

**Reprint
as at 1 July 2009**

Armed Forces Discipline Amendment Act (No 2) 2007

Public Act 2007 No 98
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Note

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

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

This Act is administered by the New Zealand Defence Force.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Armed Forces Discipline Amendment Act (No 2) 2007.

2 Commencement

This Act comes into force on a date to be appointed by the Governor-General by Order in Council, and 1 or more orders may be made appointing different dates for different provisions.

Section 2: Armed Forces Discipline Amendment Act (No 2) 2007 brought into force, on 1 July 2009, by the Armed Forces Discipline Amendment Act (No 2) 2007 Commencement Order 2008 (SR 2008/232).

3 Principal Act amended

This Act amends the Armed Forces Discipline Act 1971.

Amendments to preliminary provisions of principal Act

4 Interpretation

- (1) Section 2(1) is amended by repealing the definitions of **convening officer**, **deal summarily with**, **officer exercising summary powers**, **reviewing authority**, and **try summarily**.

- (2) Section 2(1) is amended by repealing the definition of **commanding officer** and substituting the following definition:

commanding officer—

- (a) means—
- (i) an officer for the time being appointed or authorised to be a commanding officer for the purposes of this Act by a superior commander:
 - (ii) an officer who is named as a commanding officer under section 16:
 - (iii) the officer who is in command of one of Her Majesty's New Zealand ships in commission (other than a tender or a boat):
 - (iv) the officer who is in command of one of Her Majesty's New Zealand naval establishments in commission:
 - (v) the officer who is in command of a ship declared by the Chief of Defence Force, the Chief of Navy, the Chief of Army, or the Chief of Air Force to be a service ship:
 - (vi) the officer who is in command of a battalion or regiment:
 - (vii) an officer of a force of another State that is declared to be serving together with a New Zealand force under section 23B of the Defence Act 1990, who is for the time being appointed or authorised to be a commanding officer for the purposes of this Act by a superior commander; but
- (b) does not include any midshipman or officer cadet or chaplain
- (3) Section 2(1) is amended by repealing the definition of **competent service authority** and substituting the following definition:

competent service authority—

- (a) means every superior commander; and
 - (b) includes any officer, not below the rank of lieutenant commander in the Navy, major in the Army, or squadron leader in the Air Force, appointed as a competent service authority by a superior commander; but
 - (c) does not include any chaplain
- (4) Section 2(1) is amended by repealing the definition of **court-martial** and substituting the following definition:

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

- (5) Section 2(1) is amended by repealing the definition of **detachment commander** and substituting the following definition:

detachment commander,—

- (a) in relation to the Navy, means an officer who is for the time being posted, or authorised by his or her commanding officer to be, in command of—

- (i) a tender or boat; or
 - (ii) a body of persons stationed or employed at a distance from the ship or establishment to which they belong; and
- (b) in relation to the Army and the Air Force, means an officer who is for the time being authorised by his or her commanding officer to act as detachment commander of a part of a unit stationed or employed at a distance from its unit headquarters; but
- (c) does not include any midshipman or officer cadet or chaplain
- (6) Section 2(1) is amended by repealing the definition of **detainee** and substituting the following definition:

detainee means a person under a sentence that includes the punishment of detention imposed under this Act by the Court Martial or a disciplinary officer

- (7) The definition of **is liable** in section 2(1) is amended by omitting “court-martial” and substituting “the Court Martial”.
- (8) Section 2(1) is amended by repealing the definition of **president** and substituting the following definition:

president means the president of a court of inquiry

- (9) Section 2(1) is amended by repealing the definition of **provost officer** and substituting the following definition:

provost officer—

- (a) means a provost marshal, assistant provost marshal, or other officer of the Navy, the Army, or the Air Force duly appointed to exercise the functions conferred by this Act on a provost officer; and
 - (b) includes a person duly attached or lent as a provost officer to, or seconded for service or appointed for duty as a provost officer with, any part of the Armed Forces; but
 - (c) does not include any midshipman or officer cadet or chaplain
- (10) The definition of **service prisoner** in section 2(1) is amended by omitting “a court-martial” and substituting “the Court Martial”.
- (11) Section 2(1) is amended by repealing the definition of **superior commander** and substituting the following definition:

superior commander—

- (a) means any of the following:
 - (i) the Chief of Defence Force; or
 - (ii) the Vice Chief of Defence Force; or
 - (iii) the Chief of Navy; or
 - (iv) the Chief of Army; or
 - (v) the Chief of Air Force; or

- (vi) the Commander Joint Forces New Zealand; or
 - (vii) an officer who is not below the rank of captain in the Navy, colonel in the Army, or group captain in the Air Force and who is appointed by any of the officers referred to in subparagraphs (i) to (vi) to act as a disciplinary officer under Part 5 in respect of charges against officers who—
 - (A) are not below the rank of lieutenant commander in the Navy, major in the Army, or squadron leader in the Air Force; and
 - (B) are under his or her command; and
 - (C) hold a rank at least 2 grades below his or her own rank; or
 - (viii) an officer of a force of another State that is declared to be serving together with a New Zealand force under section 23B of the Defence Act 1990 who is not below the relative rank of captain in the Navy, colonel in the Army, or group captain in the Air Force and who is authorised by the Chief of Defence Force to act as a disciplinary officer under Part 5 in respect of charges against other officers who—
 - (A) are not below the rank of lieutenant commander in the Navy, major in the Army, or squadron leader in the Air Force; and
 - (B) are under his or her command; and
 - (C) hold a relative rank at least 2 grades below his or her own rank; but
- (b) does not include a commanding officer or chaplain

- (12) Section 2(1) is amended by repealing the definition of **superior officer** and substituting the following definition:

superior officer, in relation to any member of the Armed Forces,—

- (a) means another member holding a higher rank (not being an honorary rank); and
- (b) includes another member of equal rank (except an honorary rank) who is entitled to exercise powers of command over him or her; but
- (c) does not include,—
 - (i) for the purposes of sections 35, 36, and 38, a midshipman or an officer cadet except if, in the course and for the purposes of the training he or she is undergoing or the instruction he or she is receiving, he or she is posted to a naval ship or he or she is authorised in writing by his or her commanding officer to exercise powers of command;
 - (ii) for the purposes of section 38, a chaplain

- (13) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:

Authority means the Reconsidering Authority established under section 151

Chief Judge means the Chief Judge of the Court Martial

Defence Force Orders means orders issued under section 206 of this Act or section 27 of the Defence Act 1990

Deputy Chief Judge means a Deputy Chief Judge of the Court Martial

Director of Military Prosecutions means the person appointed under section 101E
disciplinary officer—

- (a) means any officer who exercises the summary powers of discipline under Part 5; but
- (b) does not include any chaplain

Discipline Committee means the Armed Forces Discipline Committee established under section 160

Judge—

- (a) means a Judge of the Court Martial; and
- (b) includes the Chief Judge and a Deputy Chief Judge

lawyer means a person who holds a current practising certificate as a barrister or as a barrister and solicitor

member of the Court Martial means a Judge or a military member

military member, in relation to the Court Martial, means an officer or a warrant officer who is assigned by the Registrar of the Court Martial to be a member of that Court

military tribunal means any of the following

- (a) a disciplinary officer;
- (b) the Summary Appeal Court;
- (c) the Court Martial

Registrar means the Registrar of the Summary Appeal Court

subordinate commander means an officer to whom all or any of the powers to act as a disciplinary officer have been delegated under section 106

Summary Appeal Court means the Summary Appeal Court of New Zealand established under section 118

- (14) Section 2 is amended by adding the following subsections:
- (4) In this Act, a reference to the relationship between rank grades is a reference to the relationship that is to be regarded as existing between those rank grades as prescribed under section 17 of the Defence Act 1990.
- (5) In this Act, a reference to this Act includes, unless the context otherwise requires, a reference to the Court Martial Act 2007.
- (6) In this Act, a reference to counsel for an accused includes, unless the context otherwise requires, a reference to a member of the Armed Forces who undertakes the defence of an accused in the Court Martial.

- (7) If a charge against a person in respect of an offence is tried summarily, or otherwise dealt with, under Part 5 or 5A, the following paragraphs apply for the purposes of references in this Act to conviction, acquittal, sentence or passing sentence, or to any related expressions:
- (a) if a disciplinary officer finds the accused guilty on the charge, that must be treated as a conviction:
 - (b) any punishment imposed by a disciplinary officer, or by the Summary Appeal Court, must be treated as a sentence passed by the officer or Summary Appeal Court:
 - (c) if a disciplinary officer dismisses the charge or finds the accused not guilty on the charge, or the Summary Appeal Court directs a finding of not guilty of having committed the offence to be entered, that must be treated as an acquittal.

5 Special provisions relating to the interpretation, etc, of Part 2

- (1) Section 3 is amended by repealing subsection (1A) and substituting the following subsection:
- (1A) The following provisions of the Sentencing Act 2002 apply to proceedings under this Act and to proceedings on appeal from any decision under this Act:
- (a) section 6 (which provides that penal enactments are not to have retrospective effect to the disadvantage of an offender):
 - (b) sections 102 to 104 (which relate to the sentencing of offenders convicted of murder).
- (2) Despite subsection (1), section 104 of the Sentencing Act 2002 does not apply to the sentencing of an offender under the principal Act if the offender is sentenced on or after the commencement of this section for the crime of murder committed before that commencement.

Amendments to Part 1 (jurisdiction) of principal Act

6 Section 7 repealed

Section 7 is repealed.

7 Members of other forces attached to Armed Forces under section 23A of Defence Act 1990

Section 9 is amended by adding the following subsection as subsection (2):

- (2) However, the Governor-General may, by Order in Council,—
- (a) exempt all or any class of the persons specified in subsection (1) from all or any of the provisions of this Act; or
 - (b) modify any of the provisions of this Act so far as they relate to all or any class of the persons specified in subsection (1).

8 Spies, etc

Section 13 is amended by repealing paragraphs (a) and (b) and substituting the following paragraphs:

- (a) until the charge against that person is, on investigation, dismissed by a disciplinary officer; or
- (b) until the disciplinary officer finds that person not guilty on the charge; or
- (ba) until that person is acquitted by the Court Martial; or

9 Certain civilians closely associated with Armed Forces subject to this Act

- (1) Section 16(7)(d) is amended by omitting “or dealt with summarily” and substituting “, or otherwise dealt with, under Part 5”.
- (2) Section 16(7) is amended by repealing paragraphs (e) and (f) and substituting the following paragraphs:
 - (e) if a disciplinary officer finds an accused guilty of a charge, he or she must not record a finding until the accused has been given the right to elect trial by the Court Martial and, if the accused so elects,—
 - (i) a finding must not be recorded; and
 - (ii) the officer must take the steps that are necessary to have the charge tried by the Court Martial:
 - (f) the amount of compensation that any such person may be ordered to pay under section 86 must not exceed \$1,000, whether the order is made by the Court Martial or a disciplinary officer:

10 Certain persons sentenced under this Act to remain subject to this Act

- (1) Section 17(1) is amended by repealing paragraph (a) and substituting the following paragraph:
 - (a) is sentenced to a term of imprisonment or detention by the Court Martial or to a term of detention by a disciplinary officer; and
- (2) Section 17(2) is amended by repealing “a court-martial” and substituting “the Court Martial”.

11 Trial and punishment of person who has ceased to be subject to this Act

Section 18 is amended by omitting “court-martial” in each place where it appears and substituting in each case “the Court Martial”.

12 Limitation a time within which charges may be dealt with summarily or tried under this Act

- (1) Section 20 is amended by repealing subsection (1) and substituting the following subsections:
 - (1) A charge alleging that a person has committed an offence against this Act may be tried summarily, or otherwise dealt with, under Part 5 or tried by the Court

Martial only if it is so tried or dealt with, or referred to the Director of Military Prosecutions, within 3 years after the alleged commission of the offence.

- (1A) Subsection (1) is subject to subsections (2) to (6).
- (2) Section 20(2) is amended by omitting “or other civil prison”.
- (3) Section 20(4) and (6) are amended by omitting “court-martial” and substituting in each case “the Court Martial”.
- (4) Section 20(4) is amended by repealing paragraph (a) and substituting the following paragraph:
 - (a) the charge is referred to the Director of Military Prosecutions within 6 months after the person ceased in fact to be subject to this Act; or
- (5) Section 20(5) is amended by omitting “or dealt with summarily under this Act or be tried by court-martial” and substituting “, or otherwise dealt with, under Part 5 or be tried by the Court Martial”.
- (6) Section 20(5) is amended by repealing paragraph (a) and substituting the following paragraph:
 - (a) the person is so tried or dealt with or the charge is referred to the Director of Military Prosecutions within 6 months after the person ceased to be so employed; or

13 Person may not be tried under this Act and under the civil law in respect of same act or omission

- (1) Section 21(1)(a) and (c) are amended by omitting “a court-martial” and substituting in each case “the Court Martial”.
- (2) Section 21(1)(b) is amended by omitting “an officer exercising summary powers” and substituting “a disciplinary officer”.
- (3) Section 21 is amended by repealing subsections (3) and (4) and substituting the following subsections:
 - (3) Subsection (4) applies if, whether in New Zealand or elsewhere, a person—
 - (a) has been acquitted or convicted by a competent court of ordinary criminal jurisdiction, or by a court-martial or other military tribunal of the armed forces of another State, of an offence against a law in force in the country or place in which that court, court-martial, or tribunal has jurisdiction; or
 - (b) has had an offence taken into consideration by that court, court-martial, or tribunal in sentencing him or her for another offence; or
 - (c) has been found by that court, court-martial, or tribunal to be unfit to stand trial in relation to an offence and the proceedings against that person in the course of which the finding was made have been stayed.

- (4) The person must not subsequently be charged before the Court Martial or before a disciplinary officer with an offence against this Act that is substantially the same as—
- (a) the offence of which he or she was acquitted or convicted; or
 - (b) the offence that was taken into consideration; or
 - (c) the offence that was the subject of the stayed proceedings.
- (5) For the purposes of this section,—
- (a) a reference to an offence that is substantially the same as another offence is a reference to an offence of which the accused could have been convicted, under this Act or otherwise, on the same facts:
 - (b) a reference to a person having been convicted by the Court Martial includes a reference to a person in respect of whom that Court found the charge proved but did not convict him or her:
 - (c) a reference to a person having been convicted by a competent court of ordinary criminal jurisdiction or by a court-martial or other military tribunal of the armed forces of another State includes a reference to a person in respect of whom that court, court-martial, or tribunal found the charge proved but did not convict him or her:
 - (d) a person must not be considered to have had an offence taken into consideration if the sentence passed on him or her is subsequently quashed, or if the decision to take the offence into consideration has been annulled by an appellate court:
 - (e) a person is deemed to have been found guilty of an offence by a disciplinary officer even if the finding made by that officer has been quashed or the punishment imposed and any order made by the officer was quashed or varied on appeal.

14 New section 22 substituted

Section 22 is repealed and the following section substituted:

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

- (1) This section applies if—
- (a) a person has been charged with having committed an offence against this Act and the charge was, on investigation, dismissed, or he or she was acquitted or found guilty of the offence by a disciplinary officer; or
 - (b) a person has been acquitted or convicted of an offence by the Court Martial; or
 - (c) a person has had an offence taken into consideration by the Court Martial in sentencing him or her for another offence; or
 - (d) the proceedings against a person who was charged with having committed an offence against this Act have been stayed under section 101H; or

- (e) a person who was charged with having committed an offence against this Act has been found to be unfit to stand trial and the proceedings against that person in the course of which the finding was made have been stayed.
- (2) A subsequent charge alleging that the person committed the offence disposed of in the manner referred to in subsection (1) must not be tried by the Court Martial or tried summarily, or otherwise dealt with, under Part 5.
- (3) For the purposes of this section,—
 - (a) if a person was convicted of an offence by the Court Martial or found guilty of an offence by a disciplinary officer and the conviction or finding was quashed on appeal, he or she is deemed to have been acquitted of the offence by the Court Martial or the disciplinary officer, unless a new trial of the charge of having committed that offence was ordered by an appellate court:
 - (b) a person must not be regarded as having had another offence taken into consideration if the sentence passed on him or her is subsequently quashed, or if the decision to take the offence into consideration has been annulled, by an appellate court.

Amendments to Part 2 (offences) of principal Act

15 New section 45A inserted

The following section is inserted after section 45:

45A Failure to answer bail

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 1 year, who, having been released from custody on bail,—

- (a) fails without reasonable excuse to attend personally at the time and before the military tribunal or the Court Martial Appeal Court specified in the grant of bail; or
- (b) fails without reasonable excuse to attend personally at any time and place to which, during the course of the proceedings, the hearing has been adjourned

16 Delay or denial of justice

- (1) Section 69(1) is amended by repealing paragraph (b) and substituting the following paragraph:
 - (b) to investigate, try summarily, or otherwise deal under Part 5 with a charge against any such person or bring any such person before the Court Martial—
- (2) Section 69 is amended by inserting the following subsection after subsection (2):

- (2A) Every person subject to this Act commits an offence who influences or attempts to influence, by threats or bribes or other improper means, an election under section 117D or 117M or a decision concerning the withdrawal of an election made under either of those sections.

17 New section 70 substituted

Section 70 is repealed and the following section substituted:

70 Offences relating to proceedings of military tribunal or court of inquiry

- (1) Every person who is subject to this Act commits an offence if the person—
- (a) fails without reasonable excuse to comply with a summons or order to attend as a witness before a military tribunal or court of inquiry; or
 - (b) refuses to swear an oath when required to do so by a military tribunal or court of inquiry; or
 - (c) refuses to produce any papers, documents, records, or things in that person's possession or under that person's control that a military tribunal or court of inquiry has lawfully required the person to produce; or
 - (d) being a witness, refuses to answer any question that a military tribunal or court of inquiry has lawfully required the person to answer; or
 - (e) disobeys or evades any order or direction made or given by a military tribunal or court of inquiry in the course of the hearing of any proceedings before it; or
 - (f) wilfully publishes any statement in respect of the proceedings before a military tribunal or court of inquiry that—
 - (i) without foundation states or implies that the military tribunal or court of inquiry has not acted or is not acting impartially; or
 - (ii) is likely to interfere with the proper administration of justice; or
 - (g) insults, threatens, or interferes with a disciplinary officer or any member of the Summary Appeal Court, the Court Martial, or a court of inquiry while the disciplinary officer or member is attending, or is on the way to or from, the proceedings before the disciplinary officer, the Summary Appeal Court, the Court Martial, or the court of inquiry; or
 - (h) insults, threatens, or interferes with any witness or other person under a duty to attend the proceedings before a military tribunal or court of inquiry while the witness or other person is attending, or is on the way to or from, the proceedings; or
 - (i) interrupts the proceedings before a military tribunal or court of inquiry or otherwise misbehaves during the proceedings.
- (2) A person who commits an offence under subsection (1) is liable to imprisonment for a term not exceeding 6 months.

- (3) Despite subsection (2), if a person commits an offence against subsection (1)(e) to (i) in relation to the Court Martial, that Court may, by order of the Judge, sentence the person for the offence,—
- (a) in the case of a convicted member of the Armed Forces,—
 - (i) to imprisonment for a term not exceeding 21 days; or
 - (ii) except in the case of an officer, to detention for a term not exceeding 21 days; or
 - (iii) to a fine not exceeding the amount of the person's basic pay for 28 days; or
 - (b) in the case of any other person subject to this Act, to a fine not exceeding \$1,000.

18 False evidence

Section 71(1) is amended by omitting “court-martial or before any court of inquiry or person having power by virtue of this Act to administer oaths” and substituting “military tribunal or a court of inquiry”.

19 Conduct prejudicial to service discipline

- (1) Section 73(1) is amended by adding “; or” to paragraph (b) and also by adding the following paragraphs:
- (c) negligently fails to perform a duty imposed on him or her by service order, training, or custom; or
 - (d) negligently performs a duty imposed on him or her by service order, training, or custom.
- (2) Section 73(3) is repealed and the following subsection substituted:
- (3) Despite anything to the contrary in any enactment or rule of law, if a person is charged with an offence against this section, the statement of offence may allege in the alternative 1 or more of the following:
- (a) that the person behaved in a manner that was likely to prejudice service discipline:
 - (b) that the person behaved in a manner that was likely to bring discredit on the service to which he or she belongs or is attached, as the case may be:
 - (c) that the person has negligently failed to perform a duty imposed on him or her by service order, training, or custom:
 - (d) that the person negligently performed a duty imposed on him or her by service order, training, or custom.

20 Offences against the civil law of New Zealand

Section 74(4) is amended by omitting “court-martial” and substituting “the Court Martial”.

Amendments to Part 3 (jurisdiction of courts-martial and punishment of offenders) of principal Act

21 Heading to Part 3 amended

The heading to Part 3 is amended by omitting “**courts-martial**” and substituting “**Court Martial**”.

22 Jurisdiction of courts-martial

- (1) The heading to section 78 is amended by omitting “**courts-martial**” and substituting “**Court Martial**”.
- (2) Section 78 is amended by omitting “a duly constituted court-martial shall have” and substituting “the Court Martial has”.

23 Court-martial to pass one sentence only

- (1) The heading to section 79 is amended by omitting “**Court-martial**” and substituting “**Court Martial**”.
- (2) Section 79 is amended by omitting “a court-martial” and substituting “the Court Martial”.
- (3) Section 79 is amended by omitting “court” and substituting “Court”.

24 Discretion of court-martial as to punishment

- (1) The heading to section 80 is amended by omitting “**court-martial**” and substituting “**Court Martial**”.
- (2) Section 80(1) is amended by omitting “court-martial” and substituting “the Court Martial”.
- (3) Section 80(1) is amended by omitting “court” and substituting “Court”.
- (4) Section 80(3) is amended by omitting “a court-martial” and substituting “the Court Martial”.

25 Effect of period spent in custody before being sentenced

- (1) Section 81A(1) is amended by omitting “a court-martial” and substituting “the Court Martial”.
- (2) Section 81A(2) is amended by omitting “court-martial” and substituting “Court Martial”.

26 Dismissal from service and reduction in rank

- (1) Section 82(1), (2), and (3) are amended by omitting “a court-martial” and substituting in each case “the Court Martial”.
- (2) Section 82(4) is repealed.

27 Maximum term of detention

Section 83 is amended by omitting “a court-martial” and substituting “the Court Martial”.

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

- (1) Section 84(1) and (2) are amended by omitting “a court-martial” and substituting in each case “the Court Martial”.
- (2) Section 84 is amended by adding the following subsection:
- (3) Subsections (1) and (2), so far as they are applicable and with any necessary modifications, apply to a reduction in rank or stay of seniority imposed on a person under Part 5 or 5A.

29 Punishment by fine

- (1) Section 85(3) is amended by omitting “a court-martial” and substituting “the Court Martial”.
- (2) Section 85 is amended by adding the following subsection:
- (4) Subsections (1) and (2), so far as they are applicable, apply to a fine imposed on a person by any military tribunal.

30 Compensation for loss of, or damage to, property

- (1) Section 86 is amended by inserting the following subsection after subsection (3):
- (3A) When determining the amount of compensation to be paid, the Court Martial must take into account any offer, agreement, response, measure, or action as described in section 10 of the Sentencing Act 2002.
- (2) Section 86(1) and (4) are amended by omitting “a court-martial” and substituting in each case “the Court Martial”.
- (3) Section 86(2) is amended by omitting “court-martial” and substituting “Court Martial”.

31 Restitution of property

- (1) Section 87(1) is amended by omitting “a court-martial” and substituting “the Court Martial”.
- (2) Section 87(1), (2), (3), and (4) are amended by omitting “court” in each place where it appears and substituting in each case “Court”.
- (3) Section 87(2), (3), and (4) are amended by omitting “court-martial” and substituting in each case “Court Martial”.

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

- (1) The heading to section 87A is amended by omitting “courts-martial” and substituting “Court Martial”.

- (2) Section 87A(1) is amended by omitting “a court-martial” and substituting “the Court Martial”.
- (3) Section 87A(2) is amended by omitting “Courts Martial” and substituting “Court Martial”.
- (4) Section 87A is amended by adding the following subsections:
 - (3) Subsection (1), with any necessary modifications, applies to—
 - (a) a finding of guilty made by a disciplinary officer, being a finding to which section 26(1) of the Sale of Goods Act 1908 applies:
 - (b) an order for compensation or restitution made by a disciplinary officer under section 86 or 87.
 - (4) If the operation of an order for compensation or restitution or the operation of section 26(1) of the Sale of Goods Act 1908 is suspended by virtue of subsection (3), the order or provisions must not take effect if the finding of guilty is quashed on appeal.
 - (5) Subsection (4) does not limit section 134.

Amendments to Part 4 (arrest and search) of principal Act

33 Disposal of property taken in search

- (1) Section 99(1)(a) and (b) are amended by omitting “a court-martial or, as the case may be, an officer exercising summary powers” and substituting in each case “the Court Martial or, as the case may be, a disciplinary officer”.
- (2) Section 99(1)(b) is amended by omitting “court” in each place where it appears and substituting in each case “Court”.
- (3) Section 99 is amended by repealing subsection (2) and substituting the following subsection:
 - (2) An order of forfeiture made under subsection (1)(b) must be treated, for the purposes of—
 - (a) Part 5A, as a punishment imposed on the offender; and
 - (b) an appeal to the Court Martial Appeal Court, as part of the sentence imposed on the offender.

34 Delay in dealing with person after arrest

Section 101 is amended by repealing subsections (4) to (7) and substituting the following subsections:

- (4) If any person subject to this Act remains in service custody after the expiration of 4 days from the date of his or her arrest without the alleged offence being referred to the Director of Military Prosecutions for trial by the Court Martial or without him or her being tried summarily, or otherwise dealt with, under

Part 5, his or her commanding officer must make a report in writing to the Judge Advocate General stating the reasons for the delay.

- (5) The commanding officer must make a report in writing to the Judge Advocate General stating the reasons for the delay at the conclusion of each subsequent period of 8 days, if the person is still held in service custody without the alleged offence being referred to the Director of Military Prosecutions for trial by the Court Martial or without him or her being tried summarily, or otherwise dealt with, under Part 5.

35 New sections 101A to 101D inserted

The following sections are inserted after section 101:

101A Judge Advocate General may grant bail pending trial

- (1) This section applies to a person in service custody in relation to whom the Judge Advocate General has received a report under section 101.
- (2) The person in service custody is not entitled to bail as of right.
- (3) The Judge Advocate General may—
- (a) grant bail to the person in service custody;
 - (b) impose any conditions of bail that the Judge Advocate General thinks fit.
- (4) In determining whether to grant bail under this section, the Judge Advocate General—
- (a) must take into account the considerations set out in section 8(1) and (3) of the Bail Act 2000 and all of the following considerations:
 - (i) the seriousness of the alleged offence;
 - (ii) whether there are urgent and exceptional circumstances that favour the grant of bail;
 - (iii) the effect on service discipline of remanding the person on bail; and
 - (b) may take into account the considerations set out in section 8(2) 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.

101B Issue of warrant to arrest person absconding or breaching bail condition

- (1) A Judge may issue a warrant in the prescribed form for the arrest of a person who has been released on bail under section 101A if—
- (a) the Judge is satisfied by evidence on oath that—
 - (i) for the person has absconded or is about to abscond for the purpose of evading justice; or

- (ii) the person has contravened or failed to comply with any condition of bail; or
- (b) the person—
 - (i) does not attend personally at the time and place specified in the grant of bail; or
 - (ii) does not attend personally at any time and place to which, during the course of the proceedings, the hearing has been adjourned.
- (2) The warrant—
 - (a) must be directed to every provost officer and every member of the police; 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 member of the police.
- (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 person against whom the warrant 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) if he or she is not in uniform, produce evidence that he or she is 1 of the persons referred to in subsection (2)(b).

101C Person arrested under warrant for absconding or breaching bail condition must be brought before Judge Advocate General

- (1) A person who is arrested under a warrant issued under section 101B must be brought before the Judge Advocate General as soon as possible.
- (2) The Judge Advocate General must reconsider the question of bail if satisfied that the person—
 - (a) had absconded or was about to abscond; or
 - (b) had contravened or failed to comply with any condition of bail.

101D Restrictions in relation to midshipmen, officer cadets, and chaplains

- (1) A midshipman, an officer cadet, or a chaplain may not—
 - (a) exercise the powers of arrest conferred by section 88 or 90; or
 - (b) issue or execute a warrant for arrest under section 89.

- (2) A chaplain may not be—
 - (a) ordered to arrest a person subject to this Act under any of sections 88, 89, and 90; or
 - (b) ordered to carry out a search under section 96; or
 - (c) directed to search any arrested person under section 98.
- (3) A chaplain may not be authorised or ordered by a commanding officer to exercise any of the powers conferred on a commanding officer by section 95(1).

New Part 4A inserted

36 New Part 4A inserted

The following Part is inserted after section 101D (as inserted by section 35 of this Act):

Part 4A Director of Military Prosecutions

101E Appointment of Director of Military Prosecutions

- (1) The Governor-General may, by warrant, appoint the Director of Military Prosecutions.
- (2) A person must not be appointed under subsection (1) unless he or she—
 - (a) is an officer; and
 - (b) has held a practising certificate as a barrister or solicitor of the High Court for at least 7 years.
- (3) The Chief of Defence Force must arrange for notice of an appointment under subsection (1) to be published in the *Gazette* as soon as practicable after the appointment.

101F Functions and duties of Director of Military Prosecutions

The functions and duties of the Director of Military Prosecutions are—

- (a) to determine whether an accused is to be committed for trial in the Court Martial;
- (b) to decide on what charge an accused should be tried;
- (c) to prepare and certify the charge sheet or charge sheets against an accused;
- (d) to give a copy of the certified charge sheet to the accused (including any amended charge sheet so certified);
- (e) to lay the charge sheet or charge sheets before the Registrar of the Court Martial:

- (f) if 2 or more persons are accused, to direct whether they are to be tried jointly or separately;
- (g) to appoint counsel for the prosecution;
- (h) to perform any other functions or duties imposed by this Act or any other enactment.

101G Power of Director of Military Prosecutions to direct investigation

- (1) The Director of Military Prosecutions may direct a provost officer to—
 - (a) investigate any matter that the Director considers to be relevant to a charge referred to the Director; or
 - (b) arrange the investigation of that matter.
- (2) A provost officer must comply with a direction given under subsection (1).

101H Power of Director of Military Prosecutions to stay proceedings

- (1) The Director of Military Prosecutions may, on the application of a disciplinary officer or on his or her own motion, issue an order that the proceedings against an accused under this Act be stayed for the period that he or she thinks fit.
- (2) The Director of Military Prosecutions must provide a copy of the order, together with his or her written reasons for the stay, to—
 - (a) the Solicitor-General; and
 - (b) the disciplinary officer; and
 - (c) the accused in question.

101I Director of Military Prosecutions to perform functions and duties, and exercise powers, independently of ministerial control and of command

- (1) In performing his or her functions and duties, and exercising his or her powers, the Director of Military Prosecutions is not subject to—
 - (a) the control of the Minister; or
 - (b) the command of any other officer.
- (2) Subsection (1) applies despite sections 7 and 8 of the Defence Act 1990.
- (3) To avoid doubt, subsection (1) does not limit or affect the command relationship that exists between the Director of Military Prosecutions and any member of the Armed Forces in respect of any of the Director's functions and duties other than those that are specified in section 101F.

101J Director of Military Prosecutions must report annually to Attorney-General on performance of functions and duties, and exercise of powers

The Director of Military Prosecutions must, not later than 30 June in each year, report to the Attorney-General on the performance of any functions and duties, and the exercise of any powers, imposed or conferred on the Director under this Act.

101K Director of Military Prosecutions must act under general supervision of Solicitor-General

- (1) In performing functions or duties, or exercising powers, imposed or conferred by this Act, by the Court Martial Act 2007, or by the Court Martial Appeals Act 1953, the Director of Military Prosecutions must act under the general supervision of the Solicitor-General in the same manner and to the same extent as a Crown Solicitor.
- (2) However, subsection (1) does not apply if the Director of Military Prosecutions considers that compliance with that subsection is or would be inconsistent with any provisions of this Act, the Court Martial Act 2007, or the Court Martial Appeals Act 1953.

101L Delegation of functions, duties, or powers of Director of Military Prosecutions

- (1) The Director of Military Prosecutions may, in writing, either generally or particularly, delegate any of the functions, duties, and powers of the Director under this Act, except this power of delegation, to a person who—
 - (a) is an officer; and
 - (b) has held a practising certificate as a barrister or solicitor of the High Court for at least 7 years.
- (2) Subject to any general or special directions given or conditions imposed by the Director of Military Prosecutions, the person to whom any functions, duties, or powers are delegated under this section may perform and exercise them in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by delegation.
- (3) The power of the Director of Military Prosecutions to delegate under this section does not limit any power of delegation conferred on the Director by any other Act or prevent the Director delegating to any other person, under that power, any of the functions, duties, and powers of the Director under this Act.
- (4) Every person who appears to be acting under a delegation under this section is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.
- (5) A delegation under this section does not—
 - (a) affect or prevent the exercise of any power or the performance of any function or duty by the Director of Military Prosecutions; or
 - (b) affect the responsibility of the Director of Military Prosecutions for the actions of any person acting under the delegation.

New Part 5 substituted

37 New Part 5 substituted

Part 5 is repealed and the following Part substituted:

Part 5

Investigation and summary trial of charges

Subpart 1—General provisions

102 Investigation of charges

- (1) If it is alleged that a person subject to this Act has committed an offence against this Act, the commanding officer of that person must, unless he or she considers that the allegation is not well founded, either—
 - (a) cause the allegation to be recorded in the form of a charge and to be investigated in the prescribed manner; or
 - (b) cause the allegation to be referred to the appropriate civil authority for investigation.
- (2) In this Part, a matter or thing is done in the **prescribed manner** if it is done in accordance with, and in the manner prescribed by, this Part and the rules of procedure.

103 Disposal of charges by commanding officers

- (1) Every commanding officer must investigate and dispose of a charge before him or her in the prescribed manner.
- (2) However, a commanding officer may stay proceedings on a charge before him or her, or before a detachment commander or a subordinate commander, for any time that he or she considers necessary if satisfied that proceedings for the matters to which the charge relates could be, and in the interests of the better administration of justice should be, taken against the accused otherwise than under this Act.

104 Disposal of charges by superior commanders

- (1) Every superior commander must investigate and dispose of a charge before him or her in the prescribed manner.
- (2) However, a superior commander may stay proceedings on a charge before him or her for any time that he or she considers necessary if satisfied that proceedings for the matters to which the charge relates could be, and in the interests of the better administration of justice should be, taken against the accused otherwise than under this Act.

105 Disposal of charges by detachment commanders

- (1) A detachment commander may exercise all or any of the powers conferred on commanding officers under this Part.
- (2) Subsection (1) is subject to any limitations or restrictions that may be imposed by, or in accordance with, orders of the Chief of Defence Force.

106 Disposal of charges by subordinate commanders

- (1) A commanding officer may, by written notice, delegate all or any of his or her powers to act as a disciplinary officer under this Part to an officer or class of officers under his or her command as may be specified in the notice.
- (2) A commanding officer may not delegate any powers under this section to a midshipman or an officer cadet.
- (3) A subordinate commander must not act as a disciplinary officer for an offence alleged to have been committed by a member of the Armed Forces holding a rank above that of petty officer in the Navy or sergeant in the Army or the Air Force.
- (4) The exercise of any powers by a subordinate commander under this section is subject to the limitations and restrictions (if any) as may be, specified—
 - (a) in orders issued by the Chief of Defence Force; and
 - (b) in the notice given by the delegating commanding officer (in so far as the notice is consistent with any Defence Force Orders); and
 - (c) in this Part.

107 Effect of delegation

- (1) A subordinate commander may exercise the powers delegated under section 106 in the same manner and to the same extent as if they had been conferred on him or her directly by this Act and not by delegation.
- (2) A subordinate commander who appears to be acting under a delegation under section 106 is, in the absence of proof to the contrary, presumed to be acting under its terms.
- (3) A delegation under section 106 does not prevent a commanding officer from exercising his or her powers to act as a disciplinary officer in relation to charges not otherwise disposed of.
- (4) A power delegated under section 106 may be revoked by the commanding officer of the subordinate commander.

When officer is empowered to act as disciplinary officer

108 Officer is empowered to act as disciplinary officer

- (1) For the purposes of this Part, an officer is empowered to act as a disciplinary officer in relation to a charge if—

- (a) the officer is a superior commander, a commanding officer, a detachment commander, or a subordinate commander; and
 - (b) the officer holds a rank at least 2 rank grades above that of the accused; and
 - (c) the officer holds a certificate of competency as a disciplinary officer, as prescribed by the Chief of Defence Force; and
 - (d) in the case of a subordinate commander, the officer holds a delegation under section 106 that authorises him or her to so act.
- (2) However, for the purposes of this Part, an officer is not empowered to act as a disciplinary officer in relation to a charge if—
- (a) the officer considers, at the relevant time, that it is necessary for the maintenance of discipline, or in the interests of justice, that the charge be referred to another person; or
 - (b) the officer is personally interested in the charge; or
 - (c) an order made under section 206(1)(ab) specifies that the offence alleged by the charge may not be tried summarily, or otherwise dealt with, under this Part by the officer.
- (3) For the purposes of this section, **relevant time** means,—
- (a) in relation to sections 109 to 111, immediately before the officer begins to act as the disciplinary officer;
 - (b) in any other case, the time at which the officer is considering under this Part whether he or she is empowered to act as a disciplinary officer in relation to the charge.
- (4) For the purposes of this Part, an officer is **personally interested** in a charge if—
- (a) the charge alleges an offence against the officer himself or herself; or
 - (b) the charge alleges an offence against any member of his or her family; or
 - (c) the charge alleges an offence by any member of his or her family; or
 - (d) the charge is one in respect of which the officer or any member of his or her family is the sole witness to any material ingredient of the offence; or
 - (e) the officer otherwise has a personal interest in the charge that is likely to influence his or her judgment.

Subpart 2—Preliminary procedures and investigation of charges*Initial referral of charges***109 Charge must be referred to subordinate commander in certain circumstances**

- (1) This section applies if—
 - (a) an allegation has been recorded in the form of a charge; and
 - (b) the accused is below the rank of chief petty officer in the Navy, staff sergeant in the Army, or flight sergeant in the Air Force; and
 - (c) the accused has a subordinate commander who is empowered to act as a disciplinary officer in relation to the charge.
- (2) The charge against the accused must be referred to the subordinate commander.
- (3) The subordinate commander must act under this subpart as the disciplinary officer in relation to the charge.
- (4) Subsection (3) is subject to any other provision of this Part that provides for—
 - (a) the referral of the charge to another person; or
 - (b) another person to act as the disciplinary officer in relation to the charge.

110 Charge must be referred to commanding officer, superior commander, or detachment commander in certain circumstances—

- (1) This section applies if—
 - (a) an allegation has been recorded in the form of a charge; and
 - (b) either or both of the following apply:
 - (i) the accused is of or above the rank of chief petty officer in the Navy, staff sergeant in the Army, or flight sergeant in the Air Force;
 - (ii) the accused does not have a subordinate commander who is empowered to act as a disciplinary officer in relation to the charge.
- (2) The charge against the accused must be referred to—
 - (a) his or her detachment commander or commanding officer if that officer is empowered to act as a disciplinary officer in relation to the charge; or
 - (b) a superior commander in the accused's chain of command who is empowered to act as a disciplinary officer in relation to the charge.
- (3) The detachment commander, commanding officer, or superior commander must act under this subpart as the disciplinary officer in relation to the charge.
- (4) Subsection (3) is subject to any other provision of this Part that provides for—
 - (a) the referral of the charge to another person; or
 - (b) another person to act as the disciplinary officer in relation to the charge.

111 Accused must be remanded for trial in Court Martial and charge must be referred to Director of Military Prosecutions in certain circumstances

If there is no person who is empowered to act as a disciplinary officer in relation to a charge,—

- (a) the accused must be remanded for trial in the Court Martial; and
- (b) the charge must be referred to the Director of Military Prosecutions.

Certification and amendment of charges

112 Charge must be certified if disciplinary officer may impose certain punishments

- (1) A disciplinary officer must, after a charge is referred to him or her under section 109 or 110 but before the accused is brought before him or her, consider whether he or she may, if the accused were found guilty, impose a punishment consisting of or including 1 or more of the following:
 - (a) detention;
 - (b) reduction in rank;
 - (c) a fine.
- (2) In considering the matter under subsection (1), the disciplinary officer—
 - (a) must have regard to the charge referred to him or her (including the nature of the offence alleged by the charge); and
 - (b) is not required to have regard to any other information or document, or to make any further inquiries.
- (3) The disciplinary officer must stay the proceedings until a specified certificate is received if—
 - (a) he or she considers that, if the accused were found guilty, a punishment consisting of or including 1 or more of the punishments referred to in subsection (1) may be imposed; and
 - (b) he or she has not yet received a specified certificate.
- (4) The accused must be brought before the, disciplinary officer and the disciplinary officer must proceed in relation to the charge in accordance with this subpart if—
 - (a) the proceedings are not stayed under subsection (3); or
 - (b) the disciplinary officer receives a specified certificate after the proceedings are stayed under subsection (3).
- (5) For the purposes of this Part, **specified certificate**, in relation to a charge, means a certificate issued by an officer who is a member of a specialist legal branch or corps in the Armed Forces that certifies that, in the opinion of the officer, the charge—
 - (a) discloses an offence against this Act; and

- (b) is drawn in accordance with the rules of procedure; and
- (c) is otherwise correct in law.

113 Amendment of charge

- (1) A disciplinary officer may, after an accused is brought before him or her on a charge, amend that charge, substitute for it a different charge, or add a new charge, if the disciplinary officer considers that it is in the interests of justice to do so.
- (2) Section 112 applies, with all necessary modifications, in relation to the amended, substituted, or additional charge as if that charge had been referred to the disciplinary officer under section 109 or 110.
- (3) If the disciplinary officer exercises his or her powers under subsection (1) after investigating the original charge under this subpart, that investigation must be treated as an investigation under this subpart of the amended, substituted, or additional charge unless the accused requires a new investigation to be conducted.
- (4) If the amended, substituted, or additional charge differs substantially from the original charge, the disciplinary officer must—
 - (a) explain the amended, substituted, or additional charge to the accused; and
 - (b) advise the accused of his or her right to seek an adjournment to consider the charge; and
 - (c) if requested by the accused to do so, adjourn the proceedings for that purpose.

Assignment of defending and presenting officers

114 Assistance to accused

- (1) If an accused is brought before a disciplinary officer under this Part, that officer must ensure that a defending officer is assigned—
 - (a) to assist the accused in the preparation and presentation of his or her case; and
 - (b) to act on behalf of the accused.
- (2) Subsection (1) does not apply if the accused states in writing that he or she does not require the assistance referred to in that subsection.
- (3) The officer or non-commissioned officer assigned to act as defending officer—
 - (a) must hold an appropriate certificate of competency, as prescribed by the Chief of Defence Force; and
 - (b) must not be a lawyer.
- (4) The officer or non-commissioned officer assigned to act as defending officer for the accused may be changed by the disciplinary officer at any time if—

- (a) the accused so requests; or
- (b) the disciplinary officer considers that it is necessary to do so, having regard to the exigencies of the service.

115 Assignment of presenting officer

- (1) If an accused is brought before a disciplinary officer under this Part, that officer must ensure that a presenting officer is assigned to—
 - (a) assemble the evidence in support of the charge; and
 - (b) present the case in support of the charge, to the extent required by the disciplinary officer.
- (2) The officer or non-commissioned officer assigned to act as presenting officer—
 - (a) must hold an appropriate certificate of competency, as prescribed by the Chief of Defence Force; and
 - (b) must not be a lawyer.
- (3) The officer or non-commissioned officer assigned as presenting officer may be changed at any time by the disciplinary officer if the disciplinary officer considers that it is necessary or desirable to do so.

Arraignment

116 Arraignment by disciplinary officer

When the accused is brought before a disciplinary officer under this Part, the disciplinary officer must—

- (a) inform the accused that the disciplinary officer is going to hear the charge; and
- (b) ensure that the accused is correctly described in the record of proceedings; and
- (c) read the charge to the accused; and
- (d) ensure that the evidence in support of the charge has been adequately disclosed to the accused in the manner prescribed by the rules of procedure; and
- (e) ask the accused whether he or she pleads guilty or not guilty to the charge.

Plea of guilty

117 Plea of guilty

- (1) If the accused pleads guilty to the charge, the disciplinary officer must enter the plea on the record of proceedings if the disciplinary officer is satisfied that the accused—
 - (a) understands the nature of the charge; and

- (b) has made the plea voluntarily; and
 - (c) understands the consequences of the plea.
- (2) The disciplinary officer must proceed under this subpart as if the accused had pleaded not guilty if—
- (a) the accused refuses to plead; or
 - (b) the accused pleads unintelligibly; or
 - (c) the disciplinary officer is not satisfied of any of the matters referred to in subsection (1)(a) to (c).

117A Subordinate commander may punish accused or refer charge to commanding officer or detachment commander

- (1) If the disciplinary officer is a subordinate commander and he or she enters a guilty plea on the record of proceedings under section 117,—
- (a) the presenting officer must inform the subordinate commander of the facts that are relevant to the charge; and
 - (b) the subordinate commander may hear all or any of the evidence relating to the charge if he or she considers that it is in the interests of justice or discipline to do so; and
 - (c) the subordinate commander must consider whether, in his or her opinion, he or she—
 - (i) has sufficient powers of punishment in relation to the charge; and
 - (ii) is empowered to act as a disciplinary officer in relation to the charge.
- (2) If the subordinate commander considers under subsection (1) that he or she has sufficient powers of punishment and is empowered to act as a disciplinary officer in relation to the charge, he or she must—
- (a) record a finding of guilty on the charge; and
 - (b) inform the accused of that finding; and
 - (c) proceed under subpart 4.
- (3) If the subordinate commander considers under subsection (1) that he or she has insufficient powers of punishment or is not empowered to act as a disciplinary officer in relation to the charge, he or she must refer the charge to the accused's commanding officer or detachment commander without recording a finding of guilty on the charge.
- (4) After a charge is referred to a commanding officer or detachment commander under subsection (3), he or she becomes the disciplinary officer in relation to the charge.
- (5) This section is subject to sections 117G and 117H.

117B Commanding officer, detachment commander, or superior commander who receives guilty plea or receives referral must consider certain matters

- (1) This section applies if—
 - (a) the disciplinary officer is a commanding officer, a detachment commander, or a superior commander, and he or she enters a guilty plea on the record of proceedings under section 117; or
 - (b) a charge has been referred to a commanding officer or a detachment commander under section 117A.
- (2) The presenting officer must inform the commanding officer, detachment commander, or superior commander of the facts that are relevant to the charge.
- (3) The commanding officer, detachment commander, or superior commander may hear all or any of the evidence relating to the charge if he or she considers that it is in the interests of justice or discipline to do so.
- (4) The commanding officer, detachment commander, or superior commander must consider whether, in his or her opinion,—
 - (a) he or she has sufficient powers of punishment in relation to the charge; and
 - (b) he or she is empowered to act as a disciplinary officer in relation to the charge.

117C Consideration of whether accused who pleads guilty should be given right to elect trial by Court Martial

- (1) If the commanding officer, detachment commander, or superior commander considers under section 117B that he or she has sufficient powers of punishment and is empowered to act as a disciplinary officer in relation to the charge, he or she must consider whether the accused should be given the right to elect trial by the Court Martial.
- (2) The commanding officer, detachment commander, or superior commander must, in making a decision under subsection (1),—
 - (a) consider the punishment, or combination of punishments, that he or she would be likely to impose if he or she were to act under subpart 4; and
 - (b) consider the orders for compensation or restitution (or both) that he or she would be likely to make if he or she were to act under subpart 4; and
 - (c) have regard to sections 117W and 117ZA.

117D Accused who pleads guilty must be informed if he or she has right to elect trial by Court Martial

- (1) If the commanding officer, detachment commander, or superior commander considers under section 117C that he or she should give the accused the right to elect trial by the Court Martial, he or she must—
 - (a) inform the accused that the accused has the right to elect either—

- (i) trial by the Court Martial; or
 - (ii) for the commanding officer, detachment commander, or superior commander to proceed under subpart 4; and
 - (b) adjourn the hearing and give the accused a reasonable period to consider the accused's election; and
 - (c) give the accused the opportunity to consult a lawyer in respect of the accused's election if it is reasonably practicable to do so.
- (2) The period of adjournment under subsection (1)(b) must be at least 24 hours if the accused wishes it.

117E Accused who pleads guilty must be punished in certain circumstances

- (1) This section applies if—
- (a) a commanding officer, detachment commander, or superior commander considers, under section 117C, that an accused who has pleaded guilty should not be given the right to elect trial by the Court Martial; or
 - (b) an accused is given the right to an election under section 117D and elects—
 - (i) for the commanding officer, detachment commander, or superior commander to proceed under subpart 4; or
 - (ii) trial by the Court Martial, but withdraws his or her election in the prescribed manner.
- (2) The commanding officer, detachment commander, or superior commander must—
- (a) record a finding of guilty on the charge; and
 - (b) inform the accused of that finding; and
 - (c) proceed under subpart 4.
- (3) This section is subject to sections 117G and 117H.

117F Accused must be remanded for trial in Court Martial and charge must be referred to Director of Military Prosecutions in certain circumstances

- (1) A commanding officer, detachment commander, or superior commander must remand the accused for trial in the Court Martial and refer the charge to the Director of Military Prosecutions if—
- (a) he or she considers under section 117B that he or she has insufficient powers of punishment or is not empowered to act as a disciplinary officer in relation to the charge; or
 - (b) the accused is given the right to an election under section 117D and either—
 - (i) the accused elects trial by the Court Martial and does not withdraw his or her election in the prescribed manner; or

- (ii) the accused does not make an election when asked to do so by the commanding officer, detachment commander, or superior commander.
- (2) However, if the accused is given the right to an election under section 117D and elects trial by the Court Martial, the disciplinary officer must not act under subsection (1) during the 24 hours following the accused's election.

Other matters relating to pleas

117G Procedure following mixed pleas

- (1) This section applies if—
 - (a) there is more than 1 charge against the accused contained in the same charge report; and
 - (b) the accused pleads guilty to 1 or more but not all of the charges.
- (2) The disciplinary officer—
 - (a) must proceed under sections 117 to 117F in respect of each charge to which the accused pleads guilty; but
 - (b) must not proceed to punish the accused under subpart 4 in respect of those charges until a finding under this Part is recorded for the other charges against the accused contained in the same charge report.
- (3) However, if the disciplinary officer is to refer a charge to the Director of Military Prosecutions under section 117ZF, the disciplinary officer must not record a finding of guilty on the charge under sections 117 to 117F.
- (4) Each charge to which the accused has pleaded not guilty must be proceeded with in accordance with this Act.
- (5) This section is subject to section 117ZF and the rules of procedure.

117H Change or amendment of plea

- (1) If the accused pleads not guilty to the charge, he or she may withdraw his or her plea of not guilty and substitute a plea of guilty at any time before the disciplinary officer records the finding on the charge.
- (2) If the accused substitutes a plea of guilty under subsection (1), the disciplinary officer must, so far as is necessary, proceed as if the accused had originally pleaded guilty.
- (3) If the accused pleads guilty to the charge, he or she may withdraw his or her plea of guilty and substitute a plea of not guilty at any time before the disciplinary officer records the finding on the charge.
- (4) If the accused substitutes a plea of not guilty under subsection (3), the disciplinary officer must, so far as is necessary, proceed as if the accused had originally pleaded not guilty.

- (5) If the accused pleads guilty to the charge and the disciplinary officer accepts the plea, the disciplinary officer may, if at any time during the proceedings it appears to him or her that he or she should not have accepted the plea, amend the record and substitute a plea of not guilty.
- (6) If the disciplinary officer acts under subsection (5), the disciplinary officer must, so far as is necessary, proceed as if the accused had originally pleaded not guilty.

Investigation following plea of not guilty

117I Procedure following plea of not guilty

- (1) If the accused pleads not guilty to the charge, the disciplinary officer must—
 - (a) enter the plea on the record of proceedings; and
 - (b) ask the accused if he or she has had adequate time and facilities to prepare a defence.
- (2) If the disciplinary officer considers, after acting under subsection (1)(b), that the accused has not had adequate time or facilities (or both) to prepare a defence, the disciplinary officer must adjourn the proceedings to allow the accused—
 - (a) adequate time to prepare a defence; and
 - (b) a reasonable opportunity to obtain adequate facilities to prepare a defence.

117J Disciplinary officer must determine whether prima facie case is made out after hearing of evidence in support of charge

- (1) When the case is ready to proceed, the disciplinary officer—
 - (a) must ask the accused whether he or she requires oral evidence to be given on oath; and
 - (b) may ask the presenting officer to outline the case in support of the charge; and
 - (c) must ask the presenting officer—
 - (i) to call each witness in support of the charge who is to give evidence orally to give evidence in the presence of the accused; and
 - (ii) to produce, and to read aloud to the accused, any written statement that the disciplinary officer has decided to admit in evidence in support of the charge.
- (2) The disciplinary officer—
 - (a) must give the accused an opportunity to cross-examine each witness who gives evidence orally in support of the charge; and
 - (b) may allow the presenting officer an opportunity to re-examine each witness who has been cross-examined; and

- (c) may put questions to each witness who gives evidence orally in support of the charge that the disciplinary officer considers are necessary to ensure that he or she fully understands the witness's evidence.
- (3) After the disciplinary officer has heard the evidence in support of the charge, he or she must determine whether a prima facie case has been made out.
- (4) If the disciplinary officer is not satisfied that a prima facie case has been made out, he or she must dismiss the charge, record the finding, and inform the accused.

Disciplinary officer must consider certain matters

117K Disciplinary officer must consider whether he or she has sufficient powers of punishment and whether he or she can act as disciplinary officer

- (1) If the disciplinary officer is satisfied that a prima facie case has been made out, the disciplinary officer must consider whether, in his or her opinion, he or she—
 - (a) has sufficient powers of punishment in relation to the charge; and
 - (b) is empowered to act as a disciplinary officer in relation to the charge.
- (2) If the disciplinary officer is a subordinate commander who considers under this section that he or she—
 - (a) has sufficient powers of punishment and is empowered to act as a disciplinary officer in relation to the charge, he or she must proceed to act as a disciplinary officer in relation to the charge under subpart 3:
 - (b) has insufficient powers of punishment or is not empowered to act as a disciplinary officer in relation to the charge, he or she must refer the charge to the accused's commanding officer or detachment commander without recording, a finding.
- (3) After a charge is referred to a commanding officer or detachment commander under subsection (2)(b), he or she—
 - (a) becomes the disciplinary officer in relation to the charge; and
 - (b) must investigate the charge under section 117J as if the subordinate commander had not begun to investigate the charge; and
 - (c) must, after acting under paragraph (b), act under subsection (1) if he or she is satisfied that a prima facie case has been made out.
- (4) If the disciplinary officer is a commanding officer, a detachment commander, or a superior commander who considers under this section that he or she has insufficient powers of punishment or is not empowered to act as a disciplinary officer in relation to the charge, he or she must remand the accused for trial in the Court Martial and refer the charge to the Director of Military Prosecutions.

*Right to elect trial by Court Martial***117L Disciplinary officer must consider whether accused should be given right to elect trial by Court Martial**

- (1) If the disciplinary officer is a commanding officer, a detachment commander, or a superior commander who considers under section 117K that he or she has sufficient powers of punishment and is empowered to act as a disciplinary officer in relation to the charge, he or she must consider whether the accused should be given the right to elect trial by the Court Martial.
- (2) The disciplinary officer must, in making a decision under subsection (1),—
 - (a) consider the punishment, or combination of punishments, that he or she would be likely to impose if the accused were found guilty; and
 - (b) consider the orders for compensation or restitution (or both) that he or she would be likely to make if the accused were found guilty; and
 - (c) have regard to sections 117W and 117ZA.
- (3) If the disciplinary officer considers that he or she should not give the accused the right to elect trial by the Court Martial, he or she must try the accused summarily under subpart 3.

117M Disciplinary officer must inform accused if accused has right to elect trial by Court Martial

- (1) If the disciplinary officer considers under section 117L that he or she should give the accused the right to elect trial by the Court Martial, he or she must—
 - (a) inform the accused that the accused has the right to elect either—
 - (i) trial by the Court Martial; or
 - (ii) summary trial by the disciplinary officer; and
 - (b) adjourn the hearing and give the accused a reasonable period to consider the accused's election; and
 - (c) give the accused the opportunity to consult a lawyer in respect of the accused's election if it is reasonably practicable to do so.
- (2) The period of adjournment under subsection (1)(b) must be at least 24 hours if the accused wishes it.

117N Disciplinary officer must remand accused for trial in Court Martial or try charge summarily

- (1) The disciplinary officer must remand the accused for trial in the Court Martial and refer the charge to the Director of Military Prosecutions if, after having been given the right to an election under section 117M,—
 - (a) the accused elects trial by the Court Martial and does not withdraw his or her election in the prescribed manner; or

- (b) the accused does not make an election when asked to do so by the disciplinary officer.
- (2) However, if the accused is given the right to an election under section 117M and elects trial by the Court Martial, the disciplinary officer must not act under subsection (1) during the 24 hours following the accused's election.
- (3) The disciplinary officer must try the accused summarily under subpart 3 if, after having been given the right to an election under section 117M, the accused elects—
 - (a) summary trial by the disciplinary officer; or
 - (b) trial by the Court Martial, but withdraws his or her election in the prescribed manner.

Subpart 3—Trying charges summarily

117O Disciplinary officer must advise accused and hear evidence on behalf of accused

- (1) If the disciplinary officer is to try the accused summarily, the disciplinary officer must, in accordance with the rules of procedure, briefly advise the accused of the procedure to be followed in the summary trial.
- (2) After advising the accused under subsection (1), the disciplinary officer must ask the accused—
 - (a) to outline the case on behalf of the accused; and
 - (b) to tell the disciplinary officer whether or not the accused wishes to put forward evidence in reply and, if so, what form the evidence will take; and
 - (c) to give evidence orally if he or she wishes to give evidence orally; and
 - (d) to call each witness on behalf of the accused who is to give evidence orally (following the accused if he or she wishes to give evidence) to give his or her evidence in the presence of the accused.
- (3) The disciplinary officer must, after complying with subsection (2), read aloud any written statement that the disciplinary officer has decided to admit in evidence on behalf of the accused.
- (4) If evidence is put forward on behalf of the accused, the disciplinary officer—
 - (a) may allow the presenting officer to cross-examine each witness who gives evidence orally; and
 - (b) if the presenting officer cross-examines a witness, must allow the accused an opportunity to re-examine the witness.
- (5) The disciplinary officer may put questions to each witness that the disciplinary officer considers necessary to ensure that he or she fully understands the witness's evidence.

117P Presenting officer and disciplinary officer may call or recall witnesses

- (1) If evidence is put forward on behalf of the accused, the presenting officer may, at the conclusion of the evidence on behalf of the accused, with the leave of the disciplinary officer, call or recall any witness to give evidence on any matter raised by, or on behalf of, the accused in his or her defence—
 - (a) that the presenting officer could not properly have put before the disciplinary officer before the accused's defence was disclosed; or
 - (b) that the presenting officer could not reasonably have foreseen.
- (2) The disciplinary officer may, at any time before he or she determines whether he or she finds the accused guilty or not guilty on the charge, call or recall any witness if he or she considers that it is in the interests of justice to do so.
- (3) If the disciplinary officer calls or recalls a witness under subsection (2), the disciplinary officer may allow the presenting officer, the accused, or both to put questions to the witness that the disciplinary officer may allow as proper.

117Q Disciplinary officer must determine whether accused is guilty or not guilty

After the disciplinary officer has received all the evidence under subpart 2 and this subpart, he or she must—

- (a) determine whether the accused is guilty or not guilty on the charge; and
- (b) record the finding; and
- (c) inform the accused.

Subpart 4—Punishment

117R Procedures to be followed before imposing punishment

- (1) If the disciplinary officer records a finding of guilty on the charge, he or she must, before imposing a punishment,—
 - (a) examine the offender's conduct sheets; and
 - (b) if a victim of the offence so wishes, read aloud a written statement from the victim setting out—
 - (i) any physical injury or emotional harm suffered by the victim through, or by means of, the offence; and
 - (ii) any loss of, or damage to, property suffered by the victim through, or by means of, the offence; and
 - (iii) any other effects of the offence on the victim; and
 - (c) give the offender a reasonable opportunity to make an explanation or plea in mitigation of punishment; and
 - (d) if the offender so wishes, give any witness on behalf of the offender a reasonable opportunity to give evidence in support of the explanation or plea in mitigation of punishment.

- (2) If the disciplinary officer records a finding of guilty on the charge, he or she may, before imposing a punishment, obtain from the presenting officer—
 - (a) a report on the offender's record and general conduct in the service; and
 - (b) details of any period during which the offender was held in custody awaiting trial; and
 - (c) details of any information in the possession of the service authorities relating to the offender's circumstances that may be relevant in considering punishment.
- (3) The disciplinary officer must ensure that he or she has received a specified certificate if he or she intends to impose a punishment consisting of or including 1 or more of the following:
 - (a) detention:
 - (b) reduction in rank:
 - (c) a fine.
- (4) In this section, **victim** has the same meaning as in section 4 of the Victims' Rights Act 2002.

117S Disciplinary officer may impose punishment, order offender to appear for punishment if called on, or discharge offender

- (1) The disciplinary officer may, after acting under section 117R,—
 - (a) impose on the offender any 1 or more of the punishments that he or she is authorised under this Part to impose and considers just; or
 - (b) make an order under section 117T; or
 - (c) discharge the offender without acting under paragraph (a) or (b).
- (2) The disciplinary officer must give reasons for his or her action under subsection (1).
- (3) Subsection (1) does not limit section 117ZA (which relates to orders for compensation and restitution).
- (4) The disciplinary officer must, after acting under subsection (1),—
 - (a) record the details of any forfeitures incurred by or under this Act, and any cancellation of the whole or any part of those forfeitures, and inform the offender; and
 - (b) notify the offender of the offender's right of appeal under Part 5A.

117T Order to come up for punishment if called on

- (1) The disciplinary officer may, instead of imposing a punishment on an offender, order the offender to appear for punishment if called on to do so within the period specified in subsection (2).

- (2) The period referred to in subsection (1) is a period not exceeding 1 year, commencing with the date on which the finding of guilty is recorded, that the disciplinary officer may specify in the order.
- (3) If the disciplinary officer makes an order under subsection (1), he or she must record and attach to the record of proceedings a statement of his or her findings of fact in relation to the charge.
- (4) The disciplinary officer may make orders under section 117ZA in combination with an order under subsection (1).

117U Offender to come up for punishment

- (1) This section applies if an offender in respect of whom an order is made under section 117T—
 - (a) is convicted, or found guilty summarily, of a subsequent offence against this Act or any other Act; or
 - (b) fails to comply with any other order referred to in section 117T(4); or
 - (c) fails to comply with any agreement, or fails to take any measure or action, of a kind referred to in section 10(1)(b), (d), or (e) of the Sentencing Act 2002 that was brought to the attention of the disciplinary officer at the time the, disciplinary officer made the order under section 117T.
- (2) An offender's commanding officer may, at any time within the period specified in the order made under section 117T, order the offender to appear before the commanding officer or another disciplinary officer to be dealt with for the original offence.
- (3) After an order is given under subsection (2), the offender must be placed in close arrest and brought before the commanding officer or other disciplinary officer at a time and place directed by the commanding officer or disciplinary officer.
- (4) If a person appears before a commanding officer or another disciplinary officer under this section and the commanding officer or disciplinary officer is satisfied of any of the matters specified in subsection (1), the commanding officer or disciplinary officer—
 - (a) must inquire into the circumstances of the original offence and the conduct of the offender since the order under section 117T was made (including, if appropriate, the circumstances and seriousness of the subsequent offence (if any)); and
 - (b) may impose a punishment, or a combination of punishments, on the offender for the original offence.
- (5) This section is subject to section 117X.

Summary punishments

117V Types and maximum amounts of summary punishments

- (1) The punishments that may be imposed on an offender tried summarily, or otherwise dealt with, under this Part are those specified in Schedule 3.
- (2) The maximum amount of any one punishment that may be imposed on an offender in relation to a charge tried summarily, or otherwise dealt with, under this Part by—
 - (a) a commanding officer or a detachment commander is that specified in Schedule 4 in relation to the rank of the offender as specified in that schedule:
 - (b) a subordinate commander is that specified in column 3 of Schedule 4 in relation to the rank of the offender as specified in that schedule:
 - (c) a superior commander is that specified in Schedule 5.
- (3) A disciplinary officer who finds a person guilty of 1 or more offences may, if he or she thinks it is just to do so, impose on that person more than 1 of the punishments authorised by this Part.
- (4) Subsection (3) does not limit the power of a disciplinary officer to discharge an offender without imposing a punishment on him or her or to order that person to appear for punishment if called on to do so.

117W Certain punishments must not be imposed unless offender was given right to elect trial by Court Martial

- (1) This section applies if the disciplinary officer is a commanding officer, a detachment commander, or a superior commander.
- (2) If the offender was given the right to elect trial by the Court Martial under section 117D or 117M, the disciplinary officer may,—
 - (a) in the case of a commanding officer or a detachment commander, impose on the offender, to the extent authorised by column 2 of Schedule 4, any punishment or punishments that the commanding officer or detachment commander considers just:
 - (b) in the case of a superior commander, impose on the offender, to the extent authorised by column 2 of Schedule 5, any punishment or punishments that the superior commander considers just.
- (3) If the offender was not given the right to elect trial by the Court Martial under section 117D or 117M, the disciplinary officer may,—
 - (a) in the case of a commanding officer or a detachment commander, impose on the offender, to the extent authorised by column 3 of Schedule 4, any punishment or punishments that the commanding officer or detachment commander considers just:

- (b) in the case of a superior commander, impose on the offender, to the extent authorised by column 3 of Schedule 5, any punishment or punishments that the superior commander considers just.

117X Punishment must be imposed for all offences of which person is found guilty

If a person tried summarily, or otherwise dealt with, under this Part in respect of 2 or more charges contained in the same charge report is found guilty of the offences charged, or at least 2 of them if there are more than 2, any punishment or punishments imposed on him or her must be in respect of all of the offences of which he or she has been found guilty.

117Y Provisions relating to punishment of detention

- (1) In determining the period of any detention to be imposed, a disciplinary officer must not take into account any period during which the offender has been held in custody but must specify any such period on the committal order.
- (2) Subsection (1) does not apply in respect of any time spent in custody that is unrelated to any charge before the disciplinary officer.
- (3) A disciplinary officer must not impose the punishment of detention on an officer (including a midshipman or an officer cadet).
- (4) A disciplinary officer must not, except with the prior approval of a superior commander, impose the punishment of detention on a member of the Armed Forces who had, at the time that the offence was committed, attained the age of 17 years but was, at that time, under the age of 18 years.
- (5) In this section, **custody**—
 - (a) means detention in civil custody or under close arrest; but
 - (b) does not include open arrest.

117Z Reduction of punishments

- (1) When a disciplinary officer has imposed a punishment, or a combination of punishments, for an offence against this Act, he or she—
 - (a) may not subsequently increase the punishment for that offence; but
 - (b) may reduce the punishment for the offence at any time before it has been completely carried out.
- (2) A commanding officer may reduce, but not increase, a punishment imposed by a detachment commander or by a subordinate commander.

Compensation and restitution

117ZA Orders for compensation and restitution

- (1) Every disciplinary officer who finds an offender guilty of an offence may, in addition to or in substitution for any punishment or punishments that he or she

may impose on the offender, order the offender, in the same manner and to the same extent as the Court Martial,—

- (a) to pay compensation in accordance with section 86; or
 - (b) to make restitution in accordance with section 87 (with or without compensation under section 87(3)); or
 - (c) both to pay compensation and make restitution.
- (2) However,—
- (a) if the offender was given the right to elect trial by the Court Martial under section 117D or 117M, he or she may not be ordered under this section to pay an amount by way of compensation exceeding his or her basic pay for a period of 28 days:
 - (b) if the offender was not given the right to elect trial by the Court Martial under section 117D or 117M, he or she may not be ordered to pay an amount by way of compensation exceeding his or her basic pay for a period of 14 days.

Subpart 5—Miscellaneous matters

Rights under New Zealand Bill of Rights Act 1990

117ZB Accused deemed to have waived certain rights in certain circumstances

- (1) An accused is deemed to have irrevocably waived, in relation to a charge, the rights referred to in subsection (2) if having been given the right to an election under—
- (a) section 117D, the accused elects—
 - (i) for the commanding officer, detachment commander, or superior commander to proceed under subpart 4; or
 - (ii) trial by the Court Martial, but withdraws his or her election in the prescribed manner:
 - (b) section 117M, the accused elects—
 - (i) summary trial by the disciplinary officer; or
 - (ii) trial by the Court Martial, but withdraws his or her election in the prescribed manner.
- (2) The rights are—
- (a) the right that the accused had or has under section 24(c) of the New Zealand Bill of Rights Act 1990 to the extent that it relates to the right to legal representation; and
 - (b) the right that the accused had or has under section 25(a) of that Act to the extent that it relates to the right to a hearing by an independent court.

117ZC Implications of election must be explained to accused

- (1) When the accused appears before the disciplinary officer to indicate his or her election under section 117D or 117M, the disciplinary officer must, before the election is made, take reasonable steps to ensure that the implications of the election have been fully explained to the accused by—
 - (a) his or her defending officer; or
 - (b) an officer or a non-commissioned officer who holds a certificate of competency as a defending officer.
- (2) The implications referred to in subsection (1) must include any matters prescribed by the rules of procedure.
- (3) The accused's election under section 117D or 117M must be recorded in writing in the prescribed form.
- (4) The disciplinary officer must take reasonable steps to ensure that the accused has read the election before the accused signs it.

117ZD Accused does not have certain rights if accused is tried summarily or otherwise dealt with under this Part

If a disciplinary officer tries an accused summarily or an accused is otherwise dealt with under this Part,—

- (a) the accused does not have, in relation to the relevant charge, the right to legal representation; and
- (b) the accused does not have, in relation to the relevant charge, the right to a hearing by an independent court.

*Recording of proceedings***117ZE Recording proceedings before disciplinary officer**

A disciplinary officer must comply with any requirements of the rules of procedure to ensure that an audio recording, or a written summary, is made of the proceedings before the disciplinary officer.

*Referral of charges***117ZF Referral of charge must include referral of related charges**

If a disciplinary officer is required to refer a charge against an accused to another person, he or she must also refer to that person—

- (a) any charge against another person for an offence arising from the same incident or series of incidents; and
- (b) any other charge against the accused for an offence arising from the same incident or series of incidents.

117ZG Documents and information to be provided to accused and Director of Military Prosecutions

- (1) If a charge is to be referred to the Director of Military Prosecutions by a disciplinary officer, the disciplinary officer must, within 7 days of deciding that the charge is to be referred to the Director of Military Prosecutions,—
 - (a) ensure that the accused is provided with the information or documents that are prescribed by the rules of procedure for the purposes of this subsection; and
 - (b) inform the accused that he or she has 7 days from the date of being informed in which to provide to the disciplinary officer any signed written statements in his or her defence for referral to the Director of Military Prosecutions.
- (2) A disciplinary officer (other than a superior commander) must, within 14 days of deciding that a charge is to be referred to the Director of Military Prosecutions, send to his or her superior commander the documents that are prescribed by the rules of procedure for the purposes of this subsection.
- (3) A superior commander who receives documents under subsection (2) must, within 7 days of receiving those documents, send to the Director of Military Prosecutions—
 - (a) those documents; and
 - (b) a statement containing the superior commander's opinion as to whether prosecution of the charge is in the interests of the service.
- (4) If the disciplinary officer is a superior commander, he or she must, within 14 days of deciding that the charge is to be referred to the Director of Military Prosecutions, send to the Director of Military Prosecutions—
 - (a) the documents that are prescribed by the rules of procedure for the purposes of this subsection; and
 - (b) a statement containing the superior commander's opinion as to whether prosecution of the charge is in the interests of the service.

117ZH Reference back of charge by Director of Military Prosecutions

- (1) If a charge is referred by a disciplinary officer to the Director of Military Prosecutions under section 117F(1)(a) or 117K(4), the Director of Military Prosecutions may, after giving due consideration to the circumstances of the case, refer the charge (together with all or any other charges referred under section 117ZF) back to the disciplinary officer with a direction that the officer must—
 - (a) continue to act as a disciplinary officer in relation to the charge or charges; or
 - (b) dismiss the charge or charges.
- (2) If, after a charge is referred by a disciplinary officer to the Director of Military Prosecutions under section 117F(1)(b) or 117N(1), the accused withdraws, in

the prescribed manner, his or her election for trial by the Court Martial, the Director of Military Prosecutions may, after giving due consideration to the circumstances of the case, refer the charge (together with all or any other charges referred under section 117ZF) back to the disciplinary officer with a direction that the officer must—

- (a) continue to act as a disciplinary officer in relation to the charge or charges; or
 - (b) dismiss the charge or charges.
- (3) A direction under subsection (1) or (2) may include—
- (a) a direction to give the accused the right to elect trial by the Court Martial; and
 - (b) any other procedural directions that the Director of Military Prosecutions thinks fit.
- (4) If a charge is referred by a disciplinary officer to the Director of Military Prosecutions under section 117F(1)(b) or 117N(1), the Director of Military Prosecutions may, after giving due consideration to the circumstances of the case, refer the charge (together with all or any other charges referred under section 117ZF) back to the disciplinary officer with a direction that the officer must dismiss the charge or charges.
- (5) On reference back of a charge under this section, the disciplinary officer must dispose of the charge in accordance with the directions.
- (6) Reference back of a charge to a disciplinary officer under this section is without prejudice to the power of the disciplinary officer to prefer another charge if—
- (a) the Director of Military Prosecutions so directs; or
 - (b) the disciplinary officer thinks fit.
- (7) The Director of Military Prosecutions must inform the accused of any action that is taken in respect of the accused under this section.

117ZI Director of Military Prosecutions may lay charge before Court Martial

- (1) If a charge is referred to the Director of Military Prosecutions under this Part, he or she may lay the charge before the Registrar of the Court Martial.
- (2) If the accused pleaded guilty under section 116 in relation to a charge referred to the Director of Military Prosecutions under this Part, that plea must not be taken into account by the Court Martial when making a finding on the charge.

Procedures for certain persons

117ZJ Procedures for prisoners of war, spies, midshipmen, officer cadets, and chaplains

- (1) If the accused is subject to this Act by virtue of section 12 or 13, the following provisions apply:
 - (a) if the accused holds a rank in an armed force, the same procedure for dealing with the charge under this Part must be followed, with any necessary modifications, as if the accused held the corresponding rank in the Armed Forces of New Zealand:
 - (b) in any other case, the same procedure for dealing with the charge under this Part must be followed, with any necessary modifications, as if the accused were a rating of able rank in the Navy or a private in the Army or a leading aircraftman in the Air Force, as the case may be.
- (2) If the accused is a midshipman or an officer cadet, the same procedure for dealing with the charge under this Part must be followed, with any necessary modifications, as if the accused were a rating of able rank in the Navy or a private in the Army or a leading aircraftman in the Air Force, as the case may be.
- (3) If the accused is a chaplain, the same procedure for dealing with the charge under this Part must be followed, with any necessary modifications, as if the accused,—
 - (a) in the case of a chaplain Class I were a captain in the Navy, a colonel in the Army, or a group captain in the Air Force:
 - (b) in the case of a chaplain Class II, were a commander in the Navy, a lieutenant-colonel in the Army, or a wing commander in the Air Force:
 - (c) in the case of a chaplain Class III, were a lieutenant-commander in the Navy, a major in the Army, or a squadron leader in the Air Force:
 - (d) in the case of a chaplain Class IV, were a lieutenant in the Navy, a captain in the Army, or a flight lieutenant in the Air Force.

Evidence

117ZK Relevant evidence admissible unless excluded

- (1) All relevant evidence is admissible in proceedings under this Part and Part 5A except evidence that is excluded under subsection (4).
- (2) Evidence that is not relevant is not admissible in proceedings under this Part or Part 5A.
- (3) Evidence is relevant in proceedings if it has a tendency to prove or disprove anything that is of consequence to the determination of the proceedings.
- (4) The disciplinary officer or the Summary Appeal Court must exclude evidence if its probative value is outweighed by the risk that the evidence will—

- (a) have an unfairly prejudicial effect on the outcome of the proceedings; or
 - (b) needlessly prolong the proceedings.
- (5) The disciplinary officer or the Summary Appeal Court may, subject to subsections (1) to (4) and section 150B, require a witness to answer a question that is put to them in proceedings under this Part or Part 5A (whether by the disciplinary officer, the Court, a presenting officer, a defending officer, or any other counsel appearing in the proceedings).

117ZL Taking of evidence on oath

- (1) In proceedings before—
- (a) a disciplinary officer, oral evidence must not be given on oath unless the accused so requires;
 - (b) the Summary Appeal Court, oral evidence must be given on oath.
- (2) For the purposes of subsection (1)(a), if the accused requires the oral evidence to be given on oath, all witnesses who are to give evidence orally in the proceedings (including the accused if he or she gives evidence orally) must be sworn.
- (3) However, if the disciplinary officer or Summary Appeal Court considers that a child who is called as a witness does not understand the nature of an oath, the child's evidence may be received even though it is not given on oath so long as the officer or Court is of the opinion that the child—
- (a) has sufficient intelligence to justify the reception of the evidence; and
 - (b) understands the duty of speaking the truth.
- (4) If any person referred to in subsection (1) or (2) objects to being sworn or it is not reasonably practicable to administer an oath to that person in a manner appropriate to his or her religious belief, the person may be permitted to make a solemn affirmation instead of swearing an oath.
- (5) The making of an affirmation under subsection (4) has the same force and effect and has the same consequences as the taking of an oath.
- (6) Every oath or affirmation required to be administered under this Part or Part 5A must be administered in accordance with the rules of procedure.

117ZM Admission in evidence of written statements instead of oral evidence

- (1) A written statement of a person's evidence is, with the consent of the accused and the disciplinary officer or the appellant and the Director of Military Prosecutions (as the case may be), admissible in evidence instead of calling that person to give his or her evidence orally.
- (2) However, a written statement of a person's evidence is admissible only to the same extent and for the same purpose as that evidence would have been admissible in the proceedings if given orally by the maker of the statement.

- (3) Despite subsection (1), a disciplinary officer or the Summary Appeal Court may require the person to attend and give his or her evidence orally.
- (4) In proceedings before a disciplinary officer, the accused and the presenting officer must each be given—
 - (a) a copy of every written statement that the other party proposes to tender in evidence; and
 - (b) a copy of every exhibit (if any) referred to in that statement or information that is sufficient to enable the recipient to inspect the exhibit or a copy of it.
- (5) In proceedings before the Summary Appeal Court, the appellant and the Director of Military Prosecutions must each be given—
 - (a) a copy of every written statement that the other party proposes to tender in evidence; and
 - (b) a copy of every exhibit (if any) referred to in that statement or information that is sufficient to enable the recipient to inspect the exhibit or a copy of it.
- (6) A document or object accompanying a written statement tendered as evidence and referred to in the statement as an exhibit must be treated as if it had been produced as an exhibit and identified in evidence by the maker of the statement.

117ZN Disciplinary officers and Summary Appeal Court to take judicial notice of certain matters

- (1) Every disciplinary officer and the Summary Appeal Court must take judicial notice of—
 - (a) all matters of common knowledge; and
 - (b) all other matters of which judicial notice would be taken by the High Court.
- (2) The disciplinary officer may also take judicial notice of matters that may fairly be regarded as being within the general service knowledge of the disciplinary officer.

Other miscellaneous matters

117ZO General power to make orders or give directions

A disciplinary officer may, in respect of any proceedings under this Part, make or give any order or direction, not inconsistent with this Act or the rules of procedure, that seems to him or her best calculated to do justice.

117ZP Construction of charges

- (1) In the construction of a charge sheet or charge there must be presumed in favour of supporting it every proposition that may reasonably be presumed to be impliedly included, though not expressed in it.
- (2) In respect of a charge, the statement of the alleged offence and the statement of the particulars of every act or omission constituting the alleged offence must be read and construed together.

117ZQ Replacement of disciplinary officer

- (1) If at any time a disciplinary officer has begun to act under this Part in relation to a charge, and, because of death, illness, or any other reason, he or she is unable to continue to act as the disciplinary officer in relation to the charge, the officer who becomes the disciplinary officer in his or her place may act under this Part in relation to the charge as if the officer whom he or she replaced had not commenced to do so.
- (2) Despite subsection (1), if the disciplinary officer who has become incapacitated had, before his or her incapacity, found the accused guilty, the disciplinary officer who becomes the disciplinary officer in his or her place must not try the charge summarily but may instead, after inquiring into the circumstances of the charge, act under subpart 4 as if he or she had found the accused guilty himself or herself.
- (3) The rules of procedure may contain further provisions concerning how—
 - (a) an officer becomes the disciplinary officer in place of an officer who is unable to continue to act in relation to a charge; and
 - (b) the officer who becomes the disciplinary officer must deal with the charge.
- (4) This section does not apply if—
 - (a) the disciplinary officer is unable to continue to act as the disciplinary officer in relation to the charge because, in accordance with this Part, the disciplinary officer is required to refer the charge to another person; or
 - (b) this Part otherwise provides for a different procedure to be followed in the event that the disciplinary officer is unable to continue to act as the disciplinary officer in relation to the charge.

117ZR Objection relating to personal interest

- (1) If an accused, during the proceedings before a disciplinary officer, raises an objection that the disciplinary officer is personally interested in the charge, the disciplinary officer must ensure that the objection is recorded in the record of proceedings.
- (2) If, after an objection is made under subsection (1), a disciplinary officer considers that he or she is personally interested in the charge,—

- (a) he or she must not continue to act as the disciplinary officer in relation to the charge; and
 - (b) section 117ZQ applies.
- (3) However, subsection (2) does not apply if a provision of this Part provides for a different procedure to be followed in the event that a disciplinary officer considers that he or she is personally interested in a charge or is otherwise not empowered to act as a disciplinary officer in relation to a charge.

New Part 5A inserted

38 New Part 5A inserted

The following Part is inserted after Part 5:

Part 5A **Summary Appeal Court of New Zealand**

Establishment of Summary Appeal Court of New Zealand

118 Summary Appeal Court of New Zealand established

- (1) A court of record called the Summary Appeal Court of New Zealand is established.
- (2) In addition to the jurisdiction and powers specially conferred on the Summary Appeal Court by this or any other Act, the Court has all the powers inherent in a court of record.
- (3) The Summary Appeal Court is to have a seal, which is to be judicially noticed by all courts and for all purposes.

119 Constitution of Summary Appeal Court

- (1) The Summary Appeal Court comprises the Judges of the Court Martial.
- (2) The Summary Appeal Court's jurisdiction is not affected by a vacancy in the number of Judges of the Court Martial.

120 Summary Appeal Court must sit in divisions

- (1) For the purposes of any proceedings in the Summary Appeal Court, the Court must sit in divisions each comprising 1 Judge assigned by the Chief Judge.
- (2) Each division of the Summary Appeal Court may exercise all of the powers of the Court.
- (3) A division of the Summary Appeal Court may exercise any powers of the Court even though 1 or more divisions of the Court is exercising any powers of the Court at the same time.

121 Registrar, clerks, and other officers of Summary Appeal Court

- (1) The Judge Advocate General must appoint a person to act as the Registrar of the Summary Appeal Court.
- (2) The Registrar may appoint clerks and any other officers of the Summary Appeal Court as may be required.
- (3) An appointment under this section must be made by written notice to the person concerned.
- (4) A person appointed under this section must not undertake any other paid employment or hold any other office (whether paid or not) unless the Judge Advocate General or Registrar (as the case may be) is satisfied that the employment or other office is compatible with that person's appointment.

122 Chief Judge may delegate to Registrar duty to assign Judges

- (1) The Chief Judge may, either generally or particularly, delegate to the Registrar the Chief Judge's duty under section 120(1) to assign a Judge for any proceedings of the Summary Appeal Court.
- (2) A delegation—
 - (a) must be in writing; and
 - (b) may be made subject to any restrictions that the Chief Judge thinks fit; and
 - (c) is revocable at any time, in writing; and
 - (d) does not prevent the performance or exercise of a function, duty, or power by the Chief Judge.
- (3) The Registrar may perform any duties delegated under subsection (1) in the same manner and with the same effect as if they had been conferred on him or her directly by this Act and not by delegation.
- (4) If the Registrar appears to act under subsection (1), he or she is presumed to be acting in accordance with the terms of delegation in the absence of evidence to the contrary.

123 Registrar may delegate functions, duties, or powers to clerk or officer of Summary Appeal Court

- (1) The Registrar may, either generally or particularly, delegate to a clerk or any other officer of the Summary Appeal Court appointed under section 121(2) any of the Registrar's functions, duties, and powers, except—
 - (a) any function, duty, or power delegated to the Registrar by the Chief Judge; and
 - (b) this power of delegation.
- (2) A delegation—
 - (a) must be in writing; and

- (b) may be made subject to any restrictions and conditions that the Judge Advocate General or the Registrar thinks fit; and
 - (c) is revocable at any time, in writing; and
 - (d) does not prevent the performance or exercise of a function, duty, or power by the Registrar.
- (3) A clerk or any other officer of the Summary Appeal Court to whom any functions, duties, or powers are delegated may perform and exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.
- (4) A clerk or any other officer of the Summary Appeal Court who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.

Right of appeal

124 Right of appeal

Every person found guilty of an offence by a disciplinary officer may appeal to the Summary Appeal Court against 1 or more of the following:

- (a) the finding of guilty;
- (b) the punishment, or the combination of punishments, imposed in relation to that finding;
- (c) an order of compensation or restitution (or both) made in relation to that finding;
- (d) an order made under section 117T.

125 Notice of appeal

- (1) An appeal under section 124 must be made by lodging a notice of appeal, in the prescribed form, with the Registrar within—
- (a) the prescribed period; or
 - (b) any further time that the Summary Appeal Court may allow on application made before or after the expiration of that period.
- (2) An application under subsection (1)(b) must—
- (a) be in the prescribed form; and
 - (b) be lodged with the Registrar with the notice of appeal if made after the expiration of the prescribed period.
- (3) Every notice of appeal must specify—
- (a) the finding, punishment, combination of punishments, or order appealed from; and
 - (b) the grounds of appeal in sufficient detail to fully inform the Summary Appeal Court of the issues in the appeal; and

- (c) any other particulars that are prescribed by the rules of procedure for the purposes of this section.
- (4) If the time for lodging a notice of appeal with the Registrar expires on a day on which the office of the Registrar is closed, and by reason of that closure the notice cannot be lodged on that day, the notice is deemed to be lodged in time if it is lodged on the day on which the office is next open.
- (5) In this section, **prescribed period** means—
 - (a) a period of 35 days commencing with the day after the day on which the finding of guilty by the disciplinary officer is recorded if the charge is tried summarily, or otherwise dealt with, under Part 5 outside New Zealand:
 - (b) a period of 21 days commencing with the day after the day on which the finding of guilty by the disciplinary officer is recorded if the charge is tried summarily, or otherwise dealt with, under Part 5 in New Zealand.

126 Registrar and disciplinary officer must provide copies of documents

- (1) The Registrar must, as soon as practicable after receiving a notice of appeal, provide a copy of the notice of appeal to the disciplinary officer who made the finding of guilty and to the Director of Military Prosecutions.
- (2) The disciplinary officer must, within 14 days of receiving a copy of the notice of appeal under subsection (1), send to the Registrar the documents that are prescribed by the rules of procedure for the purposes of this section.
- (3) The Registrar must, within 7 days of receiving the documents under subsection (2), send a copy of those documents to the Director of Military Prosecutions and to the appellant.

127 Abandonment of appeal

- (1) An appellant may, at any time after he or she has lodged a notice of appeal, abandon the appeal by giving to the Registrar notice of abandonment in the prescribed form.
- (2) If it is contended on the appellant's behalf that the appellant is insane, a notice of abandonment may be given and signed by the appellant's representative.
- (3) The signature of the appellant or his or her representative to a notice of abandonment must be witnessed by a member of a specialist legal branch or corps in the Armed Forces, or the appellant's commanding officer, or an officer not below the rank of lieutenant commander in the Navy, major in the Army, or squadron leader in the Air Force.

128 Effect of appeal on punishments and orders

A punishment, a combination of punishments, or an order appealed against under this Part is not suspended by reason of the appeal unless—

- (a) the rules of the Summary Appeal Court specify that the punishment, the combination of punishments, or the order is suspended; or
- (b) the Summary Appeal Court directs that the punishment, the combination of punishments, or the order is suspended.

Special reference by Judge Advocate General

129 Special references to Summary Appeal Court

- (1) The Judge Advocate General may refer 1 or more of the following matters to the Summary Appeal Court if the Judge Advocate General considers that it is in the interests of justice or discipline to do so:
 - (a) a finding of guilty by a disciplinary officer:
 - (b) the punishment, or the combination of punishments, imposed in relation to a finding of guilty by a disciplinary officer:
 - (c) an order of compensation or restitution (or both) made in relation to a finding of guilty by a disciplinary officer:
 - (d) an order made under section 117T.
- (2) For the purposes of this Part, a referral under this section must, with all necessary modifications, be treated as an appeal by the person found guilty of the offence.
- (3) A reference under this section must—
 - (a) be lodged with the Registrar; and
 - (b) specify the finding, punishment, combination of punishments, or order concerned; and
 - (c) specify the reasons for the reference in sufficient detail to fully inform the Summary Appeal Court of the issues in the appeal; and
 - (d) specify any other particulars that are prescribed by the rules of procedure for the purposes of this section.
- (4) If a person has been found guilty of an offence by a disciplinary officer, any person (including the person found guilty) may, in the prescribed manner, petition the Judge Advocate General to refer to the Summary Appeal Court under this section 1 or more of the matters referred to in subsection (1)(a) to (d).

130 Person found guilty 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, send to the person found guilty of the offence—
 - (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 of guilty, the punishment, the combination of punishments, or the order 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 Summary Appeal Court may deal with a reference from the Judge Advocate General 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 to the person found guilty of the offence.

Powers of Summary Appeal Court

131 Appeals to proceed by way of rehearing and general power of Summary Appeal Court

- (1) Appeals to the Summary Appeal Court proceed by way of rehearing.
- (2) The Summary Appeal Court has, for the purposes of this Act, full power to determine, under this Act, any question necessary to be determined for the purpose of doing justice in any case before the Court.

132 Power of Summary Appeal Court in respect of finding of guilty

- (1) The Summary Appeal Court must, on an appeal against a finding that a person is guilty of an offence,—
 - (a) allow the appeal if it considers that—
 - (i) the finding of the disciplinary officer 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 disciplinary officer involves a wrong decision on a question of law; or
 - (iii) there was, on any ground, a miscarriage of justice; or
 - (iv) the summary trial was a nullity; and
 - (b) dismiss the appeal in any other case.

- (2) However, the Summary Appeal 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 Summary Appeal Court allows an appeal under subsection (1), the Court—
 - (a) must quash the finding of guilty; and
 - (b) may do any of the following:
 - (i) direct a finding of not guilty of having committed the offence to be entered; or
 - (ii) direct a new trial to be held by the disciplinary officer or by the Court Martial; or
 - (iii) make any other order that justice requires.
- (4) In making an order under subsection (3)(b)(ii), the Summary Appeal Court must—
 - (a) advise the disciplinary officer or the Court Martial (as the case may be) of its reasons for so doing; and
 - (b) give to the disciplinary officer or the Court Martial (as the case may be) any directions that it thinks fit.
- (5) In conducting a new trial of the charge, the disciplinary officer or the Court Martial (as the case may be) must have regard to the Summary Appeal Court's reasons for making an order under subsection (3)(b)(ii), and to the Court's directions under subsection (4).

133 Power of Summary Appeal Court in respect of punishments

- (1) The Summary Appeal Court may, on an appeal against a punishment or a combination of punishments,—
 - (a) quash the punishment, or the combination of punishments, if—
 - (i) all of the findings of guilty in relation to the punishment, or the combination of punishments, have been quashed; or
 - (ii) the Court considers that the disciplinary officer did not have the power to impose the punishment or the combination of punishments; or
 - (iii) the Court considers that the punishment, or the combination of punishments, is too severe; or
 - (b) vary the punishment, or the combination of punishments, if—
 - (i) the Court considers that the disciplinary officer did not have the power to impose the punishment or the combination of punishments; or

- (ii) the Court considers that the punishment, or the combination of punishments, is too severe; or
 - (c) dismiss the appeal.
- (2) The Summary Appeal Court may vary the punishment, or the combination of punishments, under subsection (1)(b) by substituting a punishment, or combination of punishments, that—
 - (a) the disciplinary officer would have had the power to impose; and
 - (b) in the opinion of the Summary Appeal Court, is no more severe than the punishment, or the combination of punishments, originally imposed.
- (3) If the punishment, or the combination of punishments, is varied, the varied punishment, or combination of punishments,—
 - (a) is deemed to have been imposed by the disciplinary officer; and
 - (b) has effect as if imposed on the day on which the original punishment, or combination of punishments, was imposed.

134 Power of Summary Appeal Court in respect of orders for compensation and restitution and orders to come up for punishment if called on

- (1) The Summary Appeal Court may, on an appeal against an order of compensation or restitution (or both) or an order under section 117T,—
 - (a) quash the order if—
 - (i) all of the findings of guilty in relation to the order have been quashed; or
 - (ii) the Court considers that the disciplinary officer did not have the power to make the order; or
 - (iii) the Court considers that the order is too severe; or
 - (iv) in the case of an order under section 117T, the court. considers that quashing the order is necessary for the maintenance of discipline or in the interests of justice; or
 - (b) vary the order if the Court—
 - (i) considers that the order is too severe; or
 - (ii) otherwise considers that a variation is necessary for the maintenance of discipline or in the interests of justice; or
 - (c) dismiss the appeal.
- (2) If an order under section 117T is quashed under subsection (1)(a)(iv),—
 - (a) the Summary Appeal Court may impose a punishment, or combination of punishments, that the disciplinary officer would have had the power to impose; and
 - (b) that punishment, or combination of punishments,—
 - (i) is deemed to have been imposed by the disciplinary officer; and

- (ii) has effect as if imposed on the day on which the order under section 117T was made.
- (3) The Summary Appeal Court may vary the order under subsection (1)(b) by substituting an order—
 - (a) that the disciplinary officer would have had the power to make; and
 - (b) that, in the case of an order requiring the payment of compensation,—
 - (i) reduces the amount of compensation to be paid; or
 - (ii) increases the amount of compensation to be paid; and
 - (c) that, in the case of an order requiring restitution,—
 - (i) requires property additional to or different from that specified in the order to be restored to the person who appears to the Court to be entitled to it; or
 - (ii) excludes part of the property that is specified in the order if the Court considers that the person to whom property is to be restored is not entitled to that part.
- (4) If an order is varied under this section, the varied order—
 - (a) is deemed to have been made by the disciplinary officer; and
 - (b) has effect as if made on the day on which the original order was made.

135 Supplementary powers of Summary Appeal Court

For the purposes of any proceedings in the Summary Appeal Court, the Court may—

- (a) order that all necessary steps be taken to obtain from the disciplinary officer who tried, or otherwise dealt with, the charge against the appellant a report that—
 - (i) sets out the disciplinary officer'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:
- (b) appoint any person with special expert knowledge to act as an assessor to the Court in any case if it appears to the Court that special knowledge is required for the proper determination of the case:
- (c) issue any warrants necessary for enforcing the orders of, or punishments imposed by, the Court.

*Decisions of Summary Appeal Court***136 Decisions of Summary Appeal Court final**

- (1) The decision of the Summary Appeal Court on any appeal under this Part is final and conclusive, and there is no right of appeal against the Court's decision.
- (2) The Summary Appeal Court must state its reasons in writing for a decision on any appeal under this Part.

*Sittings of Summary Appeal Court***137 Sittings of Summary Appeal Court**

- (1) The Summary Appeal Court—
 - (a) must sit in open court unless section 138 or 139 applies; and
 - (b) may sit in any place that the Judge Advocate General may direct, whether in New Zealand or elsewhere; and
 - (c) may conduct its proceedings by teleconference or by any means of communication that allows individuals a reasonable opportunity to participate in the proceedings.
- (2) Subsection (1)(c) is subject to the rules of procedure.
- (3) A sitting of the Summary Appeal Court may be adjourned from time to time and from place to place.

138 When Summary Appeal Court must hold proceedings in closed court

- (1) The Summary Appeal Court must hold its proceedings in closed court while deliberating on whether to allow an appeal.
- (2) The Summary Appeal Court may hold its proceedings in closed court on any other deliberation.
- (3) When the Summary Appeal Court holds its proceedings in closed court, only the following persons may be present:
 - (a) the Judge;
 - (b) any other persons authorised by the Judge.

139 Summary Appeal Court may limit scope of open court

- (1) In any proceedings in the Summary Appeal Court, the Court may make any of the orders specified in subsection (2) limiting the scope of open court if the Court considers that—
 - (a) a statement may be made or evidence given in the course of those proceedings that might lead to the disclosure of information that would or might—

- (i) be directly or indirectly useful to the enemy or any foreign country; or
 - (ii) be otherwise harmful to New Zealand; or
 - (b) the making of the order—
 - (i) is necessary in the interests of justice; or
 - (ii) is desirable in the interests of public morality; or
 - (iii) is necessary for the protection of the reputation of a victim of an alleged sexual offence or offence of extortion.
- (2) The orders referred to in subsection (1) are as follows:
 - (a) an order forbidding publication of any report or account of the whole or any part of the proceedings, including any evidence adduced or submissions made:
 - (b) an order forbidding the publication of the name of any person connected, whether as a witness or otherwise, with the proceedings or of any name or particulars likely to lead to the identification of that person:
 - (c) an order excluding all or any persons, except the following:
 - (i) the Director of Military Prosecutions or any person acting on behalf of the Director:
 - (ii) the appellant's counsel:
 - (iii) the Registrar or any other officer of the Summary Appeal Court:
 - (iv) an interpreter required in the proceedings:
 - (v) a person expressly permitted by the Summary Appeal Court to be present.
- (3) However, the Summary Appeal Court may make an order specified in subsection (2)(c) that has the effect of excluding any accredited news media reporter from the proceedings only on the grounds specified in subsection (1)(a), but not on any of the grounds specified in subsection (1)(b).
- (4) An order specified in subsection (2)—
 - (a) may be made for a limited period or permanently; and
 - (b) if it is made for a limited period, may be renewed for a further period or periods or made permanent by the Summary Appeal Court at any time; and
 - (c) if it is made permanently, may be reviewed by the Summary Appeal Court at any time.

*Miscellaneous procedural provisions***140 Right of appellant to present his or her case in writing and restricted right of appellant to be present**

- (1) An appellant under this Part may, instead of having his or her case presented orally, have it presented in writing.
- (2) If subsection (1) applies, the Summary Appeal Court may deal with the appellant's case by way of a hearing on the papers.
- (3) An appellant under this Part is not entitled to be present at the hearing of an appeal under this Part or at any proceedings preliminary or incidental to that appeal.
- (4) Subsection (3) does not apply if—
 - (a) the rules of procedure provide that the appellant has the right to be present; or
 - (b) the Summary Appeal Court gives the appellant leave to be present.
- (5) A power of the Summary Appeal Court under this Part may be exercised despite the absence of the appellant.

141 Defence of appeals and representation of appellant

- (1) The Director of Military Prosecutions must undertake the defence of an appeal to the Summary Appeal Court.
- (2) An appellant under this Part may be represented by a lawyer.

142 Costs of appeal

- (1) On the hearing and determination of an appeal or any proceedings preliminary or incidental to the appeal under this Part, no costs may be allowed on either side.
- (2) The following expenses must be defrayed in the same manner as the expenses of a trial of a criminal case in the High Court:
 - (a) the expenses of any witnesses attending on the order of the Summary Appeal Court or examined in any proceedings preliminary or incidental to the appeal under this Part;
 - (b) the expenses of, and incidental to, the appearance of the appellant on the hearing of his or her appeal under this Part or on any proceedings preliminary or incidental to that appeal;
 - (c) all expenses of, and incidental to, any examination of witnesses conducted by any person appointed by the Summary Appeal Court for the purpose;
 - (d) the expenses of any person appointed as assessor to the Summary Appeal Court.

143 Removal of prisoners for purposes of proceedings under this Part

Provision may be made by orders made by the Chief of Defence Force, or by regulations made under the Corrections Act 2004, as to the manner in which an appellant, when in custody, is to be—

- (a) taken to, kept in custody at, and brought back from any place at which he or she is entitled to be present for the purposes of this Part; or
- (b) taken to any place to which the Summary Appeal Court may order him or her to be taken for the purpose of any hearing or proceedings of the Court.

144 Duties of Registrar with respect to appeals

(1) The Registrar must—

- (a) take all necessary steps for obtaining the determination of an appeal under this Part; and
- (b) obtain and lay before the Summary Appeal Court in proper form all documents, exhibits, and other things relating to the relevant summary trial that appear necessary for the proper determination of the appeal; and
- (c) provide the necessary forms and instructions relating to notices of appeal under this Part to any person who asks for them, to persons in charge of places where persons punished by a disciplinary officer may lawfully be detained, and to any other persons that the Registrar thinks fit.

(2) Every person in charge of a place referred to in subsection (1)(c) must cause the forms and instructions to be placed at the disposal of persons detained in that place who desire to lodge a notice of appeal under this Part.

Amendments to Part 7 (provisions relating to evidence and procedure generally) of principal Act

39 New heading to Part 7 substituted

The heading to Part 7 is omitted and the following heading substituted: “**Other provisions relating to proceedings generally**”.

40 New section 145 substituted

Section 145 is repealed and the following section substituted:

145 Application of sections 139 to 141 of Criminal Justice Act 1985 to proceedings under this Act

Sections 139 to 141 of the Criminal Justice Act 1985 apply, to the extent that they are applicable and with all necessary modifications, to proceedings under this Act and to proceedings on appeal from any decision under this Act.

41 Sections 146 and 147 repealed

Sections 146 and 147 are repealed.

42 Section 149 repealed

Section 149 is repealed.

43 New sections 150 to 150G substituted

Section 150 is repealed and the following sections are substituted:

*Rules of procedure***150 Rules of procedure**

The Governor-General may, by Order in Council, make rules of procedure for all or any of the following purposes:

- (a) providing for the drawing of charges:
- (b) providing for the procedures for bringing charges before disciplinary officers:
- (c) providing for the manner in which charges brought before disciplinary officers are to be investigated or otherwise dealt with under Part 5:
- (d) providing for the replacement of a disciplinary officer in the event of the officer being unable to continue to act:
- (e) providing for the advice that must be given under section 1170:
- (f) providing for the withdrawal of an election for trial by the Court Martial, including providing for when and how that withdrawal may be made and how that withdrawal must be dealt with:
- (g) prescribing information, documents, and forms for the purposes of any provision of this Act, the rules of procedure, or the Court Martial Act 2007:
- (h) authorising the Chief of Defence Force to prescribe the information, documents, and forms referred to in paragraph (g):
- (i) providing for the recording of proceedings before disciplinary officers (including providing for the authentication, storage, and control of, and access to, those records):
- (j) providing for adequate disclosure to be made to an accused or an appellant in connection with a proceeding before a military tribunal:
- (k) providing for the expenses of members of the Court Martial and of witnesses giving evidence before the Court Martial and other proceedings under this Act:
- (l) providing for the procedure to be observed in proceedings before the Summary Appeal Court:
- (m) providing for the procedure to be observed in trials by the Court Martial:

- (n) providing for the recording of pleas in relation to charges before the Court Martial (including the recording of a plea of guilty before a Judge sitting alone) and the circumstances in which a plea may be accepted:
- (o) providing for the procedure to be observed in new trials by disciplinary officers or the Court Martial directed to be held under any provision of this Act or of the Court Martial Appeals Act 1953:
- (p) empowering the Director of Military Prosecutions, with the leave of a Judge, in such cases and to such extent as the rules specify, to amend a charge before the Court Martial:
- (q) specifying any matter referred to in section 87A(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:
- (r) specifying any matter referred to in section 87A(1) in relation to the suspension of orders for restitution and the suspension in certain cases of the provisions of section 26(1) of the Sale of Goods Act 1908; and providing for the retention and safe custody of any property to which any order for restitution or those provisions apply while the order or the operation of those provisions is suspended:
- (s) providing for the remuneration and expenses of members and witnesses attending a court of inquiry:
- (t) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect, in relation to the investigation, trial, and punishment of offences against this Act.

Protection from civil liability, privileges, and immunities

150A Protection from civil liability

No civil proceedings may be brought against a military tribunal or court of inquiry and, as the case may be, any of its members for anything done or omitted to be done, or for any words spoken or written, in good faith, at, or for the purposes of, any proceedings before that tribunal or court of inquiry under this Act.

150B Privileges and immunities of witnesses and of certain other persons appearing before military tribunals and courts of inquiry

The following persons have the same privileges and immunities as witnesses, counsel, and interpreters in the High Court:

- (a) every witness attending and giving evidence before a military tribunal or court of inquiry; and
- (b) every defending officer and every presenting officer appearing before a disciplinary officer; and

- (c) the Director of Military Prosecutions and every counsel appearing before the Court Martial or the Summary Appeal Court; and
- (d) every counsel appearing before a court of inquiry; and
- (e) every interpreter appearing before a military tribunal or court of inquiry.

Power to summon witnesses

150C Power to summon witnesses

- (1) The persons referred to in subsection (2) may issue a summons requiring any person to—
 - (a) attend at the time and place specified in the summons; and
 - (b) give evidence; and
 - (c) produce any papers, documents, records, or things in that person's possession or under that person's control that are relevant to the subject of the relevant proceedings.
- (2) The persons are—
 - (a) a disciplinary officer (for the purposes of any proceedings before the disciplinary officer);
 - (b) the Judge or the Registrar of the Summary Appeal Court (for the purposes of any proceedings in the Summary Appeal Court).
- (3) A summons—
 - (a) must be in the prescribed form; and
 - (b) may be issued—
 - (i) on the initiative of the disciplinary officer, Judge, or Registrar of the Summary Appeal Court; or
 - (ii) on the application of the presenting officer, the Director of Military Prosecutions, the accused, or the appellant.

150D Service of summons

- (1) A summons to a witness may be served—
 - (a) by delivering it to the person summoned; or
 - (b) by posting it by registered letter addressed to the person summoned at that person's usual place of residence.
- (2) The summons must,—
 - (a) if it is served under subsection (1)(a), be served at least 24 hours before the attendance of the witness is required;
 - (b) if it is served under subsection (1)(b), be served at least 10 days before the date on which the attendance of the witness is required.

- (3) If the summons is posted by registered letter, it is deemed for the purposes of subsection (2)(b) to be served at the time when the letter would be delivered in the ordinary course of post.

Contempt

150E Contempt of military tribunal or court of inquiry

A person who is not subject to this Act commits a contempt of a military tribunal or court of inquiry if the person—

- (a) fails without reasonable excuse to comply with a summons or order to attend as a witness before the military tribunal or court of inquiry; or
- (b) refuses to swear an oath when required to do so by the military tribunal or court of inquiry; or
- (c) refuses to produce any papers, documents, records, or things in that person's possession or under that person's control that the military tribunal or court of inquiry has lawfully required the person to produce; or
- (d) being a witness, refuses to answer any question that the military tribunal or court of inquiry has lawfully required the person to answer; or
- (e) disobeys or evades any order or direction made or given by the military tribunal or court of inquiry in the course of the hearing of any proceedings before it; or
- (f) wilfully publishes any statement in respect of the proceedings of the military tribunal or court of inquiry that—
 - (i) without foundation states or implies that the military tribunal or court of inquiry has not acted or is not acting impartially; or
 - (ii) is likely to interfere with the proper administration of justice; or
- (g) insults, threatens, or interferes with a disciplinary officer or any member of the Summary Appeal Court, the Court Martial, or the court of inquiry while the disciplinary officer or member is attending, or is on the way to or from, the proceedings before the disciplinary officer, the Summary Appeal Court, the Court Martial, or the court of inquiry; or
- (h) insults, threatens, or interferes with any witness or other person under a duty to attend the proceedings of the military tribunal or court of inquiry while the witness or other person is attending, or is on the way to or from, the proceedings of the military tribunal or court of inquiry; or
- (i) interrupts the proceedings of the military tribunal or court of inquiry or otherwise misbehaves during the proceedings.

150F District Court may deal with person who has committed contempt

- (1) This section applies if a military tribunal or court of inquiry considers that a person who is not subject to this Act has committed a contempt of the military tribunal or court of inquiry.
- (2) The military tribunal or court of inquiry may order any member of the police or provost officer, or any person subject to this Act directed by that tribunal or court, to take either of the actions specified in subsection (3) against the person who is considered to be in contempt of that tribunal or court.
- (3) The actions referred to in subsection (2) are—
 - (a) to remove the person from the place where the proceedings are being held and to prevent that person from re-entering that place until the military tribunal or court of inquiry has risen; or
 - (b) if the military tribunal or court of inquiry is held in New Zealand, to arrest the person and take him or her before the nearest District Court.
- (4) If a person alleged to have committed contempt of a military tribunal or court of inquiry is brought before a District Court under subsection (3)(b), the District Court Judge
 - (a) must inquire into the alleged contempt; and
 - (b) may find the person guilty of the contempt after hearing—
 - (i) any witnesses against or on behalf of the person; and
 - (ii) any statement that may be offered in defence.
- (5) The penalty for contempt of a military tribunal or court of inquiry is imprisonment for a term not exceeding 1 month or a fine not exceeding \$1,000, or both.

150G Contempt by counsel

- (1) If counsel appears at any hearing before a military tribunal or court of inquiry, the following provisions apply:
 - (a) any conduct of counsel that would be liable to censure or would constitute contempt of court if it took place before the High Court is similarly liable to censure by the military tribunal or court of inquiry or, as the case may be, similarly constitutes contempt of the military tribunal or court of inquiry;
 - (b) the rules of procedure and any rules prescribed for the guidance of counsel appearing before the military tribunal or court of inquiry are binding on counsel;
 - (c) counsel—
 - (i) is guilty of professional misconduct if he or she disobeys any of those rules; and
 - (ii) commits a contempt of the military tribunal or court of inquiry if he or she perseveres in the disobedience:

- (d) if counsel is alleged to have committed conduct liable to censure, or a contempt of the military tribunal or court of inquiry, he or she may be dealt with in the same manner as a person who is alleged to have committed a contempt of the military tribunal or court of inquiry under section 150E.
- (2) This section does not limit sections 150E and 150F.

New Parts 8 and 8A substituted

44 New Parts 8 and 8A substituted

Part 8 is repealed and the following Parts are substituted:

Part 8

Reconsideration of sentences of imprisonment or detention

151 Reconsidering Authority established

- (1) The Reconsidering Authority is established.
- (2) The Authority consists of—
 - (a) a Judge appointed to the Authority by the Chief Judge; and
 - (b) 2 or more superior commanders appointed to the Authority by or on behalf of the Judge Advocate General.
- (3) An appointment under this section must be made by written notice to the person concerned.
- (4) The powers of the Authority are not affected by any vacancy in its membership.

152 Functions and powers of Authority

- (1) The Authority—
 - (a) must reconsider every sentence of imprisonment or detention imposed by the Court Martial that is for a term of 6 months or more; and
 - (b) may reconsider any other sentence of imprisonment or detention imposed by the Court Martial.
- (2) The Authority must reconsider each sentence of imprisonment or detention at least once every 6 months while the sentence is being served.
- (3) Delay in complying with subsection (1) does not affect or invalidate any sentence of imprisonment or detention imposed under this Act.
- (4) For the purpose of determining the date on which a sentence should be reconsidered, an offender must be taken to have been serving the sentence during the whole of any period that the offender was held in custody.
- (5) Subsection (4) does not limit or affect section 177 or 179.

153 Petition for reconsideration

- (1) A service prisoner or detainee may lodge a petition against his or her sentence with the Authority.
- (2) The petition—
 - (a) must be in the prescribed form; and
 - (b) must be handed to the officer in charge of the place where the service prisoner or detainee is confined.
- (3) The officer in charge of that place must forward the petition to the Authority as soon as practicable after receiving it.

154 Authority must consider petition for reconsideration

- (1) The Authority must consider every petition it receives under section 153 in accordance with this Part.
- (2) However, if the Authority remits a punishment or part of a punishment or commutes a punishment, it must not make a decision that has the effect of imposing a punishment more severe than the punishment that had effect before that remission or commutation.

155 Procedure for reconsideration

- (1) The Authority must give a service prisoner or detainee whose sentence is to be reconsidered at least 14 days' written notice of the reconsideration.
- (2) The service prisoner or detainee may—
 - (a) request a hearing before the Authority; and
 - (b) be legally represented at the hearing.
- (3) If the service prisoner or detainee requests a hearing under subsection (2)(a), the Director of Military Prosecutions—
 - (a) must be given reasonable prior written notice of the date and time of the hearing; and
 - (b) may attend and be heard at the hearing (whether personally or through an agent).
- (4) If the service prisoner or detainee does not request a hearing under subsection (2)(a), the Authority must conduct the reconsideration of the sentence by way of a hearing on the papers.

156 Authority may call for written reports and hear evidence

The Authority—

- (a) may call for any written reports that it thinks fit in respect of a service prisoner or detainee serving a sentence of imprisonment or detention that is before it for reconsideration;
- (b) may hear evidence if a hearing is held.

157 Authority may regulate its procedure

- (1) The Authority may regulate its own procedure as it sees fit.
- (2) If it is necessary for the Authority to vote on any matter in order to reach a decision, each member of the Authority has 1 vote and the matter must be decided by a majority of votes.

158 Power of Authority to remit whole or part of sentence

- (1) At the conclusion of a reconsideration of a sentence of imprisonment or detention, the Authority may remit the whole or any part of the sentence that remains to be served on any of the following grounds:
 - (a) good conduct by the service prisoner or detainee during the term of the sentence;
 - (b) compassionate grounds;
 - (c) any other grounds that the Authority thinks proper.
- (2) Whether or not the Authority remits the whole or any part of the sentence that remains to be served, the Authority must arrange for particulars of its decision to be promulgated in the manner that may be prescribed in the rules of procedure.
- (3) A decision of the Authority takes effect from the date of its promulgation.

159 Chief Judge may delegate to Registrar of Court Martial duty to appoint Judge to Authority

- (1) The Chief Judge may, either generally or particularly, delegate to the Registrar of the Court Martial the Chief Judge's duty under section 151(2)(a) to appoint a Judge to the Authority.
- (2) A delegation—
 - (a) must be in writing; and
 - (b) may be made subject to any restrictions that the Chief Judge thinks fit; and
 - (c) is revocable at any time, in writing; and
 - (d) does not prevent the performance or exercise of a function, duty, or power by the Chief Judge.
- (3) The Registrar of the Court Martial may perform any duties delegated under subsection (1) in the same manner and with the same effect as if they had been conferred on him or her directly by this Act and not by delegation.
- (4) If the Registrar of the Court Martial appears to act under subsection (1), he or she is presumed to be acting in accordance with the terms of delegation in the absence of evidence to the contrary.

Part 8A**Armed Forces Discipline Committee***Establishment of Armed Forces Discipline Committee***160 Armed Forces Discipline Committee established**

- (1) The Armed Forces Discipline Committee is established.
- (2) The Discipline Committee consists of the following 9 members:
 - (a) the Chief of Defence Force, who will be the chairperson of the Committee; and
 - (b) the Vice Chief of Defence Force; and
 - (c) the Chief of Navy; and
 - (d) the Chief of Army; and
 - (e) the Chief of Air Force; and
 - (f) the Commander Joint Forces New Zealand; and
 - (g) the Judge Advocate General; and
 - (h) the Director of Military Prosecutions; and
 - (i) a representative of the Armed Forces Defence Counsel Panel who is appointed by the Judge Advocate General.
- (3) The Judge Advocate General must—
 - (a) make an appointment under subsection (2)(i) by written notice to the person concerned; and
 - (b) provide a copy of the notice to the Chief of Defence Force.
- (4) The notice must—
 - (a) state the date on which the appointment takes effect, which must not be earlier than the date on which the notice is received; and
 - (b) state the term of the appointment.
- (5) The powers of the Discipline Committee are not affected by any vacancy in its membership.

161 Purpose of Discipline Committee

The purpose of the Discipline Committee is to produce sentencing guidelines for offences against this Act in order to ensure consistency in the sentencing practice of the Court Martial.

162 Functions of Discipline Committee

- (1) The functions of the Discipline Committee are—
 - (a) to produce sentencing guidelines on the following in relation to offences against this Act:

- (i) sentencing principles:
 - (ii) sentencing levels:
 - (iii) particular types of sentences:
 - (iv) other matters relating to sentencing practice:
 - (v) grounds for departure from the sentencing guidelines; and
- (b) any functions that are incidental and related to, or consequential on, its functions set out in paragraph (a).
- (2) In performing its functions, the Discipline Committee must ensure that any sentencing guidelines it produces are, to the extent that they are applicable, consistent with the following:
- (a) the Sentencing Act 2002; and
 - (b) any guidelines published by the Sentencing Council established under the Sentencing Council Act 2007.
- (3) The Discipline Committee must carry out its functions independently of the Minister.

163 Chief of Defence Force must publish sentencing guidelines

The Chief of Defence Force must publish any sentencing guidelines produced by the Discipline Committee under this Part as Defence Force Orders.

Administrative provisions relating to Discipline Committee

164 Appointed member

- (1) A person who is appointed under section 160(2)(i) to be a member of the Discipline Committee (an **appointed member**) holds office for a term of up to 5 years as stated in the notice of appointment.
- (2) An appointed member may be reappointed for 1 further term, but the total of the further term together with the initial term must not exceed 7 years.
- (3) An appointed member continues in office despite the expiry of his or her term of office until—
- (a) the member is reappointed; or
 - (b) the member's successor is appointed.
- (4) An appointed member may resign from office by written notice to the Judge Advocate General.
- (5) An appointed member may at any time be removed from office by written notice from the Judge Advocate General for inability to perform the functions of office, neglect of duty, or misconduct.

165 Remuneration of members

- (1) A person who is a member of the Discipline Committee because of his or her office is not entitled to receive any fees, allowances, or expenses for services as a member in addition to his or her remuneration in respect of that office.
- (2) An appointed member is entitled to receive the fees, allowances, and expenses for services as a member that are fixed or determined by or in accordance with regulations made under section 205(1)(c).

166 Procedure of Discipline Committee generally

The Discipline Committee may regulate its own procedures.

166A Quorum for meetings

- (1) A quorum for a meeting of the Discipline Committee—
 - (a) is the number that is half the number of members; and
 - (b) must include the Chief of Defence Force and the Judge Advocate General.
- (2) No business may be transacted at a meeting of the Discipline Committee if a quorum is not present.

166B Other procedure at meetings

Every written report submitted by the senior military member of the Court Martial under section 34 of the Court Martial Act 2007 must be presented to the Discipline Committee at its next meeting after the date of the report.

166C Voting at meetings

- (1) Each member of the Discipline Committee has 1 vote.
- (2) In addition to his or her general vote, the chairperson has, in the case of an equality of votes, a casting vote.
- (3) A decision whether or not to finalise any sentencing guidelines must be decided by a majority vote of the Chief of Defence Force, the Judge Advocate General, and any other members present.

166D Protection from liability

No member of the Discipline Committee is personally liable for any act done or omitted to be done by the Committee in good faith in the performance or intended performance of its functions.

Amendments to Part 9 (provisions relating to carrying out of punishments) of principal Act

45 Manner in which sentences of imprisonment and detention are to be served

- (1) Section 168(2A) is amended by omitting “section 166” and substituting “Part 8”.
- (2) Section 168(3)(c) is amended by omitting “court-martial or the commanding officer” and substituting “Court Martial or disciplinary officer”.

46 Committal, removal, release, etc., of members of the Armed Forces serving imprisonment or detention

- (1) Section 169(2) is amended by omitting “an officer exercising summary powers” and substituting “a disciplinary officer”.
- (2) Section 169(4) is amended by—
 - (a) omitting “by court-martial” and substituting “by the Court Martial” ; and
 - (b) omitting “the court-martial” and substituting “the Court Martial” ; and
 - (c) omitting “subsection (2) of section 149 of this Act” and substituting “section 76 of the Court Martial Act 2007”.

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

Section 171(3) is amended by omitting “the court-martial which sentenced him or any reviewing authority reviewing the proceedings of that court” and substituting “the Court Martial”.

48 Imprisonment and detention of members of other forces attached to Armed Forces

Section 172(1)(a) is amended by omitting “court-martial” and substituting “the Court Martial”.

49 Imprisonment and detention of members of Armed Forces attached to other forces

Section 173(2) is amended by omitting “court-martial” and substituting “the Court Martial”.

50 Establishment and regulation of service prisons and detention quarters

Section 175(2)(a) is amended by omitting “courts-martial” and substituting “the Court Martial”.

51 Commencement of sentences

- (1) Section 177 is amended by repealing subsection (1) and substituting the following subsections:

- (1) A term of imprisonment or detention to which an offender is sentenced under this Act begins to run from the beginning of the day on which the sentence was passed, whether the sentence was passed by the Court Martial or by a disciplinary officer.
- (1A) Subsection (1) is subject to the provisions of this Part.
- (2) Section 177(3)(a) is amended by omitting “a court-martial” and substituting “the Court Martial”.

52 Effect of period spent in custody before being sentenced

Section 177A(1) is amended by omitting “a court-martial under section 81A of this Act or by an officer exercising summary powers under section 102(5A) of this Act” and substituting “the Court Martial under section 81A or by a disciplinary officer under section 117Y”.

53 Consecutive sentences

- (1) Section 178(1) is amended by omitting “a court-martial” and substituting “the Court Martial”.
- (2) Section 178(1) is amended by omitting “court” and substituting “Court”.
- (3) Section 178(2) and (3) are amended by omitting “court-martial” and substituting in each case “Court Martial”.
- (4) Section 178(2)(a), (3)(a), (5)(a), and (6)(a) are amended by omitting “review or”.
- (5) Section 178(4) is amended by omitting “a court-martial or an officer exercising summary powers, that court or officer” and substituting “the Court Martial or a disciplinary officer, the Court or that officer”.
- (6) Section 178(5) and (6) are amended by omitting “court-martial or the officer exercising summary powers” and substituting in each case “Court Martial or the disciplinary officer”.

54 Limitation of term of detention under one or more sentences

Section 179(2) is amended by omitting “or section 183”.

55 Sections 181 to 183 and heading above section 181 repealed

Sections 181 to 183 and the heading above section 181 are repealed.

56 Recovery in District Court of fines imposed under this Act

- (1) Section 185 is amended by repealing subsection (1) and substituting the following subsections:
 - (1) If a fine has been imposed by the Court Martial, or by a disciplinary officer, on a person for an offence against this Act (whether in New Zealand or elsewhere), a certificate purporting to be signed by a competent service authority

specifying particulars of the conviction and the fine imposed may be filed in any District Court in New Zealand (without payment of any fee).

- (1A) Subsection (1) does not limit section 85.
- (2) Section 185(2) is amended—
- (a) by omitting “Registrar of the Court” and substituting “Registrar of the District Court”; and
 - (b) by omitting “Court” and substituting “court”.

57 Compensation to victims of offences occasioning physical harm

- (1) The heading to section 186A is amended by omitting “**occasioning**” and substituting “**causing**”.
- (2) Section 186A is amended by repealing subsections (1) and (2) and substituting the following subsections:
- (1) If any accused is found guilty, whether summarily or by the Court Martial, of any offence arising out of any act or omission that caused physical harm to any other person (whether a member of the Armed Forces or a civilian and whether or not causing the physical harm constitutes a necessary element of the offence at law) and the accused is punished by a fine, then the disciplinary officer or the Court Martial, as the case may require, may, in his, her, or its discretion, award by way of compensation to the victim a portion of the fine, not exceeding one half, as he, she, or it thinks fit.
- (2) However, no award of compensation may be made under subsection (1) unless the disciplinary officer or the Court Martial, as the case may be, is of the opinion that the act or omission—
- (a) was unprovoked; and
 - (b) caused bodily injury to the victim.

Amendments to Part 10 (special provisions for dealing with mentally impaired persons) of principal Act

58 Interpretation of terms used in this Part

The definition of **qualified medical practitioner** in section 187(1) is amended by repealing paragraph (b) and substituting the following paragraph:

- (b) in the case of a trial in the Court Martial held overseas, includes a person approved by the Judge.

59 When court may find accused unfit to stand trial

- (1) Section 188 and the heading to that section are amended by omitting “court” in each place where it appears and substituting in each case “Court”.
- (2) Section 188(1) is amended by omitting “A court-martial” and substituting “The Court Martial”.

60 Determining if accused unfit to stand trial

- (1) Section 188A(1) is amended—
 - (a) by omitting “a court-martial” and substituting “the Court Martial” ; and
 - (b) by omitting “court” and substituting “Court”.
- (2) Section 188A(2) is amended by omitting “court” in each place where it appears and substituting in each case “Court”.
- (3) Section 188A(3) is repealed.
- (4) Section 188A(5) is amended—
 - (a) by omitting “a court-martial” in each place where it appears and substituting in each case “the Court Martial” ; and
 - (b) by omitting “court” in each place where it appears and substituting in each case “Court”.

61 Court may postpone finding as to unfitness to stand trial

- (1) The heading to section 188B is amended by inserting “**Martial**” after “**Court**”.
- (2) Section 188B(1) is amended by omitting “A court-martial” and substituting “The Court Martial”.
- (3) Section 188B(2) is amended by omitting “court” and substituting “Court”.

62 Finding of insanity

- (1) Section 190(1) is amended—
 - (a) by omitting “court-martial” and substituting “the Court Martial” ; and
 - (b) by omitting “court” in each place where it appears and substituting in each case “Court”.
- (2) Section 190(1A) is amended—
 - (a) by omitting “A court-martial” and substituting “The Court Martial” ; and
 - (b) by omitting “the court-martial” and substituting “the Court Martial”.
- (3) Section 190(2) is amended—
 - (a) by omitting “court-martial” and substituting “the Court Martial” ; and
 - (b) by omitting “court” in each place where it appears and substituting in each case “Court”.
- (4) Section 190(3) is amended—
 - (a) by omitting “a judge advocate” and substituting “the Judge” ; and
 - (b) by omitting “a court-martial” and substituting “the military members”.

63 Order to be made if person unfit to stand trial or insane

- (1) Section 191(1) is amended—
 - (a) by omitting “court-martial” and substituting “the Court Martial” ; and

- (b) by omitting “court” and substituting “Court”.
- (2) Section 191(2) is amended by omitting “court’s” and substituting “Court’s”.
- (3) Section 191(2) to (5) are amended by omitting “court” and substituting in each case “Court”.
- (4) Section 191(4) is amended by omitting “report the matter to the convening officer” and substituting “refer the matter to the Director of Military Prosecutions”.
- (5) Section 191(7) is amended by omitting “has been approved by a reviewing authority under section 198(4)(a) of this Act”.

64 Duration of order for detention as special patient where defendant unfit to stand trial

- (1) Section 192 is amended by omitting “a court-martial” in each place where it appears and substituting in each case “the Court Martial”.
- (2) Section 192(3) is amended by omitting “court” and substituting “Court”.
- (3) Section 192(4) is amended by omitting “by court-martial” and substituting “by the Court Martial”.
- (4) Section 192(6) is amended by omitting “by court-martial” and substituting “by the Court Martial”.

65 Duration of order for detention as special patient when person acquitted on account of his insanity

Section 193(1) is amended by omitting “a court-martial” and substituting “the Court Martial”.

66 Power of court-martial to commit to hospital on conviction

- (1) The heading to section 194 is amended by omitting “**court-martial**” and substituting “**Court Martial**”.
- (2) Section 194(1) is repealed and the following subsection substituted:
 - (1) If the Court Martial (whether in New Zealand or elsewhere) convicts a person of an offence that is punishable by imprisonment, the Court may, if satisfied of the matters specified in subsection (1A),—
 - (a) sentence the person to a term of imprisonment and also order that the person be detained in a hospital as a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
 - (b) instead of passing sentence, order that the person be treated as a patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992.
- (3) Section 194(1A) is amended by omitting “court” and substituting “Court”.
- (4) Section 194(3) is amended by omitting “shall be kept in strict custody pending the review of his conviction, and, if the conviction and order are approved by the reviewing authority, the accused”.

67 Sections 197 and 198 repealed

Sections 197 and 198 are repealed.

Amendments to Part 11 (miscellaneous provisions) of principal Act**68 New sections 200 to 200T substituted**

Section 200 is repealed and the following sections are substituted:

200 Interpretation

In sections 200A to 200T, unless the context otherwise requires,—

assembling authority means—

- (a) the Chief of Defence Force; or
- (b) the officer in command of any part of the Armed Forces

member—

- (a) means a member of a court of inquiry; and
- (b) includes the president

president means the president of a court of inquiry

record of proceedings, in relation to a court of inquiry, includes—

- (a) the record of the evidence collected; and
- (b) any report or comment made by the court and attached to the record of the evidence.

200A Courts of inquiry may be assembled

- (1) An assembling authority may assemble 1 or more courts of inquiry.
- (2) A court of inquiry—
 - (a) may be assembled for the purpose of collecting and recording evidence on any matters that the assembling authority has referred to the court; and
 - (b) must report and comment on those matters, if required to do so by the assembling authority.
- (3) A court of inquiry may be assembled to perform the functions and duties, and exercise the powers, of a competent tribunal under Article 5 of Schedule 3 of the Geneva Conventions Act 1958.

200B Composition of court of inquiry

- (1) A court of inquiry must consist of not less than 2 members, of whom at least 1 must be an officer and the other or others must be officers, warrant officers, or members of the Civil Staff (within the meaning of section 2(1) of the Defence Act 1990) of equivalent standing.

- (2) The assembling authority must appoint 1 of the members who is an officer to be president of the court of inquiry.
- (3) The assembling authority—
 - (a) may appoint an officer who is a barrister or solicitor of the High Court as counsel to assist the court; and
 - (b) must do so if the assembling authority considers that—
 - (i) the character or reputation of any person may be affected by the inquiry; or
 - (ii) the inquiry is likely to involve complex or serious issues of fact or law, or both.
- (4) A counsel appointed under subsection (3) is not a member of the court of inquiry, but may advise the court on questions of law and procedure and may ask questions of witnesses attending before the court for the purpose of assisting the court.

200C Order assembling court of inquiry

- (1) The order assembling a court of inquiry must—
 - (a) be in the form prescribed by the Chief of Defence Force; and
 - (b) specify the composition of the court, the place and time at which the court is to assemble, and the terms of reference of the court.
- (2) The assembling authority may, at any time, revoke, vary, or suspend the order.

200D Rank and seniority of members

If a court of inquiry is appointed to inquire into the conduct of an officer or warrant officer,—

- (a) every member must be of at least equal rank and seniority to that officer or warrant officer; and
- (b) at least 1 member must be of superior rank.

200E Terms of reference

The assembling authority must—

- (a) provide the court of inquiry with appropriate terms of reference; and
- (b) state whether any report or comment is required upon the matter under investigation.

200F Court of inquiry to sit in private

- (1) A court of inquiry must sit in private, and no person may attend a sitting of the court except—
 - (a) the members;
 - (b) a counsel appointed under section 200B(3):

- (c) a witness giving evidence;
 - (d) if section 200N applies,—
 - (i) the person who is affected or is likely to be affected by the inquiry;
 - (ii) that person's legal representative if the president approves the person being legally represented at the inquiry;
 - (e) any other persons who may be authorised by the president to be present.
- (2) A person may not be represented at the inquiry and may not have an adviser present to assist him or her at the inquiry, unless—
- (a) section 200N applies; and
 - (b) the president approves the person who is affected or is likely to be affected by the inquiry being legally represented.

200G Assembly and procedure

- (1) A court of inquiry must assemble at the time and place specified in the order assembling the court.
- (2) However, if the court is unable for any reason to assemble at the time or place so specified, it must—
 - (a) assemble as soon as possible after that time or, as the case may be, as near to that place as possible; and
 - (b) note in the record of proceedings its reasons for being unable to assemble at the time or place specified.
- (3) The president must lay the order and the terms of reference before the court and the court must then proceed to collect and record evidence in accordance with section 200K.

200H Sittings of court of inquiry

- (1) A court of inquiry must sit at the times and in the places that the president appoints.
- (2) The president may adjourn the court.
- (3) Despite subsections (1) and (2), the assembling authority may, at any time, direct the court to reassemble for any purpose that the assembling authority may specify.

200I Attendance of witnesses

- (1) The president may direct a witness to attend before the court—
 - (a) by an order given by the president, if the witness is subject to this Act; or
 - (b) by a summons signed by the president, if the witness is not subject to this Act.
- (2) Every summons to a witness issued under subsection (1)(b) must—

- (a) be in the form prescribed by the Chief of Defence Force; and
- (b) be served on the witness in one of the following ways:
 - (i) by being delivered to the witness personally, or by being brought to his or her notice if he or she refuses to accept it;
 - (ii) by being left for the witness with some other person at the witness's usual place of residence at least 24 hours before his or her attendance is required;
 - (iii) by being sent to the witness by registered letter addressed to the witness's last known or usual place of residence or place of business.
- (3) The president may order or summon any person whom the court thinks fit to attend to give evidence before the court.
- (4) Subsection (3) is subject to section 200N.

200J Witness to be sworn

- (1) Every witness must be sworn by a member in the form and manner prescribed by the Chief of Defence Force before giving evidence.
- (2) If a court of inquiry considers that a child who is called as a witness does not understand the nature of an oath, the child's evidence may be received even though it is not given on oath, so long as the court is of the opinion that the child—
 - (a) has sufficient intelligence to justify the reception of the evidence; and
 - (b) understands the duty of speaking the truth.
- (3) If any person referred to in subsection (1) objects to being sworn, or it is not reasonably practicable to administer an oath to that person in a manner appropriate to his or her religious belief, the person may be permitted to make a solemn affirmation instead of swearing an oath.
- (4) The making of an affirmation under subsection (3) has the same force and effect, and has the same consequences, as the taking of an oath.

200K Collecting and recording of evidence

- (1) A court of inquiry is not bound by the ordinary rules relating to the admissibility of evidence and may admit in evidence any matter of hearsay or any other matter that would not be admissible in a court of law.
- (2) If a court of inquiry admits evidence of that kind, it is for the court to determine the weight to be attached to that evidence.
- (3) A court of inquiry must put any questions to a witness that it considers desirable—
 - (a) to test the truth or accuracy of any evidence given by the witness; and

- (b) to elicit any further information that may be necessary to determine the truth.
- (4) A court of inquiry must record, or arrange to be recorded in writing, the evidence of every witness—
 - (a) in narrative form as nearly as possible in the words used; or
 - (b) if the court considers it expedient, in the form of questions and answers.
- (5) Each witness may read over the record of his or her evidence and may ask that any necessary corrections be made to it.
- (6) Each witness must initial all alterations and must then sign the record of his or her evidence at the end and initial each page of it.

200L Interpreters and recorders

- (1) A competent and impartial person or persons may be appointed at any time during the course of the inquiry by either the assembling authority or the president to act as interpreter, shorthand writer, typist, or operator of a recording machine to assist the court in collecting and recording the evidence.
- (2) Before an interpreter commences his or her duties, a member must administer an oath to the interpreter in the form and manner prescribed by the Chief of Defence Force.
- (3) If an interpreter objects to being sworn, or it is not reasonably practicable to administer an oath to that person in a manner appropriate to his or her religious belief, the person may be permitted to make a solemn affirmation instead of swearing an oath.
- (4) The making of an affirmation under subsection (3) has the same force and effect, and has the same consequences, as the taking of an oath.

200M Procedure if conduct of superior officer may be in question

- (1) The president must adjourn the court of inquiry and report to the assembling authority if at any time it appears to the court that the conduct of an officer or a warrant officer who is senior or superior in rank to a member is, or is likely to be, called into question in the course of the inquiry.
- (2) On receiving the president's report, the assembling authority must consider the matter and, if satisfied that the conduct of the person is or is likely to be called into question, may dissolve the court and assemble a new court, having regard to the requirements of section 200D.
- (3) If the assembling authority does not dissolve the court, the assembling authority must direct it to continue its inquiry even though the conduct of an officer or a warrant officer senior or superior in rank to a member is, or is likely to be, called into question.
- (4) Subsection (3) does not affect the power of the president to make a further report under subsection (1) if the evidence justifies that course of action.

200N Rights of person who may be affected by inquiry

- (1) If at any time it appears to an assembling authority or to a court of inquiry that an inquiry affects or is likely to affect the character or the reputation of any person (whether or not the person is subject to this Act), the president must—
 - (a) ensure that the person is given adequate notice of the time, place, date, and nature of the inquiry; and
 - (b) give the person a reasonable opportunity to exercise the rights set out in subsection (2).
- (2) The rights referred to in subsection (1) are as follows:
 - (a) the person may read or have read or played back to him or her any evidence that has already been given;
 - (b) the person may require any witness who has already given evidence to be recalled to enable him or her to question the witness;
 - (c) the person may be present during the proceedings or the remainder of the proceedings (as the case may be) while the court is hearing evidence, and may question any witness who gives evidence that he or she considers affects his or her character or reputation;
 - (d) the person may give evidence himself or herself, or call any witness to give evidence, to rebut or explain any evidence that has been given that he or she considers affects his or her character or reputation;
 - (e) the person may seek and, if the exigencies of the case permit, must be granted an adjournment to enable him or her to obtain advice;
 - (f) the person may be legally represented at the inquiry if the president approves.
- (3) If the person notifies the court that he or she does not wish to exercise the rights set out in subsection (2), the president must note the record of proceedings to that effect.
- (4) This section does not apply to an inquiry under section 201 into the absence of a member of the Armed Forces.

200O Matters president must take into account in determining whether person affected by inquiry may be legally represented

For the purposes of section 200N(2)(f), the president must take into account the following matters in determining whether a person who is affected or is likely to be affected by an inquiry should be legally represented at the inquiry:

- (a) the seriousness of any allegations made against, or any potential penalty that may be imposed on, that person;
- (b) whether any questions of law are likely to arise;
- (c) the capacity of that person to present his or her own case;
- (d) any procedural difficulties that are likely to arise;

- (e) the need for reasonable speed in completing the inquiry:
- (f) the need for fairness as between that person and all persons who may appear before the court.

200P What happens if person affected by inquiry wishes to call witness

- (1) If the person who is affected or is likely to be affected by an inquiry wishes to call a witness to give evidence under section 200N(2)(d), the president must take the necessary steps under the rules of procedure to secure the attendance of the witness, unless it is impracticable to do so.
- (2) if it is impracticable to secure the attendance of a witness, the president must note that fact in the record of proceedings.
- (3) Despite subsection (1), if the attendance of a witness is requested by the person affected or likely to be affected and the court of inquiry is satisfied that the attendance of that witness is not properly required by that person, any cost incurred by the Crown in procuring the attendance of the witness may be charged to, and recovered as a debt due by, the person affected or likely to be affected.

200Q Exhibits

- (1) Every document or thing produced in evidence at an inquiry must be made an exhibit.
- (2) However, if an original document or book is produced in evidence, a court of inquiry may, instead of making it an exhibit, compare a copy of, or an extract from, the document or book with the original and, if the court is satisfied that the copy or extract is correct,—
 - (a) the president must endorse on the copy or extract a certificate to that effect in the form prescribed by the Chief of Defence Force; and
 - (b) the court may return the original document or book to the witness, and attach the certified copy or extract to the record of proceedings as an exhibit.
- (3) Every exhibit must—
 - (a) either be marked with a number or letter in sequence and signed by the president, or have attached to it a label so marked and signed; and
 - (b) be attached to or kept with the record of proceedings unless, in the opinion of the president, it is not expedient to do so.
- (4) If an exhibit is not attached to or kept with the record of proceedings, the president must ensure its safe custody pending the directions of the assembling authority for the ultimate disposal of the exhibit.

200R Signing and dispatch of record of proceedings

- (1) The record of proceedings must, at the conclusion of the inquiry, be signed at the end by each member, who must add his or her rank and unit.

- (2) If there is a difference of opinion among the members on any material matter, the grounds of difference must be stated in the record.
- (3) After the record of proceedings has been signed, the president must forward it to the assembling authority, who must—
 - (a) record on the record his or her own opinion of the findings; and
 - (b) sign the record; and
 - (c) if necessary, forward the record to a superior commander.
- (4) The record of proceedings must be given an appropriate security classification according to the nature of the inquiry and the evidence collected and recorded.
- (5) However, if the content of the record of proceedings does not warrant a security classification, the record of proceedings must be given an appropriate In Confidence privacy marking.

200S Admissibility of record of proceedings, etc

- (1) The record of proceedings and any evidence in respect of the proceedings, including any confession, statement, or answer to a question made or given by a person during the proceedings, must not be admitted in evidence against any person in any other proceedings, judicial or otherwise.
- (2) If a member of the Armed Forces is charged under section 47 with desertion, or under section 48 with being absent without leave, the record of the declaration of the court under section 201 relating to the member of the Armed Forces is prima facie evidence of the matters stated in it.
- (3) The record of proceedings and any evidence in respect of the proceedings, including any confession, statement, or answer to a question made or given by a person during the proceedings, may be given in evidence against that person if he or she is charged—
 - (a) under section 71 with making a false statement; or
 - (b) under section 109 of the Crimes Act 1961 with perjury.
- (4) Subsection (1) is subject to subsections (2) and (3).

200T Record of proceedings not to be disclosed

The record of proceedings of a court of inquiry must not be disclosed to—

- (a) persons not subject to this Act without authority from a superior commander of the service concerned; and
- (b) persons subject to this Act, unless those persons—
 - (i) need to be aware of the contents to enable them to perform their service duties; or
 - (ii) are entitled to a copy under the rules of procedure.

69 Inquiry on absence of member of the Armed Forces

Section 201(3) is amended by omitting “court-martial” and substituting “the Court Martial”.

70 Pay, service, and effects of deserters and absentees

(1) Section 202(1) is repealed and the following subsections are substituted:

- (1) A person subject to this Act who is convicted by the Court Martial or as provided in section 201, or is found guilty by a disciplinary officer, of desertion or absence without leave forfeits 1 day’s pay and allowances for each day during which he or she was in desertion or absent without leave.
- (1A) However, if the period of absence is less than 24 hours, the Court Martial or the disciplinary officer may cancel the forfeiture under subsection (1), in whole or in part, as the Court Martial or disciplinary officer thinks just.

(2) Section 202(5)(a) is repealed and the following paragraph

- (a) is less than 24 hours, it must be counted (except for the purposes of subsection (1A)) as 1 day; or

71 Appointment and functions of Judge Advocate General

(1) Section 203(2) is repealed and the following subsections are substituted:

- (2) The Judge Advocate General may not be removed from office except in accordance with section 16 of the Court Martial Act 2007; and that section applies accordingly with any necessary modifications.
- (2A) The Judge Advocate General must retire from office on attaining the age of 75 years.

(2) Section 203(3) is repealed.

72 Deputy Judge Advocate General

Section 203A(2) is repealed and the following subsections are substituted:

- (2) The Deputy Judge Advocate General may not be removed from office except in accordance with section 16 of the Court Martial Act 2007; and that section applies accordingly with any necessary modifications.
- (2A) The Deputy Judge Advocate General must retire from office on attaining the age of 70 years.

73 Heading above section 205 amended

The heading above section 205 is amended by omitting “*Chief of*”.

74 Regulations

(1) Section 205(1)(a) and (aa) are repealed and the following paragraphs substituted:

- (a) providing, in cases where a person subject to this Act (whether a member of the Armed Forces or any other person subject to this Act who is paid by the Crown in right of New Zealand) is convicted of any offence by a civil court or the Court Martial or is found guilty of an offence by a disciplinary officer, for all or any of the following:
 - (i) the forfeiture of the whole or part of 1 day's pay and allowances for each day or part of a day during which he or she is held in civil or service custody (including imprisonment or detention) after being convicted or found guilty:
 - (ii) the forfeiture of the whole or part of 1 day's pay and allowances for each day or part of a day during which he or she is held in civil custody before being convicted or found guilty:
 - (iii) the forfeiture of the whole or part of 1 day's allowances for each day or part of a day during which he or she is suspended from duty by reason of the offence:
 - (iv) the continuance or withholding of pay and allowances pending his or her conviction or acquittal:
- (aa) if regulations are made for the purposes of paragraph (a), providing for the recovery of any pay and allowances that are to be forfeited under those regulations—
 - (i) in the case of any member of the Armed Forces, by deduction from, or withholding or delaying payment of, any money due, owing, or payable to him or her by the Crown in relation to his or her service in the Armed Forces; and
 - (ii) in the case of any other person subject to this Act who is paid by the Crown in right of New Zealand, by deduction from the pay or allowances payable to him or her:
- (2) Section 205(1)(b) is amended by omitting “court-martial or found guilty by an officer exercising summary powers” and substituting “the Court Martial or found guilty by a disciplinary officer”.
- (3) Section 205(1)(c)(i) to (v) are repealed and the following subparagraphs substituted:
 - (i) counsel appointed to advise a person who is being questioned by the service authorities or is being held under close arrest:
 - (ii) counsel appointed to appear for the Crown in the Summary Appeal Court, the Court Martial, the Court Martial Appeal Court, or any other court or tribunal that makes, or will make, a determination that may affect service discipline or the operations of the Armed Forces:
 - (iii) counsel appointed to appear for an accused or an appellant who is on legal aid in the Summary Appeal Court, the Court Martial, the Court Martial Appeal Court, the Court of Appeal, or the Supreme Court:

- (iv) persons engaged by or under the authority of the Chief of Defence Force to lecture on any matter of service law;
 - (v) the person appointed as a member of the Discipline Committee under section 160(2)(i);
 - (vi) counsel appointed to assist a court of inquiry under section 200B(3);
- (4) Section 205(1) is amended by inserting the following paragraph after paragraph (c):
- (ca) determining the nature and content of the punishments of reduction of rank, forfeiture of seniority, and stay of seniority:

75 Chief of Defence Force orders

- (1) The heading to section 206 is amended by omitting “**Chief of**”.
- (2) Section 206(1)(a) is repealed and the following paragraphs are substituted:
 - (a) determining the nature and content of the punishments of stay of seniority, confinement to ship or barracks, extra work and drill, stoppage of leave, and extra duty;
 - (ab) limiting the types of offences that a disciplinary officer may try summarily, or otherwise deal with, under Part 5;
 - (ac) limiting the amount that a disciplinary officer may, under section 117ZA, order an offender to pay;
 - (ad) restricting, by fixing the limitations as to rank as the Chief of Defence Force considers necessary, the exercise of powers under Part 5 by disciplinary officers;
 - (ae) providing for the designation of classes of certificates of competency that may be issued to members of the Armed Forces who are to be appointed disciplinary officers, presenting officers, or defending officers;
 - (af) providing for the issue, revocation, suspension, expiry, and renewal of those certificates of competency;
 - (ag) providing for the minimum standards for the issue of those certificates of competency (including standards relating to required competence, qualifications, and experience) that must be met for each class of certificate;
 - (ah) providing for the terms and conditions subject to which certificates of competency are issued;
- (3) Section 206(1)(b) is amended—
 - (a) by omitting “by court-martial” and substituting “by the Court Martial” ; and
 - (b) by omitting “court” and substituting “Court” ; and
 - (c) by omitting “in court-martial” and substituting “in the Court’s”.

- (4) Section 206(1)(c) is amended by omitting “officials of courts-martial” and substituting “officers of the Court Martial”.
- (5) Section 206(1)(e) is repealed and the following paragraphs are substituted:
 - (e) providing for legal aid to be granted at public expense in respect of—
 - (i) proceedings in the Court Martial (whether in New Zealand or elsewhere):
 - (ii) appeals to the Summary Appeal Court or the Court Martial Appeal Court (whether in New Zealand or elsewhere):
 - (ea) prescribing the conditions subject to which any legal aid referred to in paragraph (e) may be granted:
 - (eb) providing for legal aid to be granted at public expense to any unrepresented person who (whether in New Zealand or elsewhere)—
 - (i) is being questioned by the service authorities, or is wanted by the service authorities for questioning, in relation to the commission or possible commission of an offence by that person and is advised by the service authorities, before or in the course of questioning, that he or she may consult a lawyer; or
 - (ii) is under close arrest:
 - (ec) prescribing the conditions subject to which any legal aid referred to in paragraph (eb) may be granted:

76 Schedule 2 amended

- (1) The Schedule 2 heading is amended by omitting “court-martial” and substituting “Court Martial”.
- (2) Clause 1 of Schedule 2 is amended by omitting “court-martial” and substituting “the Court Martial”.

77 Schedule 3 amended

- (1) The Schedule 3 heading is amended by omitting “Sections 102, 104, and 105” and substituting “s 117V”.
- (2) Clause 1 of Schedule 3 is amended by—
 - (a) omitting “an officer exercising summary powers” and substituting “a disciplinary officer” ; and
 - (b) repealing paragraph (i).

78 New Schedules 4 and 5 substituted

Schedules 4 and 5 are repealed and the schedules set out in Schedule 1 of this Act substituted.

79 Schedule 6 repealed

Schedule 6 is repealed.

80 Revocation

The Armed Forces Discipline (Exemptions and Modifications) Order 1983 (SR 1983/234) is revoked.

81 Amendments to other enactments

The enactments specified in Schedule 2 are amended in the manner indicated in that schedule.

Transitional provisions**82 Continuation of proceedings under Part 5**

- (1) All investigations and proceedings under Part 5 of the principal Act that have been commenced before the commencement of this section and that have not been completed before that commencement are to be continued and completed as if this Act had not been enacted.
- (2) However, if, in the course of proceedings continued under subsection (1) and after the commencement of this section, an accused elects to be tried by court-martial and does not withdraw that election in the prescribed manner, or is otherwise remanded for trial by court-martial,—
 - (a) the charge must be referred to the Director of Military Prosecutions; and
 - (b) the accused may be remanded for trial in the Court Martial (as established by the Court Martial Act 2007); and
 - (c) the charge must then be dealt with in accordance with the principal Act (as amended by this Act) and the Court Martial Act 2007; and
 - (d) sections 117ZF to 117ZI of the principal Act (as substituted by this Act) apply with all necessary modifications for the purpose of giving effect to paragraphs (a) to (c).
- (3) If a person subject to the principal Act is found guilty of an offence against the principal Act by an officer exercising summary powers in proceedings continued under subsection (1), the finding and any punishment imposed on him or her may be reviewed under section 117 of the principal Act as if this Act had not been enacted.
- (4) Every officer exercising summary powers and every reviewing authority continues to have and may exercise all his, her, or its powers, functions, and duties under the principal Act (as in force immediately before the commencement of this section) for the purpose of giving effect to subsections (1) and (3).
- (5) In this section, **officer exercising summary powers and reviewing authority** have the same meanings as in the principal Act as in force immediately before the commencement of this section.

83 Charges in relation to conduct before commencement of this section

- (1) Conduct that is alleged to have occurred before the commencement of this section may be dealt with under the principal Act, as amended by this Act, if the disciplinary officer concerned is satisfied that an investigation and proceeding under Part 5 of the principal Act, as it was in force immediately before the commencement of this section, has not been commenced in relation to the conduct before that commencement.
- (2) This section does not limit section 82.

Schedule 1
New Schedules 4 and 5 of principal Act substituted

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Schedule 4		
Summary punishments that may be imposed by commanding officer, detachment commander, or subordinate commander acting as disciplinary officer under Part 5		
Column 1	Column 2	Column 3
	Punishments and jurisdictional circumstances	
	If offender was given right to elect trial by	If offender was not given right to elect trial by
Rank of offender	Court Martial	Court Martial
1 An officer or a warrant officer	Stay of seniority for a period not exceeding 12 months A fine, not exceeding 28 days' basic pay A reprimand	 A fine, not exceeding 7 days' basic pay A reprimand
2 A senior non-commissioned officer	Reduction in rank (this punishment may be imposed only on a petty officer or a sergeant who, at the time of the disposal of the charge, is on active service or sea service) Stay of seniority for a period not exceeding 12 months	

ss 117V, 117W

3 A junior non-commissioned officer	A fine, not exceeding 28 days' basic pay	A fine, not exceeding 7 days' basic pay
	A reprimand	A reprimand
	Stoppage of leave, not exceeding 21 days	Stoppage of leave, not exceeding 21 days
	Reduction in rank	
4 A rating of able rank, a private, or a leading aircraftman, or a rating, soldier, or airman of lower rank	A fine, not exceeding 28 days' basic pay	A fine, not exceeding 7 days' basic pay
	A reprimand	A reprimand
	Stoppage of leave, not exceeding 21 days	Stoppage of leave, not exceeding 21 days
	Extra duty for a period not exceeding 21 days	Extra duty for a period not exceeding 21 days
	A caution	A caution
	Detention for a period not exceeding 60 days (this punishment may be of an offence committed on active service or sea service)	
	Detention for a period not exceeding 28 days	
	A fine, not exceeding 28 days' basic pay	A fine, not exceeding 7 days' basic pay
	A reprimand	A reprimand
	Confinement to ship or barracks for a period not exceeding 21 days	Confinement to ship or barracks for a period not exceeding 21 days
	Extra duty for a period not exceeding 21 days	Extra work and drill for a period not exceeding 21 days
	Stoppage of leave, not exceeding 21 days	Stoppage of leave, not exceeding 21 days
	Extra duty for a period not exceeding 21 days	Extra duty for a period not exceeding 21 days
	A caution	A caution

Notes

For the purposes of clause 1, a disciplinary officer is not empowered to impose a punishment on an officer if the disciplinary officer holds a rank of less than 2 rank grades above that of the officer.

For the purposes of clause 2, a senior non-commissioned officer is one who holds the rank of—

- (a) chief petty officer or petty officer in the Navy; or
- (b) staff sergeant or sergeant in the Army; or
- (c) flight sergeant aircrew, flight sergeant, sergeant aircrew, or sergeant in the Air Force.

For the purposes of clause 3, a junior non-commissioned officer is one who is—

- (a) a rating of leading rank in the Navy; or
- (b) a bombardier, corporal, lance bombardier, or lance corporal in the Army; or
- (c) a corporal in the Air Force.

For the purposes of this schedule, a person is on sea service if that person is a member of the crew of a ship that is at sea or of a ship whose commanding officer has been ordered to keep the ship at less than 48 hours' notice for sea.

Schedule 5

Summary punishments that may be imposed by superior commander acting as disciplinary officer under Part 5

ss 117V, 117W

Column 1	Column 2	Column 3
	Punishments and jurisdictional circumstances	
Rank of offender	If offender was given right to elect trial by Court Martial	If offender was not given right to elect trial by Court Martial
An officer	Stay of seniority for a period not exceeding 12 months A fine, not exceeding 28 days' basic pay A reprimand	A fine, not exceeding 7 days' basic pay A reprimand

Note

For the purposes of this schedule, a superior commander is not empowered to impose a punishment on the officer if the superior commander holds a rank of less than 2 rank grades above that of the officer.

Schedule 2

Consequential amendments to other enactments

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Amendments to other Acts

Crimes Act 1961 (1961 No 413)

Section 108(4)(f): repeal and substitute:

- (f) a disciplinary officer, the Summary Appeal Court of New Zealand, or the Court Martial of New Zealand acting under the Armed Forces Discipline Act 1971.

Criminal Records (Clean Slate) Act 2004 (2004 No 36)

Paragraph (b) of the definition of **conviction** in section 4: repeal and substitute:

- (b) does not include a conviction entered by the Court Martial of New Zealand or a disciplinary officer under the Armed Forces Discipline Act 1971 or resulting from an appeal from a decision under that Act

Electronic Transactions Act 2002 (2002 No 35)

Part 4 of the Schedule: insert after item 8:

- (8A) the Summary Appeal Court of New Zealand established under the Armed Forces Discipline Act 1971:

Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 (2004 No 38)

Definition of **Head of Bench** in section 5: insert after paragraph (e):

- (ea) in relation to the Summary Appeal Court of New Zealand, the Judge Advocate General:

Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46)

Definition of **special patient** in section 2(1): insert after paragraph (d):

- (da) a person who is liable to be detained in a hospital under section 191(2)(a) of the Armed Forces Discipline Act 1971; or

Prisoners' and Victims' Claims Act 2005 (2005 No 74)

Paragraph (a) of the definition of **service detainee** in section 4: repeal and substitute:

- (a) undergoing a sentence, imposed under the Armed Forces Discipline Act 1971 by the Court Martial or a disciplinary officer, that includes the punishment of detention; and

Section 5(1)(b): repeal and substitute:

- (b) for all other purposes, a person found guilty (alone or with others) by a court or the Court Martial of the offence that affected the victim, or found guilty of that offence (alone or with others) by a disciplinary officer under the Armed Forces Discipline Act 1971, or who pleads guilty to that offence (alone or with others) before a court or the Court Martial or a disciplinary officer.

Section 24(3)(a): repeal and substitute:

- (a) relate to criminal proceedings, proceedings of a disciplinary officer under the Armed Forces Discipline Act 1971, or proceedings of the Court Martial; and

Section 35(2)(d): repeal and substitute:

- (d) any documents or records (for example, a charge report) created in connection with, and retained after, the summary trial or disposal of a charge by a disciplinary officer under the Armed Forces Discipline Act 1971.

Remuneration Authority Act 1977 (1977 No 110)

Schedule 4: add the following item:

The Registrar of the Summary Appeal Court of New Zealand.

Transport Accident Investigation Commission Act 1990 (1990 No 99)

Definition of **Proceedings** in section 14A: omit “section 200” and substitute “section 200A”.

Visiting Forces Act 2004 (2004 No 59)

Repeal section 12(a) to (d) and substitute the following paragraphs:

- (a) section 150A (protection of military tribunals and courts of inquiry from civil proceedings):
- (b) section 150B (privileges and immunities of witnesses and of certain other persons appearing before military tribunals or courts of inquiry):
- (c) section 150C (power to summons witnesses):
- (d) sections 150E to 150G (contempt of military tribunals or courts of inquiry).

2

Amendments to regulations

Armed Forces Discipline Regulations 1990 (SR 1990/79)

Regulation 3(1) to (5): revoke and substitute:

- (1) If the Court Martial sentences an officer of any Service to reduction in rank, it may reduce the officer’s rank to any lower commissioned rank in that Service.
- (2) If the Court Martial sentences a rating to reduction in rank, or a disciplinary officer imposes a punishment of reduction in rank on a rating, the Court Martial or officer may reduce the rating’s rank—
- (a) to any lower rank, not below able rank, in the rating’s present branch; or

- (b) in the case of the Naval Police Branch or the Physical Training Branch, to any lower rank, not below able rank, in the rating's former branch for which the rating is qualified.
- (3) If the Court Martial sentences a soldier to reduction in rank, or a disciplinary officer imposes a punishment of reduction in rank on a soldier, the Court Martial or officer may reduce the soldier's rank to any lower rank, not below private, in the Army.
- (4) If the Court Martial sentences an airman to reduction in rank, or a disciplinary officer imposes a punishment of reduction in rank on an airman, the Court Martial or officer may reduce the airman's rank to any lower rank, not below leading aircraftman, in the Air Force.

Regulation 5: revoke and substitute:

5 Stay of seniority

- (1) If the Court Martial sentences a member of the Armed Forces to a stay of seniority, the member must remain in the rank and retain the amount of seniority that the member has on the day on which the sentence is passed for the period, not exceeding 2 years, as the Court Martial specifies.
- (2) If a disciplinary officer imposes a punishment of a stay of seniority on a member of the Armed Forces, the member must remain in the rank and retain the amount of seniority that the member has on the day on which the punishment is imposed for the period, not exceeding 1 year, as the officer specifies.

Regulations 6 to 8: revoke and substitute:

6 Forfeiture of pay on civil conviction

- (1) If a member of the Armed Forces is convicted of an offence by a civil court, the member forfeits—
 - (a) 1 day's basic pay and allowances for—
 - (i) each day during which the member is in civil custody in respect of the offence, whether before or after conviction, or both; and
 - (ii) each day after conviction during which the member is in close arrest in respect of the offence; and
 - (b) 1 day's allowances for each day during which the member is suspended from duty in respect of the offence, whether before or after conviction, or both.
- (2) In any case to which subclause (1) applies, the member's commanding officer may cancel the forfeiture in whole or in part in respect of the period preceding the conviction.
- (3) However, the commanding officer must not cancel a forfeiture that exceeds 3 days' basic pay and allowances without the prior approval of the Chief of the Service to which the member belongs or is attached.

7 Forfeiture of pay on service conviction for period before conviction

- (1) If a member of the Armed Forces is convicted of an offence by the Court Martial or is found guilty of an offence by a disciplinary officer, the member forfeits—
 - (a) 1 day’s basic pay and allowances for each day during which the member is in civil custody in respect of the offence before conviction or the finding of guilty; and
 - (b) 1 day’s allowances for each day during which the member is suspended from duty in respect of the offence before conviction or the finding of guilty.
- (2) In any case to which subclause (1) applies, the Court Martial or the officer who found him or her guilty may cancel the forfeiture in whole or in part.

8 Forfeiture of pay on service conviction for period after conviction

- (1) If a member of the Armed Forces is convicted of an offence by the Court Martial and is sentenced to imprisonment, or to dismissal from Her Majesty’s Service, the member forfeits—
 - (a) 1 day’s basic pay and allowances for each day during which the member is in civil custody or service custody in respect of the offence after conviction; and
 - (b) 1 day’s allowances for each day during which the member is suspended from duty in respect of the offence after conviction.
- (2) If a member of the Armed Forces is convicted of an offence by the Court Martial or is found guilty of an offence by a disciplinary officer and is sentenced to detention, the member must forfeit 1 half-day’s basic pay for each day during which the member is in civil or service custody in respect of the offence after conviction.

Regulation 10: insert after subclause (3):

- (3A) The amount of pay and allowances that is ordered to be withheld under this regulation must not exceed the amount that may be subject to forfeiture under regulations 6 to 8.

Regulation 12(1): omit “a court-martial or found guilty by an officer exercising summary powers” and substitute “the Court Martial or found guilty by a disciplinary officer”.

The Schedule: revoke.

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Notes**1 General**

This is an eprint of the Armed Forces Discipline Amendment Act (No 2) 2007. It incorporates all the amendments to the Act as at 1 July 2009. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

2 About this eprint

This eprint has not been officialised. For more information about officialisation, please see “Making online legislation official” under “Status of legislation on this site” in the About section of this website.

**3 List of amendments incorporated in this eprint
(most recent first)**

Armed Forces Discipline Amendment Act (No 2) 2007 Commencement Order 2008 (SR 2008/232)