Military Justice Legislation Amendment Act 2018

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Commencement	see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Military Justice Legislation Amendment Act 2018.

2 Commencement

This Act comes into force on 30 November 2018.

Part 1
Amendments to Armed Forces Discipline Act 1971

3 Principal Act

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

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

Repeal section 3(2).

5 New sections 5A and 5B inserted

After section 5, insert:

5A Transitional, savings, and related provisions

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

5B Act binds the Crown

This Act binds the Crown.

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

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

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

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

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

After section 102, insert:

102A Commanding officer must determine whether offence is specified offence

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

(2) If the commanding officer of the accused determines that the alleged offence has 1 or more victims, the commanding officer must determine whether the alleged offence is a specified offence.

(3) If the commanding officer of the accused determines that the alleged offence is a specified offence,—

(a) the commanding officer of the accused must, for each victim,—

(i) advise the commanding officer of the victim and the Director of Military Prosecutions of that determination; and

(ii) if the victim does not have a commanding officer, appoint a member of the Defence Force to assist the victim; and

(b) Part 10A applies to the victim.

(4) Part 10A and subsection (3)(b) cease to apply if, and to the extent that, the Director of Military Prosecutions determines, under section 117ZIA, that a victim identified by the commanding officer of the accused is not a victim or that the alleged offence is not a specified offence.

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

Compare: 2002 No 39 s 29A

8 New section 117ZIA inserted (Director to determine whether offence is specified offence)

After section 117ZI, insert:

117ZIA Director to determine whether offence is specified offence

(1) This section applies to a charge that is referred to the Director of Military Prosecutions under this Part.

(2) The Director must determine whether the alleged offence—

(a) has 1 or more victims; and

(b) is a specified offence.

(3) If, and to the extent that, the Director determines that a victim identified by the commanding officer is not a victim or that the alleged offence is not a specified offence, Part 10A and section 102A(3)(b) do not apply.

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

Compare: 2002 No 39 s 29A

9 Section 155 amended (Procedure for reconsideration)

(1) After section 155(1), insert:

(1A) The Authority must take all reasonable steps to give every victim of the service prisoner or detainee prior written notice of the reconsideration.

(1B) A victim of the service prisoner or detainee may—

(a) write to the Authority by a given date, making submissions on, or giving information relevant to, the reconsideration; and

(b) if the reconsideration relates to a prisoner who is subject to a long-term sentence, request information on the prisoner.

(2) Replace section 155(3) with:

(3) If the service prisoner or detainee requests a hearing under subsection (2)(a),—

(a) the Director of Military Prosecutions—

(i) must be given reasonable prior written notice of the date and time of the hearing; and

(ii) may attend and be heard at the hearing (whether personally or through an agent); and

(b) the Authority must make reasonable efforts to ensure that every victim of the service prisoner or detainee is given reasonable prior written notice of the date and time of the hearing.

(3A) Every victim of the service prisoner or detainee is entitled—

(a) to appear and make oral submissions to the Authority for the purpose of assisting the Authority to reach a decision; and

(b) with the leave of the Authority, to be represented by counsel; and

(c) to be accompanied by 1 or more support persons (subject to any limitation on numbers imposed by the Authority), who may, with the leave of the Authority,—

(i) speak in support of the victim; and

(ii) with the permission of the victim, speak on behalf of the victim.

(3) After section 155(4), insert:

(5) In this section,—

long-term sentence means a sentence of more than 2 years of imprisonment

victim means, in relation to a service prisoner or detainee, a person who has asked for notice and who has given an address under section 198I.

10 New section 155A inserted (Information for victims)

After section 155, insert:

155A Information for victims

(1) If a victim requests information under section 155(1B)(b), the relevant person must prepare and send to the victim and the Authority all of the following:

(a) a list of any programmes that the service prisoner has attended since commencing the service prisoner's sentence, and a list of any programmes that the service prisoner has completed:

(b) a statement of the service prisoner's current security classification:

(c) a list of any offences that the service prisoner has been convicted of since commencing the service prisoner's sentence:

(d) a statement that the purpose of providing the victim with information about the service prisoner is to assist the victim to make submissions, and that the information is not to be used for any other purpose.

(2) The relevant person must prepare the information and send it to the victim and the Authority before every reconsideration hearing for the service prisoner.

(3) In this section, **relevant person** means—

(a) if the service prisoner is detained in a prison, the chief executive of the Department of Corrections; or

(b) in every other case, the Director of Military Prosecutions.

Compare: 2002 No 10 s 44

11 Section 161 amended (Purpose of Discipline Committee)

In section 161, replace "the sentencing practice of the Court Martial", with "sentencing practice".

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

(1) In section 187(1), insert in its appropriate alphabetical order:

health assessor means a person who is—

(a) a practising psychiatrist who is a medical practitioner; or

(b) a health practitioner who is, or is deemed to be, registered with the Psychologists Board continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of psychology; or

(c) in the case of a trial in the Court Martial held overseas, a person approved by the Judge

(2) In section 187(1), repeal the definition of **qualified medical practitioner**.

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

After section 187, insert:

187A Court Martial to act through Judge alone

(1) The Court Martial must act through the Judge alone when exercising any power or performing any function or duty under this Part.

(2) Subsection (1) is subject to sections 190(2A) and 194(1B).

14 Section 188 amended (When Court may find accused unfit to stand trial)

Repeal section 188(2) to (4) and (6).

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

(1) In section 188A(1), replace "If the Court Martial records a finding of the kind specified in section 188(6), the Court must" with "In order to determine whether an accused is unfit to stand trial, the Court Martial must".

(2) In section 188A(1), replace "1 qualified medical practitioner" with "2 health assessors".

(3) After section 188A(2), insert:

(3) If the Court records a finding under subsection (2) that the accused is fit to stand trial, the Court must continue the proceedings.

16 New sections 188C to 188E inserted

After section 188B, insert:

188C Inquiry before trial into accused's involvement in offence

(1) This section applies if, before trial, the accused is found unfit to stand trial.

(2) The Court Martial must decide whether the Court is satisfied, on the balance of probabilities, that the evidence against the accused is sufficient to establish that the accused caused the act or omission that forms the basis of the offence with which the accused is charged.

(3) A special hearing must be held to ascertain whether the Court Martial is satisfied of the matter specified in subsection (2).

188D Inquiry during trial into accused's involvement in offence

(1) This section applies if, during a trial, the accused is found unfit to stand trial.

(2) The Court Martial must decide whether the Court is satisfied, on the balance of probabilities, that the evidence against the accused is sufficient to establish that the accused caused the act or omission that forms the basis of the offence with which the accused is charged.

(3) For the purposes of subsection (2), the Court Martial may (whether on the application of a party or on the Court's own initiative) do either or both of the following:

(a) consider any evidence presented at the trial:

(b) hear any new evidence.

188E Outcome of consideration of accused's involvement

(1) If the Court Martial is not satisfied of the matter specified in section 188C(2) or 188D(2),—

(a) the Court must record a finding of not guilty on the charge:

(b) the finding that the accused is unfit to stand trial is deemed for all legal purposes to have been quashed.

(2) If the Court Martial is satisfied of the matter specified in section 188C(2) or 188D(2), the Court must—

(a) record a finding to that effect; and

(b) proceed to deal with the accused under section 191.

17 Section 190 amended (Finding of insanity)

After section 190(2), insert:

(2A) Section 55 of the Court Martial Act 2007 applies to a finding under this section.

18 Section 191 amended (Order to be made if person unfit to stand trial or insane)

In section 191(2), replace "medical evidence" with "the evidence of 1 or more health assessors".

19 Section 194 amended (Power of Court Martial to commit to hospital on conviction)

(1) In section 194(1A), replace "by a certificate of 1 qualified medical practitioner" with "on the evidence of 1 or more health assessors".

(2) After section 194(1A), insert:

(1B) A sentence passed or an order made under subsection (1) is a sentence of the Court Martial, and section 61 of the Court Martial Act 2007 applies to both a sentence and an order under that subsection.

20 Section 196 amended (Insanity of certain persons while serving sentences of imprisonment under this Act)

In section 196(2), replace "qualified medical practitioner" with "health assessor".

21 New Part 10A inserted

After section 198, insert:

Part 10A
Victims' rights

198A Application of this Part

(1) This Part applies to a victim of a specified offence.

(2) Subsection (1) is subject to sections 102A(4) and 117ZIA(3).

198B Interpretation of terms used in this Part

In this Part, unless the context otherwise requires,—

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

Director means the Director of Military Prosecutions

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

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

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

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

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

198C Rights to be accorded to victim of specified offence

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

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

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

(1) This section applies if—

(a) the victim is a victim of a specified offence; and

(b) the Judge Advocate General or a Judge of the Court Martial is required to determine whether to grant bail to the person who is accused of the offence.

(2) If this section applies, the Director must—

(a) make all reasonable efforts to ascertain any views that the victim has about the accused being released on bail; and

(b) inform the Judge Advocate General or (as the case requires) a Judge of the Court Martial of any views ascertained under paragraph (a).

Compare: 2002 No 39 s 30

Right to receive notice of certain matters and to appoint representative

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

(1) A victim of a specified offence has a right to receive notice of the matters described in sections 198J to 198N.

(2) The victim support officer must inform a victim who is a victim of a specified offence—

(a) that the victim has the right to receive any notice under sections 198J to 198N (and to appoint a representative to receive notices on behalf of the victim); and

(b) that, if the victim wants to receive the notices, the victim (or, if a representative is appointed, the victim's representative) must request the Director to ensure that the victim is given notice under sections 198J to 198N, and—

(i) the victim must give the Director the victim's address; or

(ii) if a representative is appointed to receive the notices, the victim or the victim's representative must give the Director the representative's name and address; and

(c) that the name and address of the victim (or, if a representative is appointed, the name and address of the victim's representative)—

(i) will be provided to the Judge Advocate General to ensure that the victim receives any notice given under section 20 of the Prisoners' and Victims' Claims Act 2005; and

(ii) may, if section 198N applies, be provided to the department of State that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Immigration Act 2009, to enable the victim to receive any notice under that section.

(3) The Director may provide the name and address of the victim or the victim's representative to—

(a) the Judge Advocate General for the purpose described in subsection (2)(c)(i):

(b) the department described in subsection (2)(c)(ii) for the purpose described in that subsection.

(4) Subsection (5) applies if the Director knows, or ought reasonably to know, that the victim is not, or may not be, capable alone of either—

(a) asking for, receiving, or understanding a notice under any of sections 198J to 198N; or

(b) appointing a representative.

(5) If this subsection applies, the Director must inform a support person of the victim that a representative of the victim may be appointed.

Compare: 2002 No 39 ss 31, 33C

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

198F Change of address of victim or representative

(1) A victim may change the address given under section 198E(2)(b) by notifying the Director in writing.

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

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

Compare: 2002 No 39 s 33A

198G Victim may opt out of receiving notices

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

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

Compare: 2002 No 39 s 33B

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

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

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

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

(2) The modifications are—

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

(b) any other necessary modifications.

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

198I Application of sections 198J to 198N

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

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

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

Compare: 2002 No 39 s 32B

Notice of certain matters to be given to victim

198J Notice of release on bail of accused or offender

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

(2) The matters are—

(a) whether the person accused of the offence (or, as the case requires, the offender) has been released on bail; and

(b) if the person accused of the offence (or, as the case requires, the offender) has been released on bail, any terms or conditions of release imposed at any time that—

(i) relate to the safety and security of the victim, or of 1 or more members of the victim's immediate family, or of both; or

(ii) require the accused or offender not to associate with, or not to contact, the victim, or 1 or more members of the victim's immediate family, or both; and

(c) the details of any order made by the Court Martial or Judge Advocate General that varies, revokes, or substitutes any term or condition of release referred to in paragraph (b); and

(d) if an application for release on bail has been made and the hearing of that application has been adjourned, the date to which the hearing has been adjourned.

(3) In this section, **release on bail** includes a release on bail—

(a) until the hearing of proceedings:

(b) during an adjournment of proceedings:

(c) until sentencing:

(d) until determination of an appeal against conviction or sentence.

(4) However, nothing in this section requires or permits the Director to give notice of a matter contrary to any provision of or contrary to any order made under subpart 3 of Part 5 of the Criminal Procedure Act 2011.

Compare: 2002 No 39 s 34

198K Notice of release or escape from custody, or of death, of accused or offender

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

(a) reasonable prior notice of the accused's or offender's impending temporary or permanent release from custody:

(b) notice, as soon as practicable, of the accused's or offender's—

(i) escape from custody, unless the accused or offender sooner returns, or is returned to, the place of custody:

(ii) death in custody:

(c) notice, as soon as practicable, of the accused's or offender's death while on bail.

(2) In this section, **custody** means any type of imprisonment or detention that is provided for in section 168.

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

Compare: 2002 No 39 s 35

198L Notice of breach of release or detention conditions

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

(a) the breach by the accused or offender of any terms or conditions of release of the type described in section 198J(2)(b)(i) and (ii):

(b) the conviction of the accused or offender for an offence against section 45 or 45A:

(c) the sentence imposed on the accused or offender in respect of a conviction referred to in paragraph (b).

Compare: 2002 No 39 s 36

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

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

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

(a) reasonable prior notice of an impending discharge of the accused or offender from the hospital or facility; and

(b) reasonable prior notice of the first unescorted leave of absence from the hospital or facility granted to the accused or offender under a leave provision; and

(c) reasonable prior notice of the first unescorted overnight leave of absence granted to the accused or offender under a leave provision; and

(d) notice, as soon as practicable, of every escape by the accused or offender; and

(e) notice, as soon as practicable, of the death (whether within or outside a hospital or facility) of the accused or offender; and

(f) notice, as soon as practicable, of the accused or offender ceasing to be a special patient within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992.

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

facility includes the land on which the facility is situated

hospital includes the land on which the hospital is situated.

(4) In this section, **leave provision** means section 31, 50, or 52 of the Mental Health (Compulsory Assessment and Treatment) Act 1992.

(5) The Director-General of Health must give the Director notice of the matters described in subsection (2) in order that the Director can give notice to the victim in accordance with that subsection.

Compare: 2002 No 39 ss 37, 38

198N Notice of proposal to cancel or suspend liability for deportation

(1) A victim to whom this section applies is entitled to receive a notice in accordance with section 39 of the Victims' Rights Act 2002 if—

(a) the offender is liable for deportation under the Immigration Act 2009 as a result of any criminal offending; and

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

(2) Section 39(2), (3), (5), and (6) of the Victims' Rights Act 2002 applies in relation to the victim with the following modifications:

(a) a reference to a specified person in that section must be treated as a reference to the Director; and

(b) any other necessary modifications.

Compare: 2002 No 39 s 39

Submissions on deportation of offender

198O Victim may make submission on consideration of cancellation or suspension of liability for deportation, or offender's appeal against deportation

A victim to whom this Part applies may make submissions to the Minister of Immigration and to the Immigration and Protection Tribunal, in accordance with sections 173 and 208 of the Immigration Act 2009.

Compare: 2002 No 39 s 48

22 Section 206 amended (Defence Force Orders)

(1) In section 206(1)(b), after "officers", insert "and warrant officers".

(2) Repeal section 206(1)(c).

23 New Schedule 1AA inserted

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

Part 2
Amendments to Court Martial Act 2007

24 Principal Act

This Part amends the Court Martial Act 2007 (the **principal Act**).

25 New section 6A inserted (Transitional, savings, and related provisions)

After section 6, insert:

6A Transitional, savings, and related provisions

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

26 Section 15 repealed (Notice requirement for appointment of Chief Judge, Deputy Chief Judges, or other Judges)

Repeal section 15.

27 Section 26 amended (Procedure for assigning military members)

(1) In section 26(1)(b), after "proceedings", insert "; and".

(2) After section 26(1)(b), insert:

(c) the Director of Military Prosecutions.

(3) In section 26(2)(b), after "accused", insert "or the Director of Military Prosecutions".

(4) In section 26(3), replace "notice under subsection (1)(b)" with "notices under subsection (1)(b) and (c)".

(5) In section 26(3)(b), replace "the accused has" with "the accused and the Director of Military Prosecutions have".

28 Section 27 amended (Accused may object against assignment of person as military member)

(1) In the heading to section 27, replace "**Accused may object against**" with "**Objections against**".

(2) In section 27(1), after "accused", insert "or the Director of Military Prosecutions".

(3) In section 27(4)(b)(ii), delete "by the accused".

(4) In section 27(4)(b)(iii), after "accused", insert "; and".

(5) After section 27(4)(b)(iii), insert:

(iv) the Director of Military Prosecutions.

(6) In section 27(6)(b), replace "and the accused" with ", the accused, and the Director of Military Prosecutions".

29 Section 28 amended (Substitute military members)

(1) In section 28(1), after "the Registrar may", insert ", before the accused has entered a plea to the charge at the trial,".

(2) In section 28(2)(a), delete "before the beginning, or in the course, of the trial".

(3) In section 28(3), after "accused", insert "or the Director of Military Prosecutions".

(4) After section 28(3), insert:

(4) If, after the accused has entered a plea to the charge at the trial, a military member is unable to continue for one of the reasons specified in subsection (2), the Judge must discharge all of the military members and refer the charge back to the Director of Military Prosecutions.

(5) The Director of Military Prosecutions may—

(a) decide not to proceed with the charge; or

(b) lay the charge sheet again, or an amended version of the charge sheet, before the Registrar.

(6) If subsection (5)(b) applies, the Registrar must assign new military members in accordance with sections 22 to 26 and, as the case may be, section 28.

30 Section 49 amended (Judge may grant bail pending trial)

After section 49(4)(a), insert:

(aa) must take into account any views of a victim to which Part 10A of the Armed Forces Discipline Act 1971 applies that are conveyed in accordance with section 198D of that Act; and

31 New Schedule 1AA inserted

Insert the Schedule 1AA set out in Schedule 2 of this Act as the first schedule to appear after the last section of the principal Act.

Part 3
Amendments to Court Martial Appeals Act 1953

32 Principal Act

This Part amends the Court Martial Appeals Act 1953 (the **principal Act**).

33 New sections 2A and 2B inserted

After section 2, insert:

2A Transitional, savings, and related provisions

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

2B Act binds the Crown

This Act binds the Crown.

34 Section 9EA amended (Appeal by accused against finding relating to fitness to stand trial)

(1) Replace section 9EA(1) with:

(1) A person in relation to whom the Court Martial has made a finding as to fitness to stand trial may appeal against 1 or both of the following findings:

(a) that the evidence against the person is sufficient to establish that the person caused the act or omission that forms the basis of the offence with which the person is charged:

(b) that the person is, according to the finding, fit or unfit to stand trial.

(2) In section 9EA(5), replace "qualified medical practitioners" with "health assessors".

35 New section 9EB inserted (Appeal against order for detention, release, etc)

After section 9EA, insert:

9EB Appeal against order for detention, release, etc

(1) This section applies to the following orders and decisions made under section 191 of the Armed Forces Discipline Act 1971 in respect of a person tried by the Court Martial:

(a) an order for the person's detention under section 191(1) or (2)(a) of that Act:

(b) an order for the person's release under section 191(2)(b) of that Act:

(c) a decision, made under section 191(2)(c) of that Act, not to make an order.

(2) The person and the Director of Military Prosecutions have the same right of appeal against the order or decision as they would have if the order or decision were a sentence.

(3) The provisions of this Act, to the extent that they are applicable and with any necessary modifications, apply to the appeal.

(4) The court may—

(a) dismiss the appeal:

(b) if the appeal is against an order, vary the order:

(c) cancel the order or decision and substitute another order or decision under section 191(1) or (2) of the Armed Forces Discipline Act 1971.

36 New Schedule 1 inserted

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

Schedule 1
New Schedule 1AA inserted

s 23

Schedule 1AA
Transitional, savings, and related provisions

s 5A

Part 1
Provisions relating to Part 1 of Military Justice Legislation Amendment Act 2018

1 Interpretation in this Part

In this Part,—

amendment Act means Part 1 of the Military Justice Legislation Amendment Act 2018

commencement means the commencement of the amendment Act

other amendments means the amendments made by sections 12 to 20 of the amendment Act

proceeding means the disposal of a charge recorded under this Act, and includes any appeals

victims' rights amendments means the amendments made by sections 6 to 10 and 21 of the amendment Act.

2 Burden of proof amendment

(1) Despite its repeal by section 4 of the amendment Act, section 3(2) continues to apply in relation to a proceeding in which the accused has been arraigned in accordance with section 116 before commencement.

(2) Despite subclause (1), if the accused in a proceeding described in that subclause is, after commencement, remanded for trial in the Court Martial, section 3(2) does not apply to the proceeding from the point at which the accused is remanded.

3 Victims' rights amendments

(1) The victims' rights amendments do not apply in relation to a proceeding in which the charge is recorded under section 102 before commencement.

(2) Despite subclause (1), the victims' rights amendments apply in relation to a proceeding described in that subclause if—

(a) any further charges for an offence arising from the same incident or series of incidents are recorded after commencement; or

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

4 Other amendments

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

Schedule 2
New Schedule 1AA inserted

s 31

Schedule 1AA
Transitional, savings, and related provisions

s 6A

Part 1
Provisions relating to Part 2 of Military Justice Legislation Amendment Act 2018

1 Interpretation in this Part

In this Part,—

amendment Act means Part 2 of the Military Justice Legislation Amendment Act 2018

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

victims' rights amendments has the meaning given in clause 1 of Schedule 1AA of the Armed Forces Discipline Act 1971.

2 Victims' rights amendments

The amendments made by section 30 of the amendment Act do not apply in relation to a proceeding to which the victims' rights amendments do not apply in accordance with clause 3 of Schedule 1AA of the Armed Forces Discipline Act 1971.

3 Other amendments

The amendments made by sections 27 to 29 of the amendment Act do not apply in relation to a proceeding described in clause 4 of Schedule 1AA of the Armed Forces Discipline Act 1971.

Schedule 3
New Schedule 1 inserted

s 36

Schedule 1
Transitional, savings, and related provisions

s 2A

Part 1
Provisions relating to Part 3 of Military Justice Legislation Amendment Act 2018

1 Interpretation in this Part

In this Part,—

amendment Act means Part 3 of the Military Justice Legislation Amendment Act 2018

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

2 Application of amendments to proceedings

The amendments made by sections 34 and 35 of the amendment Act do not apply in relation to a proceeding described in clause 4 of Schedule 1AA of the Armed Forces Discipline Act 1971.

Legislative history

15 August 2017	Introduction (Bill 299–1)
7 December 2017	First reading and referral to Foreign Affairs, Defence and Trade Committee
4 May 2018	Reported from Foreign Affairs, Defence and Trade Committee
3 July 2018	Second reading
24 July 2018	Committee of the whole House (Bill 299–2)
20 September 2018	Third reading
28 September 2018	Royal assent

This Act is administered by the Ministry of Defence.

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