**Version**
**as at 28 October 2021**

# Court Martial Appeals Act 1953

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|---|---|
| Public Act | 1953 No 100 |
| Date of assent | 26 November 1953 |
| Commencement | see section 1(2) |

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**Note**

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

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

**This Act is administered by the New Zealand Defence Force.**

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**Transitional, savings, and related provisions**

## An Act to establish a Court Martial Appeal Court and to provide for appeals thereto from the Court Martial

**Title: amended, on 1 July 2009, by section 4(2)(a) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).**

**Title: amended, on 1 July 2009, by section 4(2)(b) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).**

**Title: amended, on 22 October 2003, by section 3 of the Courts Martial Appeals Amendment Act 2003 (2003 No 68).**

### 1 Short Title and commencement

(1) This Act may be cited as the Court Martial Appeals Act 1953.

(2) This Act shall come into force on a day to be appointed for the commencement thereof by the Governor-General by Order in Council.

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

(3) *[Repealed]*

Compare: Courts-Martial (Appeals) Act 1951 s 25 (UK)

| **Legislation Act 2019 requirements for secondary legislation made under this section** | | |
|---|---|---|
| **Publication** | PCO must publish it on the legislation website and notify it in the *Gazette* | LA19 s 69(1)(c) |
| **Presentation** | The Minister must present it to the House of Representatives | LA19 s 114, Sch 1 cl 32(1)(a) |
| **Disallowance** | It may be disallowed by the House of Representatives | LA19 ss 115, 116 |

*This note is not part of the Act.*

Section 1(2): Court Martial Appeals Act 1953 brought into force, on 1 March 1955, by the Courts Martial Appeals Act Commencement Order 1955 (SR 1955/41).

Section 1(1): amended, on 1 July 2009, by section 4(3) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

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

Section 1(3): repealed, on 27 May 1988, by section 22 of the Armed Forces Discipline Amendment Act 1988 (1988 No 89).

### 2 Interpretation

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

**appellant** includes a person who has been convicted by the Court Martial and desires to appeal under this Act to the court

**appointed Judge** means a Judge of the court appointed under paragraph (b) of subsection (1) of section 3

**court** means the Court Martial Appeal Court constituted by this Act

**Court of Appeal** means the Court of Appeal of New Zealand constituted under Part 3 of the Senior Courts Act 2016

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

**Director of Military Prosecutions** means the Director of Military Prosecutions appointed under section 101E of the Armed Forces Discipline Act 1971

**Judge Advocate General** means the Judge Advocate General of the Armed Forces appointed under section 203 of the Armed Forces Discipline Act 1971

**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

**Minister** means the Minister of Defence

**offence** means an offence against the Armed Forces Discipline Act 1971

**prescribed** means prescribed by rules of court

**Registrar** means the Registrar of the court

**rules of court** means rules of court made under section 26.

(2) In this Act, the expression **on active service**, in relation to a person subject to service law, has the meaning assigned to it by section 5 of the Armed Forces Discipline Act 1971.

(3) *[Repealed]*

Compare: Courts-Martial (Appeals) Act 1951 s 24 (UK)

Section 2(1) **Air Board**: repealed, on 1 December 1983, by section 208(1) of the Armed Forces Discipline Act 1971 (1971 No 53).

Section 2(1) **Air Force Act**: repealed, on 1 December 1983, by section 208(1) of the Armed Forces Discipline Act 1971 (1971 No 53).

Section 2(1) **Air Force Court Martial**: repealed, on 1 December 1983, by section 208(1) of the Armed Forces Discipline Act 1971 (1971 No 53).

Section 2(1) **appellant**: amended, on 1 July 2009, by section 5(1) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 2(1) **Army Act**: repealed, on 1 December 1983, by section 208(1) of the Armed Forces Discipline Act 1971 (1971 No 53).

Section 2(1) **Army Board**: repealed, on 1 December 1983, by section 208(1) of the Armed Forces Discipline Act 1971 (1971 No 53).

Section 2(1) **Army Court Martial**: repealed, on 1 December 1983, by section 208(1) of the Armed Forces Discipline Act 1971 (1971 No 53).

Section 2(1) **court**: amended, on 1 July 2009, by section 5(2) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 2(1) **Court of Appeal**: amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

Section 2(1) **Court Martial**: substituted, on 1 July 2009, by section 5(3) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 2(1) **Director of Military Prosecutions**: inserted, on 1 July 2009, by section 5(3) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 2(1) **Judge Advocate General**: inserted, on 1 July 2009, by section 5(3) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

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

Section 2(1) **Naval Board**: repealed, on 1 December 1983, by section 208(1) of the Armed Forces Discipline Act 1971 (1971 No 53).

Section 2(1) **Naval Court Martial**: repealed, on 1 December 1983, by section 208(1) of the Armed Forces Discipline Act 1971 (1971 No 53).

Section 2(1) **offence**: inserted, on 1 December 1983, by section 208(1) of the Armed Forces Discipline Act 1971 (1971 No 53).

Section 2(2): substituted, on 1 December 1983, by section 208(1) of the Armed Forces Discipline Act 1971 (1971 No 53).

Section 2(3): repealed, on 1 July 2009, by section 5(4) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

### 2A Transitional, savings, and related provisions

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

Section 2A: inserted, on 30 November 2018, by section 33 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

### 2B Act binds the Crown

This Act binds the Crown.

Section 2B: inserted, on 30 November 2018, by section 33 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

## *The Court Martial Appeal Court*

Heading: amended, on 1 July 2009, by section 6 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

### 3 Constitution of Court Martial Appeal Court

(1) There shall be a Court Martial Appeal Court, of which the Judges shall be—

(a) the Judges of the High Court; and

(b) such other persons, being barristers of the High Court of New Zealand who have held a practising certificate as such for not less than 7 years or former Judges of the High Court, as the Governor-General in Council may appoint.

(2) An appointed Judge continues to hold office—

(a) unless he or she sooner vacates, or ceases to hold, or is removed from office under subsection (3); and

(b) until his or her successor comes into office.

(3) An appointed Judge—

(a) may resign from office by giving the Minister written notice to that effect and stating when the resignation takes effect:

(b) ceases to hold office when he or she reaches the age of 75 years:

(c) ceases to hold office if he or she is, under the Insolvency Act 2006, adjudged bankrupt:

(d) may be removed from office only by the Sovereign or the Governor-General, acting upon the address of the House of Representatives.

(3A) An address under subsection (3)(d) may be moved only on the ground of—

(a) the appointed Judge's misbehaviour; or

(b) the appointed Judge's incapacity to discharge the functions of his or her office.

(3B) Each appointed Judge is to be paid, out of public money, without further authority than this section,—

(a) a salary at the rate that the Remuneration Authority determines; and

(b) any allowances that are determined by the Remuneration Authority; and

(c) any additional allowances (being travelling allowances or other incidental or minor allowances) that may be determined by the Governor-General.

(4) Every person appointed under subsection (1)(b) has all the immunities of a Judge of the High Court for the purposes of carrying out his or her tasks and functions as a Judge of the Court Martial Appeal Court.

Compare: Courts-Martial (Appeals) Act 1951 s 1(1)–(3) (UK)

Section 3 heading: amended, on 1 July 2009, by section 7(1) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 3(1): amended, on 1 July 2009, by section 7(2) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 3(1)(a): substituted, on 1 December 1983, by section 2 of the Courts Martial Appeals Amendment Act 1980 (1980 No 38).

Section 3(1)(b): substituted, on 1 December 1983, by section 2 of the Courts Martial Appeals Amendment Act 1980 (1980 No 38).

Section 3(2): substituted, on 1 July 2009, by section 7(3) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 3(3): substituted, on 1 July 2009, by section 7(3) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 3(3A): inserted, on 1 July 2009, by section 7(3) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 3(3B): inserted, on 1 July 2009, by section 7(3) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 3(4): added, on 20 May 2004, by section 3 of the Courts Martial Appeals Amendment Act 2004 (2004 No 41).

Section 3(4): amended, on 1 July 2009, by section 7(2) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

## 4 Supplementary provisions as to court

(1) For the purpose of hearing and determining appeals under this Act, or any matter preliminary or incidental to an appeal, the court shall be summoned in accordance with directions given by the Chief High Court Judge, and shall be deemed to be duly constituted if—

(a) it consists of an uneven number of Judges, not being less than 3; and

(b) subject to subsection (4), at least 1 of the Judges of whom it consists is a Judge of the High Court and at least 1 is an appointed Judge.

(2) If the Chief High Court Judge so directs, the court may sit in 2 or more divisions.

(3) The court shall sit in such place as the Chief High Court Judge directs, whether within or outside New Zealand.

(4) Where the court is directed to sit at a place outside New Zealand, the Chief High Court Judge may, if he thinks it expedient so to do, direct that the court shall consist exclusively of appointed Judges.

(5) The determination of any question before the court shall be according to the opinion of the majority of the Judges of the court hearing the case.

(6) The court shall be a senior court of record and shall, for the purposes of and subject to the provisions of this Act, have full power to determine, in accordance with this Act, any question necessary to be determined for the purpose of doing justice in any case before the court.

Compare: Courts-Martial (Appeals) Act 1951 s 2 (UK)

Section 4(1): amended, on 1 July 2009, by section 8 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 4(1)(b): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 4(2): amended, on 1 July 2009, by section 8 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 4(3): amended, on 1 July 2009, by section 8 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 4(4): amended, on 1 July 2009, by section 8 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 4(6): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

## 5 Registrar and officers of court

(1) There may from time to time be appointed under the Public Service Act 2020 a Registrar of the court and such other officers of the court as may be required. Any such office may be held either separately or in conjunction with any other office in the public service.

(2) Unless any other person is appointed under subsection (1) to hold office as the Registrar of the court, the person who for the time being holds office as the Registrar of the High Court at Wellington shall, without further appointment, be deemed to have been appointed under this section to be also the Registrar of the Court Martial Appeal Court.

Compare: Courts-Martial (Appeals) Act 1951 s 1(4) (UK)

Section 5(1): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

Section 5(2): amended, on 1 July 2009, by section 9 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 5(2): amended, on 28 July 1997, by section 3 of the Courts Martial Appeals Amendment Act 1997 (1997 No 39).

*Appeals to the court*

### 6 Appeal against decision of Court Martial relating to bail

(1) This section applies to a decision made by a Judge of the Court Martial to—

(a) grant or refuse bail to a person in custody under the Armed Forces Discipline Act 1971; or

(b) impose or substitute or revoke or vary any condition of bail; or

(c) refuse to impose any condition of bail or any particular condition of bail; or

(d) refuse to vary or revoke any condition of bail.

(2) Either the Director of Military Prosecutions or the accused may appeal to the court against a decision to which this section applies—

(a) within 21 days after the date of the decision; or

(b) within any further time that the court may allow.

(3) For the purposes of an appeal under this section, the failure of a Judge of the Court Martial to impose any condition of bail, or any particular condition of bail, on any occasion on which the condition could lawfully have been imposed is deemed to be a refusal to impose the condition.

(4) On an appeal under this section, the court may—

(a) confirm the decision; or

(b) vary the decision; or

(c) set the decision aside.

(5) If subsection (4)(c) applies, the court may make any other decision that—

(a) could have been made in the first place; and

(b) the court thinks appropriate.

Section 6: substituted, on 1 July 2009, by section 10 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 6(4): added, on 7 July 2010, by section 4 of the Court Martial Appeals Amendment Act 2010 (2010 No 58).

Section 6(5): added, on 7 July 2010, by section 4 of the Court Martial Appeals Amendment Act 2010 (2010 No 58).

## 7 Appeal against ruling

(1) This section applies to a ruling given by a Judge of the Court Martial on a question of law or procedure that arises during proceedings in that court.

(2) Either the Director of Military Prosecutions or the accused may, with the leave of the court obtained in accordance with section 8, appeal to the court against a ruling to which this section applies.

(3) On an appeal under this section, the court may—

(a) confirm the ruling; or

(b) vary the ruling; or

(c) set the ruling aside.

(4) If subsection (3)(c) applies, the court may make any other ruling that—

(a) could have been made in the first place; and

(b) the court thinks appropriate.

(5) In this section, **question of law** includes any question arising in respect of—

(a) a plea to the general jurisdiction of the Court Martial:

(b) a plea in bar of trial:

(c) an application for the separation of trials:

(d) an application for the severance of charge sheets:

(e) an application for the severance of charges:

(f) a submission that there is no case to answer:

(g) the admissibility of evidence:

(h) an application for a ruling referred to in section 30(2)(a) of the Court Martial Act 2007:

(i) an application for an order specified in section 39(2) of the Court Martial Act 2007:

(j) an order under subpart 3 of Part 5 of the Criminal Procedure Act 2011 (as applied to proceedings under the Armed Forces Discipline Act 1971 by section 145 of that Act):

(k) an application for discovery.

Section 7: substituted, on 1 July 2009, by section 10 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 7(5)(j): amended, on 5 March 2012 (applying in relation to a proceeding for an offence that was commenced before that date), by section 393 of the Criminal Procedure Act 2011 (2011 No 81).

### 8 Procedure for obtaining leave of court to appeal against ruling

(1) If a person wishes to obtain the leave of the court to appeal under section 7, he or she—

(a) must, within 10 days after the ruling is given, give notice of the application for leave to appeal in any manner that may be directed by rules of the court; and

(b) may do so—

(i) whether or not reasons for the ruling are given at a later date; and

(ii) whether or not any formal steps to sign, enter, or otherwise perfect the ruling are necessary or are taken later.

(2) The time within which notice of an application for leave to appeal to the court under this section must be given may be extended at any time by the court.

(3) Despite the making of an application for leave to appeal under this section, the Court Martial may, if it is satisfied that it is in the interests of justice to do so, proceed with the trial without awaiting the determination of the application.

Section 8: substituted, on 1 July 2009, by section 10 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

### 9 Right of appeal against conviction or sentence

(1) A person convicted by the Court Martial may appeal to the court against—

(a) the conviction; or

(b) the sentence imposed for the conviction (unless the sentence is one fixed by law); or

(c) both.

(2) The Director of Military Prosecutions may appeal to the court against the sentence imposed by the Court Martial, unless the sentence is one fixed by law.

(3) An appeal under this section must be brought—

(a) within 21 days after the date of the decision appealed against; or

(b) within any further time that the court may allow.

(4) If an appeal under subsection (2) against a sentence of imprisonment or detention is not heard before the date on which the convicted person has completed serving that sentence, the appeal—

(a) lapses on that date; and

(b) is deemed to have been dismissed by the court for non-prosecution.

(5) For the purposes of this section, **sentence** includes any method of disposing of a case following conviction.

Section 9: substituted, on 1 July 2009, by section 10 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

### 9A Determination of appeals against conviction

(1) On an appeal to the court against conviction, the court must—

(a) allow the appeal if it considers that—

(i) the finding of the Court Martial should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence; or

(ii) the finding of the Court Martial involves a wrong decision on a question of law; or

(iii) there was, on any ground, a miscarriage of justice; or

(iv) the trial was a nullity; or

(b) dismiss the appeal in any other case.

(2) However, the court may dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred even though it considers that the point raised in the appeal might be decided in favour of the appellant.

(3) If the court allows an appeal, the court—

(a) may quash the conviction; and

(b) may do any of the following:

(i) direct a judgment and finding of acquittal to be entered; or

(ii) direct a new trial; or

(iii) make any other order that justice requires.

Section 9A: substituted, on 1 July 2009, by section 10 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

### 9AB Determination of appeals against sentence

On an appeal to the court against sentence, the court must—

(a) do either of the following if it thinks that a different sentence should have been imposed:

(i) quash the sentence imposed and impose any other sentence warranted in law (whether more or less severe) in substitution for the sentence that was quashed; or

(ii) vary, within the limits warranted in law, the sentence or any part of it or any condition imposed in it; or

(b) dismiss the appeal in any other case.

Section 9AB: inserted, on 1 July 2009, by section 10 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

### 9AC Substitution of conviction on different charge

(1) This section applies if—

(a) an appellant has been convicted of an offence; and

(b) the Court Martial could have found the appellant guilty of some other offence (being an included offence or an offence that was recorded as an alternative charge in the charge sheet); and

(c) on the finding of the Court Martial it appears to the court that the Court Martial must have been satisfied of facts that proved the appellant guilty of that other offence.

(2) The court may, instead of allowing or dismissing the appeal,—

(a) substitute for the finding of the Court Martial a finding of guilty of that other offence; and

(b) impose a sentence in substitution for the sentence imposed that may be warranted in law for that other offence (which must not be a sentence of greater severity).

Section 9AC: inserted, on 1 July 2009, by section 10 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

### 9B Variation of conviction so as to attract different sentence

(1) Where an appellant has been convicted of an offence committed under circumstances involving the higher of 2 degrees of punishment, and it appears to the court that the Court Martial ought to have convicted him of the offence under circumstances involving the lower degree of punishment, the court may, instead of allowing or dismissing the appeal, substitute for the conviction recorded by the Court Martial a conviction for the offence as being committed under circumstances involving the lower degree of punishment.

(2) Where the court exercises the power conferred by subsection (1), it may pass on the appellant, in substitution for the sentence passed on him by the Court Martial, such sentence as it thinks proper being a sentence warranted by the Armed Forces Discipline Act 1971 for the offence specified or involved in the substituted conviction, but not being a sentence of greater severity than that actually passed by the Court Martial.

Section 9B: inserted, on 1 December 1983, by section 208(1) of the Armed Forces Discipline Act 1971 (1971 No 53).

Section 9B(1): amended, on 1 July 2009, by section 11(1) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 9B(1): amended, on 1 July 2009, by section 11(2) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 9B(2): amended, on 1 July 2009, by section 11(1) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

### 9C Court may vary sentence in certain cases

*[Repealed]*

Section 9C: repealed, on 1 July 2009, by section 12 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

### 9D Term of sentence passed under sections 9AB, 9AC, and 9B

(1) The term of any sentence passed by the court under section 9AB, 9AC, or 9B shall, unless the court otherwise directs, begin to run from the time from which it would have begun to run if it had been passed in the proceedings from which the appeal was brought.

(2) A sentence passed by the court under section 9AB, 9AC, or 9B is deemed to be a sentence passed by the Court Martial for the purposes of the Armed Forces Discipline Act 1971.

(3) Except in a case to which subsection (4) applies, where the court substitutes a sentence of imprisonment or of detention for the sentence of imprisonment or of detention passed by the Court Martial, the term of the substituted sentence shall be deemed to have commenced or shall commence on the date when the term of the original sentence commenced or would have commenced.

(4) Where—

(a) a sentence of imprisonment or of detention passed by the Court Martial was directed to be cumulative on any earlier sentence; and

(b) the court substitutes a sentence of imprisonment or of detention for the sentence of imprisonment or of detention passed by the Court Martial, but does not direct the sentence to be cumulative on the earlier sentence referred to in paragraph (a),—

the term of the substituted sentence shall be deemed to have commenced or shall commence on the date when the sentence passed by the Court Martial would have commenced had that sentence not been directed to be cumulative on the earlier sentence.

(5) Where—

(a) a sentence of imprisonment or of detention passed by the Court Martial is directed to be cumulative on any earlier sentence of imprisonment or of detention; and

(b) the court substitutes a sentence other than one of imprisonment or of detention for that earlier sentence,—

the sentence passed by the Court Martial shall commence when the earlier sentence would have commenced.

Section 9D: inserted, on 1 December 1983, by section 208(1) of the Armed Forces Discipline Act 1971 (1971 No 53).

Section 9D heading: amended, on 1 July 2009, by section 13(1) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 9D(1): amended, on 1 July 2009, by section 13(2) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 9D(2): substituted, on 1 July 2009, by section 13(3) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 9D(3): added, on 1 January 1986, by section 2 of the Courts Martial Appeals Amendment Act 1985 (1985 No 200).

Section 9D(3): amended, on 1 July 2009, by section 13(4)(a) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 9D(4): added, on 1 January 1986, by section 2 of the Courts Martial Appeals Amendment Act 1985 (1985 No 200).

Section 9D(4): amended, on 1 July 2009, by section 13(4)(b) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 9D(4)(a): amended, on 1 July 2009, by section 13(4)(a) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 9D(4)(b): amended, on 1 July 2009, by section 13(4)(b) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 9D(5): added, on 1 January 1986, by section 2 of the Courts Martial Appeals Amendment Act 1985 (1985 No 200).

Section 9D(5): amended, on 1 July 2009, by section 13(4)(b) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 9D(5)(a): amended, on 1 July 2009, by section 13(4)(a) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

### 9E Appeal against acquittal on account of insanity

(1) A person who is acquitted by the Court Martial on account of his insanity shall have the same right of appeal against the finding of the Court Martial as he would if the finding had been a conviction.

(2) If on any such appeal the finding of insanity is challenged by the appellant, and the court is of the opinion that the finding ought not to stand, and is satisfied that in the absence of such a finding the proper finding would have been that the appellant was guilty of an offence (whether that with which he was charged or any offence of which he could have been convicted at the trial), the court shall substitute for the acquittal a conviction for the offence. Thereupon the court shall have the same powers of sentencing or otherwise dealing with the appellant, and such other powers, as the Court Martial would have had if the substituted conviction had been recorded at the trial.

(3) Except as provided in subsection (2), on any such appeal the court may—

(a) allow the appeal, and direct that the appellant be acquitted:

(b) dismiss the appeal:

(c) exercise any power, whether to direct a new trial or otherwise, that it could exercise if the appeal were an appeal against conviction.

(4) No such appeal shall be allowed by reason only of the fact that the appellant ought to have been acquitted of the offence charged, if the court is of the opinion that, but for the insanity, the proper finding would have been that he was guilty of some other offence; but the court may direct that the other offence be substituted, in the record of the finding, for the offence charged.

(5) Unless the court otherwise directs, the term of any sentence passed by it pursuant to subsection (2) shall begin to run from the time when it would have begun to run if passed on the date on which the finding appealed against was made.

Section 9E: inserted, on 1 December 1983, by section 208(1) of the Armed Forces Discipline Act 1971 (1971 No 53).

Section 9E(1): amended, on 1 July 2009, by section 14(1) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 9E(1): amended, on 1 July 2009, by section 14(2) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 9E(2): amended, on 1 July 2009, by section 14(2) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

### 9EA Appeal by accused against finding relating to fitness to stand trial

(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) For the purposes of an appeal under this section,—

(a) the finding appealed against is to be regarded as a conviction; and

(b) the provisions of this Act relating to appeals, so far as they are applicable and with any necessary modifications, apply to the appeal.

(3) If the court is satisfied that the evidence presented against the appellant is not sufficient to establish that the appellant caused the act or omission that forms the basis of the offence with which the appellant is charged, the court must quash the finding appealed against and direct that the appellant be discharged.

(4) A discharge under subsection (3) does not amount to an acquittal.

(5) In the case of an appeal against a finding relating to the appellant's fitness to stand trial, the court must (except where the appellant has been discharged under subsection (3)) consider the evidence of 2 health assessors (within the meaning of section 187(1) of the Armed Forces Discipline Act 1971), and confirm or quash the finding relating to the appellant's mental impairment.

(6) If the court is satisfied that the appellant is mentally impaired, the court must—

(a) give the appellant and the respondent an opportunity to be heard and to present evidence as to whether the appellant is unfit to stand trial; and

(b) confirm or quash the finding relating to the appellant's fitness to stand trial.

(7) If the result of the appeal is that the appellant is fit to stand trial, the court must give written notice of that fact to the Director of Military Prosecutions, who may then lay before the Registrar the charge sheet that, in accordance with section 101F(c) of the Armed Forces Discipline Act 1971, he or she has previously certified in respect of the appellant.

Section 9EA: substituted, on 1 September 2004, by section 49(1) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 9EA(1): replaced, on 30 November 2018, by section 34(1) of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Section 9EA(5): amended, on 30 November 2018, by section 34(2) of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

Section 9EA(7): substituted, on 1 July 2009, by section 15(2) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 9EA(7): amended, on 7 July 2010, by section 5 of the Court Martial Appeals Amendment Act 2010 (2010 No 58).

### 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.

Section 9EB: inserted, on 30 November 2018, by section 35 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

### 9F Powers of court to acquit on account of insanity on appeal against conviction

(1) If in the case of an appeal against conviction it appears to the court that the appellant did or omitted the act constituting the offence for which he was convicted, but was at the time at which he did or omitted the act insane, the court shall—

(a) substitute for the conviction an acquittal on account of his insanity; and

(b) quash the sentence passed in respect of the conviction.

(2) When, pursuant to subsection (1), the court substitutes for a conviction an acquittal on account of insanity, sections 191 and 193 of the Armed Forces Discipline Act 1971 shall apply to the appellant in the same manner and to the same extent as if the substituted finding were a finding of the Court Martial, and as if references in those sections to the Court Martial were references to the court.

(3) When an appellant is ordered under the provisions of this section to be detained as a special patient, or as a patient, the provisions of the Mental Health (Compulsory Assessment and Treatment) Act 1992 shall apply to him as if he were a special patient or a patient, as the case may be, within the meaning of that Act.

Section 9F: inserted, on 1 December 1983, by section 208(1) of the Armed Forces Discipline Act 1971 (1971 No 53).

Section 9F(2): amended, on 1 July 2009, by section 16(a) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 9F(2): amended, on 1 July 2009, by section 16(b) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 9F(2): amended, on 28 July 1997, by section 4(a) of the Courts Martial Appeals Amendment Act 1997 (1997 No 39).

Section 9F(3): amended, on 28 July 1997, by section 4(b) of the Courts Martial Appeals Amendment Act 1997 (1997 No 39).

Section 9F(3): amended, on 28 July 1997, by section 4(c) of the Courts Martial Appeals Amendment Act 1997 (1997 No 39).

## 10 Appeals to Court of Appeal or Supreme Court

(1) With the leave of the court appealed to, a party to an appeal under any of sections 6, 7, or 9 may appeal to the Court of Appeal or the Supreme Court against any decision of the court in the appeal.

(2) Subsection (1) is subject to section 75 of the Senior Courts Act 2016 (which provides that the Supreme Court must not give leave to appeal directly to it against a decision made in a New Zealand court other than the Court of Appeal unless it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court).

(3) An application for leave to appeal under this section must be made—

(a) within 28 days after the date of the issue of the decision or within any further time that the court appealed to may allow; and

(b) in the manner that may be directed by rules of the court appealed to for leave to appeal to that court.

Section 10: substituted, on 1 July 2009, by section 17 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 10(2): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

### 10A Appeals to Supreme Court from Court of Appeal

With the leave of the Supreme Court, a party to an appeal to the Court of Appeal under section 10 may appeal to the Supreme Court against the decision of the Court of Appeal in the appeal.

Section 10A: inserted, on 1 January 2004, by section 47 of the Supreme Court Act 2003 (2003 No 53).

Section 10A: amended, on 1 July 2009, by section 18 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

### 10B Effect of appeal

Neither an application for leave to appeal, nor an appeal, under section 10 or 10A operates as a stay of proceedings on the decision to which the application or the appeal relates unless the court appealed to orders otherwise.

Section 10B: substituted, on 1 July 2009, by section 19 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

### 10C Powers and procedure of Court of Appeal and Supreme Court

In an appeal to the Court of Appeal or the Supreme Court under section 10 or 10A,—

(a) the court appealed to has the same powers as the court; and

(b) this Act, as far as it is applicable and with any necessary modifications, applies to the appeal as it applies to an appeal to the court.

Section 10C: inserted, on 1 January 2004, by section 47 of the Supreme Court Act 2003 (2003 No 53).

Section 10C: amended, on 1 July 2009, by section 20(a) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 10C(a): amended, on 1 July 2009, by section 20(b) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 10C(b): amended, on 1 July 2009, by section 20(b) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

### 11 Supplementary powers of the court

(1) For the purposes of this Act the court may, if it thinks it necessary or expedient in the interests of justice,—

(a) order the production of any document, exhibit, or other thing connected with the proceedings the production of which appears to the court to be necessary for the determination of the case:

(b) order that all necessary steps be taken to obtain from any military member who sat in the Court Martial at the trial of the appellant, or from the Judge at that trial, a report that—

(i) sets out that person's opinion on the case or on any point arising in the case; or

(ii) contains a statement of any facts that the court considers to be in need of clarification because they appear to the court to be material for the purpose of the determination of the case:

(c) order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in the prescribed manner before any Judge of the court or before any other person appointed by the court for that purpose, and allow the admission of any depositions so taken as evidence before the court:

(d) receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness and, if the appellant makes an application for the purpose, of the spouse or civil union partner of the appellant in cases where the evidence of the spouse or civil union partner could not have been given at the trial except on such an application:

(e) where any question arising on the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in the opinion of the court conveniently be conducted before the court, order the reference of the question in the prescribed manner for inquiry and report to a special commissioner appointed by the court, and act upon the report of any such commissioner so far as the court thinks fit to adopt it:

(f) appoint any person with special expert knowledge to act as an assessor to the court in any case where it appears to the court that such special knowledge is required for the proper determination of the case,—

and may issue any warrants necessary for enforcing the orders or sentences of the court.

(2) The court must not make an order under subsection (1)(b) for the purpose of obtaining a report from a military member of the Court Martial unless—

(a) it also makes an order for the purpose of obtaining a report from the Judge at the trial; or

(b) it is satisfied that obtaining a report from the Judge at the trial is impracticable or would involve undue delay.

Compare: Courts-Martial (Appeals) Act 1951 s 8(1) (UK)

Section 11(1)(b): substituted, on 1 July 2009, by section 21(1) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 11(1)(d): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 11(2): added, on 1 July 2009, by section 21(2) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

### 12 Right of appellant to present case in writing

(1) An appellant may, instead of having his or her case presented orally, have it presented in writing.

(2) If subsection (1) applies, the court may deal with the appellant's case by way of a hearing on the papers.

Section 12: substituted, on 1 July 2009, by section 22 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

### 13 Legal aid to appellants

*[Repealed]*

Section 13: repealed, on 1 July 2009, by section 23 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

### 14 Right of appellant to be present

An appellant shall not be entitled to be present at the hearing of an appeal under this Act to the court or at any proceedings preliminary or incidental to such an appeal except where rules of court provide that he shall have the right to be present or the court gives him leave to be present, and accordingly any power of the court under this Act to pass a sentence may be exercised notwithstanding the absence of the appellant.

Compare: Courts-Martial (Appeals) Act 1951 s 11 (UK)

### 15 Defence of appeals

On an appeal under this Act to the court against a conviction by the Court Martial under the Armed Forces Discipline Act 1971, it shall be the duty of the Director of Military Prosecutions to undertake the defence of the appeal.

Section 15: substituted, on 1 December 1983, by section 208(1) of the Armed Forces Discipline Act 1971 (1971 No 53).

Section 15: amended, on 1 July 2009, by section 24(a) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 15: amended, on 1 July 2009, by section 24(b) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

### 16 Costs of appeal

(1) On the hearing and determination of an appeal or any proceedings preliminary or incidental thereto under this Act no costs shall be allowed on either side.

(2) The expenses of any solicitor or counsel assigned to an appellant under this Act, and the expenses of any witnesses attending on the order of the court or examined in any proceedings incidental to the appeal, and of the appearance of an appellant on the hearing of his appeal or on any proceedings preliminary or incidental to the appeal, and all expenses of and incidental to any examination of witnesses conducted by any person appointed by the court for the purpose, or any reference of a question to a special commissioner appointed by the court, and the expenses of any person appointed as assessor to the court shall

be defrayed in the same manner as the expenses of a trial of a criminal case in the High Court.

(3) *[Repealed]*

Compare: 1945 No 23 s 13; 1948 No 77 s 9(2), (3)

Section 16(2): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 16(3): repealed, on 28 July 1997, by section 5 of the Courts Martial Appeals Amendment Act 1997 (1997 No 39).

### 17 Proceedings to be in open court, unless it is necessary to clear the court

The proceedings of the court shall be conducted in open court, except when the court is dealing with matters of procedure or is deliberating:

provided that the presiding Judge may cause the court to be cleared of all persons or of any persons or classes of persons if he considers it necessary in the interests of national safety or for the due administration of justice or proper in the interests of public morals.

Compare: 1950 No 39 s 111; 1950 No 40 s 111

*Supplementary provisions as to appeals*

### 18 Suspension of death sentence

*[Repealed]*

Section 18: repealed, on 28 July 1997, by section 6 of the Courts Martial Appeals Amendment Act 1997 (1997 No 39).

### 19 Court may make an order for the payment of compensation or restitution of property

(1) On hearing an appeal under this Act, the court may in the appropriate case order the appellant to pay compensation under section 86, or to make restitution of property under section 87 (with or without compensation under subsection (3) of that section), of the Armed Forces Discipline Act 1971, or both to pay compensation and to make restitution, in the same manner and to the same extent as the Court Martial, notwithstanding that the Court Martial made no such order.

(2) Where the Court Martial has made an order under section 86 or section 87 of the Armed Forces Discipline Act 1971, the court may, on hearing an appeal against any such order,—

(a) confirm the order; 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 be entitled to it, or, if the court 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.

(3) *[Repealed]*

Section 19: substituted, on 1 December 1983, by section 208(1) of the Armed Forces Discipline Act 1971 (1971 No 53).

Section 19(1): amended, on 1 July 2009, by section 25(1) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 19(1): amended, on 1 July 2009, by section 25(2) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 19(1): amended, on 1 December 1983, by section 3(1) of the Courts Martial Appeals Amendment Act 1980 (1980 No 38).

Section 19(2): amended, on 1 July 2009, by section 25(1) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 19(2): amended, on 1 July 2009, by section 25(3) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 19(2)(d): amended, on 1 July 2009, by section 25(4) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 19(3): repealed, on 1 December 1983, by section 3(2) of the Courts Martial Appeals Amendment Act 1980 (1980 No 38).

### 19A Suspension of compensation and restitution orders, etc

(1) Where the court makes an order for compensation under section 86 of the Armed Forces Discipline Act 1971, or an order for restitution under section 87 of that Act (with or without compensation under subsection (3) of that section), that order shall be suspended to such extent as may be prescribed by rules of court 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) Where the operation of any such order is so suspended, it shall not take effect if the conviction is quashed on appeal.

(3) Rules of court may be made—

(a) specifying any matter referred to in subsection (1) in relation to the suspension of orders for compensation; and providing for the retention

of deductions from pay made pursuant to any order for compensation while the order is suspended; and

(b) specifying any matter referred to in subsection (1) in relation to the suspension of orders for restitution; and providing for the retention and safe custody of any property to which any order for restitution applies while the order is suspended.

Section 19A: inserted, on 1 December 1983, by section 4 of the Courts Martial Appeals Amendment Act 1980 (1980 No 38).

### 20 Person not to be tried again if conviction quashed

(1) A person whose conviction by the Court Martial for an offence has been quashed under this Act is not liable to be tried again for that offence by the Court Martial or by any other court.

(2) Subsection (1) is subject to section 9A(3).

Section 20: substituted, on 1 July 2009, by section 26 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

### 20A Judge may grant bail pending appeal

(1) On an appeal under section 9(1), the appellant—

(a) is not entitled to bail as of right; and

(b) may not go at large without bail.

(2) A Judge of the court may, on an application for bail by the appellant,—

(a) grant bail to the appellant:

(b) impose any conditions of bail that the Judge thinks fit.

(3) In determining whether to grant bail under this section, the Judge—

(a) must take into account all of the following considerations:

(i) the seriousness of the offence:

(ii) whether there are urgent and exceptional circumstances that favour the granting of bail:

(iii) the effect on service discipline of releasing the person on bail; and

(b) may take into account the considerations set out in section 14(3) of the Bail Act 2000; and

(c) must not grant bail unless satisfied on the balance of probabilities that it would be in the interests of justice in the particular case to do so.

(4) The onus is on the appellant to show cause why bail should be granted.

Section 20A: inserted, on 1 July 2009, by section 27 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

### 20B Issue of warrant to arrest appellant absconding or breaching bail condition

(1) A Judge may issue a warrant in the prescribed form for the arrest of an appellant who has been released on bail under section 20A if—

(a) the Judge is satisfied by evidence on oath that—

(i) the appellant has absconded or is about to abscond for the purpose of evading justice; or

(ii) the appellant has contravened or failed to comply with any condition of bail; or

(b) the appellant does not attend personally at the time and place specified in the grant of bail.

(2) The warrant—

(a) must be directed to every provost officer and every constable; and

(b) may be executed by—

(i) a provost officer:

(ii) a person lawfully exercising authority under or on behalf of a provost officer:

(iii) a constable.

(3) For the purpose of executing the warrant, a person referred to in subsection (2)(b) may, at any time, enter on to any premises, by force if necessary, if he or she has reasonable grounds to believe that the appellant against whom it is issued is on those premises.

(4) The person executing the warrant—

(a) must have the warrant with him or her; and

(b) must produce it on initial entry and, if requested, at any subsequent time; and

(c) must, if he or she is not in uniform, produce evidence that he or she is one of the persons referred to in subsection (2)(b).

Section 20B: inserted, on 1 July 2009, by section 27 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

### 20C Appellant arrested under warrant for absconding or breaching bail condition must be brought before Judge

(1) An appellant who is arrested under a warrant issued under section 20B must be brought before a Judge as soon as possible.

(2) The Judge must reconsider the question of bail if satisfied that the appellant—

(a) had absconded or was about to abscond; or

(b) has contravened or failed to comply with any condition of bail.

Section 20C: inserted, on 1 July 2009, by section 27 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

### 21 Removal of prisoners for purposes of proceedings under this Act

Provision may be made—

(a) by orders made by the Chief of Defence Force; or

(b) by regulations made under the Corrections Act 2004—

as to the manner in which an appellant, when in custody, is to be taken to, kept in custody at, and brought back from any place at which he is entitled to be present for the purposes of this Act or to any place to which the court, or any Judge of the court, may order him to be taken for the purpose of any proceedings of the court.

Section 21: substituted, on 1 December 1983, by section 208(1) of the Armed Forces Discipline Act 1971 (1971 No 53).

Section 21(a): amended, on 1 April 1990, by section 105(1) of the Defence Act 1990 (1990 No 28).

Section 21(b): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

### 22 Furnishing, on appeal, documents relating to trial

In every appeal under section 7 or 9, it is the duty of the Judge Advocate General to supply to the Registrar, in accordance with the rules of the court, the record of the proceedings of the Court Martial.

Section 22: substituted, on 1 July 2009, by section 28 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

### 23 Duties of Registrar with respect to appeals, etc

(1) The Registrar shall take all necessary steps for obtaining the determination of an appeal or application under this Act, and shall obtain and lay before the court in proper form all documents, exhibits, and other things relating to the proceedings in the Court Martial which appear necessary for the proper determination of the appeal or application.

(2) The Registrar shall furnish the necessary forms and instructions relating to applications for leave to appeal under this Act to any person who demands them, to persons in charge of places where persons sentenced by the Court Martial may lawfully be confined for the purpose of serving their sentences, and to such other persons as he thinks fit; and every person in charge of such a place as aforesaid shall cause the forms and instructions to be placed at the disposal of persons confined in that place who desire to make application for leave to appeal under this Act.

Compare: Courts-Martial (Appeals) Act 1951 s 19 (UK)

Section 23(1): amended, on 1 July 2009, by section 29(1) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 23(2): amended, on 1 July 2009, by section 29(2) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

*Special references to the court*

### 24 Special references to court

(1) The Judge Advocate General may refer to the court a finding made, a conviction entered, or a sentence passed in any proceedings in the Court Martial if the Judge Advocate General thinks that it is in the interests of justice or discipline to do so.

(2) The Minister may refer to the court a finding made in any proceedings in the Court Martial if the Minister thinks that the court should consider or reconsider that finding because of matters that the Minister considers have not been brought to the notice of the Court Martial.

(3) A referral under this section must, for the purposes of this Act, be treated as an appeal against conviction by the person convicted.

(4) In this section, **finding** includes a judgment, decree, order, direction, or determination.

Section 24: substituted, on 1 July 2009, by section 30 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

### 24A Person concerned must be informed of reference and may comment

(1) The Registrar must, as soon as practicable after receiving a reference from the Judge Advocate General or the Minister under section 24, send to the person who is the subject of the reference—

(a) a copy of the reference; and

(b) a notice, in the prescribed form, that—

(i) asks for the person's written views on the finding, conviction, or sentence concerned to be sent to the Registrar within the prescribed period; and

(ii) asks for the person's written advice as to whether he or she wants to be legally represented at an oral hearing of the matter to be sent to the Registrar within the prescribed period; and

(iii) advises him or her of the effect of subsection (2).

(2) The court may deal with a reference from the Judge Advocate General or the Minister by way of a hearing on the papers if the person who is sent a notice under subsection (1)—

(a) indicates that he or she does not want to be legally represented at an oral hearing of the matter; or

(b) otherwise indicates that he or she does not require an oral hearing of the matter; or

(c) does not provide written advice under subsection (1)(b)(ii) within the prescribed period.

(3) In this section, **prescribed period** means a period of 21 days commencing on the day after the day that the notice under subsection (1)(b) is sent.

Section 24A: inserted, on 1 July 2009, by section 30 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

*Miscellaneous*

### 25 Exercise of certain court powers by 1 Judge

(1) A Judge of the court may exercise any of the following powers of the court under this Act in the same manner, and subject to the same provisions, as they may be exercised by the court:

(a) to give leave to appeal against a ruling under section 7:

(b) to extend the period within which an application for leave to appeal against a ruling under section 7 must be lodged:

(c) to allow an appellant to be present at any proceedings under this Act.

(2) However, if the Judge refuses an application for the exercise of any of the powers specified in subsection (1), the appellant or the Director of Military Prosecutions, on making a request to the court, is entitled to have the application determined by the court as duly constituted for the hearing and determination of appeals under this Act.

(3) A request under subsection (2) must be made—

(a) within the prescribed period; and

(b) in the prescribed form and manner.

Section 25: substituted, on 1 July 2009, by section 31 of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

### 26 Rules of court

(1) Rules of court may be made in the manner provided by the Senior Courts Act 2016 for regulating the procedure and practice to be followed in the court.

(2) Rules of court made for the purposes of any provision of this Act may make different provision in relation to different classes of cases and may provide for any incidental or supplementary matters for which it appears to be necessary or expedient for the purposes of that provision to provide.

(3) Rules under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: Courts-Martial (Appeals) Act 1951 s 22 (UK)

| **Legislation Act 2019 requirements for secondary legislation made under this section** | | |
|---|---|---|
| **Publication** | PCO must publish it on the legislation website and notify it in the *Gazette* | LA19 s 69(1)(c) |
| **Presentation** | The Minister must present it to the House of Representatives | LA19 s 114, Sch 1 cl 32(1)(a) |
| **Disallowance** | It may be disallowed by the House of Representatives | LA19 ss 115, 116 |

*This note is not part of the Act.*

Section 26(1): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

Section 26(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

## 26A 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 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 regular forces):

(i) *[Repealed]*

(ii) a person appointed by the court under section 11(1)(c) to conduct the examination of a witness:

(iii) a person appointed by the court under section 11(1)(e) to inquire into, and report on, a question arising on an appeal:

(iv) a person appointed by the court under section 11(1)(f) to be an assessor:

(b) prescribing the fees, allowances, and expenses payable to witnesses, and other expenses referred to in subsection (2) of section 16.

(2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

| **Legislation Act 2019 requirements for secondary legislation made under this section** | | |
|---|---|---|
| **Publication** | PCO must publish it on the legislation website and notify it in the *Gazette* | LA19 s 69(1)(c) |
| **Presentation** | The Minister must present it to the House of Representatives | LA19 s 114, Sch 1 cl 32(1)(a) |
| **Disallowance** | It may be disallowed by the House of Representatives | LA19 ss 115, 116 |

*This note is not part of the Act.*

Section 26A: inserted, on 28 July 1997, by section 7 of the Courts Martial Appeals Amendment Act 1997 (1997 No 39).

Section 26A(1)(a)(i): repealed, on 1 July 2009, by section 33(1) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 26A(1)(a)(ii): substituted, on 1 July 2009, by section 33(2) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 26A(1)(a)(iii): added, on 1 July 2009, by section 33(2) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 26A(1)(a)(iv): added, on 1 July 2009, by section 33(2) of the Court Martial Appeals Amendment Act 2007 (2007 No 99).

Section 26A(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

## 27 Saving for prerogative of mercy

Nothing in this Act shall affect His Majesty's Royal prerogative of mercy.

Compare: Courts-Martial (Appeals) Act 1951 s 27 (UK)

Section 27: editorial change made by the PCO, on 31 October 2024, under sections 86(1) and 87(d) of the Legislation Act 2019 (2019 No 58).

# Schedule 1
# Transitional, savings, and related provisions

s 2A

Schedule 1: inserted, on 30 November 2018, by section 36 of the Military Justice Legislation Amendment Act 2018 (2018 No 36).

## 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.

## Notes

### *1 General*

This is a consolidation of the Court Martial Appeals Act 1953 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

### *2 Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

### *3 Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

### *4 Amendments incorporated in this consolidation*

Secondary Legislation Act 2021 (2021 No 7): section 3

Public Service Act 2020 (2020 No 40): section 135

Military Justice Legislation Amendment Act 2018 (2018 No 36): Part 3

Senior Courts Act 2016 (2016 No 48): section 183(b)

Criminal Procedure Act 2011 (2011 No 81): section 393

Court Martial Appeals Amendment Act 2010 (2010 No 58)

Court Martial Appeals Amendment Act 2007 (2007 No 99)

Relationships (Statutory References) Act 2005 (2005 No 3): section 7

Corrections Act 2004 (2004 No 50): section 206

Courts Martial Appeals Amendment Act 2004 (2004 No 41)

Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115): section 49(1)

Courts Martial Appeals Amendment Act 2003 (2003 No 68)

Supreme Court Act 2003 (2003 No 53): section 47

Health Practitioners Competence Assurance Act 2003 (2003 No 48): section 175(1)

Courts Martial Appeals Amendment Act 1997 (1997 No 39)

Defence Act 1990 (1990 No 28): section 105(1)

Armed Forces Discipline Amendment Act 1988 (1988 No 89): section 22

Courts Martial Appeals Amendment Act 1985 (1985 No 200)

Courts Martial Appeals Amendment Act 1980 (1980 No 38)

Judicature Amendment Act 1979 (1979 No 124): section 12

Armed Forces Discipline Act 1971 (1971 No 53): section 208(1)

Courts Martial Appeals Act Commencement Order 1955 (SR 1955/41)

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