 Maximum term of detention

In no case shall any person be sentenced by a court-martial to detention for a term exceeding 2 years.

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

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

- (1) If a 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 a 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.

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)

Subsection (1) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman”.

Subsection (2) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “member of the Armed Forces” for “serviceman”.

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 of this Act, a 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.

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

Subsections (2)(a) and (3)(a) were amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman”.

Subsection (3)(b) was amended, as from 1 January 1986, by section 20 Armed Forces Discipline Amendment Act 1985 (1985 No 199) by substituting “\$3,000” for “\$500”.

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, a 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 of this Act shall apply with respect to any payment ordered under this section as if it were a fine imposed for an offence.
- (4) Except as provided in subsection (2) of this section, the total amount of compensation awarded by a 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)

Subsection (1) was amended, as from 7 May 1999, by section 3 Armed Forces Discipline Amendment Act 1999 (1999 No 28) by inserting “emotional harm, or for any”.

Subsection (4)(a) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman”.

Subsection (4)(b) was amended, as from 1 January 1986, by section 21 Armed Forces Discipline Amendment Act 1985 (1985 No 199) by substituting “\$1,000” for “\$200”.

87 Restitution of property

- (1) Where a court-martial convicts anyone of an offence against sections 57 to 60 and section 74 of this Act (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) of this section, and it appears to the court-martial that a purchaser has bought the property in good faith and without knowledge 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 of this Act shall apply to any such order.
- (4) Where anyone is convicted of an offence against sections 57 to 60 of this Act, 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) of this section 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) of this section, 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) of this section 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; Naval Discipline Act 1957, s 76 (UK); Army Act 1955, s 138(1)-(8) (UK); Air Force Act 1955, s 138(1)-(8) (UK)

Subsection (2) was amended, as from 1 December 1983, by section 4 Armed Forces Discipline Amendment Act 1980 (1980 No 37) by inserting “that”.

87A Suspension of compensation and restitution orders made by courts-martial, etc

- (1) Where a court-martial makes an order for compensation under section 86 of this Act, or an order for restitution under section 87 of this Act (with or without compensation under subsection (3) of that section), or convicts anyone of an offence to which subsection (1) of section 26 of the Sale of Goods Act 1908 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 Courts 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.

Section 87A was inserted, as from 1 December 1983, by section 5 Armed Forces Discipline Amendment Act 1980 (1980 No 37).

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) of this subsection 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; Naval Discipline Act 1957, s 45 (UK); Army Act 1955, s 74 (UK); Air Force Act 1955, s 74 (UK)

Subsections (1) and (3) were amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman”.

Subsection (4) was repealed, as from 27 May 1988, by section 7 Armed Forces Discipline Amendment Act 1988 (1988 No 89).

Subsection (4) was inserted, as from 1 July 2004, by section 26 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) of this section shall specify the name of the person to be arrested and the offence that he is alleged to have committed.
- (3) A member of the Police may, in the execution of a warrant issued under subsection (1) of this section, arrest the person named in it.
- (4) On making any such arrest, the member of the Police 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 members of the Police and shall be valid if it purports to be issued pursuant to this section.
- (6) Any such warrant may be executed by a member of the Police 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 of this Act.

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

Subsections (3), (4), (5), and (6) were amended, as from 27 May 1988, by section 2(6) Armed Forces Discipline Amendment Act 1988 (1988 No 89) by substituting “members of the Police” for “constable or serviceman”.

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

Section 89A was inserted, as from 1 July 2004, by section 26 Visiting Forces Act 2004 (2004 No 59).

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 of this Act (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) of this section, the provost officer, member of the Armed Forces, or person exercising authority under a provost officer shall, as soon as prac-

licable, deliver the arrested person into service custody to be dealt with in accordance with this Act.

Compare: Naval Discipline Act 1957, s 95 (UK)

Subsections (1) and (2) were amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman”.

91 Arrest of person unlawfully at large

- (1) Where a member of the Police 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 member of the Police 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 member of the Police may arrest him without warrant.
- (3) On making any such arrest, the member of the Police 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)

Subsections (1), (2), and (3) were amended, as from 27 May 1988, by section 2(6) Armed Forces Discipline Amendment Act 1988 (1988 No 89) by substituting “members of the Police” for “constable or serviceman”.

Subsection (2) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Chief of Defence Force” for “Defence Council”.

92 Arrest of deserters and absentees

- (1) Where a member of the Police 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) of this section, the member of the Police 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); Naval Discipline Act 1957, s 105 (UK); Army Act 1955, s 186 (UK); Air Force Act 1955, s 186 (UK)

Subsections (1) and (2) were amended, as from 27 May 1988, by section 2(6) Armed Forces Discipline Amendment Act 1988 (1988 No 89) by substituting “member of the Police” for “constable or serviceman”.

Subsection (1) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman” where it firstly occurred, and by substituting “member” for “serviceman” where it secondly occurred.

Subsection (2) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member” for “serviceman”.

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) The provisions of subsections (3) to (7) of section 101 do not apply to any person to whom subsection (2) applies.

Section 92A was inserted, as from 1 July 2004, by section 26 Visiting Forces Act 2004 (2004 No 59).

93 Detention in civil custody of arrested persons

- (1) Notwithstanding anything to the contrary in sections 89, 89A, 91, 92, and 92A, where a member of the Police 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 of this Act 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: Naval Discipline Act 1957, s 103 (UK); Army Act 1955, ss 190, 202 (UK); Air Force Act 1955, ss 190, 202 (UK)

Subsection (1) was amended, as from 27 May 1988, by section 2(6) Armed Forces Discipline Amendment Act 1988 (1988 No 89) by substituting “members of the Police” for “constable or serviceman”.

Subsection (1) was amended, as from 1 July 2004, by section 26 Visiting Forces Act 2004 (2004 No 59) by substituting “sections 89, 89A, 91, 92, and 92A” for “sections 89, 91, and 92 of this Act”.

Subsection (2) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison manager” for “superintendent”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (2) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsections (3) and (4) were inserted, as from 1 July 2004, by section 26 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 of this Act shall apply in respect of any case to which this section applies.

(5) Except as provided in subsection (4) of this section, the provisions of this Part of this Act, 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 was inserted, as from 1 December 1983, by section 7 Armed Forces Discipline Amendment Act 1981 (1981 No 48).

Subsection (2)(b) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Force” for “Council”.

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.

Sections 93B and 93C were inserted, as from 1 July 2004, by section 26 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.

Sections 93B and 93C were inserted, as from 1 July 2004, by section 26 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 of this Act.
- (2) The powers conferred on a commanding officer by subsection (1) of this section 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) of this section, 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.

Subsection (4) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Chief of Defence Force” for “Secretary of Defence”.

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 of this Act.

Subsection (1) was amended, as from 1 January 1986, by section 22 Armed Forces Discipline Amendment Act 1985 (1985 No 199) by substituting “controlled drugs”, in both places where they occur, for “narcotics”.

Subsection (2) was amended, as from 27 May 1988, by section 8 Armed Forces Discipline Amendment Act 1988 (1988 No 89) by substituting “controlled drugs” for “narcotics”.

Subsection (2) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” and the word “member” for “serviceman”.

97 Customary powers of search not affected

The powers conferred on commanding officers by sections 95 and 96 of this Act 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) of this section, where an officer is to be searched pursuant to this Part of this Act, 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 of this Act, 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.

Subsection (2) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” and the words “other member of the Armed Forces” for “serviceman” in each case.

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 of this Act, 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 a court-martial or, as the case may be, an officer exercising summary powers 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 of this Act, any property found by a court-martial or, as the case may be, an officer exercising summary powers 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 the 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) Any order of forfeiture made under paragraph (b) of subsection (1) of this section shall be deemed, for the purposes of section 117, to be a punishment imposed on the offender and for the purposes of Part 8 of this Act to be part of the sentence imposed on the offender.

Subsection (1) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Chief of Defence Force” for “Secretary of Defence”.

In subsection (1)(b) the reference to the Crown Bank Account was substituted, as from 1 July 1989, for a reference to the Consolidated Account (as substi-

tuted for a reference to the Consolidated Revenue Account) pursuant to section 83(7) Public Finance Act 1989 (1989 No 44). Section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) formally substituted the words “Crown Bank Account” in subsection (1)(b) for “Consolidated Account”, as from 28 July 1997.

100 Duty of persons arresting

Where a person subject to this Act has been placed under arrest pursuant to this Part of this Act, 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) of this section.
- (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 8 days from the date of his arrest without an application being made for his trial by court-martial or without his being tried summarily or dealt with summarily, his commanding officer shall make a report in writing to the appropriate convening officer stating the reasons for the delay.
 - (5) The commanding officer shall make a similar report to the convening officer at the conclusion of each subsequent period of 8 days if the person is still held in service custody without an application being made for his trial by court-martial or without his being tried summarily or dealt with summarily.
 - (6) If a person remains in service custody for more than 40 days and his trial by court-martial has not commenced, the appropriate convening officer shall notify the officer immediately superior to him of the reasons why the trial has not commenced or why the person has not been tried summarily or dealt with summarily.
 - (7) On receiving a notice in accordance with subsection (6) of this section, the officer immediately superior to the convening officer may, if he thinks it is just to do so, order the release of the arrested person from custody.

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

Subsections (4), (5), and (6) were amended, as from 1 December 1983, by section 3 Armed Forces Discipline Amendment Act 1981 (1981 No 48) by inserting “tried summarily or”.

Part 5

Investigation and summary disposal of charges

102 Summary punishments

- (1) The punishments that may be imposed on offenders tried summarily or dealt with summarily under this Part of this Act are those specified in Schedule 3 to this Act.
- (2) The maximum amount of any one punishment that may be imposed on an offender tried summarily or dealt with summarily

by a commanding officer is that specified in Schedule 4 to this Act in relation to the rank of the offender as specified in that Schedule.

- (3) The maximum amount of any one punishment that may be imposed on an offender tried summarily or dealt with summarily by a superior commander is that specified in Schedule 5 to this Act in relation to the rank of the offender as specified in that Schedule.
- (4) An officer exercising summary powers who finds any person guilty of one or more offences may, if he thinks it is just to do so, impose on that person more than one of the punishments authorised by this Part of this Act:
Provided that nothing in this subsection shall limit the power of any such officer to discharge an offender without imposing any punishment on him.
- (5) If a person tried summarily or dealt with summarily in respect of 2 or more charges 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 shall be in respect of all of the offences of which he has been found guilty.
- (5A) In determining the period of any detention to be imposed an officer exercising summary powers 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.
- (5B) Subsection (5A) of this section shall not apply in respect of any time spent in custody that is unrelated to any charge that is before the officer exercising summary powers.
- (5C) In this section, the term **custody** means detention in civil custody or under close arrest; but does not include open arrest.
- (6) No officer tried summarily or dealt with summarily under this Part of this Act may be sentenced to detention.

Compare: 1950 No 39 ss 76-79; 1950 No 40 ss 76-79

Subsections (1), (2), (3), (5), and (6) were amended, as from 1 December 1983, by section 3 Armed Forces Discipline Amendment Act 1981 (1981 No 48) by inserting “tried summarily or”.

Subsections (5A), (5B), and (5C) were inserted, as from 27 May 1988, by section 9 Armed Forces Discipline Amendment Act 1988 (1988 No 89).

Subsection (5A) was amended, as from 27 September 2001, by section 4 Armed Forces Discipline Amendment Act 2001 (2001 No 55), by substituting “has

been held in custody” for “was held in custody awaiting to be tried summarily or dealt with summarily”.

Subsection (5B) was amended, as from 27 September 2001, by section 4 Armed Forces Discipline Amendment Act 2001 (2001 No 55), by substituting “that is unrelated to any charge that is before the officer exercising summary powers” for “while the offender was already serving a sentence of imprisonment or detention”.

Subsection (6) was substituted, as from 1 December 1983, by section 3(2) Armed Forces Discipline Amendment Act 1980 (1980 No 37).

103 Investigation of charges

If at any time it is alleged that any person subject to this Act has committed an offence against this Act, the commanding officer of that person shall, unless he 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 accordance with, and in the manner prescribed by, the rules of procedure; or
- (b) Cause the allegation to be referred to the appropriate civil authority for investigation.

Sections 103 to 105 were substituted, as from 1 December 1983, by section 8 Armed Forces Discipline Amendment Act 1981 (1981 No 48).

104 Disposal of charges by commanding officers

- (1) Every commanding officer shall investigate and, except in a case to which subsection (2) of this section applies, dispose of any charge before him in accordance with, and in the manner prescribed by, the rules of procedure.
- (2) Where, in the course of investigating a charge, it appears to the accused’s commanding officer that proceedings in respect of the matters to which the charge relates could be, and in the interests of the better administration of justice ought to be, taken against the accused otherwise than under this Act, he may stay proceedings on the charge under this Act for such time as may be necessary.
- (3) No commanding officer shall impose one or more of the punishments of an amount or of amounts exceeding that or those authorised by the third column of Schedule 4 to this Act unless the accused has been given the right to elect trial by court-mar-

tial in accordance with, and in the manner prescribed by, the rules of procedure.

- (4) If the accused elects to have the charge tried by court-martial and does not withdraw his election in accordance with, and in the manner prescribed by, the rules of procedure, the commanding officer shall apply to a convening officer to convene a court-martial to try the accused.
- (5) If the accused elects to be tried summarily or dealt with summarily or withdraws an election to have the charge tried by court-martial, the commanding officer may, after being satisfied that the accused committed the offence charged and recording a finding of guilty, impose on the accused, to the extent authorised by the second column of Schedule 4 to this Act, such punishment or punishments as he considers just.

Sections 103 to 105 were substituted, as from 1 December 1983, by section 8 Armed Forces Discipline Amendment Act 1981 (1981 No 48).

105 Disposal of charges by superior commanders

- (1) Every superior commander shall investigate and dispose of any charge before him in accordance with, and in the manner prescribed by, the rules of procedure.
- (2) No superior commander shall impose one or more of the punishments of an amount or of amounts exceeding that or those authorised by the third column of Schedule 5 to this Act unless the accused has been given the right to elect trial by court-martial in accordance with, and in the manner prescribed by, the rules of procedure.
- (3) If the accused elects to have the charge tried by court-martial and does not withdraw his election in accordance with, and in the manner prescribed by, the rules of procedure, the superior commander shall either—
 - (a) Apply to a convening officer to convene a court-martial to try the charge; or
 - (b) If he is himself a convening officer, convene a court-martial to try the charge.
- (4) If the accused elects to be tried summarily or dealt with summarily or withdraws an election to have the charge tried by court-martial, the superior commander may, after being satisfied that the accused committed the offence charged and

recording a finding of guilty, impose on the accused, to the extent authorised by the second column of Schedule 5 to this Act, such punishment or punishments as he considers just.

Sections 103 to 105 were substituted, as from 1 December 1983, by section 8 Armed Forces Discipline Amendment Act 1981 (1981 No 48).

106 Orders for compensation and restitution

Every commanding officer or superior commander who finds an accused guilty of an offence may, in addition to or in substitution for any punishment or punishments that he may impose on the accused, order the accused to pay compensation in accordance with section 86, or to make restitution in accordance with section 87 of this Act (with or without compensation under subsection (3) of that section), or both to pay compensation and make restitution, in the same manner and to the same extent as a court-martial:

Provided that—

- (a) If the accused has been given the right to elect to be tried by court-martial and has not so elected, he may not be ordered under this section to pay an amount by way of compensation exceeding his basic pay for a period of 28 days:
- (b) If the accused has no right to elect to be tried by court-martial, he may not be ordered to pay an amount by way of compensation exceeding his basic pay for a period of 14 days.

Section 106 was amended, as from 1 December 1983, by section 6 Armed Forces Discipline Amendment Act 1980 (1980 No 37) by substituting “, or to make restitution that section),” for “, or to make restitution in accordance with section 87 of this Act”.

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

- (1) Section 87A(1) of this Act, with any necessary modifications, shall apply to—
 - (a) Any finding of guilty made by an officer exercising summary powers under this Part of this Act, being a finding to which section 26(1) of the Sale of Goods Act 1908 applies:

- (b) Any order for compensation or restitution made by an officer exercising summary powers under section 86 or section 87 of this Act.
- (2) Without limiting section 117(9) of this Act, where the operation of any order for compensation or restitution or the operation of the provisions of section 26(1) of the Sale of Goods Act 1908 is suspended by virtue of subsection (1) of this section, the order or provisions shall not take effect if the conviction is quashed on review.

Section 106A was inserted, as from 1 December 1983, by section 7 Armed Forces Discipline Amendment Act 1980 (1980 No 37).

107 Additional limitations on powers of a commanding officer or superior commander

Without limiting the powers of the Chief of Defence Force to make orders under section 206 of this Act, orders may be issued under that section for all or any of the following purposes:

- (a) Limiting the types of offences that a commanding officer or superior commander may try summarily or deal with summarily:
- (b) Limiting the amount that a commanding officer or superior commander may, under section 106 of this Act, order an offender to pay:
- (c) Restricting, by fixing such limitations as to rank as the Chief of Defence Force considers necessary, the exercise by officers of summary powers under this Part of this Act.

Compare: 1950 No 39 s 87A; 1950 No 40 s 87A; 1959 No 26 s 8; 1959 No 27 s 8

Section 107(a) was amended, as from 1 December 1983, by section 3 Armed Forces Discipline Amendment Act 1981 (1981 No 48) by inserting “try summarily or”.

Section 107 was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Chief of Defence Force” for “Defence Council”.

Paragraph (c) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “the Chief of Defence Force” for “it”.

108 Reference back of a charge by a convening officer

- (1) Where an application for the trial of a charge by court-martial has been made to a convening officer in accordance with, and in the manner prescribed by, the rules of procedure, he may, after giving due consideration to the circumstances of the case, refer the charge back to the officer who made the application with a direction that the officer shall—
 - (a) If he is a commanding officer or a superior commander in the Navy and the accused has not elected to have the charge tried by court-martial, try the charge summarily; or
 - (b) If he is a commanding officer, a detachment commander, or a superior commander in the Army or the Air Force, further investigate the charge to such extent as he thinks fit and either dismiss it or, unless the accused has elected to have the charge tried by court-martial, deal with it summarily; or
 - (c) In any case, dismiss the charge.
- (2) On reference back of a charge under subsection (1) of this section, the officer shall dispose of the charge in accordance with the direction.
- (3) Reference back of a charge to an officer under this section shall be without prejudice to the power of the officer to prefer another charge if the convening officer so directs or if the officer thinks fit.
- (4) The convening officer shall cause the accused to be informed of any action that is taken in respect of him under this section.

Section 108 was substituted, as from 1 December 1983, by section 9 Armed Forces Discipline Amendment Act 1981 (1981 No 48).

109 Replacement of officer investigating or disposing of charge

- (1) If at any time an officer who is empowered to do so has begun to investigate, try summarily, or deal summarily with any charge, and, because of death, illness, or any other reason, he is unable to dispose of the charge, the officer who becomes empowered to act in his place may investigate, try summarily, or deal summarily with the charge, as the case may be, as if the officer whom he replaced had not commenced to do so.

- (2) Notwithstanding subsection (1) of this section, if the officer who has become incapacitated had, before his incapacity, found the accused guilty, the officer who becomes empowered to act in his place shall not so try or deal with the charge but may instead, after inquiring into the circumstances of the charge, impose a punishment or punishments or make an order under section 106 of this Act as if he had found the accused guilty himself.

Section 109 was substituted, as from 1 December 1983, by section 10 Armed Forces Discipline Amendment Act 1981 (1981 No 48).

110 Confession of desertion

- (1) Where a member of the Armed Forces signs a written confession that he has been guilty of desertion, a competent service authority may, by order dispensing with his trial by court-martial or by any subsequent order,—
- (a) Order the same amounts to be paid by way of compensation as a court-martial could order in respect of that offence; or
- (b) Impose the same forfeitures, pursuant to section 202 of this Act, as are consequential on conviction by a court-martial of that offence, except such of them as may be specified in the order.
- (2) If on any such confession, evidence of the truth or falsehood of the confession cannot then be conveniently obtained, the record of the confession, countersigned by the member's commanding officer or other officer authorised in that behalf, shall be entered in his service records; and the member shall continue to serve until he is discharged or released to a reserve force, or until legal proof can be obtained of the truth or falsehood of the confession.

Compare: 1950 No 39 s 115; 1950 No 40 s 115; Naval Discipline Act 1957, s 74 (UK); Army Act 1955, s 81 (UK); Air Force Act 1955, s 81 (UK)

Subsection (1) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting "member of the Armed Forces" for "serviceman".

Subsection (2) was amended, as from 1 December 1983, by section 11 Armed Forces Discipline Amendment Act 1981 (1981 No 48) by substituting "released" for "transferred".

Subsection (2) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member’s” and “member” for “serviceman’s” and “serviceman”.

111 Reduction in rank

All the provisions of section 84 of this Act, so far as they are applicable and with any necessary modifications, shall apply in respect of any reduction in rank or stay of seniority imposed on any person tried summarily or dealt with summarily under this Part of this Act.

Section 111 was amended, as from 1 December 1983, by section 3 Armed Forces Discipline Amendment Act 1981 (1981 No 48) by inserting “tried summarily or”.

112 Fines

All the provisions of subsections (1) and (2) of section 85 of this Act, so far as they are applicable, shall apply in respect of any fine imposed on any person found guilty of an offence tried summarily or dealt with summarily under this Part of this Act.

Section 112 was amended, as from 1 December 1983, by section 3 Armed Forces Discipline Amendment Act 1981 (1981 No 48) by inserting “tried summarily or”.

113 Chief of Defence Force may make orders in respect of certain summary punishments

Without limiting the powers of the Chief of Defence Force to issue orders under section 206 of this Act, orders may be issued under that section determining the nature and content of the punishments of stay of seniority, confinement to ship or barracks, extra work and drill, stoppage of leave, stoppage of grog, and extra duty.

Compare: Naval Discipline Act 1957, s 43(1)(m) (UK)

Section 113 was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Chief of Defence Force” for “Defence Council”.

114 Powers and functions of a detachment commander

Subject to such limitations or restrictions as may be imposed by or in accordance with orders of the Chief of Defence Force, a detachment commander may exercise all or any of

the powers conferred on commanding officers in the same service by or in accordance with this Part of this Act.

Compare: 1950 No 39 s 80; 1950 No 40 s 80; Naval Discipline Act 1957, s 49 (UK)

Section 114 was amended, as from 1 December 1983, by section 12 Armed Forces Discipline Amendment Act 1981 (1981 No 48) by substituting “in the same service this Part of this Act” for “by this Part of this Act”.

Section 114 was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Chief of Defence Force” for “Defence Council”.

115 Delegation of powers by commanding officers

- (1) A commanding officer may, by notice in writing under his hand or by notification in orders, delegate all or any of his powers to investigate and try charges summarily or deal summarily with charges to such officer or class of officers under his command as may be specified in the notice or orders.
- (2) No officer to whom powers have been delegated under subsection (1) of this section may try or deal with any charge in respect of 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, nor may any such officer impose a punishment greater than that authorised by the third column of Schedule 4 to this Act in relation to the rank of the member charged.
- (3) The exercise of any powers delegated to any officer under this section shall be subject to such limitations and restrictions (if any) as may from time to time be specified in orders issued by the Chief of Defence Force and, so far as consistent with any such orders, in any written notification or orders made from time to time by the delegating commanding officer.
- (4) Subject to the provisions of this section, any officer to whom powers have been delegated under this section may exercise any of those powers in the same manner and to the same extent as if they had been conferred on him directly by this Act and not by delegation.
- (4A) Where an officer to whom powers have been delegated under subsection (1) of this section tries a charge summarily and finds the accused guilty he may, in accordance with, and in the manner prescribed by, the rules of procedure, instead of im-

posing any punishment or punishments, remand the accused to his commanding officer to enable the commanding officer, in the manner prescribed by the rules of procedure, to impose a punishment or punishments or make an order under section 106 of this Act as if the commanding officer had found the accused guilty himself.

- (4B) Where an officer to whom powers have been delegated under this section decides to remand an accused found guilty on any charge to a commanding officer under subsection (4A) of this section, the officer shall also,—
- (a) Where the accused has been found guilty on any other charge arising from the same incident or series of incidents, remand the accused to the commanding officer on all other such charges:
 - (b) Where any other accused is found guilty on any charge arising from the same incident or series of incidents, remand that other accused to the commanding officer on all such charges.
- (5) Every officer purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (6) No delegation made under this section shall prevent a commanding officer from exercising his powers to investigate and try charges summarily or deal summarily with charges not otherwise disposed of.
- (7) Any power delegated under this section may at any time be revoked by the commanding officer of the officer to whom the power was delegated.

Compare: 1950 No 39 ss 81, 82; 1950 No 40 Ss 81, 82; Naval Discipline Act 1957, s 49(5) (UK); Army Act 1955, s 82(3) (UK); Air Force Act 1955, s 82(3) (UK)

Subsections (1) and (6) were amended, as from 1 December 1983, by section 3 Armed Forces Discipline Amendment Act 1981 (1981 No 48) by inserting “try charges summarily or”. Subs (2) was amended by the same provision by inserting “try or”.

Subsection (2) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” and the word “member” for “serviceman”.

Subsection (4A) was inserted, as from 1 December 1983, by section 13 Armed Forces Discipline Amendment Act 1981 (1981 No 48).

Subsections (4B) was inserted, as from 27 May 1988, by section 10(1) Armed Forces Discipline Amendment Act 1988 (1988 No 89).

Subsection (5) was amended, as from 27 May 1988, by section 10(2) Armed Forces Discipline Amendment Act 1988 (1988 No 29) by omitting “such”.

115A Punishments of detention may be suspended

Subject to sections 181 to 183 of this Act, if an officer exercising summary powers, other than an officer to whom powers have been delegated under section 115 of this Act, imposes a punishment of detention, he may suspend the operation of the whole or any part of the punishment.

Section 115A was inserted, as from 1 December 1983, by section 8 Armed Forces Discipline Amendment Act 1980 (1980 NO 37).

116 Reduction of punishments

- (1) When an officer exercising summary powers has imposed a punishment or a combination of punishments for an offence against this Act, he may not subsequently increase the punishment for that offence, but he may reduce it at any time before it has been completely carried out.
- (2) A commanding officer may reduce, but not increase, any punishment imposed by a detachment commander or by an officer to whom powers have been delegated under section 115 of this Act.

Compare: 1950 No 39 ss 83, 84; 1950 No 40 ss 83, 84

Review of summary proceedings

117 Summary findings and punishments to be reviewed by reviewing authorities

- (1) For the purposes of this section, the term **reviewing authority**, in relation to any member of the Armed Forces found guilty of an offence under this Part of this Act, means any of the following:
 - (a) The Board of Review constituted under section 151 of this Act:
 - (b) An officer (including an officer of an allied force), not being the member’s commanding officer, but superior in command to the officer who tried or dealt with the offence:

- (c) An officer (including an officer of an allied force), not inferior in rank to the officer who tried or dealt with the offence, appointed by the Chief of any Service to be a reviewing authority in respect of members of the Armed Forces (including members serving in a joint force) under the command of that Chief of Service:
 - (d) An officer (including an officer of an allied force), not inferior in rank to the officer who tried or dealt with the offence, appointed by the Chief of Defence Force to be a reviewing authority in respect of members of the Armed Forces serving in a joint force.
- (2) Where any member of the Armed Forces tried summarily or dealt with summarily is found guilty of an offence against this Act, the finding and any punishment imposed on him may be reviewed—
- (a) By a reviewing authority on application made by him or on his behalf within 6 months after the date of the finding; or
 - (b) By a reviewing authority within the meaning of paragraph (b) or paragraph (c) or paragraph (d) of subsection (1) of this section at any time on its own initiative without any such application; or
 - (c) By the Board of Review on being referred to the Board at any time by the Chief of Defence Force or the Chief of any Service.
- (3) Where any reviewing authority reviews any finding or punishment, it shall, after considering the legality and justice of the finding and punishment, either—
- (a) Direct that the finding and punishment shall stand; or
 - (b) Exercise such of the powers conferred by subsections (4) to (11) of this section as the case may, in the opinion of the authority, require.
- (4) Where on review it appears to a reviewing authority that a finding of guilty was invalid or that, as a result of a wrong decision on a question of law or any other occurrence during the proceedings, the member of the Armed Forces whose case is being reviewed suffered a substantial miscarriage of justice, the authority shall quash the finding.
- (5) If at any time it appears to a reviewing authority that—

- (a) There is fresh evidence which is credible and relevant to the offence of which a member of the Armed Forces was found guilty after being tried summarily or dealt with summarily under this Part of this Act; and
 - (b) The evidence was not adduced before the officer who tried or dealt with the member, but there is a reasonable explanation as to the failure to adduce it; and
 - (c) The interests of justice so require—
the reviewing authority may receive that evidence and, if it considers that the finding of guilty cannot be supported after due regard has been given to that evidence, it shall quash the finding.
- (6) If a reviewing authority quashes a finding under subsection (4) or subsection (5) of this section, the punishment imposed in respect of that finding shall thereupon be deemed to be quashed.
- (7) Where—
- (a) A punishment or combination of punishments was imposed not only in respect of a finding that is quashed under subsection (3) of this section but also in respect of a finding that is not so quashed, and it appears to a reviewing authority that, in the circumstances, that punishment or combination of punishments is too severe; or
 - (b) It appears to a reviewing authority in any other circumstances that the punishment or combination of punishments originally imposed is too severe—
the reviewing authority may either quash the punishment or combination of punishments, or vary the punishment or combination of punishments by substituting for the punishment or combination of punishments originally imposed any punishment or combination of punishments which could lawfully have been imposed by the officer who tried the case summarily or dealt summarily with the case and which is less severe than the punishment or combination of punishments imposed by that officer.
- (8) Where a punishment or any one of a combination of punishments originally imposed is invalid, the reviewing authority shall quash the punishment and may substitute for the invalid punishment any punishment which could lawfully have been

imposed by the officer who tried the case summarily or dealt summarily with the case:

Provided that the authority shall not impose any punishment more severe than that imposed by the officer who dealt with the case summarily.

- (8A) If a reviewing authority substitutes a punishment pursuant to subsection (8) of this section, the substituted punishment shall, subject to section 178 of this Act, be deemed for all purposes to be the punishment imposed by the officer who tried the case summarily or dealt summarily with the case.
- (8B) Where an officer exercising summary powers, other than an officer to whom powers have been delegated under section 115 of this Act, has imposed a punishment of detention, a reviewing authority may, subject to sections 181 to 183 of this Act, suspend the whole or any part of the punishment.
- (9) Where any officer exercising summary powers has made an order under section 106 of this Act, a reviewing authority may, on reviewing the order—
 - (a) Direct that the order shall stand; or
 - (b) Quash the order; or
 - (c) In the case of an order requiring the payment of compensation, vary the order by requiring a reduced amount of compensation to be paid, or by requiring an increased amount of compensation to be paid (subject to the limitation imposed by section 106 of this Act in relation to an officer trying a charge summarily or dealing with a charge summarily), in which case the order as varied shall take effect accordingly; or
 - (d) In the case of an order requiring restitution of property to be made, vary the order by requiring property additional to or different from that specified in the order to be restored to the person who appears to the authority to be entitled to it, or, if the authority thinks that the person to whom property is to be restored by an order is not entitled to the whole of it, vary the order by excluding the part to which he does not appear to be entitled; and the order as varied shall take effect accordingly.
- (10) A reviewing authority may order any member of the Armed Forces whose case is being reviewed by it to pay compen-

sation under section 86 of this Act, or to make restitution of property under section 87 of this Act (with or without compensation under subsection (3) of that section), or both to pay compensation and make restitution, in the same manner and to the same extent as a court-martial, but subject to the limitation applicable under section 106 of this Act in respect of the officer who tried the offence summarily or dealt summarily with the offence, notwithstanding that that officer has not made such an order.

- (11) Where pursuant to this section a finding is quashed or a punishment is quashed or varied or suspended or an order under section 86 or section 87 of this Act is directed to stand or is quashed or varied, the reviewing authority shall record particulars of the action taken, together with a statement of the reasons for it, and shall then, by notice in writing, notify those particulars and reasons to the officer who tried the case summarily or dealt summarily with the case and to the person so tried or dealt with.
- (12) Nothing in this section shall derogate from the provisions of section 49 of the Defence Act 1990.

Compare: 1950 No 39 s 87; 1950 No 40 s 87; Army Act 1955, s 115 (UK); Air Force Act 1955, s 115 (UK)

Subsection (1) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28), by substituting “member of the Armed Forces” for “serviceman”.

Subsection (1)(b) was amended, as from 1 December 1983, by section 3 Armed Forces Discipline Amendment Act 1981 (1981 No 48) by inserting “tried or”.

Subsection (1)(b) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member’s” for “serviceman’s”.

Section 117(1)(c): amended, on 20 September 2007, by section 4 of the Armed Forces Discipline Amendment Act 2007 (2007 No 40).

Subsection (1)(c) was amended, as from 1 December 1983, by section 3 Armed Forces Discipline Amendment Act 1981 (1981 No 48) by inserting “tried or”.

Subsection (1)(c) was amended as from 27 May 1988, by section 11(1) Armed Forces Discipline Amendment Act 1988 (1988 No 89) by inserting “(including servicemen serving in a joint force)”.

Subsection (1)(c) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “members of the Armed Forces (including members)” for “servicemen (including servicemen)”.

Subsection (1)(d) was inserted, as from 27 May 1988, by section 11(2) Armed Forces Discipline Amendment Act 1988 (1988 No 89).

Subsection (1)(d) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Force” and “member of the Armed Forces” for “Staff” and “servicemen”.

Subsection (2) was substituted, as from 1 January 1986, by section 23(1) Armed Forces Discipline Amendment Act 1985 (1985 No 199) and was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman”.

Subsection (2)(b) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by inserting “or paragraph (d)”.

Section 117(2)(c): amended, on 20 September 2007, by section 4 of the Armed Forces Discipline Amendment Act 2007 (2007 No 40).

Subsection (2)(c) was substituted, as from 27 May 1988, by section 11(3) Armed Forces Discipline Amendment Act 1988 (1988 No 89).

Subsection (2)(c) was substituted, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28).

Subsection (4) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman”.

Subsection (5)(a) was amended, as from 1 December 1983, by section 3 Armed Forces Discipline Amendment Act 1981 (1981 No 48) by inserting “tried summarily or”.

Subsection (5)(b) was amended, as from 1 December 1983, by section 3 Armed Forces Discipline Amendment Act 1981 (1981 No 48) by inserting “tried or”.

Subsection (5)(a) and (b) were amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman”, and by substituting “member” for “serviceman”, respectively.

Subsections (7) and (8) were amended, as from 1 December 1983, by section 3 Armed Forces Discipline Amendment Act 1981 (1981 No 48) by inserting “tried the case summarily or”.

The original subsection (8A) was inserted, as from 1 December 1983, by section 9(1) Armed Forces Discipline Amendment Act 1980 (1980 No 37).

A second subsection (8A) was inserted, as from 1 January 1985, by section 23(2) Armed Forces Discipline Amendment Act 1985 (1985 No 199). This subsection was renumbered (8B), as from 1 January 1985, by section 23(3) Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Subsection (9)(c) was amended, as from 1 December 1983, by section 14 Armed Forces Discipline Amendment Act 1981 (1981 No 48) by substituting “section 106” for “section 86”, and the words “trying a charge summarily” were inserted, as from 1 December 1983, by section 3 Armed Forces Discipline Amendment Act 1981 (1981 No 48).

Subsection (10) was amended, as from 1 December 1983, by section 9(2) Armed Forces Discipline Amendment Act 1980 (1980 No 37) by substituting “, or to make restitution and make restitution,” for “and to make restitution of property under section 87 of this Act”.

Subsection (10) was amended, as from 1 December 1983, by section 3 Armed Forces Discipline Amendment Act 1981 (1981 No 48) by inserting “tried the offence summarily or”.

Subsection (10) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman”.

Subsection (11) was amended, as from 1 December 1983, by section 9(3) Armed Forces Discipline Amendment Act 1980 (1980 No 37) by inserting “or suspended”.

Subsection (11) was amended, as from 1 December 1983, by section 3 Armed Forces Discipline Amendment Act 1981 (1981 No 48) by inserting “tried the case summarily or” and the words “tried or”.

Subsection (12) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “section 49 of the Defence Act 1990” for “section 50 of the Defence Act 1971”.

Part 6 Courts-martial

Constitution of courts-martial

118 General courts-martial and restricted courts-martial

- (1) Subject to the provisions of this section, the jurisdiction conferred on courts-martial by this Act may be exercised either by a general court-martial or by a restricted court-martial.
- (2) A general court-martial may try a person subject to this Act who is charged with having committed an offence against this Act, and, if that person is convicted of the offence, may sentence him to any punishment not exceeding that prescribed for the offence by this Act.
- (3) Except as provided in subsection (4) of this section, a restricted court-martial may not—
 - (a) Try any officer who is charged with having committed an offence against this Act; or
 - (b) Sentence to imprisonment, dismissal, or detention any warrant officer convicted of an offence against this Act; or
 - (c) Sentence any person convicted of an offence against this Act to imprisonment for life or for a term exceeding 2 years.
- (4) If—

- (a) Any person charged with an offence against this Act is on active service; and
- (b) The appropriate convening officer certifies in writing that, in his opinion, it is not practicable without serious detriment to the Armed Forces to convene a general court-martial—

that officer may convene a restricted court-martial to try the alleged offence, in which event the restricted court-martial shall have the same powers as a general court-martial with respect to trial of the charge and punishment of the offence if the person charged is convicted.

Compare: Naval Discipline Act 1957, s 50 (UK); Army Act 1955, s 84 (UK); Air Force Act 1955, s 84 (UK)

Subsection (3)(c) was amended, as from 26 December 1989, by section 5(8) Abolition of the Death Penalty Act 1989 (1989 No 119) by omitting “to death or”.

119 Authority to convene courts-martial

- (1) A general court-martial may be convened by order of—
 - (a) The Governor-General or an officer appointed by him for the purpose; or
 - (b) The Chief of Defence Force, the Chief of Navy, the Chief of Army, or the Chief of Air Force; or
 - (c) An officer authorised by the Chief of Defence Force, the Chief of Navy, the Chief of Army, or the Chief of Air Force, in such circumstances and subject to such conditions as may be specified in a warrant issued to the officer for the purpose; or
 - (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.
- (1A) Nothing in subsection (1) of this section shall authorise any person other than the Governor-General to convene a general court-martial in respect of a Chief of any Service.
- (2) A restricted court-martial may be convened by order of—
 - (a) An officer authorised to convene general courts-martial; or

- (b) An officer authorised by the Chief of Defence Force, the Chief of Navy, the Chief of Army, or the Chief of Air Force, in such circumstances and subject to such conditions as may be specified in a warrant issued to the officer for the purpose; or
- (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.

Compare: 1950 No 39 ss 103, 104; 1950 No 40 ss 103, 104; Naval Discipline Act 1957, s 53 (UK); Army Act 1955, s 86 (UK); Air Force Act 1955, s 86 (UK)

Subsection (1)(b) was amended, as from 27 May 1988, by section 12(1) Armed Forces Discipline Amendment Act 1988 (1988 No 89) by inserting “The Chief of Defence Staff,”.

Subsection (1)(b) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Defence Force” for “Defence Staff”.

Subsection (1)(c) was amended, as from 27 May 1988, by section 12(2) Armed Forces Discipline Amendment Act 1988 (1988 No 89) by inserting “the Chief of Defence Staff,”.

Subsection (1)(c) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Defence Force” for “Defence Staff”.

Subsection (1)(d) was substituted, as from 1 July 2004, by section 26 Visiting Forces Act 2004 (2004 No 59).

Section 119(1A): amended, on 20 September 2007, by section 4 of the Armed Forces Discipline Amendment Act 2007 (2007 No 40).

Subsection (1A) was inserted, as from 27 May 1988, by section 12(3) Armed Forces Discipline Amendment Act 1988 (1988 No 89).

Subsection (2)(b) was amended, as from 27 May 1988, by section 12(4) Armed Forces Discipline Amendment Act 1988 (1988 No 89) by inserting “the Chief of Defence Staff,”.

Subsection (2)(b) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Defence Force” for “Defence Staff”.

Subsection (2)(c) was substituted, as from 1 July 2004, by section 26 Visiting Forces Act 2004 (2004 No 59).

Section 119 was amended, as from 17 May 2005, by section 4 Armed Forces Discipline Amendment Act 2005 (2005 No 46) by substituting “the Chief of Navy, the Chief of Army, or the Chief of Air Force” for “the Chief of Naval Staff, the Chief of General Staff, or the Chief of Air Staff” wherever they occur.

120 Constitution of general courts-martial

- (1) Subject to the provisions of this Part of this Act, a general court-martial shall consist of not fewer than 5 members.
- (2) In the order convening the general court-martial, the convening officer shall appoint an officer to be its president and 4 or more officers to be its other members.
- (3) No officer shall be eligible to be appointed as a member of a general court-martial unless he has served in the Armed Forces as an officer for one or more periods totalling not less than 3 years.
- (4) An officer shall not be eligible to be appointed a president of a general court-martial if his rank is below that of captain in the Navy, or colonel or group captain:
Provided that, if the accused holds a rank below that of commander, lieutenant-colonel, or wing commander, and the convening officer is of the opinion that a captain, colonel, or group captain, as the case may be, cannot, having due regard to the exigencies of the service, be appointed as president, an officer holding the rank of commander, lieutenant-colonel, or wing commander may be appointed:
Provided also that in no event shall an officer who holds a rank below that of the accused be eligible to be appointed as president.
- (5) If the accused holds a rank not below that of commodore, brigadier, or air commodore, each of the members of the court, other than the president, shall be holders of a rank not below that of captain in the Navy, colonel, or group captain, as the case may require.
- (6) If the accused holds the rank of captain in the Navy, or the rank of colonel or group captain, each of the members of the court, other than the president, shall be holders of a rank not below that of commander, lieutenant-colonel, or wing commander, as the case may require.
- (7) If the accused holds the rank of commander, lieutenant-colonel, wing commander, or a lower rank, at least 2 of the members of the court, other than the president, shall be holders of a rank not below that of the accused.

- (8) If the accused is a woman, at least one member of the court shall be a woman officer.

Compare: 1950 No 39 s 105; 1950 No 40 s 105; 1954 No 53 s 30; Naval Discipline Act 1957, s 54 (UK); Army Act 1955, s 87 (UK); Air Force Act 1955, s 87 (UK)

Subsection (3) was amended, as from 27 May 1988, by section 14(2) Armed Forces Discipline Amendment Act 1988 (1988 No 89) by omitting “Subject to section 124 of this Act,”.

Subsection (7) was substituted, as from 27 May 1988, by section 13 Armed Forces Discipline Amendment Act 1988 (1988 No 89).

121 Constitution of restricted courts-martial

- (1) Subject to the provisions of this Part of this Act, a restricted court-martial shall consist of not fewer than 3 members.
- (2) In the order convening the restricted court-martial, the convening officer shall appoint an officer to be its president and 2 or more other officers to be its other members.
- (3) No officer shall be eligible to be appointed as a member of a restricted court-martial unless he has served in the Armed Forces as an officer for one or more periods totalling not less than 2 years.
- (4) An officer shall not be eligible to be appointed as president of a restricted court-martial if his rank is below that of lieutenant-commander, major, or squadron-leader.
- (5) If a restricted court-martial is convened pursuant to subsection (4) of section 118 of this Act to try an accused who is an officer, the president and a majority of the members of the court shall be holders of a rank not below that of the accused.
- (6) If the accused is a woman, at least one member of the court shall be a woman officer.

Compare: 1950 No 39 s 105; 1950 No 40 s 105; Army Act 1955, s 88 (UK); Air Force Act 1955, s 88 (UK)

Subsection (3) was amended, as from 27 May 1988, by section 14(2) Armed Forces Discipline Amendment Act 1988 (1988) by omitting “Subject to section 124 of this Act,”.

122 Disqualifications for membership of court-martial or appointment as judge advocate

A person is disqualified from serving as a member of a court-martial or from acting as judge advocate at a court-martial if—

- (a) He is the person who convened the court, or a previous court which tried the accused in respect of the same offence; or
- (b) At any time between the date on which the accused was charged and the date of the trial, he has been the commanding officer of the accused; or
- (c) He is the prosecutor or a witness for the prosecution; or
- (d) He has investigated the charge against the accused or was the officer who made the preliminary inquiry into the case; or
- (e) He was a member or judge advocate of a previous court which tried the accused in respect of the same offence; or
- (f) He has taken down a summary of evidence, or made an abstract of evidence, with respect to the matters on which the charge is founded; or
- (g) He has held, or was one of the persons holding, an inquiry under this Act into matters relating to the subject matter of the charge against the accused; or
- (h) He has a personal interest in the case.

Compare: 1950 No 39 s 107; 1950 No 40 s 107; Naval Discipline Act 1957, s 54 (UK); Army Act 1955, s 90(1), (2) (UK); Air Force Act 1955, s 90(1), (2) (UK)

123 Additional factors governing the composition of courts-martial

- (1) The officers appointed as members of a court-martial shall not all be appointed from the same ship or unit as the accused, nor shall they be drawn exclusively from one ship or unit, unless the convening officer states in the order convening the court that, in his opinion, it is not reasonably practicable to appoint officers from different ships or units.
- (2) In the case of a court-martial convened to try a person who belongs to—
 - (a) A part of the Navy other than the Royal New Zealand Navy; or
 - (b) A part of the Army other than the Regular Force; or
 - (c) A part of the Air Force other than the Regular Air Force—

at least one member of the court shall belong to the part of the Navy, the Army, or the Air Force, as the case may be, to which the accused belongs, unless the convening officer states in the order convening the court that, in his opinion, it is not reasonably practicable to appoint such a member.

Compare: Naval Discipline Act 1955, s 54(4) (UK); Army Act 1955, s 90(3) (UK); Air Force Act 1955, s 90(3) (UK)

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 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.

Section 124 was substituted, as from 27 May 1988, by section 14(1) Armed Forces Discipline Amendment Act 1988 (1988 No 89).

Section 124 was substituted, as from 1 July 2004, by section 26 Visiting Forces Act 2004 (2004 No 59).

125 Recording of opinion of convening officer

Whenever pursuant to section 118, section 120, section 123, or section 124 of this Act a convening officer exercises a power

that is dependent on his forming an opinion, he shall include in the order convening the court-martial a statement that he has formed such an opinion; and that statement is for all purposes conclusive.

Compare: 1950 No 39 s 105(8), (9); 1950 No 40 s 105(8), (9); Army Act 1955, s 90(4) (UK); Air Force Act 1955, s 90(4) (UK)

126 Waiting members

- (1) A convening officer may, in the order convening a court-martial, appoint such officers to act as waiting members of the court as he thinks necessary.
- (2) Notwithstanding the provisions of subsection (1) of this section, the convening officer may authorise any other officer to appoint officers under his command to be waiting members of the court.
- (3) If a member of a court-martial, other than the president,—
 - (a) Dies before the beginning of the trial; or
 - (b) When the court assembles, is absent or is found to be ineligible or disqualified; or
 - (c) Retires from the court as the result of a challenge—and a waiting member who is eligible to be and not disqualified from being a member of the court is in attendance, the president of the court may appoint that waiting member to fill the vacancy.
- (4) If—
 - (a) The president of a court-martial—
 - (i) Dies before the beginning of the trial; or
 - (ii) When the court assembles, is absent or is found to be ineligible or disqualified; or
 - (iii) Retires from the court as the result of a challenge; or
 - (b) A waiting member who is eligible and not disqualified is not available to fill any vacancy arising under subsection (3) of this section and failure to fill the vacancy would reduce the number of members to a number below that prescribed in section 120 or section 121 of this Act, as the case may require,—the court shall, without proceeding further with the trial, report the matter to the convening officer and, without limiting his

power to dissolve the court and convene a new court-martial to try the accused, that officer may appoint an officer who is eligible and not disqualified to fill the vacancy.

Compare: Naval Discipline Act 1957, s 54(3) (UK)

127 Judge advocate

- (1) Subject to subsection (2) of this section, a convening officer shall make such arrangements as may be necessary to ensure that a suitably qualified person is appointed by or on behalf of the Judge Advocate General to act as judge advocate at every court-martial which he convenes.
- (2) Every person appointed as a judge advocate shall hold such professional legal qualifications as may be prescribed in the rules of procedure.

Compare: Naval Discipline Act 1957, s 55(1) (UK); Army Act 1955, s 139 (UK); Air Force Act 1955, s 139 (UK)

Sittings, etc, of courts-martial

128 Sittings and adjournments of courts-martial

- (1) A court-martial under this Act may sit either in New Zealand or elsewhere.
- (2) Every court-martial shall assemble on the date and at the time and place determined by—
 - (a) The convening officer in the order convening the court;
or
 - (b) An officer authorised by the convening officer to determine those matters.
- (3) Without limiting the provisions of this Act relating to the adjournment of court-martial proceedings, a court-martial may adjourn its proceedings from time to time and from place to place if it considers that it is necessary or desirable to do so in the interests of justice.
- (4) A court-martial may, where it considers it necessary, view any place.

Compare: 1950 No 39 ss 110(6), (7), 128; 1950 No 40 ss 110(6), (7), 128; Naval Discipline Act 1957, s 56 (UK); Army Act 1955, s 91 (UK); Air Force Act 1955, s 91 (UK)

129 Challenges by the accused

- (1) Before the members are sworn in accordance with section 130 of this Act, an accused shall be given an opportunity to object to any member of the court on the grounds that he—
 - (a) Might not act, or is not in a position to act, impartially;
or
 - (b) Is for any other reason ineligible or disqualified.
- (2) For the purpose of enabling the accused to avail himself of the right conferred by subsection (1) of this section, the names of the members of the court shall be read over in his presence before they are sworn, and he shall be asked whether or not if he objects to any of them.
- (3) Every objection made by an accused to any member under this section shall be considered by the other members of the court in accordance with the rules of procedure.
- (4) If an objection is made to the president or any other member of the court and is allowed by not less than one-half of the members other than the member to whom objection has been made, that member shall retire.
- (5) If, pursuant to section 126 of this Act, an officer is appointed to fill a vacancy created under this section, the accused shall be given an opportunity to object to that officer, and subsections (1) to (4) of this section shall apply as if he had been designated as a member of the court in the convening order.
- (6) Before the members of the court are sworn, the accused may raise an objection to the constitution of the court; and, if it appears to a majority of the members that the objection is well founded, the court shall adjourn and report the objection to the convening officer who, on receipt of the report, may take such action as may be necessary to rectify any defect in the court's constitution.
- (7) An accused shall have no right to object to the judge advocate or the prosecutor or to any officer who attends the trial for the purpose of being instructed in court-martial procedure.

- (8) After the members of a court-martial have been sworn, no question shall be raised in the proceedings of the court as to its constitution:

Provided that nothing in this subsection shall limit any power of the Courts Martial Appeal Court or of a reviewing authority in any case where it appears to that Court or to the authority, as the case may be, that a substantial miscarriage of justice has occurred because the court-martial was incorrectly constituted.

Compare: 1950 No 39 s 108; 1950 No 40 s 108; Naval Discipline Act 1957, s 59 (UK); Army Act 1955, s 92 (UK); Air Force Act 1955, s 92 (UK)

130 Administration of oaths

- (1) An oath in the prescribed form shall be administered to—
- (a) Every member of a court-martial:
 - (b) The judge advocate:
 - (c) Every officer under instruction at the court:
 - (d) Every interpreter attending the court:
 - (e) Every shorthand writer or other person appointed to attend the court for the purposes of recording or transcribing its proceedings.
- (2) Every witness before a court-martial shall be examined on oath administered in the prescribed form:
- Provided that where a child called as a witness does not in the opinion of the court understand the nature of an oath, his evidence may be received, though not given on oath, if in the opinion of the court he has sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.
- (3) If any person referred to in subsection (1) or subsection (2) of this section objects to being sworn or it is not reasonably practicable to administer an oath to him in a manner appropriate to his religious belief, he shall be permitted to make a solemn affirmation instead of swearing an oath.
- (4) The making of an affirmation under subsection (3) of this section shall have the same force and effect and shall entail the same consequences as the taking of an oath.

- (5) Every oath or affirmation required to be administered under this Act shall be administered in accordance with the rules of procedure.

Compare: 1950 No 39 s 109; 1950 No 40 s 109; Naval Discipline Act 1957, s 60(3) (UK); Army Act 1955, ss 93, 102 (UK); Air Force Act 1955, ss 93, 102 (UK)

131 Courts-martial to sit in open court

- (1) Subject to the succeeding provisions of this section, and to section 131A of this Act, a court-martial shall sit in open court and in the presence of the accused.

- (2) If at any time it appears to a convening officer or court-martial that—

- (a) Any statement may be made or evidence given in the course of the proceedings which might lead to the disclosure of information that would or might be directly or indirectly useful to the enemy or any foreign country or would or might be otherwise harmful to New Zealand; or
- (b) It is necessary in the interests of justice to do so; or
- (c) It is desirable in the interests of public morality to do so; or
- (d) It is necessary for the protection of the reputation of any victim of any alleged sexual offence or offence of extortion to do so,—

the convening officer or court-martial may make any one or more of the orders specified in subsection (3) of this section.

- (3) The orders that may be made under subsection (2) of this section are as follows:

- (a) An order forbidding publication of any report or account of the whole or any part of—
- (i) The evidence adduced; or
- (ii) The submissions made:
- (b) An order forbidding the publication of the name of any witness or witnesses, or any name or particulars likely to lead to the identification of the witness or witnesses:
- (c) Subject to subsection (4) of this section, an order excluding all or any persons other than the following:
- (i) Any member of the court:

- (ii) The judge advocate:
 - (iii) Any officer under instruction:
 - (iv) The prosecutor:
 - (v) The accused and any escort:
 - (vi) Any barrister or solicitor or member of the Armed Forces instructed by the accused to act on the accused's behalf:
 - (vii) The clerk of the court and the court orderly:
 - (viii) Any person who is for the time being responsible for recording the proceedings:
 - (ix) Any interpreter required in the proceedings:
 - (x) Any person expressly permitted by the convening officer or the court to be present.
- (4) The power conferred by paragraph (c) of subsection (3) of this section shall not, except where the interests of security or defence so require, be exercised so as to exclude any accredited news media reporter.
- (5) An order specified in paragraph (a) or paragraph (b) of subsection (3), or made under section 139(1) or section 140 of the Criminal Justice Act 1985 as applied by subsection (9) of this section,—
- (a) may be made by a convening officer or court-martial 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—
 - (i) the convening officer or court-martial at any time before the trial is concluded:
 - (ii) any reviewing authority (within the meaning of paragraph (b) or paragraph (c) of section 151(1) of this Act) at any time; and
 - (c) if it is made permanently, may be reviewed by—
 - (i) the convening officer or court-martial at any time before the trial is concluded:
 - (ii) any such reviewing authority at any time.
- (6) A court-martial shall hold its proceedings in closed court while deliberating on its finding or sentence on any charge.
- (7) A court-martial may hold its proceedings in closed court on any other deliberation among the members.

- (8) Where a court-martial holds its proceedings in closed court, all persons, except members of the court and such other persons as may be authorised by the rules of procedure, shall be excluded from the place where the court is deliberating.
- (9) Without limiting any of the foregoing provisions of this section, sections 139 to 141 of the Criminal Justice Act 1985, so far as they are applicable and with any necessary modifications, shall apply to proceedings under this Act and to proceedings on appeal from any decision under this Act.

Section 131 was substituted, as from 1 January 1986, section 24(1) Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Subsection (1) was amended, as from 27 May 1988, by section 15(1) Armed Forces Discipline Amendment Act 1988 (1988 No 89) by inserting “and to section 131A of this Act,”.

Subsection (3)(c) was substituted, as from 27 May 1988, by section 15(2) Armed Forces Discipline Amendment Act 1988 (1988 No 89).

Subsection (3)(c) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman”.

Subsection (5) was substituted, as from 27 September 2001, by section 5 Armed Forces Discipline Amendment Act 2001 (2001 No 55).

131A Special provisions in cases involving sexual violation

- (1) For the purposes of this section, **case involving sexual violation** means any proceedings under this Act in which a person is charged with, or to be sentenced for, an offence against—
- (a) Section 74 of this Act, where the corresponding civil offence is—
- (i) Sexual violation:
 - (ii) Attempted sexual violation:
 - (iii) Assault with intent to commit sexual violation:
 - (iv) An offence against section 129A of the Crimes Act 1961 (sexual connection with consent induced by certain threats):
 - (v) An offence against section 142A of the Crimes Act 1961 (compelling indecent act with animal):
- (b) Section 75 of this Act, where the offence is one of aiding, abetting, inciting, counselling, or procuring, or conspiring with, any person to commit any offence referred to in any of subparagraphs (i) to (v) of paragraph (a) of this subsection.

- (2) While the complainant in a case involving sexual violation is giving oral evidence (whether in chief or under cross-examination or on re-examination), no person shall be present except the following:
 - (a) Members of the court-martial:
 - (b) The judge advocate:
 - (c) Any officer under instruction:
 - (d) The prosecutor:
 - (e) The accused and any escort:
 - (f) Any barrister or solicitor or member of the Armed Forces instructed by the accused to act on the accused's behalf:
 - (g) The clerk of the court and the court orderly:
 - (h) Any person who is for the time being responsible for recording the proceedings:
 - (i) Any interpreter required in the proceedings:
 - (j) Any accredited news media reporter:
 - (k) Any person whose presence is requested by the complainant:
 - (l) Any person expressly permitted by the convening officer or the court to be present.
- (3) Before the complainant in a case involving sexual violation commences to give evidence, the president shall—
 - (a) Ensure that no person other than one referred to in subsection (2) of this section is present; and
 - (b) Advise the complainant of the complainant's right to request the presence of any person under paragraph (k) of that subsection.
- (4) Where in a case involving sexual violation the court is of the opinion that the interests of the complainant so require, it may make an order forbidding publication of any report or account giving details of the criminal acts alleged to have been performed on the complainant or of any acts that the complainant is alleged to have been compelled or induced to perform or to consent to or acquiesce in.
- (5) Nothing in this section shall limit or affect the powers of a convening officer or court-martial to exclude any person or forbid any report or account of any evidence under section 131 of this Act.

Section 131A was inserted, as from 27 May 1988, by section 16 Armed Forces Discipline Amendment Act 1988 (1988 No 89).

Subsection (1)(a)(iv) was amended, as from 20 May 2005, by section 10 Crimes Amendment Act 2005 (2005 No 41) by substituting “sexual connection with consent induced by certain threats” for “inducing sexual connection by coercion”.

Subsection (2)(f) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman”.

132 Dissolution of court-martial

- (1) Where, whether before or after the commencement of the trial, it appears to the convening officer necessary or expedient in the interests of the administration of justice that a court-martial should be dissolved, he may dissolve the court.
- (2) Without limiting the provisions of subsection (1) of this section, if after the beginning of the trial a court-martial is by reason of the death of one of the members, or for any other reason, reduced below the prescribed minimum, the convening officer shall, subject to subsection (3) of this section, dissolve the court.
- (3) The death or absence of one or more members of a general court-martial, other than the president, shall not render the court-martial improperly constituted, so long as the number of members present throughout the proceedings is not reduced below 4:
Provided that a member of the court who has been absent for any time during a trial shall take no further part in the proceedings.
- (4) If, after the beginning of the trial, the president of the court dies or is otherwise unavoidably absent and the court is not reduced below the prescribed minimum, then—
 - (a) If the senior member of the court is eligible to be appointed president the convening officer may appoint him president, and the trial shall proceed accordingly; but
 - (b) If he is not, the court shall be dissolved.
- (5) If the judge advocate appointed to a court-martial dies, or is, as a result of illness or any other reason whatsoever, unable to attend the court, the president shall adjourn the court’s pro-

ceedings and report the death or absence to the convening officer who may—

- (a) Dissolve the court; or
 - (b) If the judge advocate has died, cause to be appointed by or on behalf of the Judge Advocate General another person to act as judge advocate in his place; or
 - (c) If the judge advocate is unable to attend the court because of illness or for any other reason—
 - (i) Order the court to remain adjourned until he is able to attend; or
 - (ii) If a continued adjournment would not be in the interests of the administration of justice, cause to be appointed by or on behalf of the Judge Advocate General another qualified person to act as judge advocate in his place.
- (6) Without limiting the provisions of subsection (1) of this section, if after the beginning of the trial representations are made to the convening officer that, because of the illness or other incapacity of the accused, it is impracticable or would be unreasonable, having regard to all the circumstances, to continue the trial within a reasonable time, the convening officer may dissolve the court.
- (7) If a convening officer dissolves a court-martial, he shall do so by order in writing under his hand.
- (8) Where a court-martial is dissolved under this section, the accused may be tried by another court-martial.

Compare: 1950 No 39 s 110(1)-(4); 1950 No 40 s 110(1)-(4); Naval Discipline Act 1957, s 57(2) (UK); Army Act 1955, s 95 (UK); Air Force Act 1955, s 95 (UK)

Findings, etc, of courts-martial

133 Decisions of courts-martial

- (1) Subject to the provisions of this section, every question to be determined on a trial by court-martial, other than a question to be determined by the judge advocate, shall be determined by a majority of the votes of the members of the court.
- (2) In the event of an equality of votes on a finding of guilty or not guilty, the court shall acquit the accused.
- (3)

- (4)
- (5) If, in deciding the sentence, there is an equality of votes, the president shall have a casting vote.
- (6) If a court-martial recommends a person under sentence to mercy, the recommendation shall be attached to and form part of the proceedings of the court, and shall be promulgated and communicated to the person under sentence, together with the conviction and sentence.

Compare: 1950 No 39 s 110(8), (9); 1950 No 40 s 110(8), (9); Naval Discipline Act 1957, s 62 (UK); Army Act 1955, s 96 (UK); Air Force Act 1955, s 96 (UK)

Sections 133(3) and 133(4) were repealed, as from 26 December 1989, by section 5(1) Abolition of the Death Penalty Act 1989 (1989 No 119).

134 Rulings by judge advocate

- (1) If during the proceedings of a court-martial any question of law or procedure arises, the judge advocate shall rule on it and that ruling shall be followed by the court.
- (2) Without limiting the ordinary meaning of the term **question of law**, for the purposes of this section that term includes any question arising before a court-martial in respect of—
- (a) A special plea to the general jurisdiction of the court:
 - (b) A plea in bar of trial:
 - (c) A submission that there is no case to answer:
 - (d) The admissibility of evidence:
 - (e) The joinder of charges in the same charge sheet:
 - (f) The trial of accused persons jointly or separately.
- (3) Subject to the rules of procedure, a judge advocate may, if he thinks it would be desirable in the interests of justice to do so, determine a question of law or procedure in the absence of the members of the court-martial.

Compare: Army Act 1955, s 104 (UK); Air Force Act 1955, s 104 (UK)

135 Power to convict of an offence other than that charged

- (1) Where by this Act it is provided that an act or omission, if done or made with a certain specified intent or in certain specified circumstances, is an offence punishable by a specified punishment, and it is also provided that the same act or omission, if done or made otherwise than with that intent or in those circumstances, is an offence punishable by a less severe punish-

ment, an accused charged before a court-martial with having committed an offence with the intent or in the circumstances involving the more severe punishment may be convicted of the offence that involves the less severe punishment.

- (2) An accused charged before a court-martial with an offence may, if the circumstances so warrant, be convicted of attempting to commit that offence.
- (3) An accused charged before a court-martial with attempting to commit an offence may be convicted of the attempt notwithstanding that it is proved that he actually committed the offence.
- (4) An accused charged before a court-martial with an offence specified in the first column of Schedule 6 to this Act may be convicted of the corresponding offence specified in the second column of that Schedule in relation to the first-mentioned offence.
- (5) Where an accused is charged before a court-martial with an offence and the court considers that—
 - (a) The facts which it finds to be proved in evidence differ from the facts alleged in the particulars of the charge but are sufficient to prove the commission of the offence; and
 - (b) The difference is not so material as to have prejudiced the accused in his defence—he may nevertheless be convicted of the offence in accordance with the rules of procedure.

Compare: 1950 No 39 s 121; 1950 No 40 s 121; Naval Discipline Act 1957, ss 67-69 (UK); Army Act 1955, s 98 (UK); Air Force Act 1955, s 98 (UK)

136 Recording of finding on alternative charges

A court-martial which has recorded a conviction on a charge laid in the alternative shall—

- (a) Find the accused not guilty of any charge laid in the alternative to it which is placed before it on the charge sheet; and
- (b) Record no finding on any alternative to it which is placed after it on the charge sheet.

137 Announcement of finding and sentence

- (1) The finding of a court-martial on each charge tried by the court shall be announced in open court by its president.
- (2) Any sentence passed by a court-martial shall be announced in open court by its president.
- (3) Where a court-martial sentences any person to be dismissed from Her Majesty's Service, or sentences him to a term of imprisonment involving dismissal from Her Majesty's Service, the president shall announce the sentence as being subject to approval on review by a reviewing authority.
- (4)

Compare: 1950 No 39 s 122(5); 1950 No 40 s 122(5); Naval Discipline Act 1957, s 62(3) (UK); Army Act 1955, s 97 (UK); Air Force Act 1955, s 97 (UK)

Section 137(4) was repealed, as from 26 December 1989, by section 5(1) Abolition of the Death Penalty Act 1989 (1989 No 119) of 1989 No 119.

138 Certain sentences may be suspended

Subject to sections 181 to 183 of this Act,—

- (a) If a court-martial passes a sentence of imprisonment, detention, or a fine on any offender, the court may suspend the operation of the sentence or any part of it; and
- (b) If a court-martial passes a sentence of reduction in rank or forfeiture of seniority on any offender, the court may suspend the operation of the sentence.

Section 138 was substituted, as from 1 January 1986, by section 25 Armed Forces Discipline Amendment Act 1985 (1985 No 199).

139 Other offences may be taken into consideration in passing sentence

- (1) Where a court-martial convicts a person of an offence, he may, unless the offence is one which is punishable by imprisonment for life, request the court to take into consideration any other offence (being an offence similar to that of which he has been convicted) which he admits having committed.
- (2) On any such request being made, the court may take the admitted offence into account in sentencing the accused.
- (3) Where a court-martial takes into consideration any offence admitted by an accused, it shall not, in passing sentence, impose a punishment of greater severity than the maximum punish-

ment that it may impose in respect of the offence of which the accused was found guilty.

- (4) A court-martial may exercise, in respect of an offence taken into consideration under this section, any of the powers to order payment of compensation under section 86 or to order the restitution of property under section 87 of this Act.

Compare: Army Act 1955, s 105 (UK); Air Force Act 1955, s 105 (UK)

Subsection (1) was amended, as from 26 December 1989, by section 5(9) Abolition of the Death Penalty Act 1989 (1989 No 119) by omitting “by death or”.

Evidential and procedural matters

140 Court to take judicial notice of certain matters

- (1) A Court-martial shall take judicial notice of—
- (a) All matters of public notoriety; and
 - (b) All other matters of which judicial notice would be taken by the High Court.
- (2) The court may also take judicial notice of matters which may fairly be regarded as being within the general service knowledge of members of the court.

Compare: Army Act 1955, s 99(3) (UK); Air Force Act 1955, s 99(3) (UK)

The reference to the High Court was substituted for a reference to the Supreme Court, as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

141 Privileges and immunities of judge advocates and members of courts-martial, and protection of witnesses and counsel

- (1) Neither the members of a court-martial, nor any judge advocate, shall be under any criminal or civil liability in respect of any thing done or omitted to be done, or of any words spoken or written, at or for the purposes of any proceedings before the court.
- (2) Every witness attending and giving evidence before a court-martial, and every counsel (including any member of the Armed Forces appearing on behalf of the prosecution or the accused) and interpreter appearing before a court-martial,

shall have the same privileges and immunities as witnesses, counsel, and interpreters in the High Court.

Compare: 1950 No 39 s 116(2), (3); 1950 No 40 s 116(2), (3); Army Act 1955, s 100 (UK); Air Force Act 1955, s 100 (UK)

Subsection (2) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman”.

The reference to the High Court was substituted for a reference to the Supreme Court, as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

142 Defence of accused

- (1) Any accused to be tried by a court-martial may be defended—
- (a) By a barrister or solicitor of the High Court or any other person holding such legal professional qualifications as may be prescribed by the rules of procedure; or
 - (b) By an officer; or
 - (c) Where the accused, by notice in writing to the convening officer so requests, by a rating, soldier, or airman.

(2)

Compare: SR 1951/255, rr 21(2), 22; SR 1951/256, rr 21(2), 22

The reference to the High Court was substituted for a reference to the Supreme Court, as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

Section 142(2) was repealed, as from 26 December 1989, by section 5(1) Abolition of the Death Penalty Act 1989 (1989 No 119).

143 Proceedings not invalid for want of form

Proceedings before a court-martial shall not be held bad for want of form only or be liable to removal into any court by means of any prerogative writ or order or be liable to review by any court under the Judicature Amendment Act 1972 or otherwise.

Section 143 was amended, as from 1 January 1986, by section 26 Armed Forces Discipline Amendment Act 1985 (1985 No 199), by inserting “or be liable to review by any court under the Judicature Amendment Act 1972 or otherwise”.

Contempt of courts-martial

144 Powers of courts-martial in relation to contempt

- (1) Every person (being a person who is not subject to this Act) commits a contempt of court-martial who—

- (a) Having been duly summoned or ordered to attend as a witness before a court-martial, fails to comply with the summons or order; or
 - (b) Refuses to swear an oath when duly required by a court-martial to do so; or
 - (c) Refuses to produce any document in his custody or under his control which a court-martial has lawfully required him to produce; or
 - (d) Being a witness, refuses to answer any question which a court-martial has lawfully required him to answer; or
 - (e) Disobeys or evades any order or direction made or given—
 - (i) By a convening officer under section 131 of this Act; or
 - (ii) By a court-martial in the course of the hearing of any proceedings before it; or
 - (iii) By a reviewing authority under paragraph (b) or paragraph (c) of section 131(5) of this Act; or
 - (f) Wilfully publishes any statement in respect of the proceedings of a court-martial which—
 - (i) States or implies that the court 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 any member of a court-martial while he is attending or going to or returning from the proceedings of the court; or
 - (h) Insults, threatens, or interferes with any witness or other person under a duty to attend the proceedings of a court-martial while he is attending or is going to or returning from the proceedings of the court; or
 - (i) Interrupts the proceedings of a court-martial or otherwise misbehaves during the proceedings.
- (2) If at any time the president of a court-martial considers that any person has committed a contempt of that court-martial, he may order any member of the Police or provost officer, or any person subject to this Act directed by the court, to remove the person considered to be in contempt from the place where the proceedings are being held and prevent him from re-entering

that place until the court has risen, or, where the court-martial is held in New Zealand, order the member of the Police, provost officer, or other person removing the person considered to be in contempt to arrest him and take him before the nearest District Court.

- (3) Where any person alleged to have committed contempt of a court-martial against subsection (1) of this section is brought before a District Court pursuant to subsection (2) of this section, the District Court Judge shall inquire into the alleged contempt and, after hearing any witnesses who may be produced against or on behalf of the person, and after hearing any statement that may be offered in defence, may find the person guilty of a contempt of court-martial.
- (4) Where a person is found guilty of contempt of a court-martial under subsection (3) of this section, he may be sentenced for each offence to imprisonment for a term not exceeding one month or to a fine not exceeding \$1,000.
- (5) Without limiting the provisions of subsections (1) to (4) of this section, when counsel appears at any trial by court-martial on behalf of either the prosecution or the defence pursuant to the rules of procedure, the following provisions shall apply:
 - (a) Any conduct of counsel which would be liable to censure or would constitute contempt of court if it took place before the High Court shall be similarly liable to censure by the court-martial or, as the case may be, constitute contempt of court-martial:
 - (b) The rules of procedure and the rules prescribed for the guidance of counsel appearing before courts-martial shall be binding on counsel:
 - (c) If counsel disobeys any such rules he shall be guilty of professional misconduct, and, if he perseveres in the disobedience, he commits a contempt of court-martial:
 - (d) Where counsel is alleged to have committed conduct liable to censure, or a contempt of court-martial, he may be dealt with in the same manner as a person who is alleged to have committed a contempt of court-martial under subsection (1) of this section.
- (6) For the purposes of this section,—

- (a) The term **court-martial** includes a commissioner appointed to take evidence or an officer taking a summary of evidence in accordance with the rules of procedure; and
- (b) A reference to the president or other member of a court-martial includes a reference to any commissioner or officer to whom paragraph (a) of this subsection relates.

Compare: 1950 No 39 ss 95, 113; 1950 No 40 ss 95, 113; Naval Discipline Act 1957, s 65 (UK); Army Act 1955, s 101 (UK); Air Force Act 1955, s 101 (UK)

Subsection (1)(e) was substituted, as from 1 January 1986 by section 27(1) Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Subsection (2) was amended, as from 27 May 1988, by section 2(6) Armed Forces Discipline Amendment Act 1988 (1988 No 89) by substituting “member of the Police”, in both places where they occur, for “constable”.

Subsection (2) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman”.

Subsection (4) was amended, as from 1 January 1986, by section 27(2) Armed Forces Discipline Amendment Act 1985 (1985 No 199) by substituting “\$1,000” for “\$200”.

Subsection (5) was amended, as from 1 January 1986, by section 27(3) Armed Forces Discipline Amendment Act 1985 by inserting “of”. The reference to the High Court was substituted for a reference to the Supreme Court, as from 1 April 1980, by section 12 Judicature Amendment Act 1979 (1979 No 124).

In subsections (2) and (3) the reference to the District Court was substituted for a reference to the Magistrate’s Court, as from 1 April 1990, pursuant to section 18(1) District Courts Amendment Act 1979 (1979 No 125). The reference to the District Court Judge replaced a reference to a Magistrate pursuant to section 18(2) District Courts Amendment Act 1979 (1979 No 125).

Part 7

Provisions relating to evidence and procedure generally

145 Records of court-martial proceedings

- (1) The record of the proceedings of a court-martial held under this Act shall be delivered by the person having its custody as soon as practicable after the promulgation of the determination of the authority which reviewed the proceedings, or, in the case of an acquittal on every charge, as soon as practicable after the trial, to the Judge Advocate General to be kept in accordance with his directions for a period of not less than 6 years from the conclusion of trial.

- (2) Subject to subsection (4) of this section, a person who has been tried by court-martial is, on an application being made by him to the Judge Advocate General within 5 years after the conclusion of the trial and on payment of the prescribed fee (if any), entitled to be supplied with a copy of the record of the proceedings of the court.
- (3) If a person tried by a court-martial dies within 5 years after the trial, his legal personal representative, or any other person who, in the opinion of the Judge Advocate General, should, for the purposes of this section, be regarded as the legal personal representative of the deceased person, is, on an application being made by him to the Judge Advocate General within 12 months after the death and on payment of the prescribed fee (if any), entitled to be supplied with a copy of the record of the proceedings of the court.
- (4) Where the Minister certifies that it is necessary for reasons of security that the record of the proceedings of a court-martial, or any part of them, should not be disclosed, the Judge Advocate General may direct that an applicant for a copy of the record is not to be supplied with the record, or that part of the record, to which the certificate relates.
- (5) Every reference in this section to the record of the proceedings of a court-martial includes a reference to the record of the review of the conviction and sentence (if any) of the court and to any reconsideration of the sentence of the court.

Compare: 1950 No 39 s 112; 1950 No 40 s 112; Naval Discipline Act 1957, s 66 (UK); Army Act 1955, s 141 (UK); Air Force Act 1955, s 141 (UK)

146 Witnesses may be compelled to attend courts-martial, etc

Every person required to give evidence in any proceedings before a court-martial, a court of inquiry, a commissioner appointed to take evidence, or an officer taking a summary of evidence in accordance with the rules of procedure, may be summoned or ordered to attend the proceedings and to give evidence or produce any document, as the case may require, in the manner prescribed in the rules of procedure.

Compare: 1950 No 39 s 116(1); 1950 No 40 s 116(1); Naval Discipline Act 1957, s 64 (UK); Army Act 1955, s 103(2)(h) (UK); Air Force Act 1955, s 103(2)(h)

147 Evidence in proceedings under this Act

- (1) Subject to subsection (2) of this section, the rules of evidence to be followed in court-martial proceedings shall be the same as those that are followed in the High Court when exercising its criminal jurisdiction (including the rules of evidence contained in the Evidence Act 2006 and in any other enactment containing any rule of evidence); and no person shall be required to answer any question or to produce any document in any such proceedings which he could not be required to answer or produce in criminal proceedings before the High Court.
- (2) The following provisions shall have effect with respect to evidence in all proceedings under this Act:
 - (a) The attestation paper purporting to be signed by a person on his being attested as a rating, soldier, or airman in the Armed Forces of New Zealand or in any Commonwealth force, and the declaration purporting to be made by any person upon his re-engagement in any of the Armed Forces of New Zealand or in any Commonwealth force, shall be evidence of that person having given the answers to questions that he is represented as having given in the paper or declaration:
 - (b) The enlistment of a person in any of the Armed Forces of New Zealand or in a Commonwealth force may be proved by the production of a copy of his attestation paper purporting to be certified to be a true copy by the officer or record officer having the custody of the attestation paper without proof of the handwriting of that officer, or of his having the custody of the paper:
 - (c) A letter, return, or other document with respect to a person—
 - (i) Having, or not having, at any time or times served in, or been discharged from, any Commonwealth force; or
 - (ii) Having, or not having, held any rank or appointment in, or been posted or transferred to, any Commonwealth force, or having, or not having, served in any particular country or place; or
 - (iii) Being, or not being, authorised to use or wear any service decoration, ribbon, badge, wound stripe,

or emblem, the use or wearing of which by an unauthorised person is under any other Act an offence—

if purporting to be issued by or on behalf of the Chief of Defence Force, or by a person authorised by the Chief of Defence Force, or by the commanding officer or the officer or record officer having the custody of the records of any portion of a Commonwealth force, or of any ship of a Commonwealth naval force to which that person appears to have belonged, or alleges that he belongs or had belonged, shall be evidence of the facts stated in that letter, return, or other document:

- (d) Copies purporting to be printed under the authority of the New Zealand Government of regulations, rules, or orders made under this Act, the Defence Act 1990, or any other Act shall be evidence of those regulations, rules, or orders:
- (e) Any list of members of the Armed Forces published by or under the authority of the Chief of Defence Force, or published in the *Gazette*, shall be evidence of the status and rank of the members mentioned in the list or *Gazette*, and of any appointment held by any such member, and of the ship, corps, or battalion or arm or branch of the service to which any such member belongs:
- (f) Any warrants or orders made under this Act or the Defence Act 1990 by any service authority shall be deemed to be evidence of the matters and things therein directed to be stated by or under this Act or the said Defence Act, and any copies of any such warrants or orders purporting to be certified to be true copies by the officer therein alleged to be authorised by the Chief of Defence Force to certify them shall be admissible in evidence:
- (g) Where an entry is made in, or a document is filed with, any service record pursuant to this Act or the Defence Act 1990 or pursuant to a service duty, and that entry or document purports to be signed by the commanding officer or by the officer or record officer whose duty it is to make the entry or file the document, as the case may

be, that entry or document shall be evidence of the facts stated therein:

- (h) A copy of any entry or document (including the signature of any person who has signed it) forming part of a service record and purporting to be certified to be a true copy by the officer or record officer stated in the certificate to have the custody of the record shall be evidence of that entry or document:
- (i) Where the proceedings are proceedings against a member of the Armed Forces on a charge of being a deserter or an absentee without leave, and the member has surrendered himself into the custody of a provost officer or a person lawfully exercising authority under or on behalf of a provost officer, or of any other officer of any New Zealand or allied force, a certificate purporting to have been signed by that provost officer, or person, or other officer, and stating the fact, date, and place of the surrender, shall be evidence of the matters so stated:
- (j) Where the proceedings are proceedings against a member of the Armed Forces on a charge of being a deserter or an absentee without leave, and the member has been arrested and taken into the custody of a provost officer or a person lawfully exercising authority under or on behalf of a provost officer, or of any other officer of any New Zealand or allied force, a certificate purporting to have been signed by that provost officer, or person, or other officer, and stating the fact, date, and place of the arrest, shall be evidence of the matters so stated:
- (k) Where the proceedings are proceedings against a member of the Armed Forces on a charge of being a deserter or absentee without leave, and the member has been delivered into service custody by a member of the Police, a certificate purporting to be signed by that member of the Police, and stating the fact, date, and place of the surrender of the member, shall be evidence of the matters so stated:
- (l) Where a member of the Armed Forces has been arrested and taken to a police station in any place in New Zealand or elsewhere or has on surrender been taken

into custody at any such police station, then, for the purposes of any proceedings against that member, a certificate purporting to be signed by the member of the Police in charge of that police station, and stating the fact, date, and place of the arrest or surrender, shall be evidence of the matters so stated:

- (m) Any certificate given under paragraphs (i) to (l) of this subsection, or any one or more of those paragraphs, may include a statement as to whether at the time of the surrender, arrest, or delivery into service custody, as the case may be, the member of the Armed Forces was wearing the uniform of the service to which he belongs or civilian clothes; and any such certificate shall be evidence of the matters so stated:
- (n) A certificate purporting to be signed by the commanding officer of any accused, or signed by any other officer authorised by that commanding officer to give the certificate, and stating the contents of any Defence Force order, or any general, standing, daily, or routine order, or any part of any such order, made in respect of any service, force, command, or formation, or any defence area or ship, or any unit, detachment, or other part of the Armed Forces, shall, in the proceedings against the accused, be evidence of the matters stated in the certificate:
- (na) A certificate purporting to be signed by the commanding officer of any accused, or signed by any other officer authorised by that commanding officer to give the certificate, and stating the contents of any part of any Defence Manual shall, in the proceedings against the accused, be evidence of the matters stated in the certificate:
- (o) Where the issue or one of the issues in the proceedings relates to the navigation of one of Her Majesty's New Zealand ships, a navigation report prepared by a competent officer or officers appointed in accordance with the rules of procedure shall be evidence of the matters stated in the report.

Compare: 1950 No 39 s 118; 1950 No 40 s 118; Army Act 1955, s 99(1), s 189(3), s 198 (UK); Air Force Act 1955, s 99(1), s 189(3), s 198 (UK)

In subsection (1) the reference to the High Court was substituted for a reference to the Supreme Court, as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

Subsection (1) was amended, as from 1 August 2007, by section 216 Evidence Act 2006 (2006 No 69) by substituting “Evidence Act 2006” for “Evidence Act 1908”. See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Subsection (2)(a) was substituted, as from 1 January 1986, by section 28(1) Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Subsection (2)(b) was amended, as from 1 January 1986, by section 28(2) Armed Forces Discipline Amendment Act 1985 (1985 No 199) by inserting “in any of the Armed Forces of New Zealand or”.

Subsection (2) (that part after paragraph (c)) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Chief of Defence Force, or by a person authorised by the Chief of Defence Force,” for “Defence Council, or by a person authorised by it”.

Subsection (2)(d) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “Defence Act 1990” for “Defence Act 1971”.

Subsection (2)(e) was substituted, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28).

Subsection (2)(f) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “Chief of Defence Force” for “Defence Council”.

Subsection (2)(f) and (g) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “Defence Act 1990” for “Defence Act 1971”.

Subsection (2)(i) and (j) was substituted, as from 1 January 1986, by section 28(3) Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Subsection (2)(i) to (m) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman” where that word first occurs in each paragraph.

Subsection (2)(i) to (l) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member” for “serviceman” where it otherwise occurs.

Subsection (2)(k) was amended, as from 27 May 1988, by section 2(6) Armed Forces Discipline Amendment Act 1988 by substituting “member of the Police” for “constable”.

Subsection (2)(l) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “member of the Police” for “constable”.

Subsection (2)(n) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Force” for “Council”.

Subsection (2)(na) was inserted, as from 1 January 1986, by section 28(4) Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Subsection (2)(o) was inserted, as from 1 December 1983, by section 11 Armed Forces Discipline Amendment Act 1980 (1980 No 37).

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

- (1) The original record of the proceedings of a court-martial purporting to be signed by the president of the court and being in the custody of the Judge Advocate General, or of any person lawfully having its custody, shall be admissible in evidence in all proceedings under this Act and in all courts in New Zealand on its being produced from that custody.
- (2) A document which purports—
 - (a) To be a copy of the original record (including a transcript of a tape recording of the record) of the proceedings of a court-martial or of part of that record; and
 - (b) To be certified by the Judge Advocate General, or by any person lawfully having custody of the original record, as being a true copy of that record or part—shall be admissible in evidence of the original record or part of the original record, as the case may be, in all proceedings under this Act and in all proceedings in civil courts in New Zealand on its being produced in those proceedings, without proof of the signature of the Judge Advocate General or other person lawfully having custody of the original record.

Compare: 1950 No 39 s 120; 1950 No 40 s 120; Army Act 1955, s 200 (UK); Air Force Act 1955, s 200 (UK)

150 Rules of procedure

- (1) Subject to the provisions of this section, the Governor-General, by Order in Council, may from time to time make rules of procedure, not inconsistent with this Act, relating to—
 - (a) The investigation and trial of, and the imposition of punishments and sentences for, offences within the jurisdiction of courts-martial and officers exercising summary powers; and
 - (b) The review of convictions and sentences of courts-martial and of findings and punishments by officers exercising summary powers.
- (2) Without limiting the generality of the provisions of subsection (1) of this section, any such rules may make provision for all or any of the following matters:
 - (a) The procedures to be observed in the bringing of charges before officers exercising summary powers:
 - (b) The manner in which charges so brought are to be investigated, and the taking of evidence (whether orally or in writing, whether or not on oath and whether in full or in summary or abstract form):
 - (c) The taking of evidence on commission for courts-martial and the appointment of commissioners and authority to compel the attendance of witnesses and to administer oaths for that purpose:
 - (d) The addition to, or substitution for, a charge that has been investigated of a new charge for an offence disclosed by evidence taken on the investigation, and the treating of that investigation as the investigation of the new charge:
 - (e) The framing of charges:
 - (f) The sittings, adjournment, and dissolution of courts-martial:
 - (g) The functions of judge advocates and the manner in which those functions shall be exercised, and the legal qualifications required to be held by judge advocates:
 - (h) Subject to section 142 of this Act, the representation of accused at trials by court-martial:

- (i) Procuring the attendance of witnesses at preliminary investigations into charges or at any proceedings at which charges are tried summarily or dealt with summarily:
- (j) The expenses of members of courts-martial and of witnesses giving evidence before courts-martial and other proceedings under this Act:
- (k) The procedure to be observed in trials by courts-martial:
- (l) The procedure to be observed in new trials by court-martial directed to be held pursuant to any provision of this Act or of the Courts Martial Appeals Act 1953:
- (m) The rules of evidence to be observed by officers exercising summary powers, including rules with respect to the admissibility and force of documentary evidence:
- (n) Empowering a court-martial or a convening officer in such cases and to such extent as the rules specify to amend a charge before the court:
- (o) The procedure to be followed by reviewing authorities:
- (p) Specifying any matter referred to in section 87A(1) of this Act 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:
- (q) Specifying any matter referred to in section 87A(1) of this Act in relation to the suspension of orders for restitution and the suspension in certain cases of the provisions of section 26(1) of the Sale of Goods Act 1908; 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:
- (r) The procedure of courts of inquiry (including the taking of evidence on oath, and the authority to compel the attendance of witnesses and to administer oaths):
- (s) The disclosure of the records of proceedings of a court of inquiry, and the remuneration and expenses of members and witnesses attending any such court:
- (t) The forms of orders and other documents to be made for the purposes of any provision of this Act or the rules of procedure relating to—

- (i) The investigation and trial of, or the imposition of punishment for, offences cognisable by courts-martial or officers exercising summary powers; or
 - (ii) The review of convictions and sentences imposed by courts-martial, and findings and punishments imposed by officers exercising summary powers:
 - (u) Such matters as are contemplated by or necessary for giving full effect to this Act, and its due administration, in relation to the investigation, trial, and punishment of offences against this Act.
- (3) The rules of procedure may make different provision for different services of the Armed Forces.

Compare: 1950 No 39 s 18; 1950 No 40 s 17; Army Act 1955, s 103 (UK); Air Force Act 1955, s 103 (UK)

Subsection (2)(i) was amended, as from 1 December 1983, by section 3 Armed Forces Discipline Amendment Act 1981 (1981 No 48) by inserting “tried summarily or”.

Subsection (2)(p) and (q) were substituted, as from 1 December 1983, by section 12 Armed Forces Discipline Amendment Act 1980 (1980 No 37).

Subsection (2)(t)(i) was amended, as from 1 December 1983, by section 15(1) Armed Forces Discipline Amendment Act 1981 (1981 No 48) by substituting “and” for “of”.

Subsection (3) was inserted, as from 1 December 1983, by section 15(2) Armed Forces Discipline Amendment Act 1981 (1981 No 48).

Part 8

Review of convictions and sentences of courts-martial

151 Constitution of reviewing authorities

- (1) The following shall be reviewing authorities for the purposes of this Part and section 198 of this Act:
- (a) The Governor-General:
 - (b) The Board of Review, which shall consist of 3 officers of whom—
 - (i) One shall be an officer of the Navy not below the rank of commodore, appointed under the hand of the Chief of Navy:

- (ii) One shall be an officer of the Army, not below the rank of brigadier, appointed under the hand of the Chief of Army:
 - (iii) One shall be an officer of the Air Force, not below the rank of air commodore, appointed under the hand of the Chief of Air Force:
 - (c) An officer (including an officer of an allied force) appointed by any such Chief of Service to review convictions and sentences of courts-martial held outside New Zealand in respect of members of the Armed Forces (including members serving in a joint force) under the command of that Chief of Service:
 - (d) An officer (including an officer of an allied force) appointed by the Chief of Defence Force to review convictions and sentences of courts-martial held outside New Zealand, in respect of members of the Armed Forces serving in a joint force.
- (2) The powers and functions exercisable by a reviewing authority appointed under paragraph (c) or paragraph (d) of subsection (1) of this section shall be specified in the instrument of appointment.

Compare: 1950 No 39 s 123A; 1950 No 40 s 123A; 1959 No 26 s 10; 1959 No 27 s 10; Army Act 1955, s 113(2) (UK); Air Force Act 1955, s 113(2) (UK)

Subsection (1)(b)(i) was amended, as from 17 May 2005, by section 5(a) Armed Forces Discipline Amendment Act 2005 (2005 No 46) by substituting “Chief of Navy” for “Chief of Naval Staff”.

Subsection (1)(b)(ii) was amended, as from 17 May 2005, by section 5(b) Armed Forces Discipline Amendment Act 2005 (2005 No 46) by substituting “Chief of Army” for “Chief of General Staff”.

Subsection (1)(b)(iii) was amended, as from 17 May 2005, by section 5(c) Armed Forces Discipline Amendment Act 2005 (2005 No 46) by substituting “Chief of Air Force” for “Chief of Air Staff”.

Section 151(1)(c): amended, on 20 September 2007, by section 4 of the Armed Forces Discipline Amendment Act 2007 (2007 No 40).

Subsection (1)(c) was amended, as from 27 May 1988, by section 17(1) Armed Forces Discipline Amendment Act 1988 (1988 No 89) by inserting “(including servicemen serving in a joint force)”.

Subsection (1)(c) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “members of the Armed Forces (including members)” for “servicemen (including servicemen)”.

Subsection (1)(d) was inserted, as from 27 May 1988, by section 17(2) Armed Forces Discipline Amendment Act 1988 (1988 No 89).

Subsection (1)(d) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “members of the Armed Forces” for “servicemen”, and by substituting “Force” for “Staff”.

Subsection (2) was amended, as from 27 May 1988, by section 17(3) Armed Forces Discipline Amendment Act 1988 (1988 No 89) by inserting “or paragraph (d)”.

152 Review of proceedings

- (1) Where a court-martial convicts a person of an offence against this Act, the record of the proceedings of the court shall be transmitted in accordance with the rules of procedure to a reviewing authority.
- (2) Subject to section 165 of this Act, as soon as practicable after the reviewing authority has received the record of the proceedings, it shall examine the record and consider the legality and propriety of the conviction and sentence (if any) of the court.
- (3) For the purposes of any such review, the reviewing authority shall request advice on the proceedings of the court-martial from the Judge Advocate General or any Deputy Judge Advocate General or, if neither of them is able to act, any other person having such qualifications in law as may be prescribed for the purpose in the rules of procedure.
- (4) After considering the legality and propriety of the conviction and sentence (if any) in accordance with subsection (2) of this section, together with the advice given under subsection (3) of this section, the reviewing authority shall either—
 - (a) Direct that the conviction and the sentence (if any) shall stand; or
 - (b) Carry out the review in accordance with the provisions of sections 153 to 161 of this Act.

Compare: Naval Discipline Act 1957, s 70(1) (UK); Army Act 1955, s 113(1) (UK); Air Force Act 1955, s 113(1) (UK)

Subsection (2) was amended, as from 1 January 1986, by section 30(1) Armed Forces Discipline Amendment Act 1985 (1985 No 199) by inserting “Subject to section 165 of this Act”.

153 Power to quash convictions and order a new trial

- (1) Where, on reviewing a conviction recorded by a court-martial, a reviewing authority is satisfied that—

- (a) As a result of a wrong decision on a question of law determined during the proceedings, the conviction was wrong in law; or
 - (b) The conviction was manifestly unreasonable, having regard to the evidence adduced during the proceedings—
the authority shall quash the conviction.
- (2) Where, on reviewing a conviction recorded by a court-martial, a reviewing authority is satisfied that—
- (a) A question of law which might have affected the conviction was wrongly determined; or
 - (b) The conviction was against the weight of evidence; or
 - (c) Any other occurrence during the court-martial proceedings might have unfairly prejudiced the person convicted—

the authority shall quash the conviction and may, by order in writing addressed to the appropriate convening officer, direct a new trial of the charge by another court-martial:

Provided that the power to direct a new trial may not be exercised under this subsection if more than 3 months have elapsed since the date on which the person convicted was sentenced by the court.

Compare: 1950 No 39 s 123A; 1950 No 40 s 123A; 1959 No 26 s 10; 1959 No 27 s 10; Naval Discipline Act 1957, s 71(1)(a) (UK); Army Act 1955, s 113(5) (UK); Air Force Act 1955, s 113(5) (UK)

154 Revision of sentence on quashing of conviction

- (1) If a reviewing authority—
- (a) In any case where a person was convicted of only one offence by a court-martial, quashes the conviction; or
 - (b) In the event of a person being convicted of several offences by a court-martial, quashes all of the convictions—
- the authority shall also quash any sentence passed as a result of that conviction or those convictions, as the case may be.
- (2) Where a reviewing authority quashes a conviction in respect of any charge but is satisfied that the person convicted by the court-martial was properly convicted on another charge, the authority may substitute for the sentence passed on him by the court such sentence as the authority thinks just, being a

sentence imposing a punishment warranted by this Act for the offence of which he was properly convicted, but not being a sentence imposing a punishment of greater severity than that imposed by the court.

Compare: Naval Discipline Act 1957, s 71(2), (3) (UK)

155 Substitution of convictions and sentences

- (1) Where, on reviewing a conviction recorded by a court-martial, a reviewing authority is satisfied that—
- (a) The person tried by the court was wrongly convicted of an offence and the court could have properly convicted him of another offence; and
 - (b) The court must have been satisfied that the facts which would justify his conviction for that other offence were proved at the trial—

the authority may substitute for the conviction a conviction for the other offence and substitute for the sentence passed on him by the court such sentence as it thinks just, being a sentence imposing a punishment warranted by this Act in respect of that other offence, but not being a sentence imposing a punishment of greater severity than that imposed by the court.

- (2) Where, on reviewing a conviction of a person by a court-martial for an offence against this Act, the reviewing authority is satisfied that—
- (a) The facts which were proved in evidence at the trial differed from the facts alleged in the particulars of the charge but were sufficient to prove the commission of the offence; and
 - (b) The difference was not so material as to have prejudiced the person in his defence—

the authority may nevertheless direct that the conviction shall stand, but substitute for the sentence passed by the Court such sentence as it thinks just, being a sentence imposing a punishment warranted by this Act in respect of the offence, but not being a sentence imposing a punishment of greater severity than that actually imposed by the court.

Compare: Naval Discipline Act 1957, s 71(1)(b), (3) (UK)

156 Substitution of a valid for an invalid sentence

Where, on reviewing a conviction recorded by a court-martial, a reviewing authority is satisfied that a sentence passed by the court is invalid, the authority shall substitute for the sentence passed by the court such valid sentence as the authority thinks just, being a sentence imposing a punishment warranted by this Act, but not being a sentence imposing a punishment of greater severity than that imposed by the court.

Compare: Naval Discipline Act 1957, s 72(1)(d) (UK); Army Act 1955, s 113(5)(c) (UK); Air Force Act 1955, s 113(5)(c) (UK)

157 Variation, postponement, and suspension of sentences

On reviewing a conviction and sentence recorded by a court-martial, a reviewing authority may exercise one or more of the following powers:

- (a) Remit the whole or any part of any punishment imposed by the sentence of the court:
- (b) Commute any punishment imposed by the sentence of the court to a less severe punishment:
- (c) Postpone the carrying out of a punishment of dismissal from Her Majesty's Service for such period as the authority thinks fit:
- (d) Extend or terminate any such postponement:
- (e) In the case of a sentence imposing imprisonment, detention, reduction in rank, forfeiture of seniority, or a fine, subject to sections 181 to 183 of this Act, suspend the whole or any part of the sentence.

Compare: 1950 No 39 ss 123, 123A(4)(c), 125; 1950 No 40 ss 123, 123A(4)(c), 125; 1959 No 26 s 10; 1959 No 27 s 10; Naval Discipline Act 1957, ss 72(1)(b), (c), 90(1) (UK); Army Act 1955, ss 110(4), 120(3) (UK); Air Force Act 1955, ss 110(4), 120(3) (UK)

158 Two or more punishments may be imposed in certain cases

- (1) A reference in this Part of this Act to a punishment imposed by sentence of a court-martial includes a reference to the punishments so imposed in any case where a court-martial has passed a sentence imposing more than one punishment.
- (2) Where under this Part a reviewing authority is empowered to—

- (a) Substitute for a punishment imposed by sentence of a court-martial a punishment that is not more severe than the punishment so imposed; or
- (b) Commute a punishment so imposed to a less severe punishment—

the authority may also impose, in place of the punishment imposed by the court, one or more punishments that are not more severe or that are less severe, as the case may be, than the punishment imposed by the sentence of the court.

Compare: 1950 No 39 ss 123(1), 123A(4)(c); 1950 No 40 ss 123(1), 123A(4)(c); 1959 No 26 s 10(1); 1959 No 27 s 10(1)

159 Substituted conviction or sentence deemed to be conviction or sentence of court-martial

- (1) If a reviewing authority substitutes a conviction or sentence for the conviction or sentence imposed by a court-martial, or if any such authority exercises the powers conferred by section 157 of this Act to remit or commute a punishment imposed by a sentence of a court-martial, the substituted conviction or sentence, or the sentence having effect after the exercise of those powers, as the case may be, shall, subject to the succeeding provisions of this section, be deemed for all purposes to be the conviction or sentence of the court.
- (2) Where—
 - (a) A sentence imposed by a court-martial was directed to be cumulative on any earlier sentence; and
 - (b) A reviewing authority substitutes any sentence for the sentence imposed by the court-martial or remits or commutes that sentence but does not direct the sentence to be cumulative on the earlier sentence referred to in paragraph (a) of this subsection,—the term of the substituted, remitted, or commuted sentence shall be deemed to have commenced or shall commence on the date when the sentence imposed by the court-martial would have commenced had that sentence not been directed to be cumulative on the earlier sentence.
- (3) Where—
 - (a) A sentence imposed by a court-martial is directed to be cumulative on any earlier sentence; and

- (b) A reviewing authority substitutes for that earlier sentence a sentence other than one of a kind upon which the later sentence can be cumulative or remits or commutes the earlier sentence to such a sentence,—
the later sentence shall commence when the earlier sentence commenced or would have commenced.

Section 159 was substituted, as from 1 January 1985, by section 29 Armed Forces Discipline Amendment Act 1985 (1985 No 199).

160 Reviewing authority may make an order for the payment of compensation or restitution of property

- (1) On reviewing a conviction recorded by a court-martial, a reviewing authority may order the convicted person to pay compensation under section 86 of this Act or to make restitution of property under section 87 of this Act (with or without compensation under subsection (3) of that section), or both to pay compensation and make restitution, in the same manner and to the same extent as a court-martial, notwithstanding that the court which tried the person made no such order.
- (1A) Section 87A of this Act, with any necessary modifications, shall apply to any order made by a reviewing authority under subsection (1) of this section as if the order had been made by a court-martial.
- (2) Where a court-martial has made an order under section 86 or section 87 of this Act, a reviewing authority may, on reviewing the order,—
- (a) Direct that the order shall stand; or
 - (b) Quash the order; or
 - (c) In the case of an order requiring the payment of compensation, vary the order by requiring a reduced amount of compensation to be paid, or by requiring an increased amount of compensation to be paid (not exceeding the limit imposed by the said section 86), in which case the order as varied shall take effect accordingly; or
 - (d) In the case of an order requiring restitution of property to be made, vary the order by requiring property additional to or different from that specified in the order to be restored to the person who appears to the authority to be entitled to it, or, if the authority thinks that the per-

son to whom property is to be restored by an order is not entitled to the whole of it, vary the order by excluding the part to which he does not appear to be entitled; and the order as varied shall take effect accordingly.

Compare: 1950 No 39 s 135; 1950 No 40 s 135; Naval Discipline Act 1957, s 76 (UK); Army Act 1955, s 138(7), (8) (UK); Air Force Act 1955, s 138(7), (8) (UK)

Subsection (1) was amended, as from 1 December 1983, by section 13(1) Armed Forces Discipline Amendment Act 1980 (1980 No 37) by substituting “to make restitution of property under section 87 of this Act (with or without compensation under subsection (3) of that section), or both to pay compensation and make restitution” for “make restitution of property under section 87 of this Act”.

Subsection (1A) was inserted, as from 1 December 1983, by section 13(2) Armed Forces Discipline Amendment Act 1980 (1980 No 37).

160A Reviewing authority to review decision to take other offences into consideration

Where it appears to a reviewing authority that a court-martial, in sentencing the accused for an offence, exceeded or erroneously exercised its powers under section 139 of this Act to take other offences into consideration, the authority shall, whether or not it substitutes a different sentence or remits or commutes any punishment, annul the decision to take into consideration the other offence or offences in question and any orders dependent thereon; and where the authority does so, the offence or offences shall be deemed for all purposes not to have been taken into consideration.

Section 160A was inserted, as from 1 December 1983, by section 16(1) Armed Forces Discipline Amendment Act 1981 (1981 No 48).

161 Decision of reviewing authority to be promulgated

- (1) At the conclusion of a review under this Part of this Act, by a reviewing authority (whether the authority directs that the conviction and sentence (if any) it has reviewed shall stand, or exercises with respect to the conviction or the sentence, or both the conviction and the sentence, any powers exercisable by reviewing authorities under this Part of this Act), the authority shall cause particulars of its decision (including any order made, directed to stand, quashed, or varied under section 160 of this Act) to be promulgated in such manner as may be prescribed in the rules of procedure.

- (2) Every decision of a reviewing authority shall take effect from the date of its promulgation.

Compare: Army Act 1955, s 113(6) (UK); Air Force Act 1955, s 113(6) (UK)

162 Further reviews

- (1) A review by a reviewing authority under sections 152 to 161 of this Act shall not prevent a further review by that or another reviewing authority if it appears to that authority that there is sufficient ground for a further review.
- (2) At any time after a court-martial has sentenced any person in respect of any offence against this Act, but before the expiration of 6 months from the date of promulgation of the decision of the reviewing authority which first examined the court's record of proceedings, he may lodge with a reviewing authority in accordance with the rules of procedure a petition against the conviction or against any sentence imposed on him, or against both the conviction and the sentence; and the authority petitioned shall thereupon consider the petition and carry out a review in accordance with the powers conferred on reviewing authorities by this Part of this Act and by the rules of procedure.
- (3) Where a reviewing authority remits a punishment or part of a punishment or commutes a punishment, it shall not, on a further review, make a decision that has the effect of imposing a punishment more severe than the punishment which had effect before that remission or commutation.

Compare: 1950 No 39 s 122A; 1950 No 40 s 122A; 1959 No 26 s 9; 1959 No 27 s 9; Naval Discipline Act 1957, s 70(2) (UK); Army Act 1955, s 113(1) (UK); Air Force Act 1955, s 113(1) (UK)

163 Fresh evidence

If, within 3 months after the date of sentence of a person by court-martial, it appears to a reviewing authority, whether on consideration of a petition under section 162 of this Act or otherwise, that—

- (a) There is fresh evidence that is credible and relevant to a charge on which the person was convicted; and

- (b) That evidence was not adduced at the trial and there is a reasonable explanation as to why it was not so adduced; and
- (c) The interests of justice so require—
the authority may quash the conviction of the court on that charge and, by order in writing addressed to the appropriate convening officer, direct him to convene another court-martial to try the charge.

Compare: Court-martials (Appeals) Act 1968, s 28(2) (UK)

164 New trial procedure

- (1) Where any person is liable to be retried as a result of an order made by a reviewing authority under this Part of this Act, the retrial may only be in respect of—
 - (a) The offence to which the order directing the retrial relates; or
 - (b) Any offence of which he could have been convicted at the original trial; or
 - (c) Any offence charged in the alternative in respect of which the court-martial originally trying him recorded no conviction because it convicted him of the more serious offence.
- (2) Whether any person is retried under this section in respect of the charge or charges on which he was tried originally, or in respect of any new charge or charges specified in the order directing his retrial, no further or new investigation and disposal of the charge or charges under Part 5 of this Act shall be held.
- (3) If any person is convicted of any offence on any retrial under this section, the court-martial convicting him may sentence him to any of the punishments authorised by this Act in respect of the offence:

Provided that the court shall not pass a sentence imposing any punishment or punishments more severe than the punishment or punishments imposed at the original trial.

Compare: Court-martials (Appeals) Act 1968, s 19(3), (4) (UK)

165 Effect of appeal

Where an application for leave to appeal against conviction by a court-martial has been lodged under section 7 of the Courts

Martial Appeals Act 1953, a reviewing authority shall not commence or proceed with a review of the proceedings of that court-martial until—

- (a) The application to appeal is withdrawn or abandoned, in which case the reviewing authority shall consider the legality and propriety of the conviction and sentence (if any) of the court; or
- (b) The application to appeal is refused or the appeal is determined, in which case the reviewing authority shall consider the legality and propriety of the sentence (if any) of the court.

Section 165 was substituted, as from 1 January 1986, by section 30(2) Armed Forces Discipline Amendment Act 1985 (1985 No 199).

*Reconsideration of sentences of imprisonment
and detention*

166 Constitution and powers of reconsidering authorities

- (1) For the purposes of this section, the following shall be reconsidering authorities:
 - (a) Any board of officers appointed by the Board of Review to exercise the powers and functions of a reconsidering authority:
 - (b) An officer appointed by the Chief of any Service to reconsider sentences of courts-martial held in respect of members of the Armed Forces (including members serving in a joint force) under the command of that Chief of Service:
 - (c) An officer appointed by the Chief of Defence Force to reconsider sentences of courts-martial in respect of members of the Armed Forces serving in a joint force.
- (2) Any such reconsidering authority may include an officer or, in the case of a board, an officer or officers of an allied force.
- (3) A reconsidering authority may be appointed to reconsider the sentences imposed by courts-martial from such services or parts of services of the Armed Forces as the Board of Review, the Chief of Defence Force, or Chief of Service, as the case may be, may specify in the instrument appointing the authority.

- (4) A sentence of imprisonment or detention may be reconsidered by a reconsidering authority at any time after it has been reviewed by a reviewing authority under this Part of this Act, and—
- (a) Where the sentence is being served, it shall be reconsidered at intervals not exceeding 6 months; or
 - (b) Where the operation of the sentence has been suspended under this Act, it shall be reconsidered at intervals not exceeding 3 months.
- (4A) For the purpose of determining the date on which a sentence should be reconsidered, an 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 a court-martial under section 81A of this Act.
- (4B) Nothing in subsection (4A) of this section shall limit or affect the provisions of section 177 or section 179 of this Act.
- (5) Delay in complying with subsection (4) of this section shall not affect or invalidate any sentence of imprisonment or detention imposed under this Act.
- (6) If at any time the reconsidering authority considers that the conduct since conviction of an offender who is serving a sentence of imprisonment or detention has been such as to justify the remission or suspension of the whole or any part of the sentence that remains to be served, it may remit or suspend the whole or any part of that sentence.
- (7) At the conclusion of a reconsideration of sentence under this section, whether or not the reconsidering authority remits the whole or any part of a sentence of imprisonment or detention that remains to be served, the authority shall cause particulars of its decision to be promulgated in such manner as may be prescribed in the rules of procedure.
- (8) Every decision of a reconsidering authority shall take effect from the date of its promulgation.

Compare: 1950 No 39 s 123B; 1950 No 40 s 123B; 1959 No 26 s 10; 1959 No 27 s 10; Naval Discipline Act 1957, s 92 (UK); Army Act 1955, s 114 (UK); Air Force Act 1955, s 114 (UK)

Section 166(1)(b): amended, on 20 September 2007, by section 4 of the Armed Forces Discipline Amendment Act 2007 (2007 No 40).

Subsection (1)(b) was amended, as from 27 May 1988, by section 18(1) Armed Forces Discipline Amendment Act 1988 (1988 No 89) by inserting “(including servicemen serving in a joint force)”.

Subsection (1)(b) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “members of the Armed Forces (including members” for “servicemen”.

Subsection (1)(c) was inserted, as from 27 May 1988, by section 18(2) Armed Forces Discipline Amendment Act 1988 (1988 No 89). It was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Force” for “Staff”.

Section 166(3): amended, on 20 September 2007, by section 4 of the Armed Forces Discipline Amendment Act 2007 (2007 No 40).

Subsection (3) was amended, as from 27 May 1988, by section 18(3) Armed Forces Discipline Amendment Act 1988 (1988 No 89) by inserting “the Chief of Defence Staff”. It was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Force” for “Staff”.

Subsections (4A) and (4B) were inserted, as from 27 May 1988, by section 18(4) Armed Forces Discipline Amendment Act 1988 (1988 No 89). *See* section 18(5) of that Act.

Subsection 4A was amended, as from 27 September 2001, by section 6 Armed Forces Discipline Amendment Act 2001 (2001 No 55) by substituting “, as is required to be specified” for “awaiting trial, as specified”.

Part 9

Provisions relating to the carrying out of punishments

Death

167 Execution of sentences of death

[Repealed]

Section 167 was repealed, as from 26 December 1989, by section 5(1) 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 section 166.
- (3) Subject to the provisions of orders made by the Chief of Defence Force in accordance with section 175 of this Act, 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 the commanding 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)

Subsection (1) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (2) was amended, as from 1 October 1985, by section 150(1) Criminal Justice Act 1985 (1985 No 120) by substituting “section 80 or section 90 or section 91 or sections 93 to 95 of the Criminal Justice Act 1985” for “sections 31 of the Penal Institutions Act 1954 or in section 33A of the Criminal Justice Act 1954”.

Subsection (2) was amended, as from 1 March 1996, by section 11 Criminal Justice Amendment Act 1995 (1995 No 69) by section 11 Criminal Justice Amendment Act 1995 (1995 No 69) by substituting “any of sections 89, 90, 91, 94, 97, 99, 100, and 101” for “section 80 or section 90 or section 91 or sections 93 to 95”. See regulation 2 Criminal Justice Amendment Act Commencement Order 1996 (SR 1996/2).

Subsection (2) was substituted, as from 30 June 2002, by section 125 Parole Act 2002 (2002 No 10). See clause 2 Parole Act Commencement Order 2002 (SR 2002/177).

Subsection (2) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (2A) was inserted, as from 30 June 2002, by section 125 Parole Act 2002 (2002 No 10). *See* clause 2 Parole Act Commencement Order 2002 (SR 2002/177).

Subsection (2A) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. *See* clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (3) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “Chief of Defence Force” for “Defence Council”.

**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 an officer exercising summary powers 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) of this section, where any person has been convicted by 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 subsection (2) of section 149 of this Act, 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)

Subsection (1) was substituted, as from 1 December 1983, by section 14 Armed Forces Discipline Amendment Act 1980 (1980 No 37).

Subsection (1)(a) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (3)(a)(i) to (v) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (4) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Force” for “Staff”.

170 Duty of superintendents of prisons, etc, to receive service prisoners

- (1) It is the duty of the prison manager of every prison to receive any prisoner sent to that institution 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 police officer 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; Naval Discipline Act 1957, s 107 (UK); Army Act 1955, s 129 (UK); Air Force Act 1955, s 129 (UK)

Subsection (1) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting "prison" for "penal institution". See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsections (1) and (2) were amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting "prison manager" for "superintendent". See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

171 Places in which sentences of imprisonment or detention may be served

- (1) Subject to the provisions of this section and of section 172 of this Act, 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) of this section:

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 which sentenced him or any reviewing authority reviewing the proceedings of that court, 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; Naval Discipline Act 1957, s 81 (UK); Army Act 1955, s 127 (UK); Air Force Act 1955, s 127 (UK)

Subsections (3) and (4)(a) were amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

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.
- (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 was substituted, as from 1 July 2004, by section 26 Visiting Forces Act 2004 (2004 No 59).

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 court-martial under this Act.

Paragraphs (a) and (b) were amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman”.

Section 173 was substituted, as from 1 July 2004, by section 26 Visiting Forces Act 2004 (2004 No 59).

Subsection (1)(b)(ii) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

174 Interim custody of member of the 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)

The heading to section 174 was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman”.

Section 174 was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

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 of this Act, orders may be issued under that section for all or any of the following purposes:
 - (a) For the carrying into effect of sentences of courts-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; Naval Discipline Act 1957, s 82 (UK); Army Act 1955, s 122 (UK); Air Force Act 1955, s 122 (UK)

Subsections (1) and (2) were amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Chief of Defence Force” for “Defence Council”.

Subsection (2)(g) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (3) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “Coroners Act 1988” for “Coroners Act 1951”.

Subsection (3) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “Corrections Act 2004” for “Penal Institutions Act 1954”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (3) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison managers” for “superintendents”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (3) was amended, as from 1 July 2007, by section 146 Coroners Act 2006 (2006 No 38) by substituting “Coroners Act 2006” for “Coroners Act 1988”.

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 of this Act 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

Subsection (1) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Chief of Defence Force” for “Defence Council”.

177 Commencement of sentences

- (1) Subject to the provisions of this Part of this Act and of subsection (5) of section 7 of the Courts Martial Appeals Act 1953, a term of imprisonment or detention to which an offender is sentenced under this Act shall begin to run from the beginning of the day on which the sentence was passed, whether the sentence was passed by a court-martial or by an officer exercising summary powers.
- (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 institution 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 a 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)

Subsection (2) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (2) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison manager” for “superintendent”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (3) was inserted, as from 1 January 1986, by section 32 Armed Forces Discipline Amendment Act 1985 (1985 No 199).

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 a court-martial under section 81A of this Act or by an officer exercising summary powers under section 102(5A) of this Act.
- (2) Nothing in this section shall limit or affect the provisions of section 177 or section 179 of this Act.

Section 177A was inserted, as from 27 May 1988, by section 19(1) Armed Forces Discipline Amendment Act 1988 (1988 No 89). *See* section 19(2) of that Act.

The heading of section 177A was amended, as from 27 September 2001, by section 7 Armed Forces Discipline Amendment Act 2001 (2001 No 55) by substituting “before being sentenced” for “awaiting trial”.

Subsection (1) was amended, as from 27 September 2001, by section 7 Armed Forces Discipline Amendment Act 2001 (2001 No 55) by substituting “, as is required to be specified” for “awaiting trial, as specified”.

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 imprisonment by a 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) of this section applies,—
 - (a) The earlier sentence is quashed on review or 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) of this section applies,—
 - (a) The earlier sentence is quashed on review or 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 a court-martial or an officer exercising summary powers, that court or 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) of this section applies,—
- (a) The earlier sentence is quashed on review or 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 officer exercising summary powers 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) of this section applies,—
- (a) The earlier sentence is quashed on review or 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 officer exercising summary powers 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 was substituted, as from 1 January 1986, by section 33 Armed Forces Discipline Amendment Act 1985 (1985 No 199).

179 Limitation of term of detention under one 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 one or more sentences of detention.
- (2) Subsection (1) of this section shall not affect the validity of an order under section 178 or section 183 of this Act 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); Naval Discipline Act 1957, s 89 (UK); Army Act 1955, s 72(10), (11) (UK); Air Force Act 1955, s 72(10), (11) (UK)

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); Naval Discipline Act 1957, s 88 (UK); Army Act 1955, s 119 (UK); Air Force Act 1955, s 119 (UK)

Suspended sentences

181 Effect of suspension of sentences

- (1) Where an officer exercising summary powers other than an officer to whom powers have been delegated under section 115 of this Act, imposes a sentence of detention, or a court-martial imposes a sentence of imprisonment, detention, reduction in rank, forfeiture of seniority, or a fine, and the officer or court suspends the whole or any part of the sentence, the sentence or part of the sentence that is suspended, as the case may be, shall not become operative unless and until the suspension is terminated by an order made under section 182 or section 183 of this Act.
- (2) Where a reviewing authority suspends the whole or any part of a sentence of imprisonment, detention, reduction in rank, forfeiture of seniority, or a fine, the sentence or part of the sentence that is suspended, as the case may be—
- (a) In the case of a sentence of imprisonment or detention, shall cease to be operative from the beginning of the day on which the offender is released from custody; or

- (b) In the case of a sentence of reduction in rank, forfeiture of seniority, or a fine, shall be deemed to have been suspended from the time when it was passed.
- (3) Where a reconsidering authority suspends the whole or any part of a sentence of imprisonment or detention, the sentence or the part of the sentence that is suspended, as the case may be, shall cease to be operative from the beginning of the day on which the offender is released from custody.
- (4) If any sentence or part of a sentence is suspended by a reviewing authority or a reconsidering authority, the currency of the sentence, or part of the sentence, as the case may be, shall not be revived unless and until the suspension is terminated under section 182 or section 183 of this Act, as the case may require.
- (5) Where the whole or any part of a sentence of imprisonment, detention, reduction in rank, forfeiture of seniority, or a fine is suspended, the sentence or the part of the sentence that is suspended, as the case may be, shall, unless the suspension is sooner terminated under section 182 or section 183 of this Act, be deemed to be remitted—
- (a) If the sentence or the part of the sentence imposed imprisonment or detention for a term not exceeding 12 months, at the expiration of 12 months after the date of the suspension; or
- (b) If the sentence or the part of the sentence imposed imprisonment or detention for a term exceeding 12 months, at the expiration of a period equal to the term of the sentence or the part of the sentence that was suspended, as the case may be; or
- (c) If the sentence or the part of the sentence imposed reduction in rank, forfeiture of seniority, or a fine, at the expiration of 12 months after the date of the suspension.
- (6) On the suspension of the whole or any part of a sentence of imprisonment or detention, the sentenced offender shall be released forthwith from custody or confinement, as the case requires; and the sentence shall not be executed while the suspension remains in force.
- (7) On the suspension by a reviewing authority of any sentence of reduction in rank, forfeiture of seniority, or a fine, the offender shall be placed as near as it is practicable to do so in the same

position as he would have been in if the sentence had been suspended by the officer who or the court-martial which imposed it; and the sentence shall not be executed while the suspension remains in force.

Compare: 1950 No 39 s 125(3)-(8); 1950 No 40 s 125(3)-(8); 1959 No 26 s 11(1); 1959 No 27 s 11(1); Naval Discipline Act 1957, ss 90, 91 (UK); Army Act 1955, s 120 (UK); Air Force Act 1955, s 120 (UK)

Subsection (1) was substituted, as from 1 December 1983, by section 15(1) Armed Forces Discipline Amendment Act 1980 (1980 No 37).

Subsection (2) was amended, as from 1 December 1983, by section 15(2) Armed Forces Discipline Amendment Act 1980 (1980 No 37) by omitting “under Part 8 of this Act”.

Subsection (7) was amended, as from 1 December 1983, by section 15(3) Armed Forces Discipline Amendment Act 1980 (1980 No 37) by inserting “the officer who or”.

182 Termination of suspension of sentence

- (1) The suspension of the whole or any part of a sentence of imprisonment, detention, reduction in rank, forfeiture of seniority, or a fine may (without prejudice to the power to suspend further the sentence) be terminated on the review of the sentence by an order of the authority reviewing the sentence.
- (2) The suspension of the whole or any part of a sentence of imprisonment or detention may (without prejudice to the power to suspend further the sentence) be terminated on the reconsideration of the sentence by an order of the authority reconsidering the sentence.
- (3) On the making of an order under subsection (1) or subsection (2) of this section the sentence shall be revived and the sentence or any unserved part of the sentence, as the case may be, shall become operative from the beginning of the day on which the order is made.

Compare: 1950 No 39 s 125(3)-(8); 1950 No 40 s 125(3)-(8); 1959 No 26 s 11(1); 1959 No 27 s 11(1); Naval Discipline Act 1957, ss 91, 92 (UK)

183 Offender under suspended sentence convicted or found guilty of further offence

- (1) If, while a sentence of imprisonment, detention, reduction in rank, forfeiture of seniority, or a fine, or any part of any such sentence, imposed on an offender in respect of an offence is suspended under this Act, the offender is subsequently sen-

tenced in respect of a further offence against this Act (whether committed before or after the first-mentioned offence)—

- (a) By court-martial, to imprisonment, detention, reduction in rank, forfeiture of seniority, or a fine; or
- (b) By an officer exercising summary powers, to detention, reduction in rank, or a fine—

the court or officer, as the case may be, may make an order terminating the suspension of the suspended sentence, and, subject to subsection (2) of this section, every such order shall take effect according to its tenor.

- (2) If the suspension of a suspended sentence of imprisonment is terminated under subsection (1) of this section as a result of a further offence and a sentence of imprisonment is imposed in respect of that further offence, the order terminating the suspension of the suspended sentence shall specify whether it is to be served concurrently or consecutively with the other sentence.
- (3) If the suspension of a suspended sentence of detention is terminated under subsection (1) of this section as a result of a further offence and a sentence of detention is imposed in respect of that further offence, the order terminating the suspension of the suspended sentence shall specify whether it is to be served concurrently or consecutively with the other sentence.
- (4) An order made under subsection (1) of this section shall be subject to its being reviewed by the reviewing authority reviewing the sentence imposed in respect of the further offence. Any such authority may approve or quash the order, or may, in the case of sentences of imprisonment or detention, if the order specifies that the sentences are to be served consecutively, vary the order by directing that the sentences shall be served concurrently with each other.
- (5) If a court-martial or an officer exercising summary powers does not make an order under subsection (1) of this section when sentencing an offender in respect of a further offence, the reviewing authority reviewing the sentence imposed in respect of the further offence shall have the same powers to make such an order as a court-martial or an officer exercising summary powers.

- (6) The exercise of any power conferred by this section shall be subject to the operation of section 179 of this Act.
- (7) Every suspended sentence of detention imposed on any person under this Act shall be deemed to be remitted on the approval or variation by a reviewing authority of any subsequent sentence of imprisonment imposed on that person.
- (8) Nothing in this section shall affect any other provision of this Act authorising the remission or suspension of the sentence which was originally suspended or the further sentence, or both such sentences, after an order has been made under this section.

Compare: Naval Discipline Act 1957, ss 90, 91 (UK); Army Act 1955, s 120 (UK); Air Force Act 1955, s 120 (UK)

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, member of the Police, 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 was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “member of the Police” for “constable”.

Fines

185 Recovery in District Court of fines imposed under this Act

- (1) Without limiting the provisions of sections 85 and 112 of this Act, where a fine has been imposed by a court-martial, or by an officer exercising summary powers, 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 any District Court in New Zealand (without payment of any fee).

- (2) In every such case, the Registrar of the Court shall make an appropriate entry in the criminal record book kept there; and on that entry being made, payment of the amount of the fine may be enforced as if the fine had been ordered to be paid by that Court at the time of the filing of the certificate; and all enactments relating to fines imposed on summary conviction shall apply accordingly.

Compare: 1950 No 39 s 156; 1950 No 40 s 156; 1954 No 53 s 56

The reference to the District Court was substituted for a reference to the Magistrate's Court, as from 1 April 1980, pursuant to section 18(1) District Court Amendment Act 1979 (1979 No 125).

186 Fines to be paid into Crown Bank Account

Subject to section 186A of this Act all fines imposed under this Act shall, when recovered, be paid into the Crown Bank Account.

Compare: 1950 No 39 s 157(1); 1950 No 40 s 157; 1954 No 53 s 57

Section 186 was amended, as from the commencement of this Act (1 December 1983), by section 1(2) and section 2(2) Armed Forces Discipline Amendment Act 1976 (1976 No 13) by inserting "Subject to section 186A of this Act".

The reference to the Crown Bank Account was substituted, as from 1 April 1990, for a reference to the Consolidated Account (as substituted for a reference to the Consolidated Revenue Account by section 114(6) Public Finance Act 1977 (1977 No 65)) by section 105(1) Defence Act 1990 (1990 No 28).

186A Compensation to victims of offences occasioning physical harm

- (1) Where any accused is found guilty, whether summarily or by court-martial, of any offence arising out of any act or omission that occasioned physical harm to any other person (whether a member of the Armed Forces or a civilian and whether or not the occasioning of physical harm constitutes a necessary element of the offence at law) and the accused is punished by a fine, then, subject to subsection (2) of this section, the commanding officer, detachment commander, superior commander, officer trying summarily or dealing summarily with the charge under section 115 of this Act, or court-martial, as the case may require, may, in his or its discretion, award by way of compensation to the victim such portion of the fine, not exceeding one half, as he or it thinks fit.

- (2) No award of compensation may be made under subsection (1) of this section, unless the commanding officer, detachment commander, superior commander, officer trying summarily or dealing summarily with the charge under the said section 115, 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 was inserted, as from 1 December 1983, by section 2(1) Armed Forces Discipline Amendment Act 1976 (1976 No 13).

Subsection (1) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman”.

Subsections (1) and (2) were amended, as from 1 January 1986, by section 34 Armed Forces Discipline Amendment Act 1985 (1985 No 199) by inserting “trying summarily or”.

Subsection (4)(a) and (b) was amended by substituting the reference to s 27 of the Accident Compensation Act 1982 for the repealed s 5 of the Accident Compensation Act 1972. The Accident Compensation Act 1982 was repealed, as from 1 July 1992, by section 179(1) Accident Rehabilitation and Compensation Insurance Act 1992 (1992 No 13).

Subsection (4)(a) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “Accident Rehabilitation and Compensation Insurance Act 1992” for “Accident Compensation Act 1982”.

Subsection (4)(a) was amended, as from 1 July 1999, by section 415(1) Accident Insurance Act 1998 (1998 No 114) by substituting “Accident Insurance Act 1998” for “Accident Rehabilitation and Compensation Insurance Act 1992”.

Subsection (4)(a) was amended, as from 1 April 2002, by section 337(1) Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49) by substituting “the Injury Prevention, Rehabilitation, and Compensation Act 2001” for “the Accident Insurance Act 1998”. See Part 10 of that Act for provisions

relating to transition from competitive provision of workplace accident insurance. *See* Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

Subsection (4)(b) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “section 14” for “section 27”.

Subsection (4)(b) was amended, as from 1 April 2000, by section 9(1) Accident Insurance Amendment Act 2000 (2000 No 6) by substituting “section 394” for “section 14”.

Subsection (4)(b) was amended, as from 1 April 2002, by section 337(1) Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49) by substituting “section 317” for “section 394”. *See* Part 10 of that Act for provisions relating to transition from competitive provision of workplace accident insurance. *See* Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

Part 10

Special provisions for dealing with mentally impaired persons

This heading was amended, as from 1 January 1986, by section 35 Armed Forces Discipline Amendment Act 1985 (1985 No 199) by substituting “MENTALLY DISORDERED” for “INSANE”.

This heading was amended, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115) by substituting “impaired” for “disordered”. *See* clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

187 Interpretation of terms used in this Part

(1) In this Part of this Act, 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

Compulsory Treatment Order: this definition was inserted, as from 1 November 1992, by section 140(2) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Mentally disordered has the same meaning as it has in the Mental Health (Compulsory Assessment and Treatment) Act 1992

Mentally disordered: this definition was substituted, as from 1 November 1992, by section 140(2) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Patient means a person who is, or is deemed to be, subject to a compulsory treatment order

Patient: this definition was inserted, as from 1 November 1992, by section 140(2) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Psychiatric hospital, or hospital*[Repealed]*

Psychiatric Hospital: this definition was repealed, as from 1 November 1992, by section 140(2) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

[Repealed]

qualified medical practitioner—

- (a) means a medical practitioner; and
- (b) includes a person who holds medical qualifications obtained in a country outside New Zealand that are recognised by the Chief of Defence Force for the purposes of this Part.

Qualified medical practitioner: this definition was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Chief of Defence Force” for “Defence Council”.

Qualified medical practitioner: this definition was substituted, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115). *See* clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

Qualified medical practitioner: this definition was substituted, as from 18 September 2004, by section 175(1) Health Practitioners Competence Assurance Act 2003 (2003 No 48). *See* sections 178 to 227 of that Act as to the transitional provisions.

Under disability*[Repealed]*

Under disability: this definition was omitted, as from 1 December 1983, by section 16(1) Armed Forces Discipline Amendment Act 1980 (1980 No 37).

[Repealed]

(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.

Subsection (1A) was inserted, as from 1 December 1983, by section 16(2) Armed Forces Discipline Amendment Act 1980 (1980 No 37).

Subsection (1A) was substituted, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115). *See* clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

Subsection (2) was substituted, as from 1 November 1992, by section 140(2) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

188 When court may find accused unfit to stand trial

- (1) A 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) The court may not make a finding on whether the accused is unfit to stand trial unless the court is satisfied, on the balance of probabilities, that the evidence presented by the prosecution 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) If the question whether the accused is unfit to stand trial is to be determined before the trial, a special hearing must be held to ascertain whether the court is satisfied of the matter specified in subsection (2).
- (4) If the court is not satisfied of the matter specified in subsection (2), the court must record a finding to that effect and discharge the accused.
- (5) A discharge under subsection (4) does not amount to an acquittal.

- (6) If the court is satisfied of the matter specified in subsection (2), the court must record a finding to that effect, and proceed to determine the matters specified in section 188A.

Subsection (1) was substituted and subsection (1A) was inserted, as from 1 December 1983, by section 16(3) Armed Forces Discipline Amendment Act 1980 (1980 No 37).

Subsection (2) was amended, as from 1 January 1986, by section 36 Armed Forces Discipline Amendment Act 1985 (1985 No 199) by inserting “that his mental condition is such”.

Subsection (4) was amended, as from 1 December 1983, by section 16(4) Armed Forces Discipline Amendment Act 1980 (1980 No 37) by substituting “subsection (1A)” for “subsection (1)”.

Section 188 was substituted, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115). *See* clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

188A Determining if accused unfit to stand trial

- (1) If a court-martial records a finding of the kind specified in section 188(6), the court must receive the evidence of at least 1 qualified medical practitioner 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) A finding that the accused is unfit to stand trial does not have effect unless a reviewing authority has, under section 198(4)(a), directed that the finding is to stand.
- (4) The standard of proof required for a finding under this section is the balance of probabilities.
- (5) The jurisdiction conferred on a 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 a court-martial.

Sections 188A and 188B were inserted, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115). See clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

188B Court may postpone finding as to unfitness to stand trial

- (1) A 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.

Sections 188A and 188B were inserted, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115). See clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

189 When plea of not guilty may be substituted for plea of guilty

[Repealed]

Section 189 was repealed, as from 1 January 1986, by section 37 Armed Forces Discipline Amendment Act 1985 (1985 No 199).

190 Finding of insanity

- (1) If, on the trial by 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) A 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 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.
- (3) Nothing in this section shall limit or affect the power of a judge advocate to leave to a court-martial 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.

Sections 190 to 194 were substituted, as from 1 January 1986, by section 38 Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Subsection (1A) was inserted, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115). *See* clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

191 Order to be made if person unfit to stand trial or insane

- (1) Subject to subsections (2) and (4) of this section, if any person tried by 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) of this section applies, the court, having regard to all the circumstances of the case, and being satisfied, after hearing medical evidence, 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) of this section,—
 - (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) of this section, 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) of this section, adjourn and report the matter to the convening officer 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) of this section 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) of this section, 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 of this Act, 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 has been approved by a reviewing authority under section 198(4)(a) of this Act, 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) of this section 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 cur-

rency 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.

Sections 190 to 194 were substituted, as from 1 January 1986, by section 38 Armed Forces Discipline Amendment Act 1985 (1985 No 199).

The heading to section 191 was amended, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115) by substituting “unfit to stand trial” for “under disability”. See clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

Subsection (1) was amended, as from 1 November 1992, by section 140(2) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46) by omitting “psychiatric”.

Subsection (1)(a) was amended, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115) by substituting “unfit to stand trial” for “to be under disability”. See clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

Subsection (2) was amended, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115) by inserting “, or of any person or class of person who may be affected by the court’s decision,” after the words “interests of the public”. See clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

Subsection (2)(a) was amended, as from 1 November 1992, by section 140(2) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46) by substituting “hospital as a” for “psychiatric hospital as a committed”.

Subsection (4) was amended, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115) by substituting “unfit to stand trial” for “to be under disability”. See clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

Subsection (4A) was inserted, as from 1 November 1992, by section 140(2) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Subsection (5) was amended, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115) by substituting “unfit to stand trial” for “to be under disability”. See clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

Subsection (6) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “Defence Force Orders” for “Defence Council Orders”.

Subsections (6) and (7) were amended, as from 1 November 1992, by section 140(2) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46) by omitting “psychiatric”.

Subsections (6) and (7) were amended, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115) by substituting “unfit to stand trial” for “to be under disability”. See clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

Subsection (8) was amended, as from 1 November 1992, by section 140(2) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46) by omitting “committed” from two places.

Subsection (8) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

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 a 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) of this Act, 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) of this Act 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 one offence) of the offence punishable by the longer or longest term of imprisonment, in any other case.
- (2) If an order is made by a court-martial pursuant to section 191(1) of this Act 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 a 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) of this section, 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) of this Act 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 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) of this section 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 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.

Sections 190 to 194 were substituted, as from 1 January 1986, by section 38 Armed Forces Discipline Amendment Act 1985 (1985 No 199).

The heading to section 192 was amended, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115) by substituting “unfit to stand trial” for “under disability”. See clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

Subsection (1) was amended, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115) by substituting “unfit to stand trial” for “under disability”. See clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

Subsection (1)(a) was amended, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115) by substituting “10” for “seven”. See clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

Subsection (2) was amended, as from 1 November 1992, by section 140(2) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46) by substituting “sections 84 and 128 of the Mental Health (Compulsory Assessment and Treatment) Act 1992” for “sections 72 and 74 of the Mental Health Act 1969”. Subsection (2)(b) was amended by the same provision by omitting “committed”.

Subsection (2) was amended, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115) by substituting “unfit to stand trial” for “under disability”. See clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

Subsections (4) to (6) were substituted, and subsection (6A) was inserted, as from 1 November 1992, by section 140(2) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Subsections (4), (5), and (6)(a) were amended, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115) by substituting “unfit to stand trial” for “under disability”. See clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

Subsection (7) was amended, as from 1 November 1992, by section 140(2) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46) by omitting “committed”.

193 Duration of order for detention as special patient when person acquitted on account of his insanity

- (1) If an order is made by a court-martial pursuant to section 191(1) of this Act 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.

Sections 190 to 194 were substituted, as from 1 January 1986, by section 38 Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Subsection (1)(a) was amended, as from 1 November 1992, by section 140(2) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46) by omitting “committed”.

Subsection (2) was substituted, as from 1 November 1992, by section 140(2) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Subsection (2) was amended, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115) by inserting “any person or class of person or” after the words “for the safety of”. See clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

Subsection (3) was inserted, as from 1 November 1992, by section 140(2) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

194 Power of court-martial to commit to hospital on conviction

- (1) A court-martial that (whether in New Zealand or elsewhere) convicts a person of an offence that is punishable by imprisonment may, if the court is 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, by a certificate of 1 qualified medical practitioner,—
 - (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.
- (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 kept in strict custody pending the review of his conviction, and, if the conviction and order are

approved by the reviewing authority, the accused shall be removed to a hospital as soon as practicable thereafter.

Sections 190 to 194 were substituted, as from 1 January 1986, by section 38 Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Subsection (1) was amended, as from 27 May 1988, by section 20 Armed Forces Discipline Amendment Act 1988 (1988 No 89) by inserting “qualified”.

Subsection (1) was amended, as from 1 November 1992, by section 140(2) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46) by substituting “hospital as a” for “psychiatric hospital as a committed”.

Subsection (1) was substituted, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115). *See* clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

Subsection (1A) was inserted, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115). *See* clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

Subsection (2A) was inserted, as from 1 November 1992, by section 140(2) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Subsection (2A) was amended, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115) by substituting “subsection (1)(b)” for “this section”. *See* clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

Subsection (3) was amended, as from 1 November 1992, by section 140(2) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46) by omitting “psychiatric”.

195 Notice to be sent to Public Trustee of certain orders

[Repealed]

Section 195 was substituted by section 18 Armed Forces Discipline Amendment Act 1980.

Section 195 was repealed, as from 1 November 1992, by section 140(1) 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 qualified medical practitioner, 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.

Subsection (1) was substituted, as from 1 November 1992, by section 140(2) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Subsection (1) was amended, as from 1 June 2005, by section 206 Corrections Act 2004 (2004 No 50) by substituting “prison” for “penal institution”. See clause 2 Corrections Act Commencement Order 2005 (SR 2005/52).

Subsection (2) was amended, as from 1 November 1992, by section 140(2) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46) by omitting “psychiatric”, and by substituting “Mental Health (Compulsory Assessment and Treatment) Act 1992 as if it were a compulsory treatment order under that Act” for “Mental Health Act 1969 as if it were a reception order made pursuant to an application under section 42 of that Act”.

197 Substitution of finding and quashing of sentence where accused was insane

- (1) Where it appears to a reviewing authority that a person convicted of an offence against this Act did or omitted the act constituting the offence for which he was tried, but was at the time at which he did or omitted the act insane within the meaning of section 23 of the Crimes Act 1961, the authority may—
 - (a) Substitute for the conviction an acquittal on account of the person’s insanity; and
 - (b) Quash the sentence passed in respect of the conviction.
- (2) When, pursuant to subsection (1) of this section, a reviewing authority substitutes for a conviction an acquittal on account of insanity, sections 191, 193, and 195 of this Act and section 9E of the Courts Martial Appeals Act 1953 shall apply to the acquitted person in the same manner and to the same extent as if the substituted finding were a finding of a court-martial, and as if the reviewing authority were a court-martial.

Compare: Naval Discipline Act 1957, s 71 (UK); Army Act 1955, s 116 (UK); Air Force Act 1955, s 116 (UK)

Subsection (2) was amended, as from 1 January 1986, by section 89 Armed Forces Discipline Amendment Act 1985 (1985 No 199) by inserting “and section 9E of the Courts Martial Appeals Act 1953”.

198 Powers of reviewing authority if person found unfit to stand trial

- (1) Where a court-martial finds a person to be unfit to stand trial or acquits a person on account of his insanity, the record of the proceedings shall be transmitted, in accordance with the rules of procedure, to a reviewing authority.
- (2) Within 28 days after the reviewing authority has received the record of the proceedings, it shall, unless it is impracticable to do so, examine the record and consider the legality and propriety of the finding of the court.
- (3) For the purposes of any such review, the reviewing authority shall request advice on the proceedings of the court-martial from the Judge Advocate General or any Deputy Judge Advocate General or, if neither of them is able to act, any other person having such qualifications in law as may be prescribed for the purpose of the rules of procedure.
- (4) After considering the legality and propriety of a finding that a person is unfit to stand trial, together with the advice given under subsection (3) of this section, the reviewing authority may—
 - (a) Direct that the finding shall stand:
 - (b) Quash the finding, in which case the authority, by order in writing addressed to the appropriate convening officer, shall direct him to convene a court-martial to try the charge on which the person found to be unfit to stand trial was previously arraigned:
 - (c) Direct that the finding shall stand, but nevertheless if it is satisfied that the person is no longer unfit to stand trial, by order in writing addressed to the appropriate convening officer, direct him to convene a court-martial to try the charge on which the person was previously arraigned:
 - (d) If the finding of unfitness to stand trial was determined after the beginning of the trial and if the authority is of the opinion that the court should, before that time, have

found the person to be not guilty, substitute an acquittal (other than an acquittal on account of his insanity).

- (4A) After considering the legality and propriety of an acquittal of a person on account of his insanity, together with the advice given under subsection (3) of this section, the reviewing authority may—
- (a) Direct that the finding of the court-martial shall stand:
 - (b) Quash the finding, and, if the reviewing authority is satisfied that in the absence of such a finding the proper finding would have been that the person was guilty of an offence (whether that with which he was charged or any other offence of which he could have been convicted at the trial), the reviewing authority may substitute for the acquittal a conviction for the offence; and, in any such case, the reviewing authority shall have the same powers of sentencing or otherwise dealing with the person as the court-martial would have had if the substituted conviction had been recorded at the trial:
 - (c) Quash the finding, and substitute an acquittal (otherwise than an acquittal on account of insanity):
 - (d) Exercise any power, whether to direct a new trial or otherwise, that it could have exercised if the review were a review of a conviction.
- (5) At the conclusion of a review under this section, the authority shall cause particulars of its decision to be promulgated in such manner as may be prescribed in the rules of procedure.
- (6) Every such decision shall take effect from the date of its promulgation.
- (7) At any time after a court-martial has found any person to be unfit to stand trial or has acquitted any person on account of his insanity, but before the expiration of 6 months from the date of promulgation of the decision of the reviewing authority which first examined the court's record of proceedings, he may lodge with a reviewing authority in accordance with the rules of procedure a petition against the court's finding; and the authority petitioned shall thereupon consider the petition and carry out a review in accordance with the powers conferred on reviewing authorities by Part 8 of this Act and by the rules of procedure.
- Compare: Naval Discipline Act 1957, s 71 (UK)

The heading to section 198 was amended, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115) by substituting “if person found unfit to stand trial” for “where person under disability and promulgation of finding of disability”. See clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

Subsection (1) was amended, as from 1 January 1986, by section 40(1) Armed Forces Discipline Amendment Act 1985 (1985 No 199) by inserting “or acquits a person on account of his insanity”.

Subsection (1) was amended, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115) by substituting “unfit to stand trial” for “under disability”. See clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

Subsection (4) was amended, as from 1 January 1986, by section 40(2) Armed Forces Discipline Amendment Act 1985 (1985 No 199) by inserting “a finding that a person is under disability”.

Subsection (4) was amended, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115) by substituting “unfit to stand trial” for “under disability” wherever they occur. See clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

Subsection (4)(d) was amended, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115) by substituting “finding of unfitness to stand trial” for “finding of disability”. See clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

Subsection (4A) was inserted, as from 1 January 1986, by section 40(3) Armed Forces Discipline Amendment Act 1985 (1985 No 199).

Subsection (7) was inserted, as from 1 January 1986, by section 40(4) Armed Forces Discipline Amendment Act 1985 (1985 No 199). See clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

Subsection (7) was amended, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115) by substituting “unfit to stand trial” for “under disability”. See clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

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 Courts of Inquiry**

- (1) The Chief of Defence Force, or the officer in command of any part of the Armed Forces, may assemble a court of inquiry for the purpose of collecting and recording evidence on such matters as may be referred to it by the assembling authority. Every such court shall in addition, if required by that authority to do so, report and comment on any such matters.
- (2) A court of inquiry shall consist of not less than 2 members, of whom at least one shall be an officer and the other or others shall be either officers or warrant officers:
Provided that where the authority assembling the court considers that any matter referred to it concerns more than one service, that authority, with the consent of the appropriate proper authority of the other service or services, may appoint one or more officers or warrant officers from that service or those services, as the case may require, to be members of the court.
- (3) The authority assembling the court of inquiry shall appoint one of the members who is an officer to be president of the court.
- (4) Subject to the provisions of this section and of the rules of procedure, the assembling authority shall determine the constitution of the court of inquiry.
- (5) The members of a court of inquiry shall not be under any criminal or civil liability in respect of anything done or omitted to be done, or of any words spoken or written, in good faith, at or for the purposes of any proceedings of the court.
- (6) Every witness attending and giving evidence before a court of inquiry and every interpreter appearing before any such court, shall have the same privileges and immunities as a witness or interpreter in the High Court.
- (7) Where any person in relation to a court of inquiry does or omits any act which, if done or omitted in respect of a court-martial, would constitute a contempt of court-martial under subsection (1) of section 144 of this Act, he may be dealt with in the same manner as a person dealt with under that subsection and, on being found guilty by a District Court Judge of a contempt of court of inquiry, shall be liable to a penalty not exceeding that prescribed in that section in respect of a contempt of court-

martial. For the purposes of this subsection, every reference to the president or a member of a court-martial in the said section 144 shall be construed as a reference to the president or a member of the court of inquiry, as the case may require.

Compare: 1950 No 39 s 137; 1950 No 40 s 137; Army Act 1955, s 135 (UK); Air Force Act 1955, s 135 (UK)

Subsection (1) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “Chief of Defence Force” for “Defence Council or any of its service members”.

In subsection (6) the reference to the High Court was substituted for a reference to the Supreme Court, as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

In subsection (7) the reference to the District Court Judge was substituted for a reference to a Magistrate, as from 1 April 1980, pursuant to section 18(2) District Courts Amendment Act 1979 (1979 No 125).

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 service 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 of this Act, have the legal effect of a conviction by 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)

Subsection (1) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “serviceman” where it firstly occurs and by substituting “member” where it secondly occurs.

Subsections (2) and (3) were amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member” for “serviceman”.

Pay, etc, of deserters and absentees

202 Pay, service, and effects of deserters and absentees

- (1) Any person subject to this Act who is convicted by court-martial or as provided in section 201 of this Act, or is found guilty by an officer exercising summary powers, of desertion or absence without leave shall forfeit one day’s pay and allowances for each day during which he was in desertion or absent without leave:

Provided that, if the period of absence is less than 24 hours, the court-martial or the officer exercising summary powers may cancel such forfeiture, in whole or in part, as it or he thinks just.

- (2) Any period in respect of which pay and allowances are forfeited under subsection (1) of this section 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) of this section 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) of this section, 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 shall be counted (except for the purposes of the proviso to subsection (1) of this section) as one day; or
 - (b) Is more than 24 hours, each multiple of 24 hours shall be counted as one day and any remaining number of hours shall be counted as a further day.

Compare: Naval Discipline Act 1957, s 75 (UK)

Subsection (1) was substituted, as from 1 December 1983, by section 19(1) Armed Forces Discipline Amendment Act 1980 (1980 No 37).

Subsection (2A) was inserted, as from 1 December 1983, by section 19(2) Armed Forces Discipline Amendment Act 1980 (1980 No 37).

Subsection (2A)(a) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “Defence Act 1990” for “Defence Act 1971”.

The original subsection (3)(a) and (c) were amended, as from 1 April 1978, by section 160(1) Public Finance Act 1977 (1977 No 65) by substituting “deposited with the Treasury, and subsections (2) to (4) of section 108 of the Public Finance Act 1977 shall apply to any money so deposited as if it were so deposited pursuant to subsection (1) of that section and as of the reference in subsection (3) of that section to a Government agency were a reference to the Secretary of Defence” for “paid into the Public Account as unclaimed money in accordance with the provisions of that Act”.

Subsection (3) was substituted, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28).

The proviso to subsection (3) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “that person” for “Chief of Defence Force”.

Subsection (4) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “Chief of Defence Force” for “Secretary of Defence”.

Subsection (5) was inserted, as from 1 December 1983, by section 19(3) Armed Forces Discipline Amendment Act 1980 (1980 No 37).

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 shall hold office during the pleasure of the Governor-General.
- (3) Nothing in this Act shall prejudice the exercise of the functions conferred (whether by this Act or by the Courts Martial Appeals Act 1953 or by any rule of law) on the Judge Advocate General of considering and advising on the proceedings of courts-martial or any other functions conferred on him.

Compare: Naval Discipline Act 1957, s 73 (UK); Army Act 1955, s 117 (UK); Air Force Act 1955, s 117 (UK)

Subsection (1) was amended, as from 1 December 1983, by section 20 Armed Forces Discipline Amendment Act 1980 (1980 No 37) by substituting “High Court who has held a practising certificate as such for not less than 7 years” for “Supreme Court of not less than 7 years’ practice”.

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 shall hold office during the pleasure of the Governor-General.
- (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 was inserted, as from 15 December 1988, by section 2 Armed Forces Discipline Amendment Act (No 2) 1988 (1988 No 176).

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 responsi-

ble 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)

Subsection (1) was amended, as from 1 April 1990, pursuant to section 105(1) Defence Act 1990 (1990 No 28) by substituting “Chief of Defence Force” for “Defence Council”.

Regulations and Chief of 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 is convicted of any offence by a civil court or a court-martial or is found guilty of an offence by an officer exercising summary powers, for the forfeiture of the whole or part of one day’s pay and allowances (in the case of a member of the Armed Forces) or salary, wages, and other emoluments (in the case of any other person subject to this Act who is paid by the Crown in right of New Zealand) for each day or part of a day during which he is held in civil or service custody (including imprisonment or detention) or is suspended from duty or is otherwise absent from duty by reason of the offence; and for the continuance or withholding of pay and allowances or salary, wages, and emoluments pending his conviction or acquittal:
- (aa) Where regulations are made for the purposes of paragraph (a) of this subsection, providing for the recovery of any pay and allowances or salary, wages, and emoluments 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 by the Crown in relation to his 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 his salary or wages or from any other emoluments payable to him:
- (b) Providing, in cases where a person subject to this Act has been convicted by court-martial or found guilty by an officer exercising summary powers 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) The Judge Advocate General and the Deputy Judge Advocate General:
 - (ii) Persons engaged in preparing for or attending courts-martial as judge advocates, counsel, interpreters, shorthand writers, and typists:
 - (iii)
 - (iv) Counsel appointed to represent the Chief of Defence Force pursuant to section 15 of the Courts Martial Appeals Act 1953:
 - (v) Persons engaged from time to time by or under the authority of the Chief of Defence Force to lecture on any matter of service law.
 - (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) of this section 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) of this section shall make any provision contrary to or inconsistent with section 92 of the Government Superannuation Fund Act 1956.

- (2) All regulations made under this Act shall come into force on the date of their notification in the *Gazette*, or on such later date as may be specified in the regulations.
- (3) Any such regulations may make different provision for different services, commands, branches, corps, formations, units, and ranks in the Armed Forces.

Compare: 1950 No 39 s 17; 1950 No 40 s 16

Subsection (1)(a) and (b) were substituted, and subsection (1)(aa) was inserted, as from 1 December 1983, by section 21(1) Armed Forces Discipline Amendment Act 1980 (1980 No 37).

Subsection (1)(a) and (aa) was amended, as from 1 April 1990, by section 105(1) Defence Act 1990 (1990 No 28) by substituting “member of the Armed Forces” for “Serviceman”.

Subsection (1)(c) was substituted, as from 15 December 1988, by section 3 Armed Forces Discipline Amendment Act (No 2) 1988 (1988 No 176).

Subsection (1)(c) was amended, as from 1 April 1990, section 105(1) Defence Act 1990 (1990 No 28) by substituting “Chief of Defence Force” for “Defence Council” in subparagraph (iv) and for “Secretary of Defence” in subparagraph (v). Subs (1)(c)(i) was amended by the same provision by substituting “members” for “servicemen”.

Subsection (1)(c) was amended, as from 3 June 1998, by section 2(a) Armed Forces Discipline Amendment Act 1998 (1998 No 27) by substituting “Armed Forces” for “regular forces”.

Subsection (1)(c)(iii) was repealed, as from 3 June 1998, by section 2(b) Armed Forces Discipline Amendment Act 1998 (1998 No 27).

Subsection (1A) was inserted, as from 1 December 1983, by section 17 Armed Forces Discipline Amendment Act 1981 (1981 No 48).

Subsection (1B) was originally inserted as subsection (1A) (but was amended to subsection (1B), as from 1 December 1983, by section 17 Armed Forces Discipline Amendment Act 1981 (1981 No 48)) by section 21(2) Armed Forces Discipline Amendment Act 1980 (1980 No 37), as from 1 December 1983.

206 Chief of Defence Force orders

- (1) The Chief of Defence Force may from time to time make and issue orders, not inconsistent with this Act or the Defence Act 1990, for all or any of the following purposes:
 - (a) Providing for the convening and constitution of courts-martial:
 - (b) Providing for the attendance at trials by court-martial of officers attending the proceedings of the court for the purpose of being instructed in court-martial procedure:

- (c) Providing for the appointment of, and duties and functions that may be performed by, officials of courts-martial:
 - (d) Providing for the assembling and constitution of courts of inquiry:
 - (e) Providing for legal aid to be granted at public expense to persons tried by courts-martial (whether in New Zealand or elsewhere), and prescribing the conditions subject to which any such legal aid 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 of this Act, 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.

Subsection (1) was amended, as from 1 April 1990, pursuant to section 105(1) Defence Act 1990 (1990 No 28) by substituting “Chief of Defence Force” for “Defence Council”.

Subsection (1) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “Defence Act 1990” for “Defence Act 1971”.

Subsection (1)(g) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by omitting “psychiatric”.

Subsection (1)(g) was amended, as from 1 September 2004, by section 51 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115) by substituting “unfit to stand trial” for “under disability”. See clause 2 Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

Subsection (2) was amended, as from 1 April 1990, pursuant to section 105(1) Defence Act 1990 (1990 No 28) by substituting “Chief of Defence Force” for “Defence Council”.

Subsection (2) was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “Defence Force Orders” for “orders of the Chief of Defence Force”.

Repeals, amendments, and savings

This heading was substituted, and section 207 was repealed, as from 28 July 1997, by section 3 Armed Forces Discipline Amendment Act 1997 (1997 No 34).

207 Transitional provisions

[Repealed]

Subsection (2) was amended, as from 23 March 1987, by section 5(2) and (3) Health Amendment Act 1987 (1987 No 10) by substituting “Director General of the Department of Health” for “Director of the Division of Mental Health and the Department of Health”.

Subsection (2) was amended, as from 1 July 1993, by section 38(3) Health Amendment Act 1993 (1993 No 24) by substituting “Ministry of Health” for “Department of Health”.

In subsection (8) the reference to the Parliament of New Zealand was substituted for a reference to the General Assembly of New Zealand pursuant to section 29(2) Constitution Act 1986 (1986 No 114).

Section 207 was repealed, and the preceding heading was substituted, as from 28 July 1997, by section 3 Armed Forces Discipline Amendment Act 1997 (1997 No 34).

The Mental Health Act 1969 referred to in subsection (1) and (2) was repealed, as from 1 November 1992, by section 137(1) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46). Section 140(2) of that Act amended several sections in this Act by substituting the references to hospitals for references to psychiatric hospitals.

208 Repeals, amendments, and savings

- (1) The enactments specified in Schedule 7 to this Act are hereby consequentially amended in the manner indicated in that Schedule.
- (2) The enactments specified in Schedule 8 to this Act 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) of this section, 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 1

Section 16(3)

Civilians subject to this Act

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.

Clause 1 was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting "Defence Force Orders" for "orders issued by the Defence Council".

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.
- Clause 4 was amended, as from 28 July 1997, by section 4 Armed Forces Discipline Amendment Act 1997 (1997 No 34) by substituting “Chief of Defence Force” for “Defence Council”.
- 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 of this Schedule 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 of this Schedule.
- 9** Persons forming part of the family of persons falling within either clause 7 or clause 8 of this Schedule and residing with them or about to reside or departing after residing with them.
-

Schedule 2

Sections 79, 80

**Scale of punishments which may be
imposed by court-martial****1**

The punishments that may be imposed on an offender convicted by court martial are as follows:

- (a)
- (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.

Clause 1(a) was omitted, as from 26 December 1989, by section 5(10) Abolition of the Death Penalty Act 1989 (1989 No 119).

2

Except as provided in clauses 3 and 4 of this Schedule, a punishment specified in any paragraph of the scale prescribed by clause 1 of this Schedule 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 two combinations of punishments as provided in subclause (1) of this clause, 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

Sections 102, 104, and 105

1

Scale of authorised summary punishments

The punishments that may be imposed on an offender by an officer exercising summary powers 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) Stoppage of grog:
- (j) Extra duty not exceeding 2 hours a day:
- (k) A caution.

2

Except as provided in clauses 3 and 4 of this Schedule, a punishment specified in any paragraph of the scale prescribed by clause 1 of this Schedule 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) of this clause, 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

Sections 102 and 104

Summary punishments which may be imposed by a commanding officer exercising summary powers under Part 5 of this Act

First Column	Second Column	Third Column
	Punishments and Jurisdictional Circumstances	
Rank of the Offender	If the offender was given the right to elect trial by court-martial and has not so elected	If the offender has no right to elect to be tried by court-martial
*1. A senior non-commissioned officer.	Reduction in rank (this punishment may be imposed only on a petty officer who, at the time of the disposal of the charge, is on sea service)	

First Column	Second Column	Third Column
	<p>Stay of seniority for a period not exceeding 12 months.</p> <p>A fine, not exceeding 28 days' basic pay.</p> <p>A reprimand.</p> <p>Stoppage of leave, not exceeding 21 days.</p> <p>Stoppage of grog for a period not exceeding 21 days.</p>	<p>If the offence was committed on active or sea service, a fine, not exceeding 14 days' basic pay.§</p> <p>A reprimand.</p> <p>Stoppage of leave, not exceeding 21 days.</p> <p>Stoppage of grog for a period not exceeding 21 days.</p>
<p>†2. A junior non-commissioned officer.</p>	<p>Reduction in rank.</p> <p>A fine, not exceeding 28 days' basic pay.</p>	<p>If the offence was committed on active or sea service, reduction in rank.§</p> <p>If the offence was committed on active or sea service, a fine, not exceeding 14 days' basic pay.§</p> <p>If the offence was committed otherwise than on active or sea service, a fine, not exceeding 7 days' basic pay.§</p>

First Column	Second Column	Third Column
	<p>A reprimand.</p> <p>Stoppage of leave, not exceeding 21 days.</p> <p>Stoppage of grog for a period not exceeding 21 days.</p> <p>Extra duty for a period not exceeding 21 days.</p> <p>A caution.</p>	<p>A reprimand.</p> <p>Stoppage of leave, not exceeding 21 days.</p> <p>Stoppage of grog for a period not exceeding 21 days.</p> <p>Extra duty for a period not exceeding 21 days.</p> <p>A caution.</p>
<p>3. A rating of able rank, a private, or a leading aircraftman, or a rating, soldier, or airman of lower rank.</p>	<p>Detention for a period not exceeding 60 days (this punishment may be imposed only on a rating of able rank or of lower rank in respect of an offence committed on sea service)</p> <p>Detention for a period not exceeding 28 days.</p> <p>A fine not exceeding 28 days' basic pay.</p>	<p>If the offence was committed on active or sea service, detention for a period not exceeding 14 days. §</p> <p>If the offence was committed on active or sea service, a fine not exceeding 14 days' basic pay. §</p>

First Column	Second Column	Third Column
	<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>Stoppage of grog for a period not exceeding 21 days.</p> <p>Extra duty for a period not exceeding 21 days.</p> <p>A caution.</p>	<p>If the offence was committed otherwise than on active or sea service, 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>Stoppage of grog for a period 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 of this Schedule, 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 2 of this Schedule, 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 the application of this punishment, 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.

The first item in the second column was amended, as from 22 October 2003, by section 3(a) Armed Forces Discipline Amendment Act 2003 (2003 No 59) by substituting “Reduction in rank (this punishment may be imposed only on a petty officer who, at the time of the disposal of the charge, is on sea service)” for “Reduction in rank†”.

The note to the first item denoted by the symbol ‡ was repealed, as from 22 October 2003, by section 3(b) Armed Forces Discipline Amendment Act 2003 (2003 No 59).

The note to the first item in the second column was substituted, as from 1 December 1983, by section 22 Armed Forces Discipline Amendment Act 1980 (1980 No 37).

The note relating to sea service, in both places where it occurs, was substituted, as from 15 December 1988, by section 21 Armed Forces Discipline Amendment Act 1988 (1988 No 89).

The third item in the second column was amended, as from 22 October 2003, by section 3(c) Armed Forces Discipline Amendment Act 2003 (2003 No 59) by substituting “Detention for a period not exceeding 60 days (this punishment may be imposed only on a rating of able rank or of lower rank in respect of an offence committed on sea service)” for “Detention for a period not exceeding 60 days‡”.

The note to the third item denoted by the symbol ‡ was repealed, as from 22 October 2003, by section 3(d) Armed Forces Discipline Amendment Act 2003 (2003 No 59).

Schedule 5

Sections 102, 104, 105

Summary punishments which may be imposed by a superior commander

**exercising summary powers under Part
5 of this Act**

First Column	Second Column	Third Column
Rank of Offender	Punishments and Jurisdictional Circumstances	
	If the offender was given the right to elect trial by court-martial and has not so elected	If the offender has no right to elect to be tried by court-martial
*1. A junior officer.	<p>Stay of seniority for a period not exceeding 12 months.</p> <p>A fine, not exceeding 28 days' basic pay.</p> <p>A reprimand.</p>	<p>If the offence was committed on active or sea service, a fine not exceeding 14 days' basis pay.**</p> <p>If the offence was committed otherwise than on active or sea service, a fine, not exceeding 7 days' basic pay.**</p> <p>A reprimand.</p>
2. A warrant officer.	<p>Stay of seniority for a period not exceeding 12 months.</p> <p>A fine, not exceeding 28 days' basic pay.</p>	<p>If the offence was committed on active or sea service, a fine not exceeding 14 days' basis pay.**</p>

First Column	Second Column	Third Column
		If the offence was committed otherwise than on active or sea service, a fine, not exceeding 7 days' basic pay.**
	A reprimand.	A reprimand.

***Notes—**

*For the purposes of clause 1 of this Schedule, a junior officer is an officer who holds a rank below that of lieutenant commander, major, or squadron leader.

**For the purposes of the application of this punishment, 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.

The note relating to sea service was substituted, as from 15 December 1988, by section 21 Armed Forces Discipline Amendment Act 1988 (1988 No 176).

Schedule 6

Section 135(4)

**Alternative offences of which accused
may be convicted by court-martial**

First Column	Second Column
Offence Charged	Alternative Offence
1. Section 23(1) (aiding the enemy with intent to assist the enemy).	Section 23(2) (aiding the enemy knowingly and without lawful excuse).

First Column	Second Column
<p>2. Section 24(1) (communicating with, giving intelligence to, or failing to report information about the enemy, with intent to assist the enemy).</p>	<p>(a) Section 24(2) (communicating with or giving intelligence to the enemy without authority, or failing to report information about the enemy without lawful excuse); or</p> <p>(b) Section 25 (disclosing information without authority).</p>
<p>3. Section 24(2) (communicating with or giving intelligence to the enemy without authority, or failing to report information about the enemy without lawful excuse).</p>	<p>Section 25 (disclosing information without authority).</p>
<p>4. Section 29(1)(b) (when before the enemy, using words which to his knowledge are likely to create despondency or unnecessary alarm).</p>	<p>Section 29(2) (the corresponding offence without knowledge).</p>
<p>5. Section 34(5)(a) (striking a person on guard duty or on watch).</p>	<p>Section 34(5)(b) (using force against a person on guard duty or on watch otherwise than by striking him).</p>
<p>6. Section 35(1)(a) (striking his superior officer).</p>	<p>(a) Section 35(1)(b) (using violence to his superior officer otherwise than by striking); or</p> <p>(b) Section 35(1)(c) (offering violence to his superior officer).</p>

First Column	Second Column
7. Section 35(1)(b) (using violence to his superior officer otherwise than by striking).	Section 35(1)(c) (offering violence to his superior officer).
8. Section 35(1)(c) (offering violence to his superior officer).	Section 36(1)(a) (using threatening language to his superior officer).
9. Section 36(1)(a) (using threatening language to his superior officer).	(a) Section 36(1)(b) (using insubordinate language to his superior officer); or
	(b) Section 36(1)(c) (using insulting language to his superior officer).
10. Section 36(1)(b) (using insubordinate language to his superior officer).	Section 36(1)(c) (using insulting language to his superior officer).
11. Section 41(a) (striking another person subject to this Act who is of inferior rank).	Section 41(b) (ill-treating such a person otherwise than by striking him).
12. Section 44(2)(a) (striking a serviceman ordering offender into arrest).	(a) Section 44(2)(b) (using violence to a serviceman ordering offender into arrest otherwise than by striking); or
	(b) Section 44(2)(c) (offering violence to any such serviceman).
13. Section 44(2)(b) (using violence to any serviceman who has ordered offender into arrest).	Section 44(2)(c) (offering violence to any such serviceman).

First Column	Second Column
14. Section 44(3)(a) (striking person who is apprehending an offender or who is holding him in custody).	(a) Section 44(3)(b) (using violence to any such person otherwise than by striking); or (b) Section 44(3)(c) (offering violence to any such person).
15. Section 44(3)(b) (using violence to any person who is apprehending an offender or who is holding him in custody).	Section 44(3)(c) (offering violence to any such person).
16. Section 46(1) (permitting the escape of prisoners and other persons in custody wilfully and without authority).	Section 46(2) (doing certain specified acts with intent to facilitate escape).
17. Section 47 (desertion).	Section 48 (absence without leave).
18. Sections 47 and 76 (attempting to desert).	Section 48 (absence without leave).
19. Section 57(1)(a) (stealing service property or property belonging, etc, to a person subject to service law).	Section 57(1)(b) (fraudulently misapplying any such property).
20. Section 58 (receiving service property or property belonging, etc, to a person subject to service law).	Section 59 (being in possession of any such property without lawful excuse).
21. Section 61(1) (wilful destruction of or damage to property).	Section 61(2) (negligent destruction of or damage to property).

First Column	Second Column
22. Section 64(1) losing or hazarding a ship, aircraft, or armoured fighting vehicle wilfully and without authority).	Section 64(2) (losing or hazarding a ship, aircraft, or armoured fighting vehicle negligently).
23. Section 67(1)(a) (reckless or dangerous driving).	Section 67(2) (careless or inconsiderate driving).

Schedule 7
Enactments amended

Section 208(1)

Title of Act	Amendments
1927, No 35-The Police Offences Act 1927	Repealed by s 51(1) of the Summary Offences Act 1981.
1953, No 100-The Courts Martial Appeals Act 1953	These amendments have been incorporated in the reprinted Courts Martial Appeals Act 1953 (1974-3, p 2281).
1955, No 94-The Wills Amendment Act 1955	These amendments have been incorporated in the reprinted Wills Amendment Act 1955 (1984, RS Vol 15, p 848).
1958, No 19-The Geneva Conventions Act 1958	By repealing subsection (2) of section 6.
1961, No 43-The Crimes Act 1961	These amendments have been incorporated in the reprinted Crimes Act 1961 (1979, RS Vol 1, p 635).

Schedule 8
Enactments repealed

Section 208(2)

1

Repeal of enactments relating to the Naval
Forces

- 1954, No 53—The Navy Act 1954. (1957 Reprint, Vol 10, p 897.)
- 1958, No 22—The Navy Amendment Act 1958.
- 1958, No 87—The Police Offences Amendment Act 1958: Section 3.
- 1967, No 28—The Navy Amendment Act 1967.

2

Repeal of enactments relating to the Army

- 1950, No 39—The New Zealand Army Act 1950. (1957 Reprint, Vol 11, p 1)
- 1954, No 20—The New Zealand Army Amendment Act 1954. (1957 Reprint, Vol 11, p 110.)
- 1957, No 33—The New Zealand Army Amendment Act 1957. (1957 Reprint, Vol 11, p 112.)
- 1959, No 26—The New Zealand Army Amendment Act 1959.
- 1961, No 29—The New Zealand Army Amendment Act 1961.
- 1963, No 105—The New Zealand Army Amendment Act 1963.
- 1965, No 54—The New Zealand Army Amendment Act 1965.
- 1967, No 26—The New Zealand Army Amendment Act 1967.

3

Repeal of enactments relating to the Air
Force

- 1950, No 40—The Royal New Zealand Air Force Act 1950. (1957 Reprint, Vol 13, p 455.)
- 1954, No 21—The Royal New Zealand Air Force Amendment Act 1954. (1957 Reprint, Vol 13, p 561.)

3—continued

- 1957, No 34—The Royal New Zealand Air Force Amendment Act 1957. (1957 Reprint, Vol. 13, p. 563.)
 - 1959, No 27—The Royal New Zealand Air Force Amendment Act 1959.
 - 1960, No 88—The Royal New Zealand Air Force Amendment Act 1960.
 - 1961, No 97—The Royal New Zealand Air Force Amendment Act 1961.
 - 1965, No 55—The Royal New Zealand Air Force Amendment Act 1965.
 - 1967, No 27—The Royal New Zealand Air Force Amendment Act 1967.
 - 1968, No 58—The Royal New Zealand Air Force Amendment Act 1968.
-

Contents

- 1 General
 - 2 About this eprint
 - 3 List of amendments incorporated in this eprint (most recent first)
-

Notes

1 *General*

This is an eprint of the Armed Forces Discipline Act 1971. It incorporates all the amendments to the Armed Forces Discipline Act 1971 as at 20 September 2007. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

2 *About this eprint*

This eprint has not been officialised. For more information about officialisation, please see "Making online legislation official" under "Status of legislation on this site" in the About section of this website.

3 *List of amendments incorporated in this eprint (most recent first)*

Armed Forces Discipline Amendment Act 2007 (2007 No 40)
