Armed Forces Discipline Legislation Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill is an omnibus Bill that amends more than 1 Act and is introduced under Standing Order 267(1)(a) because the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. That single broad policy is to make the military justice system easier to navigate and administer, to better enable command to focus on operational outputs.

The military justice system applies to uniformed Armed Forces personnel within the New Zealand Defence Force. It is a unique system that runs parallel to, but does not replace, the civilian justice system. It is established under the Armed Forces Discipline Act 1971, the Court Martial Act 2007 and the Court Martial Appeals Act 1953. Unlike the civilian justice system, the military justice system applies to Armed Forces personnel everywhere in the world.

Strong military discipline is central to ensuring the New Zealand Defence Force's operational effectiveness. Military discipline's primary purpose is to create a cohesive and effective fighting force. It enables a military to function as a unit, adhering to rules, regulations, and orders to achieve specific goals. This discipline, which encompasses both external enforcement of rules and internal self-control, is essential for successful missions and maintaining order within the ranks.

Consistent with this, a wide range of behaviour is an offence in the military context—ranging from very minor offending (such as being late for duty) to very serious offending (such as assisting the enemy). Offences against the ordinary civilian law of New Zealand are also offences within the military justice system (such as assault, sexual violence, or misuse of drugs). Most charges are prosecuted at summary trial and only the most serious offences are referred to the Director of Military Prosecutions for trial by the Court Martial.

The military justice system currently works well for mid-level offending. However, the summary trial system has proved to be too complex and time-consuming for

low-level offending. The current system also does not respond well to serious, complex or sensitive offending—including sexual violence offending. In addition, the search powers contained in the Armed Forces Discipline Act 1971 are out of date and hamper the effective investigation of offending. Other aspects of the military justice system require updating to reflect developments that have taken place within the civilian criminal justice system and the broader legal environment.

The changes in the Bill are designed to address these concerns and ensure that the military justice system is fair, efficient, and transparent and—

- supports the maintenance of military discipline within the New Zealand Defence Force:
- is portable, expeditious, and as simple as possible—and capable of functioning in a range of different operational environments:
- is fair to both victims and the accused and continues to protect the rights recognised in the New Zealand Bill of Rights Act 1990.

The key substantive changes made by the Bill are as follows:

- creation of a new minor disciplinary sanction system, which will provide a faster, more efficient, and more transparent way of dealing with very low-level offending (such as being late for duty):
- transfer of responsibility for serious, complex, or sensitive offending out of the chain of command to the Director of Military Prosecutions:
- extension of the right to elect trial by the Court Martial to all offences except for a subset that will be identified in Defence Force Orders:
- updating the existing search power under section 95 of the Armed Forces Discipline Act 1971, together with the creation of new powers to search defence areas and carry out drug testing:
- establishment of a new search warrant framework providing judicial oversight of searches of electronic devices and providing new powers for a Judge to authorise the New Zealand Defence Force Joint Military Police Unit to search areas outside of a defence area owned, occupied, or used by a member of the Armed Forces, or to request documents from third parties:
- better alignment of bail provisions with those that apply in the civilian criminal justice system under the Bail Act 2000:
- provision for the Director of Military Prosecutions to appeal against certain summary trial decisions, in line with the appeal rights available to prosecutors in the civilian criminal justice system under the Criminal Procedure Act 2011:
- updating of powers to address disruptive behaviour and contempt of court to better align with the Contempt of Court Act 2019:
- application of the special procedures in Part 2 of the Security Information in Proceedings Act 2022 to certain proceedings in the Court Martial and Court Martial Appeal Court.

The main legislative changes are amendments to the Armed Forces Discipline Act 1971 and the Court Martial Act 2007. Amendments are also made to the Court Martial Appeals Act 1953, the Search and Surveillance Act 2012, the Crimes Act 1961, the Security Information in Proceedings Act 2022, Te Ture mō Te Reo Māori 2016/Māori Language Act 2016, and the New Zealand Sign Language Act 2006.

Departmental disclosure statement

The New Zealand Defence Force is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2025&no=239

Regulatory impact statement

A regulatory impact statement is not required for this Bill.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause.

Part 1
Amendments to Armed Forces Discipline Act 1971

Part 1 amends the Armed Forces Discipline Act 1971 (the **principal Act**).

Clause 4 amends section 2 (interpretation) to add new defined terms, modify existing definitions, and make other minor changes.

Amendments to Part 1

Clauses 5, 6, and 7 make minor amendments to sections 13, 16, and 18 to remove an obsolete reference to a sentence (of death) being carried out, clarify the terminology used to describe the disposal of a charge under Part 5, and update a cross-reference to section 20.

Clause 8 replaces section 20, which limits the time within which offences against the principal Act may be dealt with under that Act, with *new sections 20 and 20A*.

Under *new section 20(1)*, the limitation period for a minor offence (punishable by imprisonment of 2 years or less) or a mid-level offence (punishable by imprisonment of 7 years or less) is (respectively) 3 or 5 years after the date on which the alleged offence was committed. There is no limitation period for serious offences (punishable by imprisonment for more than 7 years or life) or loyalty offences against specified provisions of the principal Act. The limitation period for an offence against section

74(1), which allows civilian offences to be tried as offences against the principal Act, is the same as for the corresponding civilian offence.

New section 20(2) sets out how those limitation periods work when the person who is alleged to have committed an offence against the principal Act is a prisoner of war, is absent without leave, or is imprisoned in a civilian prison, and sets out how they apply to offences against the principal Act when a person ceases to be subject to that Act.

New section 20A limits the time within which a person who has ceased to be subject to the principal Act may be charged with an offence against that Act. This limitation period applies to offences against the principal Act committed by the person while they were subject to that Act. *New section 20A* does not limit the time within which—

- a person may be charged with an offence against section 74 of the principal Act that was committed outside New Zealand; or
- a civilian authority may charge the person with an offence that is not an offence against the principal Act.

Clauses 9 and 10 amend sections 21 and 22, which prevent a person from being tried—

- under civil law in respect of an offence that is substantially the same as an offence disposed of under the principal Act; or
- under the principal Act in respect of an offence that is substantially the same as an offence disposed of by another State's civilian criminal court or military tribunal; or
- under the principal Act for an offence that has already been disposed of under that Act.

The amendments to sections 21 and 22 incorporate references to the minor disciplinary sanction system, remove references to other offences taken into consideration by the Court Martial when passing a sentence, and, for the purposes of section 22, allow for the possibility of a disciplinary officer's decision to acquit a person being quashed on appeal under *new section 124B*. (The provision of the Court Martial Act 2007 that allows the Court Martial to take other offences into consideration when passing a sentence is repealed by *clause 137*.)

Amendments to Part 2

Clauses 11 and 12 amend sections 37 and 69 to add cross-references to new provisions.

Clause 13 amends section 70, which provides for offences relating to proceedings of a military tribunal or court of inquiry. The amendments extend the section to cover conduct relating to proceedings in the Court Martial Appeal Court, remove the Court Martial-specific penalties in section 70(3), and add a guidance note.

Amendments to Part 3

Clause 14 amends section 79 (Court Martial to pass 1 sentence only) to remove references to the Court Martial taking other offences into account when passing a sentence.

Clause 15 amends section 82, which deals with matters relating to dismissal from the Armed Forces after being sentenced by the Court Martial, to provide that, if a person is sentenced to dismissal from His Majesty's Service, the sentence takes effect immediately (unless the person is also serving a term of imprisonment or detention). This alters the position provided for in section 66(3) and (4) of the Court Martial Act 2007, where a sentence of dismissal does not take effect until after any appeal rights have been exhausted.

Clause 16 inserts *new section 82A*, which addresses what happens when a sentence of dismissal that has taken effect is quashed on appeal. Under *new section 82A*, the default position is that the person who was dismissed is immediately reinstated and deemed never to have been dismissed. However, the appeal court can order that the person not be reinstated, or modify the terms of their reinstatement, if satisfied it is in the interests of justice to do so.

Clause 17 amends section 85 (punishment by fine) to allow the Court Martial to impose a fine exceeding the maximum amount specified in section 85(3) when imposing fines under specified provisions dealing with disruptive behaviour and military member misconduct during a proceeding.

Clause 18 inserts *new section 85A*, which prohibits the Court Martial from passing a sentence that includes more than 1 of the following punishments: a fine, a sentence of imprisonment, and a sentence of detention.

Amendments to Part 4

Clauses 19 to 38 amend Part 4 of the principal Act and divide its provisions into the following 7 subparts:

- *new subpart 1* (arrest) (section 88 to *new section 92B*):
- *new subpart 2* (detention) (sections 93 to 93C):
- *new subpart 3* (search) (*new section 95* to *new section 98K*):
- *new subpart 4* (production orders and preservation directions) (*new sections 99 to 99D*):
- *new subpart 5* (further provisions about search, production orders, and preservation directions) (*new sections 99E to 99H*):
- *new subpart 6* (drug and alcohol testing) (*new sections 99I to 99N*):
- *new subpart 7* (duties in relation to person arrested, bail, and other matters) (sections 100 to 101D).

Clause 19 amends the Part 4 heading.

New subparts 1 (arrest) and 2 (detention)

Clauses 20 and 22 insert headings for *new subparts 1 and 2 of Part 4*.

Clauses 21 and 23 replace section 94 (reasonable force may be used to arrest or search) with an equivalent arrest-specific provision: *new section 92B*. (Use of force in connection with the search of a person is now provided for in *new section 98C*.)

New subpart 3 (search)

Clauses 24 to 27 insert a heading for *new subpart 3 of Part 4* and replace and amend provisions of the principal Act that fall within that new subpart (sections 95 to 98) to—

- replace section 95, which empowers a commanding officer to search for evidence of an offence against the principal Act within the limits of their command, with 2 new sections containing search powers (*new sections 95A and 95B*):
- give members of the Military Police a power to search, under warrant, beyond the limits of those new search powers (*new section 98A*):
- provide for matters relating to how searches under the principal Act may or must be carried out.

Clause 24 replaces section 95 with *new sections 95 to 95B*.

New section 95 defines terms used in *new subpart 3* of Part 4.

New sections 95A and 95B give commanding officers, superior commanders, and officers in charge of a defence area a statutory power to search people, places, vehicles, and other things within the limits of their command for the purpose of finding evidential material in respect of an offence against the principal Act that is punishable by a term of imprisonment. The requirement that a search under *new section 95A or 95B* relate to an imprisonable offence prevents the search powers from being used to find evidence of an alleged offence that, for example, is punishable by a fine only, but does not prevent the powers from being used to find evidence of alleged offending in respect of an imprisonable offence that, if proven, would be unlikely to result in a sentence of imprisonment.

Like current section 95 of the principal Act, *new sections 95A and 95B* are intended to operate as limits on the ability of a superior officer to use their command power to search for evidence of offending against the principal Act (*see R v A* [2019] NZHC 293 at para 22 in relation to existing section 95).

A commanding officer, superior commander, or officer in charge of a defence area may carry out a search under *new section 95A or 95B* personally or authorise another person to carry out the search in accordance with the requirements of the relevant section.

Clause 25 amends section 96 (searches to prevent smuggling, etc) to remove a redundant reference to what may be searched under that section (as this is now covered by *new section 98*).

Clause 26 updates section 97 (customary powers of search not affected) to refer to *new sections 95A and 95B* (instead of section 95).

Clause 27 replaces section 98 with *new sections 98 to 98K*, which provide for other search powers and matters relating to how searches under the principal Act may be carried out.

New section 98—

- provides for the search of a person in service custody (as currently provided for in section 98(1) and (2)); and
- requires that Search and Surveillance Act 2012 rub-down searches carried out in connection with an arrest or detention under the principal Act be dealt with as a search under that Act (rather than a search under the Search and Surveillance Act 2012 to which Part 4 of that Act applies).

See also clause 160, which makes associated amendments to the Search and Surveillance Act 2012.

New section 98A provides for a member of the Military Police to search a place, vehicle, or other thing under warrant. This search power supplements the search powers in *new sections 95A and 95B* by allowing a member of the Military Police to obtain a warrant to carry out a search that goes beyond what may be done under those sections.

The *new section 98A* search power expressly applies specified provisions of the Search and Surveillance Act 2012 (*see new section 98A(2) and (3)* and *new Schedule 9* of the principal Act).

The other search powers in *new subpart 3 of Part 4* do not apply provisions of the Search and Surveillance Act 2012 in this way. However, many of the provisions in *new subpart 3* dealing with how searches are carried out are based on provisions of that Act (*see new sections 98B, 98C, and 98F to 98J*).

New sections 98B and 98C set out things that a person carrying out a search of a place, vehicle, or other thing, or a search of a person, may do and provide for other matters relating to how those searches may be carried out.

New section 98D provides for Defence Force Orders to be issued in relation to the *new section 95A or 95B* search powers. Those orders may—

- prescribe the procedure for making, and the record-keeping requirements in relation to, decisions under those sections:
- specify how searches carried out under those sections may, or must, be carried out (including by limiting or regulating the application of *new sections 98B(2) and 98C(2)* to those searches).

However, Defence Force Orders issued for the purposes of *new section 98D* are not able to be used to extend the *new section 95A or 95B* search powers by authorising a person to do something they would not otherwise be authorised to do (*see new section 98D(2)(b)*).

New section 98E prohibits a computer or data storage device from being used, as part of a search under the principal Act, to access intangible material that is not stored on the computer or device. A computer or device may be used to search for remotely stored material only if—

- the computer or device is a Defence Force computer or device that has been issued to a person for the purpose of conducting their duties; or
- a warrant issued under *new section 98A* authorises use of the computer or device to access intangible material stored remotely.

New sections 98F to 98J provide for matters relating to identification and notice in connection with searches under the principal Act.

New section 98K empowers the Chief of Defence Force to remedy economic loss resulting from the search of a place, vehicle, or other thing (which is currently provided for in section 95(4) of the principal Act).

New subpart 4 (production orders and preservation directions)

Clause 28 replaces section 99 with *new subparts 4, 5, and 6 of Part 4*.

New section 99 defines terms used in *new subpart 4*.

New section 99A allows a member of the Military Police to apply to a Judge of the Court Martial for a production order and sets out the conditions for making such an order.

An application for a production order by a member of the Military Police under *new section 99A(1)*—

- is made under that section (not section 71(1) of the Search and Surveillance Act 2012); and
- does not require the member to be able to apply for a search warrant to obtain the documents to which the production order relates (as is the case under section 71(1) of the Search and Surveillance Act 2012).

New sections 99B and 99C apply provisions of the Search and Surveillance Act 2012 production order regime, with modifications, to *new section 99A* production orders.

New section 99D—

- allows a member of the Military Police who may apply to obtain documents under a search warrant or a production order to apply, under *new section 99D(1)*, to the Commissioner of Police for a preservation direction in respect of those documents; and
- applies provisions of the Search and Surveillance Act 2012 preservation direction framework, with modifications, to *new section 99D(1)* preservation directions.

New subpart 5 (further provisions about search, production orders, and preservation directions)

New section 99E specifies who is, and who is not, an enforcement officer for the purposes of the Search and Surveillance Act 2012 to prevent the provisions of that Act that relate to enforcement officers from applying more broadly than intended.

New section 99F provides for the Chief of Defence Force to issue Defence Force Orders dealing with the subject matter of subpart 6 of Part 4 of the Search and Surveillance Act 2012 (procedures applying to seized or produced materials) for the purposes of things seized or produced under the principal Act.

New section 99G provides for how things seized or produced must be dealt with when transferred from the Armed Forces to a civilian law enforcement agency or vice versa.

New section 99H provides for reporting on the use of search powers and production orders under the principal Act.

New subpart 6 (drug and alcohol testing)

New section 99I—

- specifies the offences in respect of which drug and alcohol testing may be carried out (*see* the definition of drug or alcohol offence in that section); and
- empowers the Chief of Defence Force to approve devices for drug or alcohol testing; and
- defines terms used in *new subpart 6 of Part 4*.

New section 99J provides for when a person may be required to submit to a drug or alcohol test.

New sections 99K and 99L provide for how drug or alcohol tests must be carried out and require the person tested to be informed of the test results.

New section 99M provides for the issuing of certificates recording the results of a drug or alcohol test, which are presumed, in the absence of evidence to the contrary, to be conclusive evidence of the results stated in the certificate.

New section 99N provides for the Chief of Defence Force to issue Defence Force Orders prescribing the procedure for drug or alcohol testing.

New subpart 7 (duties in relation to person arrested, bail, and other matters)

Clause 29 inserts a heading for *new subpart 7 of Part 4* before section 100.

Clauses 30 to 38 amend provisions within, and add provisions to, *new subpart 7*.

Clause 30 replaces section 101(4) and (5), which sets out when a delay in dealing with a person after arrest must be reported to the Judge Advocate General. *New subsections (4) and (5)* allow for the possibility that an alleged offence may be dealt with through the minor disciplinary sanction system, but otherwise operate in the same way as the provisions they replace.

Clause 31 replaces section 101A, which provides for pretrial bail decisions by the Judge Advocate General, with *new sections 101A to 101AD*, which more closely align with how pretrial bail is dealt with in civilian cases under the Bail Act 2000.

New section 101A provides for pretrial bail decisions by the Judge Advocate General.

Under *new section 101A(2)*, the Judge Advocate General must grant bail to a person if the person is entitled to bail as of right. Subject to some exceptions, *new section 101A(3)* requires the Judge Advocate General to grant bail to a person who is not entitled to bail as of right—

- if the person is 17 or 18 years old and has not previously been sentenced to imprisonment; or
- in any other case, unless the Judge Advocate General is satisfied there is just cause for continued detention of the person.

New section 101AB sets out when a person is entitled to bail as of right.

New section 101AC sets out matters relating to the Judge Advocate General's consideration of whether there is just cause for continued detention.

New section 101AD applies specified restrictions on when bail may be granted under the Bail Act 2000 to the Judge Advocate General's bail decisions under *new section 101A(3)*.

Clause 32 corrects a typographical error in section 101B.

Clause 33 amends section 101C to make it clear that *new sections 101A to 101AD* apply to reconsideration of bail under that section.

Clause 34 inserts a cross-heading after 101C.

Clause 35 amends section 101D to clarify the circumstances in which a midshipman or an officer cadet may exercise the powers of arrest referred to in section 101D(1).

Clause 36 amends section 101F to remove references to multiple charge sheets.

Clause 37 amends section 101G, which allows the Director of Military Prosecutions to direct a provost officer to investigate matters relevant to a charge that has been referred to the Director of Military Prosecutions, to cover allegations referred to the Director of Military Prosecutions as well.

Clause 38 amends section 101L to make it clear what happens to delegations under that section when the Director of Military Prosecutions ceases to hold office.

New Part 4B

Clause 39 inserts *new Part 4B*, which partially codifies the office of the Provost Marshal.

New section 101M—

- confirms that *new Part 4B* continues the existing office of the Provost Marshal; and
- provides for the appointment of the Provost Marshal by the Chief of Defence Force.

New section 101N provides for the functions and duties of the Provost Marshal.

New section 101O requires the Provost Marshal to perform and exercise their functions, duties, and powers impartially and without improper influence.

New section 101P gives the Provost Marshal the power to require a person subject to the principal Act to give reasonable assistance to enable the Provost Marshal to perform or exercise a function, duty, or power.

New section 101Q provides for the appointment of Assistant Provost Marshals by the Chief of Defence Force or the Provost Marshal.

New section 101R provides for the delegation of the functions, duties, and powers of the Provost Marshal to an Assistant Provost Marshal.

New section 101S provides for the appointment of provost officers by the Chief of Defence Force, the Provost Marshal, or an Assistant Provost Marshal.

Amendments to Part 5

Clause 40 amends the Part 5 heading.

Subpart 1 (allegations: investigation, referral, and charging decisions)

Clause 41 replaces the heading to subpart 1 of Part 5.

Clause 42 replaces sections 102 and 102A with *new sections 102 to 102F.*

New section 102 defines when an allegation or a charge is suitable for disposal by summary trial.

An allegation or a charge will be suitable for disposal by summary trial if it can be fairly and efficiently disposed of through the summary trial process. This is subject to any Defence Force Orders that specify that an offence is an offence that must not be tried summarily.

New section 102A allows the Chief of Defence Force to issue Defence Force Orders specifying minor offences against the principal Act that may be disposed of through the minor disciplinary sanction system. (A minor offence is an offence against the principal Act, other than an offence against section 47(1)(b) or section 74, that is punishable by a term of imprisonment of 2 years or less.)

New section 102B provides for how an allegation that a person subject to the principal Act has committed an offence against that Act must be dealt with.

Under *new section 102B*, allegations are investigated by the person's commanding officer and, if well founded, recorded in the form of a charge for summary trial or referred to the Director of Military Prosecutions or an appropriate civil authority (depending on whether the allegation is suitable for disposal by summary trial).

However,—

- if the commanding officer considers the alleged offence is, or may be, a serious, complex, or sensitive offence (as defined in *new section 102B(9)*), the commanding officer must refer the allegation to the Director of Military Prosecutions instead of investigating it; or

- if the person is alleged to have committed an offence that may be disposed of through the minor disciplinary sanction system, the commanding officer may decide to deal with it through that system if the criteria in *new section 102C* are met.

The criteria in *new section 102C* are as follows:

- the commanding officer must—
  - believe on reasonable grounds that the person is committing, or has committed, the alleged offence; and
  - be satisfied that the alleged offence can be fairly disposed of without trial; and
- the commanding officer's decision to deal with the offence through the minor disciplinary sanction system must—
  - be made no later than 6 months after the date on which the offence is alleged to have been committed; and
  - be consistent with any requirements specified in Defence Force Orders.

New section 102D specifies what the Director of Military Prosecutions may do when an allegation is referred to them. The Director of Military Prosecutions may—

- record the allegation in the form of a charge and must—
  - lay the charge before the Registrar of the Court Martial for trial; or
  - refer the charge to a disciplinary officer for summary trial:
- decline to record the allegation in the form of a charge:
- refer the allegation to the Provost Marshal for investigation:
- refer the allegation to the appropriate civil authority for investigation.

New section 102E allows a superior commander to perform the powers, functions, and duties of a commanding officer under *new section 102B* in specified circumstances (for example, when a person's commanding officer is incapacitated, or when the superior commander considers, on reasonable grounds, that a commanding officer has failed to properly investigate an allegation).

New section 102F allows a commanding officer to delegate their functions in relation to the minor disciplinary sanction system to a person under their command who satisfies the minimum rank requirement for the delegation (which will be specified in Defence Force Orders).

New subpart 1A (minor disciplinary sanction system)

Clause 43 inserts *new subpart 1A* into Part 5. *New subpart 1A* provides for the minor disciplinary sanction system.

New section 102G provides that the minor disciplinary sanction system applies to a person if the person's commanding officer has decided, under *new section 102B(7)*, to deal with the person's alleged offence through the minor disciplinary sanction system.

New section 102H requires that a person whose alleged offence is being dealt with through the minor disciplinary sanction system must be given the following information:

- details of the alleged offence that fairly inform the person of the time, place, and nature of the alleged offence:
- the sanction, or combination of sanctions, the person's commanding officer intends to impose:
- a statement of the reasons for the commanding officer's—
  - decision to deal with the alleged offence through the minor disciplinary sanction system:
  - decision to impose the intended sanction:
- an explanation of the person's right to—
  - have the intended sanction reviewed under *new section 102J*:
  - elect whether to have their alleged offence disposed of through the minor disciplinary sanction system under *new section 102K*:
- any other information specified in Defence Force Orders.

New section 102I provides for the sanctions that may be imposed through the minor disciplinary sanction system (a reprimand, extra work and drill, extra duty, and a caution) and allows a commanding officer to impose any sanction (or combination of those sanctions) that the commanding officer considers just.

New section 102J provides for a person's right to have the sanction that will be imposed on them reviewed.

A review under *new section 102J* must be requested before the time limit within which the person's right of election must be exercised expires.

If a review is requested, it must be carried out by a superior commander within the person's chain of command or by the person's commanding officer (if the sanction was proposed by a delegate of the commanding officer). The reviewer may uphold the original sanction or replace it with a different sanction that they consider just (which must not be more severe than the original sanction).

New section 102K gives a person who is subject to the minor disciplinary sanction system the right to elect whether to—

- accept responsibility for the alleged offence and have it disposed of through the minor disciplinary sanction system; or
- have the alleged offence dealt with in the same way as other alleged offences that are not referred to the minor disciplinary sanction system under *new section 102B(1) to (6)*.

The person must exercise their right of election within 24 hours of being given the information they are entitled to under *new section 102H* (or within a longer period if their commanding officer thinks fit). However, if the person requests a review under

new section 102J, this time limit runs from the point at which the person is notified of the outcome of the review instead.

If the person decides not to have their alleged offence dealt with through the minor disciplinary sanction system, or fails to make a decision within the time limit, the alleged offence must be dealt with under *new section 102B(1) to (6)* and may not be dealt with through the minor disciplinary sanction system again.

New section 102L provides for what happens when a person's alleged offence is disposed of through the minor disciplinary sanction system. When the offence is disposed of,—

- the person is not convicted of the alleged offence; but
- the sanctions in respect of the alleged offence are imposed on the person; and
- disposal of the offence, and the sanctions imposed, are recorded by the person's commanding officer.

Sections 21 and 22 of the principal Act, which protect a person from being tried again for an offence or a matter that has been disposed of, apply to offences disposed of through the minor disciplinary sanction system.

New section 102M clarifies that disposal of a person's alleged offence under the minor disciplinary sanction system may be taken into account by a commanding officer when making subsequent decisions about the person in respect of the minor disciplinary sanction system.

New section 102N requires each commanding officer to keep and maintain a register of alleged offences dealt with through the minor disciplinary sanction system by the commanding officer or a delegate of the commanding officer, provides for matters relating to those registers, and allows the Chief of Defence Force to prescribe other procedures and requirements relating to the registers by Defence Force Orders.

The purpose of the registers kept and maintained under *new section 102N* is to—

- allow offences disposed of through the minor disciplinary sanction system to be taken into account when making subsequent decisions about the person in respect of the minor disciplinary sanction system; and
- enable use of the minor disciplinary sanction system to be monitored and reviewed.

The registers may only be accessed for those purposes, or to keep and maintain the register, or as otherwise required by law.

New section 102O prevents further action from being taken in respect of an alleged offence under *new section 102B(2) or (4)* while the offence is being dealt with through the minor disciplinary sanction system.

New subpart 1B (summary trial: disciplinary officer's duty to dispose of charges)

Clause 44 amends the principal Act to put existing sections 103 to 108 into *new subpart 1B*. This is a structural change made in conjunction with the insertion of *new subpart 1A of Part 5*.

Clauses 45 and 46 amend sections 103 and 104 to ensure that it is clear which subparts of Part 5 govern the disposal of an offence by summary trial.

Clause 47 amends section 107 to make it clear what happens to delegations under section 106 when a commanding officer leaves their command.

Clause 48 replaces section 108(2)(a). *New paragraph (a)* additionally provides that an officer is not empowered to act as a disciplinary officer in relation to a charge if they consider the charge should be referred to the Director of Military Prosecutions because it is not suitable for disposal by summary trial.

Subpart 2 (summary trial: preliminary procedures and disposal of charges)

Clause 49 replaces the heading to subpart 2 of Part 5.

Clause 50 replaces section 111 with a provision that reflects that the Director of Military Prosecutions will make decisions about how to deal with referred charges under *new section 102D*.

Clause 52 amends section 113 (amendment of charge) to—

- require a disciplinary officer who amends, substitutes, or adds a charge to consider whether they are empowered to act in relation to the new charge and, if they are not, to refer the new charge to another disciplinary officer or the Director of Military Prosecutions; and
- provide that the limitation periods in *new sections 20 and 20A* apply to the addition of a new charge, but do not prevent amendments to, or substitutions for, an existing charge.

Clause 53 inserts *new section 113A*, which gives an accused the right to require a disciplinary officer to repeat steps undertaken under subpart 2 in relation to an amended, substituted, or added charge.

Clauses 51, 52, 54, and 55 amend (or also amend) sections 112 to 115 to make it clear that those provisions refer to a person being brought before a disciplinary officer for arraignment.

Clause 56 replaces section 116 with *new sections 116 and 116A*.

New sections 116 and 116A give a person accused of an offence against the principal Act a right to elect trial before the Court Martial (instead of summary trial) when they are brought before a disciplinary officer for arraignment as part of the summary trial process.

New section 116 incorporates the new right of election into the arraignment process currently provided for in section 116 of the principal Act.

Under *new section 116A(1)*, an accused has an automatic right of election in respect of any offence against the principal Act. However, the right of election is subject to *new section 116A(3)*, which allows the Chief of Defence Force to issue Defence Force Orders that specify that an offence is an offence in respect of which the right of election is not available.

The automatic right of election provided for by *new sections 116 and 116A* is in addition to the discretionary right of election an accused may be given under section 117D (following a guilty plea) or section 117M (following a finding that a prima facie case is made out).

Clause 57 inserts a guidance note at the end of section 117D referring users of the principal Act to sections 117ZB to 117ZD (which are relevant to an accused's right of election).

Clause 58 amends section 117F to align with changes made to how the Director of Military Prosecutions deals with a referred charge under the principal Act (*see new section 117ZH*) and changes made to how the principal Act provides for the withdrawal of an election (*see new section 117ZDA*).

Clause 59 amends the cross-heading above section 117I to update the terminology.

Clause 60 amends section 117J to allow a summary trial to proceed if a disciplinary officer determines a prima facie case has been made out in relation to an included offence (even if a prima facie case is not made out in relation to the associated charge).

Clause 61 amends section 117K for clarity and to align with changes made to how the Director of Military Prosecutions deals with a referred charge under the principal Act.

Clause 62 inserts a guidance note at the end of section 117M referring users of the principal Act to sections 117ZB to 117ZD.

Clause 63 amends section 117N to align with changes made to how the Director of Military Prosecutions deals with a referred charge under the principal Act and changes made to how the principal Act provides for the withdrawal of an election.

Clause 64 replaces section 117Q (disciplinary officer must determine whether accused is guilty or not guilty) with a provision that additionally—

- defines included offence for the purposes of the principal Act (as an offence against the Act other than the offence the accused is charged with that is committed when the offence charged is committed); and
- allows a disciplinary officer to find an accused guilty of an included offence (even if the offence that the accused is charged with is not proven).

Subpart 4 (punishment of offenders tried summarily)

Clause 65 replaces the heading to subpart 4 of Part 5.

Clause 66 amends section 117R to reflect that an accused may be found guilty of an included offence instead of the offence charged and to repeal the definition of victim in subsection (4) (as that term is now defined in section 2 of the principal Act).

Clause 67 amends section 117T to reflect that an accused may be found guilty of an included offence instead of the offence charged.

Clause 68 amends section 117V (types and maximum amounts of summary punishments) to prohibit a disciplinary officer from imposing a combination of punishments that includes both a fine and detention.

Clause 69 amends section 117Y (provisions relating to punishment of detention) to prohibit a disciplinary officer from imposing the punishment of detention on a person who was aged under 18 years when they committed the offence to which the punishment relates.

Clause 70 amends 117ZB (accused deemed to have waived certain rights in certain circumstances) for clarity and to incorporate references to the *new section 116A* right of election.

Clause 71 amends section 117ZC to add a reference to the *new section 116A* right of election.

Clause 72 inserts *new section 117ZDA*, which more clearly provides for the withdrawal of an accused's election of trial by the Court Martial to be provided for in, and dealt with in accordance with, the rules of procedure.

Clause 73 replaces section 117ZH (reference back of charge by Director of Military Prosecutions) with *new sections 117ZH and 117ZHA*.

New section 117ZH gives the Director of Military Prosecutions a wider range of options to deal with charges that are referred to the Director of Military Prosecutions from the summary trial process.

New sections 20 and 20A of the principal Act, which provide for limitation periods in respect of offences against that Act, apply to new charges added by the Director of Military Prosecutions under *new section 117ZH(2)(i)* but do not prevent amendments to, or substitutions for, an existing charge.

If the Director of Military Prosecutions refers a charge back to a disciplinary officer with directions as to how it must be disposed of, *new section 117ZHA* requires the disciplinary officer to dispose of the charge in accordance with those directions.

Clause 74 replaces section 117ZI with a provision that extends section 117ZI(2). Section 117ZI(2) prohibits the Court Martial from taking an accused's guilty plea at summary trial into account if the charge that the accused pleaded guilty to is subsequently referred for trial in the Court Martial. *New section 117ZI* extends this prohibition, making it clear that the Court Martial must not take a guilty plea at summary trial into account when disposing of the charge to which the plea relates, an amended charge, a substituted charge, or an additional charge.

Clause 75 repeals section 117ZIA (director to determine whether offence is specified offence). The effect of this repeal, and the associated replacement of section 102A, is that the application of Part 10A of the principal Act (victims' rights) is determined by the section 198A(1) application provision (rather than by a determination under section 102A or 117ZIA based on the test in those provisions).

Clause 76 inserts *new section 117ZJA*, which gives an accused who is under the age of 18 years the right to be accompanied by a support person during a summary trial.

Clause 77 inserts *new section 117ZS*, which provides for publication of specified summary trial decisions.

Under *new section 117ZS*, a disciplinary officer may publish a decision if they consider that publication will support service discipline and the proper administration of justice within the Armed Forces. However, a decision must not be published if publication of the decision—

- would contravene a non-publication order; or
- would contravene Defence Force Orders that restrict, or impose requirements in relation to, publication under *new section 117ZS*; or
- may, in the disciplinary officer's opinion, prejudice national security interests or service discipline.

Clause 78 amends section 117ZQ to align with changes made in other areas.

Amendments to Part 5A

Clauses 79 and 80 amend sections 122 and 123 to clarify what happens to delegations made under those sections by the Chief Judge or the Registrar of the Court Martial when the Chief Judge or Registrar ceases to hold office.

Clause 81 replaces the cross-heading above section 124.

Clause 82 inserts *new sections 124A to 124C* and associated cross-headings.

New section 124A allows the Director of Military Prosecutions to appeal to the Summary Appeal Court against the following decisions of a disciplinary officer in respect of a person who is guilty of an offence:

- a decision to impose a punishment, or combination of punishments, on the person:
- a decision to discharge the person without imposing a punishment:
- a decision to order the person to appear for punishment if called on:
- a decision to order the person to pay compensation or make restitution.

New section 124B allows the Director of Military Prosecutions to appeal to the Summary Appeal Court on a question of law against a decision of a disciplinary officer that a prima facie case has not been made out or that a person is not guilty of an offence. An appeal under *new section 124B* may only be brought with the leave of the Summary Appeal Court.

New section 124C provides for appeals to the Summary Appeal Court against decisions of a disciplinary officer in relation to suppression orders. An appeal under *new section 124C* may be brought by the applicant for the suppression order, the Director of Military Prosecutions, or a member of the media to whom section 210(1) of the Criminal Procedure Act 2011 applies.

Clause 83 replaces section 125 (notice of appeal) with *new section 125*, which provides for matters relating to notices of appeal and applications for leave to appeal.

Clause 84 amends section 126 (Registrar and disciplinary officer must provide copies of documents) to add references to documents provided in connection with appeals under *new sections 124A, 124B(2), and 124C(1)*.

Clause 85 inserts *new section 126A*, which provides for matters relating to a memorandum in reply to an application for leave to appeal.

Clause 86 amends section 131 to make it clear that, unlike other appeals to the Summary Appeal Court, an appeal on a question of law under *new section 124B(2)* is not an appeal by way of rehearing.

Clause 87 amends section 132 to add a reference to *new section 132A* to the list of things the Summary Appeal Court may do when it allows an appeal against a finding of guilty, and to make other minor changes.

Clause 88 inserts *new sections 132A to 132C*.

New section 132A allows the Summary Appeal Court, when allowing an appeal against a finding of guilty, to find the person guilty of a different offence, and impose a punishment in relation to that offence, in specified circumstances.

New sections 132B and 132C provide for how the Summary Appeal Court determines appeals under *new sections 124B and 124C*, respectively.

Clause 89 amends section 133 to—

- provide for how the Summary Appeal Court determines appeals against punishment decisions brought by the Director of Military Prosecutions under *new section 124A*; and
- allow the Summary Appeal Court to specify the date from which a punishment has effect (as an alternative to the date on which the original punishment was imposed).

Clause 90 amends section 134 to allow the Summary Appeal Court to specify the date from which punishments imposed, and orders made, under that section have effect.

Clause 91 amends section 136 (decisions of Summary Appeal Court final) to—

- provide that the Summary Appeal Court's suppression order decisions are also final and conclusive with no right of appeal (in addition to the court's decisions on appeals under Part 5A); and
- require the Summary Appeal Court to provide written reasons for those decisions.

Clauses 92 and 93 amend section 141 (defence of appeals and representation of appellant) and 142 (costs of appeal) to reflect that *new sections 124A, 124B, and 124C* allow appeals to the Summary Appeal Court to be brought by the Director of Military Prosecutions (and, in the case of an appeal under *new section 124C*, a member of the media).

Clause 94 amends section 144 (duties of Registrar with respect to appeals) to add references to the new appeal provisions and associated procedural requirements.

Amendments to Part 7

Clause 95 amends section 145 to clarify—

- how the provisions of the Criminal Procedure Act 2011 dealing with public access and restrictions on reporting, applied by *new section 145(1)*, apply in summary trial proceedings before a disciplinary officer; and
- how references to civil offences in the applied provisions should be interpreted.

The amendments to section 145 are clarificatory in nature and are not intended to change or limit how the Criminal Procedure Act 2011 applies in relation to martial proceedings under section 145.

Clause 96 inserts *new section 145A*. *New section 145A* supplements section 209 of the Criminal Procedure Act 2011 by specifying additional circumstances in which suppressed information may be disclosed in the martial context.

Clause 97 amends section 150 (rules of procedure) to modernise the drafting and make other minor changes.

Clause 98 amends section 150C (power to summon witnesses) to make it clear that the respondent to an appeal initiated by the Director of Military Prosecutions can apply for a summons.

Clause 99 inserts *new section 150DA*. *New section 150DA*, which applies only in relation to proceedings held in New Zealand, provides for failure to comply with a summons or an order to attend by a person who is not subject to the principal Act to be referred to and dealt with by a District Court Judge (instead of the martial tribunal or court that issued the summons).

If the District Court Judge finds the person guilty of having failed without reasonable excuse to comply with the summons, the person is not convicted of an offence but may have a fine not exceeding $1,000 imposed on them.

Clause 100 replaces the cross-heading above section 150E.

Clause 101 replaces sections 150E to 150G with *new sections 150E to 150K*.

New section 150E defines terms used in *new subpart 3 of Part 7*.

New sections 150F and 150G (respectively) give disciplinary officers and courts of inquiry, and military courts, powers to deal with disruptive behaviour during proceedings. The powers are as follows:

- a disciplinary officer, member of a court of inquiry, or judicial member of a military court may exclude a person from the hearing until—
    - the officer or court rises for the day; or
    - a specified time before the officer or court rises for the day (and may require the person to return at that time):
- a military court may—

- cite the person for disruptive behaviour; and
- if the court is in New Zealand, order that the person cited be detained until a time no later than the time the court rises for the day.

New section 150H sets out the procedure for dealing with a person cited for disruptive behaviour. *New section 150H* requires that, before the military court rises for the day,—

- the person cited must be given a reasonable opportunity to obtain legal representation and to apologise to the court; and
- the citation must be reviewed by a judicial member of the court.

If, following those steps, the judicial member considers that further punishment is necessary, that matter must be set down for a hearing in accordance with *new section 150H(3) and (4)*. If the person is found guilty of engaging in disruptive behaviour, they do not receive a conviction but may be fined up to $10,000.

New sections 150I and 150J extend the restrictions on the publication of criminal trial information under sections 7 to 9 of the Contempt of Court Act 2019 to cover trials in the Court Martial.

New section 150K extends sections 14 and 15 of the Contempt of Court Act 2019 (which make it an offence to disclose jury deliberations) to cover the deliberations of military members of the Court Martial.

Clause 102 amends section 159 to make it clear what happens to delegations under that section when the Chief Judge of the Court Martial ceases to hold office.

Clause 103 amends section 160 to add 2 members to the Armed Forces Discipline Committee: the Warrant Officer of the Defence Force and the Provost Marshal.

Clause 104 amends section 162 to clarify, for the avoidance of doubt, that the Armed Forces Discipline Committee's functions do not include producing guidelines relating to the imposition of sanctions through the minor disciplinary sanction system.

Clause 105 inserts *new section 177AA*, which allows the Court Martial or a disciplinary officer to defer the start date of a sentence of imprisonment or detention for up to 2 months on humanitarian grounds in specified circumstances.

Clause 106 amends section 177A (effect of period spent in custody before being sentenced) to make it clear that the section does not limit or affect *new section 177AA*.

Clause 107 amends section 186A (compensation to victims of offences causing physical harm) to make it clear that the definition of victim inserted into section 2 does not change who section 186A applies to.

Clauses 108 to 111 amend provisions in Part 10A (victims' rights) to—

- make it clearer when Part 10A applies; and
- move the definitions of victim and specified offence to section 2; and
- make changes relating to victim support officers to—

  - clarify and improve the process by which victim support officers are initially appointed; and
  - give the Director of Military Prosecutions a power to appoint or replace a victim support officer; and
- clarify when a victim's views about release on bail must be ascertained and provided to a decision-maker.

Clause 112 amends section 200E to update the terminology.

Clause 113 amends section 200N (rights of person who may be affected by inquiry). Section 200N provides that, if it appears that an inquiry affects or is likely to affect the character or reputation of a person, the president of the inquiry must inform the person of the inquiry and give them a reasonable opportunity to exercise specified rights in relation to it. The amendment to section 200N makes it clear that the president of a court of inquiry can discharge their obligations under the section by taking all reasonably practicable steps to do so.

Clause 114 inserts *new Part 2* into Schedule 1AA (transitional, savings, and related provisions). *New Part 2* contains transitional and savings provisions relating to the amendments made by the Bill.

Clause 115 inserts *new Schedule 5A*, which sets out the sanctions that may be imposed through the minor disciplinary sanction system and specifies how the relative severity of sanctions and combinations of sanctions must be assessed.

Clause 116 inserts *new Schedule 9*, which sets out how Part 4 of the Search and Surveillance Act 2012 applies in relation to searches under *new section 98A*.

Part 2
Amendments to Court Martial Act 2007

Part 2 amends the Court Martial Act 2007.

Clause 118 amends section 5 (interpretation) to insert definitions relating to acting Judges and repeal the definition of defender. (A defender is a member of the Armed Forces who undertakes the defence of an accused before the Court Martial. The Bill is abolishing this role.)

Clauses 119 to 125 amend the Court Martial Act 2007 to provide for the appointment of acting Judges of the Court Martial and make other minor changes relating to Judges of the Court Martial as follows:

- acting Judges are appointed by the Governor-General and may be appointed only if the Chief Judge has certified that the appointment is necessary for the conduct of the Court Martial:
- to be appointed as an acting Judge, a person must be a former Judge of the Court Martial, or a former District Court Judge, who is under the age of 75 years:

- an acting Judge may be appointed for a term of up to 2 years and may be reappointed (but their appointment must end on or before the date on which they reach the age of 75 years):
- an acting Judge may act as a Judge only when authorised to do so by the Chief Judge.

Clause 126 replaces section 23, which sets out when a person is disqualified from acting as a military member of the Court Martial, with *new section 23*.

Under *new section 23*, a person is disqualified from acting as a military member in proceedings relating to a charge if the person—

- has been involved in the investigation of the allegation that led to the charge or has dealt with that allegation through the minor disciplinary sanction system; or
- has had the charge referred to them as a prospective disciplinary officer or has acted as a disciplinary officer in respect of any charge against the accused; or
- has been a military member of the Court Martial during an earlier proceeding where the accused was tried in relation to an offence; or
- has held, or was one of the persons holding, an inquiry under the Armed Forces Discipline Act 1971 into matters relating to the subject matter of the charge; or
- is personally concerned with the facts of the case or closely connected with one of the parties or prospective witnesses; or
- is a prospective witness, a lawyer, or a member of the Military Police.

Clause 127 simplifies section 30 (duties of Judge at trial) by removing the prescriptive requirements in section 30(2) to (4) (leaving it to the Judge to determine how best to discharge their obligations under subsection (1)).

Clause 128 amends section 32, which provides that a military member who fails to attend, or fails to perform their functions or duties in relation to, the Court Martial commits contempt of court. *New section 32(3) and (4)*—

- sets out, in more detail, the procedure a Judge must follow when making a finding about whether a military member is guilty of committing a contempt:
- clarifies that a military member found guilty of contempt is not convicted of an offence:
- increases the penalties that may be imposed to—
  - imprisonment for a term not exceeding 1 month (increased from 21 days); or
  - a fine not exceeding $5,000 (increased from $1,000).

Clause 129 inserts *new section 32A*. *New section 32A* allows a military member in a trial to be fined if they intentionally investigate or research information relevant to the trial without the permission of the trial Judge. (*New section 32A* is based on section 13 of the Contempt of Court Act 2019, which allows a member of a jury to be fined for engaging in equivalent conduct.)

Clauses 130 and 131 amend sections 39 and 42 to remove references to a member of the Armed Forces acting as a defender.

Clause 132 amends the inclusive definition of question of law in section 44(4) to add a reference to questions arising in respect of a special procedure under Part 2 of the Security Information in Proceedings Act 2022, delete a redundant reference to severance of charge sheets, and make other minor changes.

Clause 133 replaces section 49, which provides for pretrial bail decisions by the Judge Advocate General, with *new sections 49 to 49C*. *New sections 49 to 49C* more closely align with how pretrial bail is dealt with in civilian cases under the Bail Act 2000.

New section 49 provides for pretrial bail applications to a Judge of the Court Martial.

Under *new section 49(3)*, the Judge must grant bail to a person if the person is entitled to bail as of right. Subject to some exceptions, *new section 49(4)* requires the Judge to grant bail to a person who is not entitled to bail as of right—

- if the person is 17 or 18 years old and has not previously been sentenced to imprisonment; or
- in any other case, unless the Judge is satisfied there is just cause for continued detention of the person.

New section 49A sets out when a person is entitled to bail as of right.

New section 49B sets out matters relating to a Judge's consideration of whether there is just cause for continued detention.

New section 49C applies specified restrictions on when bail may be granted under the Bail Act 2000 to a Judge's bail decisions under *new section 49(4)*.

Clause 134 amends section 50, which provides for decisions by a Judge of the Court Martial about bail pending an appeal, to more closely align with how equivalent decisions are made under the Bail Act 2000.

Clause 135 updates section 52 (procedure for bail generally) to reflect changes made to other provisions relating to bail.

Clause 136 replaces section 56 (power to convict of offence other than that charged) with *new section 56*, which allows the Court Martial to convict an accused of an included offence.

Clause 137 repeals section 64, which allows the Court Martial to take other offences a person has committed into account when sentencing a person in specified circumstances.

Clause 138 amends section 66 to—

- make it clear that the requirement to announce the Court Martial's findings and sentence in open court is subject to any order under section 39 that limits the scope of open court in the proceeding; and
- reflect changes to how dismissal, and deemed dismissal, from His Majesty's Service are dealt with (*see also clauses 15 and 16*).

Clause 139 amends section 68 to remove references to defenders and to clarify, for the avoidance of doubt, that an accused may represent themselves in proceedings before the Court Martial.

Clause 140 inserts *new section 68A*, which gives an accused who is under the age of 18 years the right to be accompanied by a support person during proceedings before the Court Martial.

Clause 141 inserts *new section 74A*, which makes hearings in respect of certain matters specified proceedings for the purposes of the Security Information in Proceedings Act 2022 (in respect of which special procedures under Part 2 of that Act apply). (*See also clauses 162 and 163*, which make associated amendments to the Security Information in Proceedings Act 2022 to extend that Act to cover specified proceedings in the Court Martial and Court Martial Appeal Court.)

Clauses 142 and 143 amend sections 78 and 82 to make it clear what happens to delegations under those sections when an office holder leaves office.

Clause 144 inserts *new Part 2* into Schedule 1AA (transitional, savings, and related provisions). *New Part 2* contains transitional and savings provisions relating to the amendments made by the Bill.

Part 3
Amendments to other legislation and consequential amendment

Subpart 1—Amendments to Court Martial Appeals Act 1953

Subpart 1 of Part 3 amends the Court Martial Appeals Act 1953.

Clause 146 amends section 2 (interpretation) to add a definition of member of the media.

Clause 147 amends section 7, which provides for appeals to the Court Martial Appeal Court against rulings given by a Judge of the Court Martial. The amendments—

- provide for appeals against takedown orders and rulings relating to a special procedure under the Security Information in Proceedings Act 2022:
- allow a member of the media to appeal against suppression orders and takedown orders:
- allow the subject of a takedown order to appeal against the order:
- make other minor changes to update terminology and remove a redundant reference to severance of charge sheets.

Clause 148 inserts *new section 9EC*, which provides for appeals to the Court Martial Appeal Court against a finding of guilty or fines imposed in relation to disruptive behaviour by a person, a military member's failure to attend the Court Martial, or investigation or research of a case before the Court Martial by a military member of that court.

Clause 149 inserts *new section 9G*, which provides for appeals to the Court of Appeal against a Court Martial Appeal Court finding that a person is guilty of disruptive behaviour or a fine imposed in relation to that finding.

Clause 150 amends section 10 to add references to appeals by a member of the media under amended section 7 and appeals under *new section 9EC*.

Clauses 151 and 152 amend sections 10A and 10C to add references to appeals under *new section 9G*.

Clause 153 inserts *new section 11A*, which allows a person who is not subject to the Armed Forces Discipline Act 1971, and who fails without reasonable excuse to comply with an order to attend as a witness before the Court Martial Appeal Court, to be brought before and dealt with by the District Court. Under *new section 11A*, if the District Court finds the person guilty, the person is not convicted of an offence but may have a fine of up to $1,000 imposed on them.

Clause 154 amends section 17 to make it clear that section 11 of the Security Information in Proceedings Act 2022, which requires that an oral hearing in specified proceedings where security information is being considered must be a closed hearing, is an exception to the general position that proceedings in the Court Martial Appeal Court be conducted in open court.

Clause 155 amends section 20A, which provides for decisions by a Judge of the Court Martial Appeal Court about bail pending an appeal, to more closely align with how equivalent decisions are made under the Bail Act 2000.

Clause 156 inserts *new Part 2* into Schedule 1 (transitional, savings, and related provisions). *New Part 2* contains transitional and savings provisions relating to the amendments made by the Bill.

Subpart 2—Amendment to Crimes Act 1961

Clause 158 amends section 9 of the Crimes Act 1961 (offences not to be punishable except under New Zealand Acts) to repeal the section 9(1)(b) exception that preserves the jurisdiction and powers of the Court Martial and officers of the Armed Forces.

Subpart 3—Amendments to Search and Surveillance Act 2012

Clause 160 amends section 82 of the Search and Surveillance Act 2012 to extend the provisions of that Act providing for rub-down searches in connection with the exercise of a power of arrest or detention to apply to arrest or detention under the Armed Forces Discipline Act 1971 or under secondary legislation made under that Act.

Subpart 4—Amendments to Security Information in Proceedings Act 2022

Clauses 162 and 163 amend the Security Information in Proceedings Act 2022 to—

- extend that Act to specified proceedings in the Court Martial (*see also clause 141*):

- make the Court Martial and the Court Martial Appeal Court authorised courts for the purpose of that Act.

Te wāhanga iti 5/Subpart 5—Ngā Panonitanga o Te Ture mō Te Reo Māori 2016/Amendments to Māori Language Act 2016

Ko te *rārangi 165* e panoni ana i Te Ture mō Te Reo Māori 2016 kia whai mana te tangata ki te kōrero Māori i ngā whakahaerenga i mua i te aroaro o tētahi Āpiha Whakaraupapa, o Te Kōti Ope Tauā rānei, o Te Kōti Pīra Ope Tauā rānei, o Te Kōti Pīra Whakaraupapa rānei.

Clause 165 amends the Māori Language Act 2016 to give people the right to speak Māori in proceedings before a disciplinary officer, the Court Martial, the Court Martial Appeal Court, or the Summary Appeal Court.

Subpart 6—Amendments to New Zealand Sign Language Act 2006

Clause 167 amends the New Zealand Sign Language Act 2006 to give people the right to use New Zealand Sign Language in proceedings before a disciplinary officer, the Court Martial, the Court Martial Appeal Court, or the Summary Appeal Court.

Subpart 7—Consequential amendment

Clause 168 and *Schedule 6* provide for a consequential amendment to the Search and Surveillance Act 2012.

Hon Judith Collins

Armed Forces Discipline Legislation Amendment Bill

Government Bill

Contents

			Page
1	Title		14
2	Commencement		14
	Part 1		
	Amendments to Armed Forces Discipline Act 1971		
3	Principal Act		14
4	Section 2 amended (Interpretation)		14
5	Section 13 amended (Spies, etc)		16
6	Section 16 amended (Certain civilians closely associated with Armed Forces subject to this Act)		16
7	Section 18 amended (Trial and punishment of person who has ceased to be subject to this Act)		16
8	Section 20 replaced (Limitation of time within which charges may be dealt with summarily or tried under this Act)		16
	20	Limit on time to charge person with offence against this Act	16
	20A	Limit on time to charge person with offence against this Act where person ceases to be subject to Act	17
9	Section 21 amended (Person may not be tried under this Act and under the civil law in respect of same act or omission)		18
10	Section 22 amended (Persons cannot be tried under this Act for offences already disposed of)		18
11	Section 37 amended (Obstruction of provost officers)		19
12	Section 69 amended (Delay or denial of justice)		19
13	Section 70 amended (Offences relating to proceedings of military tribunal or court of inquiry)		19
14	Section 79 amended (Court Martial to pass 1 sentence only)		20

15	Section 82 amended (Dismissal from service and reduction in rank)		20
16	New section 82A inserted (Reinstatement if sentence of dismissal quashed)		20
	82A	Reinstatement if sentence of dismissal quashed	21
17	Section 85 amended (Punishment by fine)		21
18	New section 85A inserted (Punishments that must not be imposed together)		22
	85A	Punishments that must not be imposed together	22
19	Part 4 heading amended		22
20	New subpart 1 heading in Part 4 inserted		22
	Subpart 1—Arrest		
21	New section 92B inserted (Reasonable force may be used to arrest)		22
	92B	Reasonable force may be used to arrest	22
22	New subpart 2 heading in Part 4 inserted		22
	Subpart 2—Detention		
23	Section 94 repealed (Reasonable force may be used to arrest or search)		22
24	Section 95 replaced (Search in connection with suspected offence)		22
	Subpart 3—Search		
	95	Interpretation	23
	Search within limits of command		
	95A	Command search in connection with suspected offence	23
	95B	Search of defence area, naval ship, or military aircraft by officer in charge	24
25	Section 96 amended (Searches to prevent smuggling, etc)		25
26	Section 97 amended (Customary powers of search not affected)		25
27	Section 98 replaced (Search of person in service custody, etc)		25
	Other search powers		
	98	Search of person arrested or detained	25
	98A	Search beyond limits of sections 95A and 95B under warrant	25
	How search may be carried out		
	98B	How search of place, vehicle, or other thing may be carried out	26
	98C	How personal searches may be carried out	27
	98D	Defence Force Orders relating to search under section 95A or 95B	29
	98E	Restrictions on when remotely stored intangible material may be accessed	29

Identification and notice

98F Identification and notice requirements for person exercising power to physically search place, vehicle, or other thing 30
98G Identifications and notice requirements for remote access search under section 98A 32
98H Inventory of items seized 32
98I Compliance with certain provisions may be deferred in certain circumstances 33
98J Further postponement of, or dispensation from, obligation to comply with certain provisions 34

Miscellaneous provisions relating to search

98K Chief of Defence Force may remedy economic loss resulting from search of premises 34

28 Section 99 replaced (Disposal of property taken in search) 35

Subpart 4—Production orders and preservation directions

Interpretation

99 Interpretation 35

Production orders

99A Production order: application and making 35
99B Provisions of Search and Surveillance Act 2012 applicable to applications for production order 36
99C Other provisions of Search and Surveillance Act 2012 that apply in relation to production orders 36

Preservation directions

99D Preservation directions in relation to documents obtainable under search warrant or production order 38

Subpart 5—Further provisions about search, production orders, and preservation directions

99E Who is enforcement officer for purposes of Search and Surveillance Act 2012 38
99F Seized or produced materials must be dealt with in accordance with Defence Force Orders 39
99G Transfer of things between law enforcement agencies 39
99H Provost Marshal must report on use of powers 40

Subpart 6—Drug and alcohol testing

Drug and alcohol testing

99I Interpretation 40
99J When person is required to submit to drug or alcohol test 41
99K How drug or alcohol test must be carried out 41

	99L	Person tested must be informed of test results	42
	99M	Evidence of drug or alcohol test results	42
		Prescribed procedure for drug or alcohol testing	
	99N	Prescribed procedure for drug or alcohol testing	42
29	New subpart 7 heading in Part 4 and cross-heading inserted		43
	Subpart 7—Duties in relation to person arrested, bail, and other matters		
	Duties in relation to person arrested		
30	Section 101 amended (Delay in dealing with person after arrest)		43
31	Section 101A replaced (Judge Advocate General may grant bail pending trial)		44
	Bail		
	101A	Judge Advocate General may grant bail pending trial	44
	101AB	People entitled to bail as of right	45
	101AC	Consideration of just cause for continued detention	46
	101AD	Bail Act 2000 restrictions apply to bail decisions under section 101A(3)	46
32	Section 101B amended (Issue of warrant to arrest person absconding or breaching bail condition)		47
33	Section 101C amended (Person arrested under warrant for absconding or breaching bail condition must be brought before Judge Advocate General)		47
34	New cross-heading above section 101D inserted		47
	People prohibited from exercising, or being required to exercise, powers under this Part		
35	Section 101D amended (Restrictions in relation to midshipmen, officer cadets, and chaplains)		47
36	Section 101F amended (Functions and duties of Director of Military Prosecutions)		48
37	Section 101G amended (Power of Director of Military Prosecutions to direct investigation)		48
38	Section 101L amended (Delegation of functions, duties, or powers of Director of Military Prosecutions)		48
39	New Part 4B inserted		48
	Part 4B Provost Marshal		
	101M	Appointment of Provost Marshal	48
	101N	Functions and duties of Provost Marshal	48
	101O	Provost Marshal must act impartially and without improper influence	49

	101P	Power to require person subject to Act to give reasonable assistance	49
	101Q	Appointment of Assistant Provost Marshal	50
	101R	Power to delegate to Assistant Provost Marshal	50
	101S	Appointment of provost officer	51
40	Part 5 heading amended		51
41	Subpart 1 heading in Part 5 replaced		51
	Subpart 1—Allegations: investigation, referral, and charging decisions		
42	Sections 102 and 102A replaced		51
	Key concepts		
	102	When allegation or charge is suitable for disposal by summary trial	51
	102A	Offences that may be disposed of through minor disciplinary sanction system	52
	Allegations: investigation, referral, and charging decisions		
	102B	How commanding officer must deal with allegations	52
	102C	Criteria for disposal through minor disciplinary sanction system	53
	102D	What Director of Military Prosecutions may do in relation to allegation	54
	Exercise of commanding officer's powers by other people		
	102E	Superior commander may investigate and refer allegations in specified circumstances	54
	102F	Administration of minor disciplinary sanction system by delegate	55
43	New subpart 1A of Part 5 inserted		56
	Subpart 1A—Minor disciplinary sanction system		
	Application of subpart		
	102G	Application of subpart	56
	How alleged offences must be dealt with under minor disciplinary sanction system		
	102H	Information that must be given to person	57
	102I	Sanctions that may be imposed through minor disciplinary sanction system	57
	102J	Right to have intended sanction reviewed	57
	102K	Right to elect whether alleged offence disposed of through minor disciplinary sanction system	58

		Consequences of disposal through minor disciplinary sanction system	
	102L	What happens when alleged offence is disposed of through minor disciplinary sanction system	59
	102M	Disposal relevant to subsequent decisions about minor disciplinary sanction system	59
		Register of alleged offences dealt with through minor disciplinary sanction system	
	102N	Register of alleged offences dealt with through minor disciplinary sanction system	60
		No investigation or referral of alleged offence while it is being dealt with	
	102O	No investigation or referral of alleged offence while it is being dealt with	62
44	New subpart 1B heading in Part 5 and cross-heading inserted		62
		Subpart 1B—Summary trial: disciplinary officer's duty to dispose of charges	
		Duty to dispose of charges in prescribed manner	
45	Section 103 amended (Disposal of charges by commanding officers)		62
46	Section 104 amended (Disposal of charges by superior commanders)		62
47	Section 107 amended (Effect of delegation)		62
48	Section 108 amended (Officer is empowered to act as disciplinary officer)		62
49	Subpart 2 heading in Part 5 replaced		63
		Subpart 2—Summary trial: preliminary procedures and disposal of charges	
50	Section 111 replaced (Accused must be remanded for trial in Court Martial and charge must be referred to Director of Military Prosecutions in certain circumstances)		63
	111	Charge must be referred to Director of Military Prosecutions if there is no disciplinary officer	63
51	Section 112 amended (Charge must be certified if disciplinary officer may impose certain punishments or make certain compensation orders)		63
52	Section 113 amended (Amendment of charge)		63
53	New section 113A inserted (Amendments of charge after evidence given)		64
	113A	Amendments of charge after evidence given	64
54	Section 114 amended (Assistance to accused)		64
55	Section 115 amended (Assignment of presenting officer)		64

56	Section 116 replaced (Arraignment by disciplinary officer)	64
	116 Arraignment by disciplinary officer	64
	116A Right to elect trial before Court Martial at arraignment	66
57	Section 117D amended (Accused who pleads guilty must be informed if he or she has right to elect trial by Court Martial)	66
58	Section 117F amended (Accused must be remanded for trial in Court Martial and charge must be referred to Director of Military Prosecutions in certain circumstances)	66
59	Cross-heading above section 117I amended	67
60	Section 117J amended (Disciplinary officer must determine whether prima facie case is made out after hearing of evidence in support of charge)	67
61	Section 117K amended (Disciplinary officer must consider whether he or she has sufficient powers of punishment and whether he or she can act as disciplinary officer)	67
62	Section 117M amended (Disciplinary officer must inform accused if accused has right to elect trial by Court Martial)	68
63	Section 117N amended (Disciplinary officer must remand accused for trial in Court Martial or try charge summarily)	68
64	Section 117Q replaced (Disciplinary officer must determine whether accused is guilty or not guilty)	68
	117Q Disciplinary officer must determine whether accused is guilty or not guilty	68
65	Subpart 4 heading in Part 5 replaced	69
	Subpart 4—Punishment of offenders tried summarily	
66	Section 117R amended (Procedures to be followed before imposing punishment)	69
67	Section 117T amended (Order to come up for punishment if called on)	69
68	Section 117V amended (Types and maximum amounts of summary punishments)	69
69	Section 117Y amended (Provisions relating to punishment of detention)	69
70	Section 117ZB amended (Accused deemed to have waived certain rights in certain circumstances)	69
71	Section 117ZC amended (Implications of election must be explained to accused)	70
72	New section 117ZDA and cross-heading inserted	70
	Withdrawal of election of trial by Court Martial	
	117ZDA Withdrawal of election of trial by Court Martial	70
73	Section 117ZH replaced (Reference back of charge by Director of Military Prosecutions)	70

	117ZH	Things Director of Military Prosecutions may do when charge is referred	70
	177ZHA	Disciplinary officer must dispose of charge in accordance with directions	72
74	Section 117ZI replaced (Director of Military Prosecutions may lay charge before Court Martial)		72
	117ZI	Court Martial must not take into account guilty plea	72
75	Section 117ZIA repealed (Director to determine whether offence is specified offence)		73
76	New section 117ZJA inserted (Accused under age of 18 years entitled to support person)		73
	117ZJA	Accused under age of 18 years entitled to support person	73
77	New section 117ZS inserted (Publication of summary trial decisions)		73
	117ZS	Publication of summary trial decisions	73
78	Section 117ZQ amended (Replacement of disciplinary officer)		74
79	Section 122 amended (Chief Judge may delegate to Registrar duty to assign Judges)		74
80	Section 123 amended (Registrar may delegate functions, duties, or powers to clerk or officer of Summary Appeal Court)		74
81	Cross-heading above section 124 replaced		75
	Appeal by person found guilty of offence		
82	New sections 124A to 124C and cross-headings inserted		75
	Appeal by Director of Military Prosecutions		
	124A	Right of appeal in relation to punishment, etc	75
	124B	Appeal on question of law	75
	Appeal against suppression order decisions		
	124C	Right of appeal in relation to suppression orders	75
83	Section 125 replaced (Notice of appeal)		76
	Procedure		
	125	Notice of appeal and application for leave to appeal	76
84	Section 126 amended (Registrar and disciplinary officer must provide copies of documents)		77
85	New section 126A inserted (Reply memorandum)		77
	126A	Reply memorandum	77
86	Section 131 amended (Appeals to proceed by way of rehearing and general power of Summary Appeal Court)		78
87	Section 132 amended (Power of Summary Appeal Court in respect of finding of guilty)		78
88	New sections 132A to 132C inserted		78
	132A	Power to substitute finding of guilty and punishment	79

	132B	Summary Appeal Court's powers in respect of appeals under section 124B	80
	132C	Summary Appeal Court's powers in respect of appeals under section 124C	80
89	Section 133 amended (Power of Summary Appeal Court in respect of punishments)		80
90	Section 134 amended (Power of Summary Appeal Court in respect of orders for compensation and restitution and orders to come up for punishment if called on)		81
91	Section 136 amended (Decisions of Summary Appeal Court final)		81
92	Section 141 amended (Defence of appeals and representation of appellant)		82
93	Section 142 amended (Costs of appeal)		82
94	Section 144 amended (Duties of Registrar with respect to appeals)		82
95	Section 145 amended (Application of subpart 3 of Part 5 of the Criminal Procedure Act 2011 to proceedings under this Act)		82
96	New section 145A inserted (Publication by or at request of authorised member of the Armed Forces, etc)		83
	145A	Publication by or at request of authorised member of Armed Forces, etc	83
97	Section 150 amended (Rules of procedure)		84
98	Section 150C amended (Power to summon witnesses)		84
99	New section 150DA inserted (Failure to comply with summons or order to attend: persons not subject to this Act)		84
	150DA	Failure to comply with summons or order to attend: persons not subject to this Act	84
100	Cross-heading above section 150E replaced		85
	Interpretation of terms used in sections 150E to 150K		
101	Sections 150E to 150G replaced		85
	150E	Interpretation	85
	Disruptive behaviour during proceedings		
	150F	Disruptive behaviour during proceedings before disciplinary officer or court of inquiry	86
	150G	Disruptive behaviour during proceedings before military court	87
	150H	Procedure for dealing with person cited for disruptive behaviour	88
	Offences relating to proceedings in Court Martial		
	150I	Offence to publish certain Court Martial trial information	88
	150J	Court Martial may make orders under section 9(1) of Contempt of Court Act 2019	89
	150K	Offence to disclose deliberations of military members of Court Martial	90

102	Section 159 amended (Chief Judge may delegate to Registrar of Court Martial duty to appoint Judge to Authority)	90
103	Section 160 amended (Armed Forces Discipline Committee established)	90
104	Section 162 amended (Functions of Discipline Committee)	90
105	New section 177AA inserted (Deferral of sentence of imprisonment or detention on humanitarian grounds)	90
	177AA Deferral of sentence of imprisonment or detention on humanitarian grounds	91
106	Section 177A amended (Effect of period spent in custody before being sentenced)	91
107	Section 186A amended (Compensation to victims of offences causing physical harm)	91
108	Section 198A amended (Application of this Part)	91
109	Section 198B amended (Interpretation of terms used in this Part)	91
110	New section 198BA inserted (Victim support officers: notification and appointment)	92
	198BA Victim support officers: notification and appointment	92
111	Section 198D amended (Victim's views about release on bail of accused or offender)	92
112	Section 200E amended (Terms of reference)	93
113	Section 200N amended (Rights of person who may be affected by inquiry)	93
114	Schedule 1AA amended	93
115	New Schedule 5A inserted	93
116	New Schedule 9 inserted	93

Part 2
Amendments to Court Martial Act 2007

117	Principal Act	93
118	Section 5 amended (Interpretation)	93
119	Section 11 amended (Eligibility for appointment as Judge)	93
120	Section 14 amended (Appointment of other Judges)	94
121	New sections 14A to 14D inserted	94
	14A Appointment of acting Judges	94
	14B Term of appointment of acting Judge	94
	14C Acting Judge must be authorised to act	94
	14D Permanent Judges senior to acting Judges	94
122	Section 17 replaced (Judges must not hold other offices)	95
	17 Restrictions on Judges	95
123	Section 19 amended (Age of retirement)	95
124	Section 20 amended (Salaries and allowances of Judges)	95
125	New section 20A inserted (Superannuation of acting Judges)	95
	20A Superannuation of acting Judges	95
126	Section 23 replaced (Disqualifications for membership)	95

	23	Disqualifications for membership	96
127	Section 30 amended (Duties of Judge at trial)		96
128	Section 32 amended (Failure to attend Court Martial is contempt of court)		96
129	New section 32A inserted (Military members who investigate or research case are liable to fine)		97
	32A	Military members who investigate or research case are liable to fine	97
130	Section 39 amended (Judge may limit scope of open court)		98
131	Section 42 amended (Special provisions in cases involving sexual violation)		98
132	Section 44 amended (Judge may sit alone to rule on question of law or procedure)		98
133	Section 49 replaced (Judge may grant bail pending trial)		99
	49	Judge may grant bail pending trial	99
	49A	People entitled to bail as of right	100
	49B	Consideration of just cause for continued detention	100
	49C	Bail Act 2000 restrictions apply to bail decisions under section 49(4)	101
134	Section 50 amended (Judge may grant bail pending appeal)		102
135	Section 52 amended (Procedure for bail generally)		102
136	Section 56 replaced (Power to convict of offence other than that charged)		102
	56	Accused may be convicted of included offence	103
137	Section 64 repealed (Other offences may be taken into account in passing sentence)		103
138	Section 66 amended (Announcement of finding and sentence)		103
139	Section 68 amended (Defence of accused)		103
140	New section 68A inserted (Accused under age of 18 years entitled to support person)		103
	68A	Accused under age of 18 years entitled to support person	103
141	New section 74A inserted (Application of Security Information in Proceedings Act 2022)		104
	74A	Application of Security Information in Proceedings Act 2022	104
142	Section 78 amended (Chief Judge may delegate functions, duties, or powers to Deputy Chief Judge or Registrar)		104
143	Section 82 amended (Registrar may delegate functions, duties, or powers to clerk or other officer of Court Martial)		104
144	Schedule 1AA amended		105

Part 3
Amendments to other legislation and consequential amendment

Subpart 1—Amendments to Court Martial Appeals Act 1953

145	Principal Act		105
146	Section 2 amended (Interpretation)		105
147	Section 7 amended (Appeal against ruling)		105
148	New section 9EC inserted (Right of appeal against finding of guilty or fine in relation to disruptive behaviour by person or other specified misconduct by military member)		106
	9EC	Right of appeal against finding of guilty or fine in relation to disruptive behaviour by person or other specified misconduct by military member	106
149	New section 9G inserted (Appeal to Court of Appeal against decision of judicial member of court under section 150(5) of 1971 Act)		106
	9G	Appeal to Court of Appeal against decision of judicial member of court under section 150(5) of 1971 Act	107
150	Section 10 amended (Appeals to Court of Appeal or Supreme Court)		107
151	Section 10A amended (Appeals to Supreme Court from Court of Appeal)		107
152	Section 10C amended (Powers and procedure of Court of Appeal and Supreme Court)		108
153	New section 11A inserted (Failure to comply with summons or order to attend: persons not subject to Armed Forces Discipline Act 1971)		108
	11A	Failure to comply with summons or order to attend: persons not subject to Armed Forces Discipline Act 1971	108
154	Section 17 amended (Proceedings to be in open court, unless it is necessary to clear the court)		108
155	Section 20A amended (Judge may grant bail pending appeal)		109
156	Schedule 1 amended		109

Subpart 2—Amendment to Crimes Act 1961

157	Principal Act	109
158	Section 9 amended (Offences not to be punishable except under New Zealand Acts)	109

Subpart 3—Amendments to Search and Surveillance Act 2012

159	Principal Act	109
160	Section 82 amended (Application of this subpart)	109

Subpart 4—Amendments to Security Information in Proceedings Act 2022

161 Principal Act 110
162 Section 4 amended (Interpretation) 110
163 Section 8 amended (Application of special procedures to certain proceedings) 110

Te wāhanga iti 5/Subpart 5—Ngā Panonitanga o Te Ture mō Te Reo Māori 2016/Amendments to Māori Language Act 2016

Ngā Panonitanga o Te Ture mō Te Reo Māori 2016

164 Te Ture Matua 110
165 Kua panonitia te Āpitihanga 2 110

Amendments to Māori Language Act 2016

164 Principal Act 111
165 Schedule 2 amended 111

Subpart 6—Amendments to New Zealand Sign Language Act 2006

166 Principal Act 111
167 Schedule amended 111

Subpart 7—Consequential amendment

168 Consequential amendment 111

Schedule 1 112
New Part 2 inserted into Schedule 1AA of Armed Forces Discipline Act 1971

Schedule 2 115
New Schedule 5A inserted into Armed Forces Discipline Act 1971

Schedule 3 116
New Schedule 9 inserted into Armed Forces Discipline Act 1971

Schedule 4 118
New Part 2 inserted into Schedule 1AA of Court Martial Act 2007

Schedule 5 120
New Part 2 inserted into Schedule 1 of Court Martial Appeals Act 1953

Schedule 6 121
Consequential amendment to Search and Surveillance Act 2012

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Armed Forces Discipline Legislation Amendment Act **2025**.

2 Commencement

This Act comes into force on the first anniversary of Royal assent. 5

Part 1
Amendments to Armed Forces Discipline Act 1971

3 Principal Act

This Part amends the Armed Forces Discipline Act 1971.

4 Section 2 amended (Interpretation) 10

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

Assistant Provost Marshal means an officer appointed as an Assistant Provost Marshal under **section 101Q(1)**

civil offence has the meaning given in section 74(1)

computer system has the meaning given in **section 95** 15

drug means—

(a) a controlled drug:

(b) a prescription medicine or restricted medicine within the meaning given in section 3(3) of the Medicines Act 1981:

(c) a psychoactive substance within the meaning given in section 9 of the Psychoactive Substances Act 2013 20

drug or alcohol test has the meaning given in **section 99I(1)**

equivalent offence against section 74(1), in relation to a civil offence, means an offence against section 74(1) for which the corresponding civil offence is that civil offence 25

evidential material has the meaning given in section 3(1) of the Search and Surveillance Act 2012

family relationship has the meaning given in section 12 of the Family Violence Act 2018

family violence offence has the meaning given in section 3 of the Bail Act 2000 30

included offence has the meaning given in **section 117Q(4)**

loyalty offence has the meaning given in **section 20(3)**

member of the Military Police means a member of the Armed Forces who—

(a) is a member of—

(i) the Royal New Zealand Navy Police; or

(ii) the Corps of the Royal New Zealand Military Police; or

(iii) the Royal New Zealand Air Force Police; and

(b) is working in a policing role within the Armed Forces

mid-level offence has the meaning given in **section 20(3) and (4)**

military court has the meaning given in **section 150E**

minor offence has the meaning given in **section 20(3) and (4)**

offence that may be disposed of through the minor disciplinary sanction system has the meaning given in **section 102A**

Provost Marshal means the Provost Marshal appointed under **section 101M(2)**

serious offence has the meaning given in **section 20(3) and (4)**

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

suitable for disposal by summary trial, in relation to an allegation or charge, has the meaning given in **section 102(1)**

suppression order has the meaning given in section 194 of the Criminal Procedure Act 2011

victim has the meaning given in section 4 of the Victims' Rights Act 2002 with the following exceptions:

(a) section 39(1)(b)(iii) of the Court Martial Act 2007 and section 139(1)(b)(iii) of this Act (where a reference to a victim is a reference to a person against whom an offence is alleged to have been committed):

(b) sections 155 and 155A of this Act (where victim has the meaning given in section 155(5))

(2) In section 2(1), definition of **disciplinary officer**, paragraph (a), after "under", insert "**subparts 1B** to 5 of".

(3) In section 2(1), definition of **provost officer**, replace paragraph (b) with:

(b) is any of the following:

(i) the Provost Marshal:

(ii) an Assistant Provost Marshal:

(iii) a person appointed as a provost officer under **section 101S**:

(iv) a person attached or lent as a provost officer to any part of the Armed Forces, with approval in writing by or on behalf of the Chief of Defence Force or by the Provost Marshal or an Assistant Provost Marshal:

(v) a person seconded for service or appointed for duty as a provost officer with any part of the Armed Forces, with approval in writing by or on behalf of the Chief of Defence Force or by the Provost Marshal or an Assistant Provost Marshal:

(4) In section 2(7), after "dealt with", insert "by a disciplinary officer or the Summary Appeal Court". 5

(5) In section 2(7)(a), after "guilty on the charge,", insert "or guilty of an included offence,".

5 Section 13 amended (Spies, etc)

(1) In section 13(a), delete ", on investigation,". 10

(2) In section 13(c), delete "the sentence has been carried out or".

6 Section 16 amended (Certain civilians closely associated with Armed Forces subject to this Act)

In section 16(6), replace "summary disposal of charges, trial and" with "disposal of charges,". 15

7 Section 18 amended (Trial and punishment of person who has ceased to be subject to this Act)

(1) In section 18(1), replace "section 20" with "**sections 20 and 20A**".

(2) In section 18(3)(b), replace "investigation and trial" with "disposal".

8 Section 20 replaced (Limitation of time within which charges may be dealt with summarily or tried under this Act) 20

Replace section 20 with:

20 Limit on time to charge person with offence against this Act

(1) A person may be charged with an offence specified in the first column of the following table only if the charge is recorded within the period of time (the **limitation period**) (if any) specified for that offence in the second column of the table: 25

Offence	Limitation period for offence
Minor offence	Three years after the date on which the minor offence was committed
Mid-level offence	Five years after the date on which the mid-level offence was committed
Serious offence	No limitation period (a person may be charged at any time after the date on which the serious offence was committed)
Loyalty offence	No limitation period (a person may be charged at any time after the date on which the loyalty offence was committed)
Offence against section 74	The period of time (if any) within which a person may be charged (or criminal proceedings otherwise commenced) in respect of the corresponding civil offence

(2) For the purposes of **subsection (1)**, when determining whether the limitation period for a minor offence, a mid-level offence, or an offence against section 74 has ended, the following periods of time do not count towards the specified limitation period:

(a) a period of time during which the person accused of the offence is a prisoner of war:

(b) a period of time during which the person has been declared by a court of inquiry under section 201 to be absent without leave or other sufficient reason:

(c) a period of time during which the person is serving a sentence of imprisonment in a civil prison.

(3) In this section,—

civil offence has the meaning given in section 74(1)

loyalty offence means an offence against section 23, 24, 26, 32, 33, or 47

mid-level offence means an offence against this Act that—

(a) is punishable by a term of imprisonment of 7 years or less; and

(b) is not a minor offence

minor offence means an offence against this Act that is punishable by a term of imprisonment of 2 years or less

serious offence means an offence against this Act that—

(a) is punishable by—

(i) imprisonment for life; or

(ii) a term of imprisonment of more than 7 years; and

(b) is not a loyalty offence.

(4) However,—

(a) an offence against section 47(1)(b) is not a minor offence; and

(b) an offence against section 74 is not a minor offence, a mid-level offence, or a serious offence.

(5) This section is subject to **section 20A**.

20A Limit on time to charge person with offence against this Act where person ceases to be subject to Act

(1) This section applies if a person ceases to be subject to this Act.

(2) The person may be charged with an offence against this Act specified in **subsection (3)** only if the person is charged within the period of time specified in **subsection (4)**.

(3) The offences are as follows:

(a) a minor offence:

(b) a mid-level offence:

(c) a serious offence:

(d) an offence against section 74 that is committed in New Zealand.

(4) The period of time within which the person may be charged is the shorter of the following:

(a) 6 months after the date on which the person ceased to be subject to this Act:

(b) the period within which the person may be charged with the offence under **section 20(1)**.

9 Section 21 amended (Person may not be tried under this Act and under the civil law in respect of same act or omission)

(1) Replace section 21(1) with:

(1) **Subsection (1A)** applies to a person if the person—

(a) has been charged with an offence before the Court Martial and has been acquitted or convicted of the offence; or

(b) has been charged with an offence before a disciplinary officer and the charge was dismissed, or the person was acquitted or found guilty of the offence; or

(c) has had an offence disposed of through the minor disciplinary sanction system.

(1A) The person must not subsequently be charged before a civil court with having committed an offence that is substantially the same as the offence referred to in **subsection (1)(a), (b), or (c)** (as applicable).

(2) In section 21(2), replace "subsection (1)" with "**subsections (1) and (1A)**".

(3) Repeal section 21(3)(b).

(4) In section 21(4), after "disciplinary officer with", insert ", or be dealt with under the minor disciplinary sanction system in relation to,".

(5) Repeal section 21(4)(b).

(6) Repeal section 21(5)(d).

10 Section 22 amended (Persons cannot be tried under this Act for offences already disposed of)

(1) Replace section 22(1) with:

(1) This section applies if—

(a) a person is charged with committing an offence against this Act and—

(i) the charge is dismissed; or

(ii) a disciplinary officer—

(A) acquits the person of the offence; or

(B) finds the person guilty of the offence or an included offence; or

(iii) the Court Martial—

(A) acquits the person of the offence; or

(B) convicts the person of the offence, an included offence, or an offence under section 57 or 58 of the Court Martial Act 2007 in relation to the offence; or

(iv) the proceedings against the person in relation to the offence are stayed under section 101H; or

(v) the proceedings against the person in relation to the offence are stayed because the person is found to be unfit to stand trial in relation to the offence; or

(b) a person has an offence disposed of through the minor disciplinary sanction system.

(2) After section 22(2), insert:

(2A) A subsequent allegation that the person has committed the offence disposed of in the manner referred to in **subsection (1)** must not be dealt with through the minor disciplinary sanction system.

(3) Replace section 22(3)(b) with:

(b) a person must not be regarded as having been acquitted of an offence if the disciplinary officer's decision to find the person not guilty of the offence, or to dismiss the charge in respect of the offence, is quashed on appeal.

11 Section 37 amended (Obstruction of provost officers)

In section 37(1)(b), after "do so", insert "under **section 101P** or otherwise".

12 Section 69 amended (Delay or denial of justice)

In section 69(2A),—

(a) replace "117D" with "**116A**, 117D,"; and

(b) replace "either" with "any".

13 Section 70 amended (Offences relating to proceedings of military tribunal or court of inquiry)

(1) In the heading to section 70, after "**military tribunal**", insert "**, military court,**".

(2) In section 70(1), after "military tribunal", insert ", military court," in each place.

(3) Repeal section 70(1)(f).

(4) In section 70(1)(g), after "the Court Martial,", insert "the Court Martial Appeal Court," in each place.

(5) Repeal section 70(3).

(6) After section 70(2), insert:

Guidance note

Military tribunals, military courts, and courts of inquiry also have powers under **sections 150F to 150H** to deal with disruptive behaviour.

14 Section 79 amended (Court Martial to pass 1 sentence only)

In section 79,—

(a) delete "or, on convicting a person of 1 or more offences, agrees to take other offences which he admits to have committed into consideration when sentencing him"; and

(b) delete "(including any offences which he has admitted)".

15 Section 82 amended (Dismissal from service and reduction in rank)

(1) Before section 82(1), insert:

Officer sentenced to imprisonment also deemed to be dismissed

(2) After section 82(1), insert:

(1A) However, the deemed dismissal does not take effect until the officer has served the term of imprisonment and any consecutive sentence of imprisonment imposed under section 178(1).

(3) Before section 82(2), insert:

Rating, soldier, or aviator sentenced to imprisonment may also be sentenced to dismissal

(4) After section 82(2), insert:

Non-commissioned officer's rank deemed to be reduced if sentenced to imprisonment or detention

(5) Replace section 82(5) with:

When sentence of dismissal takes effect

(5) If a member of the Armed Forces is sentenced to dismissal from His Majesty's Service, the dismissal takes effect immediately after the sentence is imposed.

(6) However, if the member is also sentenced to a term of imprisonment or detention, the dismissal does not take effect until after the member has served the term of imprisonment or detention and any consecutive sentence of imprisonment or detention imposed under section 178(1) or (4).

16 New section 82A inserted (Reinstatement if sentence of dismissal quashed)

After section 82, insert:

82A Reinstatement if sentence of dismissal quashed

(1) This section applies if—

(a) a person—

(i) has been sentenced to dismissal from His Majesty's Service; or

(ii) has been sentenced to imprisonment and, as a result, is deemed to be dismissed from His Majesty's Service under section 82(1); and

(b) the dismissal has taken effect; and

(c) the sentence is subsequently quashed by a court on appeal.

(2) The person—

(a) is immediately reinstated as a member of the Armed Forces; and

(b) is deemed to have remained a member of the Armed Forces from the date of their dismissal, or deemed dismissal, to the date of their reinstatement.

(3) **Subsection (2)** is subject to **subsection (4)**.

(4) If the court is satisfied that it is in the interests of justice to do so, the court may make one of the following orders:

(a) an order that the person not be reinstated as a member of the Armed Forces; or

(b) an order modifying the terms of the person's reinstatement (for example, by specifying when the person is reinstated, or a period of time during which the person is not deemed to have been a member of the Armed Forces).

17 Section 85 amended (Punishment by fine)

Replace section 85(3) with:

(3) The Court Martial must not impose a fine that exceeds,—

(a) in the case of a member of the Armed Forces, an amount equal to the member's basic pay for 84 days; or

(b) in the case of any other person, $3,000.

(3A) **Subsection (3)** is subject to **subsection (3B)**.

(3B) **Subsection (3)** does not apply to a fine imposed on a person in relation to the following:

(a) an offence against section 74(1):

(b) a finding of guilty under **section 150H(5)**:

(c) a finding of guilty under **section 32(4)** of the Court Martial Act 2007:

(d) a finding of guilty under **section 32A(4)** of the Court Martial Act 2007.

18 New section 85A inserted (Punishments that must not be imposed together)

After section 85, insert:

85A Punishments that must not be imposed together

(1) The Court Martial must not pass a sentence that includes any of the following combinations of punishments:

(a) a fine and imprisonment:

(b) a fine and detention:

(c) imprisonment and detention.

(2) In addition, when sentencing an officer, the Court Martial must not pass a sentence that includes both the punishment of imprisonment and the punishment of dismissal (but *see* section 82, which provides that an officer sentenced to imprisonment is deemed to be dismissed from His Majesty's Service).

19 Part 4 heading amended

In the Part 4 heading, replace "**and search**" with "**, detention, search, preservation orders and production directions, and drug and alcohol testing**".

20 New subpart 1 heading in Part 4 inserted

After the Part 4 heading, insert:

Subpart 1—Arrest

21 New section 92B inserted (Reasonable force may be used to arrest)

After section 92A, insert:

92B Reasonable force may be used to arrest

A person who arrests any person under this Act may use reasonable force to carry out the arrest.

22 New subpart 2 heading in Part 4 inserted

Before section 93, insert:

Subpart 2—Detention

23 Section 94 repealed (Reasonable force may be used to arrest or search)

Repeal section 94.

24 Section 95 replaced (Search in connection with suspected offence)

Replace section 95 with:

Subpart 3—Search

95 Interpretation

In this subpart, unless the context otherwise requires,—

computer system has the meaning given in section 3(1) of the Search and Surveillance Act 2012

imprisonable offence means an offence against this Act that is punishable by a term of imprisonment

remote access search has the meaning given in section 3(1) of the Search and Surveillance Act 2012

thing has the meaning given in section 97 of the Search and Surveillance Act 2012.

Search within limits of command

95A Command search in connection with suspected offence

(1) A commanding officer or superior commander may, if the requirements in **subsection (2)** are met,—

(a) search a person who is both subject to this Act and under the commanding officer's or superior commander's command; or

(b) enter and search a place, vehicle, or other thing that is within the limits of the commanding officer's or superior commander's command.

(2) The requirements are that the commanding officer or superior commander has reasonable grounds to—

(a) suspect that an imprisonable offence has been committed, is being committed, or will be committed; and

(b) suspect that the search will find evidential material in respect of the offence—

(i) in the possession of the person; or

(ii) in or on the place, vehicle, or other thing.

(3) The commanding officer or superior commander may carry out a search under **subsection (1)** themselves or authorise 1 or more of the following persons to act on their behalf:

(a) a member of the Armed Forces who is under the commanding officer's or superior commander's command:

(b) a member of the Military Police.

(4) If a commanding officer or superior commander decides to carry out or authorise a search under this section, the commanding officer or superior commander must record their decision in writing.

(5) *See also* **sections 98B to 98J** (which relate to how searches are carried out).

95B Search of defence area, naval ship, or military aircraft by officer in charge

(1) An officer in charge of a defence area, naval ship, or military aircraft may, if the requirements in **subsection (2)** are met,—

(a) search a person who is both subject to this Act and in, on, or attempting to enter or leave the defence area, naval ship, or military aircraft; or

(b) enter and search a place, vehicle, or other thing that is located in or on the defence area, naval ship, or military aircraft.

(2) The requirements are that the officer in charge of the defence area, naval ship, or military aircraft has reasonable grounds to—

(a) believe that an imprisonable offence has been committed, is being committed, or will be committed; and

(b) believe that the search will find evidential material in respect of the offence—

(i) in the possession of the person; or

(ii) in or on the place, vehicle, or other thing.

(3) An officer in charge of a defence area, naval ship, or military aircraft may carry out a search under **subsection (1)** themselves or authorise 1 or more of the following persons to act on their behalf:

(a) a member of the Armed Forces whom the Provost Marshal has approved to carry out defence area searches:

(b) a member of the Military Police.

(4) If an officer in charge of a defence area decides to carry out or authorise a search under this section, the officer in charge must record their decision in writing.

(5) *See also* **sections 98B to 98J** (which relate to how searches are carried out).

(6) In this section,—

military aircraft means an aircraft of the Armed Forces

officer in charge means,—

(a) in relation to a defence area,—

(i) the officer commanding the area; or

(ii) if there is no officer commanding the area, the officer commanding the major unit occupying the area; or

(iii) any other person declared by the Chief of Defence Force to be the officer in charge:

(b) in relation to a naval ship, the commanding officer of the naval ship:

(c) in relation to a military aircraft, the person in command of the military aircraft.

25 Section 96 amended (Searches to prevent smuggling, etc)

In section 96(1)(a), delete "(including any clothing or any other article of any description worn by him)".

26 Section 97 amended (Customary powers of search not affected)

In section 97, replace "sections 95" with "**sections 95A, 95B,**". 5

27 Section 98 replaced (Search of person in service custody, etc)

Replace section 98 with:

Other search powers

98 Search of person arrested or detained

Power to search person arrested under Act 10

(1) If a person is arrested in accordance with this Act, the person making the arrest (**B**), or a person acting under B's direction, may search the person.

Power to search person in service custody

(2) If a person who is subject to this Act is in service custody, the following people may search the person: 15

(a) a provost officer or member of the Armed Forces who has custody of the person:

(b) a person acting under the direction of one of those people.

Rub-down searches under Search and Surveillance Act 2012

(3) **Subsections (4) and (5)** apply to a rub-down search under sections 85 to 87 of the Search and Surveillance Act 2012 that is carried out in connection with the exercise of a power of arrest or detention under this Act. 20

(4) The rub-down search must be treated, and conducted, as if it were an exercise of a power to search a person under this Act (to which the provisions of this Act apply). 25

(5) Part 4 of the Search and Surveillance Act 2012 does not apply in relation to the rub-down search.

98A Search beyond limits of sections 95A and 95B under warrant

(1) A member of the Military Police may enter and search a place, vehicle, or other thing that is owned, used, or occupied by a person who is subject to this Act (including a place, vehicle, or other thing that is not in a defence area) if the member obtains a warrant under **subsection (2)**. 30

(2) A Judge may, on an application made by a member of the Military Police in the manner provided for in subpart 3 of Part 4 of the Search and Surveillance Act 2012, issue a warrant if the Judge is satisfied that there are reasonable grounds— 35

(a) to suspect that an offence against this Act has been committed, is being committed, or will be committed; and

(b) to believe that the search will find evidential material in respect of the offence in or on the place, vehicle, or thing.

(3) The provisions of subparts 1, 3, 4, 5, 9, and 10 of Part 4 of the Search and Surveillance Act 2012 apply as set out in **Schedule 9**.

(4) *See also* **sections 98B to 98J** (which relate to how searches are carried out).

How search may be carried out

98B How search of place, vehicle, or other thing may be carried out

(1) This section applies the exercise of a power to search a place, vehicle, or other thing under this Act.

Things person carrying out search may do

(2) The person exercising the power is authorised—

(a) to enter and search the place, vehicle, or other thing that the person is authorised to enter and search, and any item or items found in that place or vehicle or thing, at any time that is reasonable:

(b) to request any person to assist with the entry and search (including, without limitation, a member of a hapū or an iwi if the place to be entered is of cultural or spiritual significance to that hapū or iwi):

(c) to use any force in respect of any property that is reasonable for the purposes of carrying out the search and any lawful seizure:

(d) to seize anything that is the subject of the search or anything else that may be lawfully seized:

(e) to bring and use in or on the place, vehicle, or other thing searched any equipment; to use any equipment found in or on the place, vehicle, or other thing; and to extract any electricity from the place, vehicle, or other thing to operate the equipment that it is reasonable to use in the circumstances, for the purposes of carrying out the entry and search:

(f) to bring and use in or on the place, vehicle, or other thing searched a dog that—

(i) is trained to undertake searching for law enforcement purposes; and

(ii) is under the control of its usual handler:

(g) to copy any document, or part of a document, that may lawfully be seized:

(h) subject to **section 98E**,—

(i) to use any reasonable measures to access a computer system or other data storage device located (in whole or in part) at the place,

vehicle, or other thing if any intangible material that is the subject of the search may be in that computer system or other device; and

(ii) if any intangible material accessed under **paragraph (h)(i)** is the subject of the search or may otherwise be lawfully seized, to copy that material (including by means of previewing, cloning, or other forensic methods either before or after removal for examination):

(i) to take photographs, sound and video recordings, and drawings of the place, vehicle, or other thing searched, and of any thing found in or on that place, vehicle, or other thing, if the person exercising the power has reasonable grounds to believe that the photographs, sound or video recordings, or drawings may be relevant to the purposes of the entry and search.

(3) **Subsection (2)** is subject to any Defence Force Orders issued for the purposes of **section 98D**.

Additional requirements for search of marae

(4) When searching a marae or a building associated with a marae under this Act, the person carrying out the search must have regard to the kawa of the marae.

98C How personal searches may be carried out

(1) This section applies to the exercise of a power to search a person under this Act.

Things person carrying out personal search may do

(2) The person exercising the power—

(a) may detain the person to enable the search to be carried out (whether at the place of initial detention or while the person is travelling to or is at any other place where the search is carried out), but only for as long as is necessary to achieve that purpose; and

(b) may use any force that is reasonable for the purposes of the search; and

(c) may, in conducting the search, use any equipment or aid to facilitate the search, if it is used in a way that—

(i) involves no or minimal contact; and

(ii) is reasonable in the circumstances; and

(d) may, if they consider that either or both of the following are in the interests of the person to be searched, request:

(i) the assistance of a medical practitioner or nurse:

(ii) the assistance of a parent, guardian, or other person for the time being responsible for the day-to-day care of the person to be searched; and

(e) may search any item that—

(i) the person is wearing or carrying; or

(ii) is in the person's physical possession or immediate control; and

(f) may seize any thing carried by the person or in the physical possession or immediate control of the person being searched if that thing is the subject of the search or may otherwise be lawfully seized; and

(g) may copy any document, or part of a document, carried by the person or in the physical possession or immediate control of the person being searched if that document is the subject of the search or may otherwise be lawfully seized; and

(h) subject to **section 98E**,—

(i) may use any reasonable measures to access a computer system or other data storage device, that the person being searched is carrying or that is in the person's physical possession or immediate control, if any intangible material that is the subject of the search may be in that computer system or other device; and

(ii) if any intangible material accessed under **paragraph (h)(i)** is the subject of the search or may otherwise be lawfully seized, may copy that material (including by means of previewing, cloning, or other forensic methods either before or after removal for examination); and

(i) may take photographs, sound and video recordings, and drawings of any thing carried or in the physical possession or immediate control of the person if the person exercising the power has reasonable grounds to believe that the photographs, sound or video recordings, or drawings may be relevant to the purposes of the search.

(3) **Subsection (2)** is subject to—

(a) **subsection (4)**; and

(b) any Defence Force Orders issued for the purposes of **section 98D**.

(4) The person exercising the power, unless authorised by another enactment,—

(a) must not conduct a strip search of the person; and

(b) must not conduct an internal search of any part of the body of the person, except for, with the person's consent, a search of the person's mouth.

How personal search must be carried out

(5) A search of a person under this Act must—

(a) be conducted with decency and sensitivity and in a manner that affords to the person being searched the degree of privacy and dignity that is consistent with achieving the purpose of the search; and

(b) wherever practicable, be carried out by a person that is of the same sex as the person being searched; and

(c) if the person searched is an officer, be carried out by another officer or on the order of another officer.

(6) **Subsection (5)(c)** is subject to **subsection (5)(a) and (b)**.

(7) Nothing in **subsection (2)(c)** permits a person carrying out a rub-down search under sections 85 to 87 of the Search and Surveillance Act 2012 to carry out a more intrusive search than is described in those sections.

(8) In this section, **strip search** has the meaning given in section 3(1) of the Search and Surveillance Act 2012.

98D Defence Force Orders relating to search under section 95A or 95B

(1) The Chief of Defence Force may issue, under section 206, Defence Force Orders for the following purposes:

(a) prescribing the procedure for making decisions under **section 95A(1) or 95B(1)**:

(b) specifying requirements relating to the written record of those decisions, including—

(i) the form in which the record must be prepared; and

(ii) the information that must be included in the record; and

(iii) how the record must be kept:

(c) prescribing how searches under **section 95A or 95B** may, or must, be carried out.

(2) Defence Force Orders issued for the purpose of **subsection (1)(c)**—

(a) may—

(i) specify how a person carrying out a search under **section 95A(1) or 95B(1)** may do the things set out in **sections 98B(2) and 98C(2)** (for example, by prescribing the procedure that must be followed when doing that thing); and

(ii) restrict the circumstances in which the things set out in **sections 98B(2) and 98C(2)** may be done when carrying out such a search; but

(b) may not authorise the person carrying out the search to do anything that they would not otherwise be authorised to do in connection with the search.

(3) A search under **section 95A or 95B** must be carried out in accordance with any Defence Force Orders issued for the purpose of **subsection (1)(c)**.

98E Restrictions on when remotely stored intangible material may be accessed

(1) A search under this Act must not involve the use of a computer or data storage device to access intangible material that is not stored in the computer or data storage device (for example, the search must not involve the use of a computer

to access intangible material that is accessible from the computer but is stored in a different computer that forms part of the same computer system).

(2) **Subsection (1)** does not apply to—

(a) a Defence Force computer or data storage device that the Defence Force has issued to a person subject to this Act for the purpose of conducting their duties; or

(b) a search under **section 98A** if the warrant authorises use of a computer or data storage device to access intangible material that is stored remotely.

Identification and notice

98F Identification and notice requirements for person exercising power to physically search place, vehicle, or other thing

(1) A person exercising a power to search a place, vehicle, or other thing under this Act must,—

(a) before initial entry into or onto the place, vehicle, or other thing to be searched,—

(i) announce their intention to enter and search the place, vehicle, or other thing under a statutory power or the command power (as applicable); and

(ii) identify themselves by name and rank; and

(iii) if not in uniform, produce evidence of their identity:

(b) before or on initial entry into or onto the place, vehicle, or other thing to be searched, provide the occupier of the place or the person in charge of the vehicle or other thing with,—

(i) in the case of a search under **section 98A**, a copy of the search warrant; or

(ii) in any other case, if it is reasonably practicable in the circumstances to do so,—

(A) a statement that the search is taking place under the Armed Forces Discipline Act 1971; and

(B) the reason for the search; and

(C) any other information specified in Defence Force Orders.

(2) The person exercising the search power is not required to comply with **subsection (1)** if they have reasonable grounds to believe that—

(a) no person is lawfully present in or on the place, vehicle, or other thing to be searched; or

(b) compliance with **subsection (1)(a)** would—

(i) endanger the safety of any person; or

(ii) prejudice the successful exercise of the entry and search power; or

(iii) prejudice ongoing investigations; or

(c) compliance with **subsection (1)(a) or (b)**—

(i) has the potential to prejudice an active military operation; or

(ii) is not reasonably practicable due to an active military operation.

(3) The person exercising the search power may use reasonable force in order to effect entry into or onto the place, vehicle, or other thing if—

(a) **subsection (2)** applies; or

(b) following a request, the person present refuses entry or does not allow entry within a reasonable time.

(4) If the occupier of a place is not present at any time during the search, or no person is in charge of the vehicle or other thing during the search, the person carrying out the search must,—

(a) in the case of a search of a civilian place, vehicle, or thing,—

(i) on completion of the search, leave a copy of the notice referred to in **subsection (5)** and, if applicable, a copy of the search warrant, in a prominent position at the place, or in or on the vehicle or other thing; or

(ii) if that is not reasonably practicable, provide a copy of the notice referred to in **subsection (5)** and, if applicable, a copy of the search warrant, to the occupier of the place or the owner of the vehicle or other thing no later than 7 days after the exercising of the power; or

(b) in any other case, give notice of the search in the manner prescribed in Defence Force Orders.

(5) The notice required under **subsection (4)(a)(i) and (ii)** is a written notice containing the following particulars:

(a) the date and time of the commencement and completion of the search:

(b) the name and rank of the person who had overall responsibility for the search:

(c) if the power is exercised without a warrant,—

(i) a statement that the search is taking place under the Armed Forces Discipline Act 1971; and

(ii) the reason for the search; and

(iii) any other information specified in Defence Force Orders:

(d) the address of the office to which inquiries should be made:

(e) if nothing is seized, the fact that nothing was seized:

(f) if anything was seized, the fact that seizure occurred and (if an inventory is not provided at the same time under **section 98G**) that an inventory of the things seized will be provided to the occupier of the place or person in charge of the vehicle or other thing no later than 7 days after the seizure.

(6) For the purposes of this section and **sections 98H to 98J**, the following persons may not be treated as the occupier of the place or the person in charge of a vehicle or other thing:

(a) any person who is under 14 years of age:

(b) any person who the person carrying out the search has reasonable grounds to believe is not the occupier of the place or person in charge of the vehicle or other thing.

(7) In this section, a **civilian place, vehicle, or thing** is a place, vehicle, or thing that—

(a) is not located in a defence area; and

(b) is occupied by, or in the charge of, a person who is not subject to this Act.

98G Identifications and notice requirements for remote access search under section 98A

(1) A person who conducts a remote access search under **section 98A** must, on completion of the search, send an electronic message to the email address of the thing searched—

(a) attaching a copy of the search warrant; and

(b) setting out the following particulars:

(i) the date and time of the commencement and completion of the search:

(ii) the name and rank of the person who had overall responsibility for that search:

(iii) the address of the office to which inquiries should be made.

(2) If the person conducting the search is unable to deliver the electronic message required by **subsection (1)** (or it is returned undelivered), the person must take all reasonable steps to identify the user of the thing searched and to send the information referred to in **subsection (1)(a) and (b)** to that person.

98H Inventory of items seized

(1) The person who carries out a search of a place, vehicle, or thing under this Act must, at the time they seize any thing, or as soon as practicable after the seizure of any thing, and in any case not later than 7 days after that seizure, provide written notice specifying what was seized to—

(a) the occupier of the place, or the person in charge of the vehicle or other thing, from where the seizure took place; and

(b) every other person who the person who carried out the search has reason to believe is the owner of the thing that was seized.

(2) A written notice referred to in **subsection (1)**—

(a) must contain information about the extent to which a person from whom a thing was seized or the owner of the thing has a right to apply—

(i) to have access to the thing; or

(ii) to have access to any document relating to the application for a search warrant or the exercise of any other search power that led to the seizure; and

(b) must contain information about the right to bring a claim that any privileged or confidential information has been seized; but

(c) need not be provided to the occupier of the place, or person in charge of the vehicle or other thing, from which the seizure took place if the person who carries out the search is satisfied that none of the items seized are owned by that person.

(3) If the occupier of the place or person in charge of the vehicle or other thing is not present at the time of seizure, a written notice referred to in **subsection (1)** and a copy of the warrant or information that must be given under **section 98F(1)(a) or (b)** (as applicable) may be provided to that person by leaving the notice in a prominent position at the place, or in or on the vehicle or other thing.

(4) **Subsection (1)** is subject to **subsections (2) and (3)**.

(5) This section is subject to **sections 98I and 98J**.

98I Compliance with certain provisions may be deferred in certain circumstances

(1) A person exercising a search power under this Act may apply to a Judge for a postponement of the obligation to comply with **section 98F(4) or (5) or 98H** on the grounds that compliance would—

(a) endanger the safety of any person; or

(b) prejudice ongoing investigations.

(2) An application may be made under **subsection (1)**—

(a) at the time of the initial application for the warrant under **section 98A** (if applicable); or

(b) until the expiry of the period within which notice must be given under **section 98F(4)(a)(ii) or (b) or 98H(1)** (as applicable).

(3) On an application under **subsection (1)**, the Judge may postpone for a specified period not exceeding 12 months the obligation to comply with **section**

98F(4) or (5) or 98H, if the Judge is satisfied that there are reasonable grounds for believing that compliance would—

(a) endanger the safety of any person; or

(b) prejudice ongoing investigations.

98J Further postponement of, or dispensation from, obligation to comply with certain provisions

(1) A person who has obtained an order under **section 98I(3)** may, before the expiry of that order, apply to a Judge for a further postponement of, or dispensation from, the obligation to comply with **section 98F(4) or (5) or 98H** on the grounds that compliance would—

(a) endanger the safety of any person; or

(b) prejudice ongoing investigations.

(2) An application for a further postponement may only be made on 1 occasion.

(3) On an application under **subsection (1)**, the Judge may postpone for a further specified period not exceeding 12 months, or order a permanent dispensation from, the obligation to comply with **section 98F(4) or (5) or 98H** if the Judge is satisfied that compliance would—

(a) endanger the safety of any person; or

(b) prejudice ongoing investigations.

(4) A Judge may not grant, under **subsection (3)**, any postponement of, or dispensation from, an obligation in respect of any thing that has been seized unless the thing seized is—

(a) a copy or clone of any information taken or made; or

(b) a thing the possession of which by the person from whom it was seized is unlawful under New Zealand law (for example, a controlled drug that is found in the possession of a member of the public in circumstances in which possession by the person of the controlled drug is an offence against the Misuse of Drugs Act 1975).

Miscellaneous provisions relating to search

98K Chief of Defence Force may remedy economic loss resulting from search of premises

(1) This section applies if—

(a) a person has, as a result of a search of a place, vehicle, or other thing under this Act, suffered economic loss by reason of damage to, or destruction or loss of, any property—

(i) that belongs to the person; or

(ii) in which the person has a special property or interest; and

(b) 1 or more of the following applies in respect of the search or the property:

(i) the search did not find any evidence of an offence against this Act:

(ii) the suspected offender, in respect of whom the search was conducted, is acquitted or not proceeded against:

(iii) the property belongs to a person other than the suspected offender:

(iv) a person other than the suspected offender has a special property or interest in the property.

(2) The Chief of Defence Force may, without further appropriation than this section, do any one of the following:

(a) repair the property:

(b) replace the property:

(c) pay the person an amount that the Chief of Defence Force considers appropriate to enable the person to repair or replace the property.

28 Section 99 replaced (Disposal of property taken in search)

Replace section 99 with:

Subpart 4—Production orders and preservation directions

Interpretation

99 Interpretation

In this subpart, unless the context otherwise requires, **document** has the meaning given in section 70 of the Search and Surveillance Act 2012.

Production orders

99A Production order: application and making

Application for production order

(1) A member of the Military Police may apply to a Judge for a production order against a person in respect of documents if the member is satisfied that the conditions for making the order against the person are met.

Conditions for making production order

(2) The conditions for making a production order are that there are reasonable grounds—

(a) to suspect that an offence against this Act that is punishable by imprisonment has been committed, is being committed, or will be committed; and

(b) to believe that the documents sought by the proposed order—

(i) constitute evidential material in respect of the offence; and

(ii) are in the possession or under the control of the person against whom the order is sought, or will come into their possession or under their control while the order is in force.

Judge may make production order

(3) On an application under **subsection (1)**, a Judge may make a production order against a person if satisfied that the conditions for making the order are met.

99B Provisions of Search and Surveillance Act 2012 applicable to applications for production order

(1) Section 71(2)(a) and (c) to (i) of the Search and Surveillance Act 2012, which specify what must be included in an application for a production order, apply to an application made under **section 99A(1)**.

(2) The following provisions of the Search and Surveillance Act 2012 apply in relation to an application made under **section 99A(1)**:

(a) section 98(2) (requirements for further information):

(b) section 99 (verification of an application):

(c) section 100 (mode of an application):

(d) section 101 (retention of documents about applications).

(3) Those provisions apply with the following modifications:

(a) references to an application for a search warrant, or to a search warrant, are (respectively) references to an application, or a production order, made under **section 99A**:

(b) references to an issuing officer are references to a Judge of the Court Martial or to the Judge of the Court Martial hearing the application (as applicable):

(c) references to the Registrar of a District Court are references to the Registrar of the Court Martial.

99C Other provisions of Search and Surveillance Act 2012 that apply in relation to production orders

(1) The following provisions of the Search and Surveillance Act 2012 apply in relation to a production order made under **section 99A(3)**:

(a) section 75 (form and content of a production order):

(b) section 75A (production orders against network operators relating to traffic data, etc):

(c) section 76 (duration of a production order):

(d) section 78 (documents produced under a production order):

(e) section 79 (requiring a copy of a retained document to be given):

(f) section 105 (transmission of a search warrant):

(g) section 107 (when a search warrant is invalid):

(h) sections 136 to 139 and 147 (relating to privilege and confidentiality):

(i) sections 174, 175, and 179 (offences relating to production orders):

(j) section 180 (effect of proceedings):

(k) section 181 (service of orders and notices).

(2) Those provisions apply with the following modifications:

(a) references to the High Court and to the District Court are (respectively) references to the Court Martial Appeal Court and to the Court Martial:

(b) references to a District Court Judge are references to a Judge of the Court Martial:

(c) in sections 105 and 107, the references to a search warrant are references to the production order in relation to which the provision applies:

(d) in section 107(1)(a), the reference to the grounds or conditions for lawful issue of a warrant is a reference to the conditions for making a production order set out in **section 99A(2)**:

(e) section 107(2) disapplies section 69(a) of the Court Martial Act 2007 in relation to a production order that is invalid under section 107(1):

(f) in sections 138 and 139, references to the Commissioner are references to the Chief of Defence Force:

(g) section 180 applies to any proceeding that has been commenced in any court in respect of—

(i) the exercise of a power, or discharge of a duty, conferred or imposed by **sections 99A to 99C** of this Act or by Defence Force Orders issued for the purposes of **section 99F** of this Act; or

(ii) the use for investigative purposes of any evidential material obtained from the execution of those powers or discharge of those duties:

(h) section 181(1)—

(i) applies to a production order made under **section 99A** of this Act and to any written notice required to be given in connection to the order; and

(ii) allows such an order or notice to be given to a person in the manner prescribed in Defence Force Orders (in addition to the other means by which an order or notice may be given under that subsection).

Preservation directions

99D Preservation directions in relation to documents obtainable under search warrant or production order

(1) A member of the Military Police who may apply for a search warrant under **section 98A**, or a production order under **section 99A(1)**, to obtain documents may apply to the Commissioner of Police for a preservation direction against a person in respect of those documents if the member is satisfied that the conditions for making the direction against the person are met.

(2) Subpart 2A of Part 3 of the Search and Surveillance Act 2012 (preservation directions) applies in relation to an application under **subsection (1)**—

(a) as if the application were an application under section 79B of that Act; and

(b) with the modifications set out in **subsection (3)**.

(3) The modifications are as follows:

(a) section 79B of that Act does not apply:

(b) references to a search warrant may alternatively or additionally be read as references to a production order under **section 99A** of this Act (as the context requires):

(c) references to a production order must be read as references to a production order under **section 99A** of this Act:

(d) in section 79E(a)(ii) of the Search and Surveillance Act 2012, the reference to an issuing officer is a reference to a Judge of the Court Martial:

(e) the condition set out in section 79E(c) of that Act requires the offence to be an offence against this Act that is punishable by imprisonment.

(4) In this section, the **conditions for making the direction** are the conditions specified in section 79E of the Search and Surveillance Act 2012 (as modified by **subsection (3)(d) and (e)**).

Subpart 5—Further provisions about search, production orders, and preservation directions

99E Who is enforcement officer for purposes of Search and Surveillance Act 2012

(1) A person authorised to exercise a power of entry, search, inspection, examination, or seizure under this Act is not an enforcement officer for the purposes of the Search and Surveillance Act 2012 solely by virtue of that authorisation.

(2) **Subsection (1)** is subject to **subsection (3)**.

(3) For the purposes of provisions of the Search and Surveillance Act 2012 that are applied by this Act,—

(a) a member of the Military Police is an enforcement officer; and

(b) the Armed Forces are a law enforcement agency in relation to the member; and

(c) the Chief of Defence Force is the chief executive of the Armed Forces.

(4) Section 3 of the Search and Surveillance Act 2012 is subject to this section.

99F Seized or produced materials must be dealt with in accordance with Defence Force Orders

(1) The Chief of Defence Force may issue Defence Force Orders, under section 206, dealing with the subject matter of subpart 6 of Part 4 of the Search and Surveillance Act 2012 for the purposes of things—

(a) produced under a production order made under **section 99A**; or

(b) seized as part of a search under this Act.

(2) Defence Force Orders issued for the purpose of **subsection (1)** may provide for issues relating to access to, release of, or disposal of those things to be determined by the Court Martial on application.

(3) Things produced under a production order made under **section 99A**, or seized as part of a search under this subpart, must be dealt with in accordance with any Defence Force Orders issued for the purposes of this section.

99G Transfer of things between law enforcement agencies

(1) This section applies if, for the purposes of investigation, prosecution, or forfeiture,—

(a) a thing seized by, or produced to, a person under this Act is transferred to a civilian law enforcement agency; or

(b) a thing seized by, or produced to, a person engaged by a civilian law enforcement agency is transferred to the Armed Forces.

(2) The recipient of the thing must, to the extent that it is reasonably practicable to do so, deal with the thing as if the thing had been seized by, or produced to,—

(a) a person engaged by the civilian law enforcement agency (if the recipient is a civilian law enforcement agency); or

(b) a person under this Act (if the recipient is the Armed Forces).

(3) For the purposes of **subsection (2)**, the recipient of a thing—

(a) may treat things done in relation to the thing before the thing was transferred as having been done by the recipient; and

(b) does not need to do a thing that would otherwise be required to be done in relation to the thing if an analogous thing has already been done in relation to the thing before the thing was transferred.

(4) In this section, **civilian law enforcement agency** means a law enforcement agency other than the Armed Forces.

99H Provost Marshal must report on use of powers

(1) The Provost Marshal must give the Chief of Defence Force a report on the following matters each reporting period:

(a) use of the search power conferred by **section 98A** during the reporting period:

(b) use of the power to obtain a production order conferred by **section 99A** during the reporting period:

(c) any other matter specified in Defence Force Orders.

(2) The report—

(a) must include any information about those matters that is specified in Defence Force Orders; and

(b) may include any other information that the Provost Marshal thinks fit.

(3) The report must be given to the Chief of Defence Force as soon as practicable after the end of the reporting period to which it relates.

(4) In this section, **reporting period** means,—

(a) in the case of the first reporting period, a period commencing on the date this section comes into force and ending with 30 June in the subsequent calendar year:

(b) for each subsequent reporting period, a period of 12 months commencing on 1 July and ending with 30 June.

Subpart 6—Drug and alcohol testing

Drug and alcohol testing

99I Interpretation

(1) In this subpart,—

approved testing device means a device that the Chief of Defence Force has approved for use in testing under this subpart

drug or alcohol condition means a condition of bail that prohibits a person from doing either or both of the following:

(a) using 1 or more drugs:

(b) consuming alcohol

drug or alcohol offence means any of the following offences:

(a) an offence against section 38 or 39, where the lawful command or written order—

(i) requires a person not to use 1 or more drugs or consume alcohol; or

(ii) limits a person's use of 1 or more drugs or consumption of alcohol to a prescribed amount:

(b) an offence against section 34(2)(c):

(c) an offence against section 51(1):

(d) an offence against section 67(1)(b):

(e) an offence against section 74(1) that involves drugs or alcohol (whether or not commission of the offence requires a person to have used drugs or consumed alcohol)

drug or alcohol test means a procedure for drug or alcohol testing prescribed in Defence Force Orders.

(2) The Chief of Defence Force may, by Defence Force Order, approve the following types of device for use in testing under this subpart:

(a) a breath screening device:

(b) an evidential breath-testing device:

(c) a passive-breath testing device:

(d) an oral fluid testing device.

(3) In **subsection (2)**, **breath screening device**, **evidential breath-testing device**, **passive-breath testing device**, and **oral fluid testing device** have the meanings given in section 2(1) of the Land Transport Act 1998.

99J When person is required to submit to drug or alcohol test

(1) A commanding officer may require a person under their command to submit to a drug or alcohol test if the commanding officer has reasonable grounds to believe the person has committed, or is committing, a drug or alcohol offence.

(2) If a person is released on bail under **section 101A** of this Act or **section 49** of the Court Martial Act 2007 with a drug or alcohol condition, the person's commanding officer may require the person to submit to a drug or alcohol test to determine whether the person is complying with the condition.

(3) **Sections 99K and 99L** apply to a drug or alcohol test under **subsection (1) or (2)**.

(4) *See also* section 38 (which makes it an offence for a person to disobey a lawful command of their superior officer).

99K How drug or alcohol test must be carried out

(1) A drug or alcohol test must be carried out—

(a) using an approved testing device; and

(b) in accordance with the procedure for the test set out in Defence Force Orders.

(2) A commanding officer who requires a person to submit to a drug or alcohol test must—

(a) inform the person of—

(i) why the person is being required to submit to the test (including the alleged offence to which the test relates, if applicable); and

(ii) the consequences for the person if the person refuses to submit to the test; and

(b) give the person a general description of the procedure for the test, including—

(i) how the test will be carried out; and

(ii) if the test involves the taking of a bodily sample, how that sample will be taken and analysed.

99L Person tested must be informed of test results

If a drug or alcohol test is carried out in relation to a person under this subpart, the person must be informed of the result of the test promptly and in writing.

99M Evidence of drug or alcohol test results

(1) An authorised person may issue a certificate stating the results of a drug or alcohol test (a **test result certificate**).

(2) A test result certificate—

(a) must be issued in the manner and form prescribed in Defence Force Orders; and

(b) may be admitted as evidence of the results of the drug or alcohol test in proceedings in relation to—

(i) a drug or alcohol offence; or

(ii) a drug or alcohol condition; and

(c) if so admitted, is presumed, in the absence of evidence to the contrary, to be conclusive evidence of the results stated in the certificate.

(3) A test result certificate for a drug or alcohol test must not be ruled inadmissible by reason only of the fact that a requirement set out in **sections 99J to 99L** has not been strictly complied with, or has not been complied with at all, if there has been reasonable compliance with the requirements set out in those sections as they apply in relation to the drug or alcohol test.

(4) In this section, **authorised person** means a person authorised by Defence Force Orders to issue a test result certificate in relation to a drug or alcohol test.

Prescribed procedure for drug or alcohol testing

99N Prescribed procedure for drug or alcohol testing

(1) The Chief of Defence Force may issue Defence Force Orders, under section 206, prescribing 1 or more procedures for the purpose of either or both of the following:

(a) detecting whether a person has used drugs, consumed alcohol, or both:

(b) determining the amount of those substances a person has used or consumed.

(2) An order prescribing a procedure—

(a) may, without limitation, do any of the following:

(i) specify the circumstances in which the procedure may be used (for example, by limiting the procedure to particular offences):

(ii) prescribe how the procedure may be carried out (including the approved testing device or devices that may be used to carry out the procedure):

(iii) prescribe how any samples obtained from the procedure may be analysed or stored, or both:

(iv) provide for disposal of samples obtained from the procedure:

(v) regulate how information obtained from the analysis of those samples may be accessed, used, and disclosed:

(vi) provide for the destruction of that information; but

(b) must not require a person to supply a sample of their blood.

29 New subpart 7 heading in Part 4 and cross-heading inserted

Before section 100, insert:

Subpart 7—Duties in relation to person arrested, bail, and other matters

Duties in relation to person arrested

30 Section 101 amended (Delay in dealing with person after arrest)

Replace section 101(4) and (5) with:

(4) **Subsection (5)** applies if—

(a) a person subject to this Act is in service custody; and

(b) the offence that the person is alleged to have committed has not been—

(i) recorded in the form of a charge and laid before the Registrar of the Court Martial; or

(ii) disposed of by summary trial under subparts **1B** to 5 of Part 5; or

(iii) disposed of through the minor disciplinary sanction system; or

(iv) otherwise dealt with under Part 5.

(5) While this subsection applies, the person's commanding officer must report the reasons for the delay, in writing, to the Judge Advocate General as follows:

(a) the commanding officer must make a report if the person remains in service custody at the end of the fourth day after the day on which the person was arrested:

(b) the commanding officer must make a further report if the person remains in service custody—

(i) at the end of the 12th day after the day on which the person was arrested; and

(ii) at the end of each subsequent 8-day period.

31 Section 101A replaced (Judge Advocate General may grant bail pending trial)

Replace section 101A with:

Bail

101A Judge Advocate General may grant bail pending trial

(1) The Judge Advocate General must consider whether to grant bail to a person in service custody each time the Judge Advocate General receives a report under section 101 in relation to the person.

Bail must be granted when person entitled to bail as of right

(2) The Judge Advocate General must grant bail to the person if the person is entitled to bail as of right (*see* **section 101AB**).

Bail may be granted in other cases

(3) The Judge Advocate General must grant bail to the person—

(a) if the person is 17 or 18 years old and has not previously been sentenced to imprisonment; or

(b) in any other case, unless the Judge Advocate General is satisfied that there is just cause for continued detention of the person (*see* **section 101AC**).

(4) **Subsection (3)** is subject to **section 101AD** (which applies provisions of the Bail Act 2000 that restrict when bail may be granted under **subsection (3)** in specified circumstances).

Bail may be granted subject to reasonable terms and conditions

(5) Bail granted under this section may be subject to any reasonable terms and conditions that the Judge Advocate General thinks fit.

Conditions of bail granted to person charged with family violence offence

(6) Without limiting **subsection (5)**, if the Judge Advocate General grants bail to a person who is charged with a family violence offence, the Judge Advocate General may impose any condition that the Judge Advocate General considers reasonably necessary to protect—

(a) the victim of the alleged offence; and

(b) any particular person in a family relationship with the victim.

Victim of specified offence's views about bail must be taken into account

(7) When considering whether to grant a person bail in relation to a specified offence (including the conditions, if any, that should be imposed if bail is granted), the Judge Advocate General must take into account any views of a victim of the offence that have been conveyed to the Judge Advocate General in accordance with section 198D.

Guidance note

See also **section 49** of the Court Martial Act 2007, which allows a person in service custody to make an application for bail to a Judge of the Court Martial.

101AB People entitled to bail as of right

(1) This section sets out when a person is entitled to bail as of right for the purposes of **section 101A(2)**.

(2) A person is **entitled to bail as of right** if the offence that they are charged with—

(a) is not punishable by imprisonment; or

(b) is an offence for which the maximum punishment is less than 3 years' imprisonment.

(3) **Subsection (2)** is subject to **subsection (4)**.

(4) A person is not entitled to bail as of right under **subsection (2)** if—

(a) the person is charged with an offence against section 74(1) for which the a corresponding civil offence is either of the following:

(i) an offence against section 194 of the Crimes Act 1961 (which relates to assault on a child, or by a male on a female):

(ii) an offence against section 194A of the Crimes Act 1961 (which relates to assault on a person with whom the person charged is, or has been, in a family relationship); or

(b) the person—

(i) is charged with an offence that is punishable by imprisonment; and

(ii) has previously been convicted of an offence punishable by death or imprisonment (including an offence that is not an offence against this Act); or

(c) the person has been—

(i) released on bail in relation to the charge; and

(ii) arrested under a warrant issued under **section 101B** in relation to that release.

101AC Consideration of just cause for continued detention

(1) When considering whether there is just cause for continued detention of a person under **section 101A(3)(b)**, the Judge Advocate General—

(a) must take into account the following matters:

(i) the matters set out in section 8(1)(a) and (b) of the Bail Act 2000:

(ii) any effect that releasing the person on bail may have on—

(A) service discipline; or

(B) the operations of the Armed Forces; and

(b) may, when considering whether there is just cause for continued detention based on those matters, take into account the matters set out in section 8(2)(a) to (h) of the Bail Act 2000.

(2) **Subsection (1)** is subject to **subsections (3) and (4)**.

(3) If the person is charged with a family violence offence, the Judge Advocate General's primary consideration must be the need to protect—

(a) the victim of the alleged offence; and

(b) any particular person or people in a family relationship with the victim.

(4) Despite **subsection (3)**, if the person is charged with an offence against section 74(1) for which the corresponding civil offence is an offence against section 112 of the Family Violence Act 2018, the Judge Advocate General's paramount consideration must be the need to protect every person who, in relation to the protection order, is a protected person.

(5) In this section, **protected person**, in relation to a protection order, has the same meaning as in section 8 of the Family Violence Act 2018.

101AD Bail Act 2000 restrictions apply to bail decisions under section 101A(3)

(1) The following provisions of the Bail Act 2000 apply to bail decisions under **section 101A(3)(a) and (b)** with the modifications set out in **subsection (2)** and any other necessary modifications:

(a) section 9A (restriction on bail if defendant charged with murder):

(b) section 10 (restriction on bail if defendant with previous conviction for specified offence charged with further specified offence):

(c) section 11 (restriction on bail if defendant with previous conviction for specified offence found guilty or pleads guilty to further specified offence):

(d) section 12 (further restriction on bail in certain cases):

(e) section 17A (restriction on bail if defendant charged with serious Class A drug offence).

(2) The modifications are as follows:

(a) references to a civil offence that a defendant is charged with, has been found guilty of, or has pleaded guilty to are references to the equivalent offence against section 74(1):

(b) references to a defendant's previous conviction for a civil offence are a reference to both of the following:

(i) a conviction for that civil offence; and

(ii) a conviction for the equivalent offence against section 74(1):

(c) references to another civil offence in relation to which a defendant is awaiting trial are a reference to both that offence and the equivalent offence against section 74(1):

(d) references to a High Court Judge, a District Court Judge, or a Judge are references to the Judge Advocate General:

(e) in the case of a person who is aged 17 years and who is charged, found guilty, or pleads guilty under this Act, the Bail Act 2000 provisions apply as if the accused were charged, were found guilty, or pleaded guilty in the High Court.

(3) To avoid doubt, section 11 of the Bail Act 2000 does not apply to a person who has pleaded guilty during proceedings under Part 5 if **section 117ZI(2)** applies to the guilty plea.

32 Section 101B amended (Issue of warrant to arrest person absconding or breaching bail condition)

In section 101B(1)(a)(i), replace "for the person" with "the person".

33 Section 101C amended (Person arrested under warrant for absconding or breaching bail condition must be brought before Judge Advocate General)

After section 101C(2), insert:

(3) **Sections 101A to 101AD** apply to the Judge Advocate General's reconsideration of the question of bail.

34 New cross-heading above section 101D inserted

After section 101C, insert:

People prohibited from exercising, or being required to exercise, powers under this Part

35 Section 101D amended (Restrictions in relation to midshipmen, officer cadets, and chaplains)

After section 101D(1), insert:

(1A) Subsection (1) is subject to **subsection (1B)**.

(1B) A midshipman or an officer cadet may do a thing specified in subsection (1)(a) or (b) if the midshipman or officer cadet—

(a) is—

(i) posted to a naval ship; or

(ii) authorised in writing to do the thing by their commanding officer; and

(b) is acting in that capacity, or within the scope of that authorisation, when they do the thing.

36 Section 101F amended (Functions and duties of Director of Military Prosecutions)

In section 101F(c) and (e), delete "or charge sheets".

37 Section 101G amended (Power of Director of Military Prosecutions to direct investigation)

In section 101G(1)(a), after "relevant to", insert "an allegation or".

38 Section 101L amended (Delegation of functions, duties, or powers of Director of Military Prosecutions)

After section 101L(4), insert:

(4A) A delegation under this section continues to have effect, as if made by the Director of Military Prosecutions' successor in office, if the Director of Military Prosecutions ceases to hold office (but does not continue in effect after that successor ceases to hold office).

39 New Part 4B inserted

After section 101L, insert:

Part 4B
Provost Marshal

101M Appointment of Provost Marshal

(1) There continues to be an office called the Provost Marshal.

(2) The Chief of Defence Force may appoint an officer as the Provost Marshal.

(3) An appointment under **subsection (2)** must be made in writing.

101N Functions and duties of Provost Marshal

(1) The Provost Marshal's functions and duties are as follows:

(a) to provide oversight of the Armed Forces' conduct and institutional capabilities in relation to the following matters:

(i) policing (including the activities of the Military Police):

(ii) investigation of offences:

(iii) custodial arrangements (including custodial practice and procedure and the operation of custodial facilities):

(b) to ensure that the Armed Forces act impartially and without improper influence in relation to those matters:

(c) to provide strategic direction in relation to those matters:

(d) to perform the Provost Marshal's inherent functions and duties under service custom:

(e) to perform any function conferred, or duty imposed, by—

(i) this Act; or

(ii) any other enactment; or

(iii) an order issued by the Chief of Defence Force.

(2) **Subsection (1)(a) to (c)** does not limit the Provost Marshal's inherent functions and duties under service custom.

101O Provost Marshal must act impartially and without improper influence

The Provost Marshal must perform and exercise their functions, duties, and powers impartially and without improper influence.

101P Power to require person subject to Act to give reasonable assistance

(1) The Provost Marshal may require a person subject to this Act to give reasonable assistance to the Provost Marshal to enable the Provost Marshal to perform or exercise a function, duty, or power.

(2) *See* section 37, which makes it an offence to refuse to assist the Provost Marshal in the performance of their duty when required to do so under this section.

(3) The following are examples of things that may be reasonable assistance:

(a) giving the Provost Marshal access to an individual or location under the person's command:

(b) giving the Provost Marshal support or resources to enable the Provost Marshal to conduct an investigation:

(c) assisting the Provost Marshal to conduct a search authorised under this Act.

(4) **Subsection (1)** is subject to any provision of this Act, any other enactment, or an order issued by the Chief of Defence Force that requires the Provost Marshal to do or not do a thing, to do a thing in a particular way, or to only do a thing in specified circumstances (for example, the provisions of this Act that specify when and how a search may be carried out).

101Q Appointment of Assistant Provost Marshal

(1) The Chief of Defence Force or the Provost Marshal may appoint 1 or more officers as an Assistant Provost Marshal.

(2) An appointment under **subsection (1)** must be made in writing.

101R Power to delegate to Assistant Provost Marshal

(1) The Provost Marshal may, either generally or particularly, delegate any of the functions, duties, or powers of the Provost Marshal under this Act, any other enactment, or an order issued by the Chief of Defence Force to an Assistant Provost Marshal.

(2) **Subsection (1)** is subject to **subsection (3)**.

(3) The Provost Marshal must not delegate the following powers:

(a) this power of delegation:

(b) the power to appoint an Assistant Provost Marshal under **section 101Q(1)**.

(4) A delegation under this section—

(a) must be in writing; and

(b) may be made subject to any restrictions and conditions that the Provost Marshal 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 Provost Marshal; and

(e) continues to have effect, as if made by the Provost Marshal's successor in office, if the Provost Marshal ceases to hold office (but does not continue in effect after that successor ceases to hold office).

(5) If a function, duty, or power is delegated to an Assistant Provost Marshal under **subsection (1)**,—

(a) the Assistant Provost Marshal may perform or exercise the function, duty, or power in the same manner and with the same effect as if it had been conferred on them directly by the relevant enactment or order and not by delegation (subject to any restrictions or conditions imposed under the delegation); and

(b) **section 101O** applies to the Assistant Provost Marshal in relation to their performance or exercise of the function, duty, or power.

(6) If an Assistant Provost Marshal appears to act under **subsection (1)**, they are presumed to be acting in accordance with the terms of delegation in the absence of evidence to the contrary.

101S Appointment of provost officer

(1) The Chief of Defence Force, the Provost Marshal, or an Assistant Provost Marshal may appoint 1 or more officers as a provost officer.

(2) An appointment under **subsection (1)** must be made in writing.

(3) In this section, **officer** does not include a person who is a midshipman, an officer cadet, or a chaplain.

40 Part 5 heading amended

In the Part 5 heading, replace "**summary trial of charges**" with "**disposal of offences against this Act**".

41 Subpart 1 heading in Part 5 replaced

In Part 5, replace the subpart 1 heading with:

Subpart 1—Allegations: investigation, referral, and charging decisions

42 Sections 102 and 102A replaced

Replace sections 102 and 102A with:

Key concepts

102 When allegation or charge is suitable for disposal by summary trial

(1) In this Act, an allegation or a charge is **suitable for disposal by summary trial** if it can be fairly and efficiently disposed of through the summary trial process under this Part.

(2) However, an allegation or a charge is not suitable for disposal by summary trial if the alleged offence is an offence that must not be tried summarily.

(3) Matters relevant to whether an allegation or a charge is suitable for disposal by summary trial include the following:

(a) the extent to which disposing of the allegation or charge is likely to—

(i) require determination of complex questions of fact or law; or

(ii) involve complex allegations (for example, allegations made by a large number of complainants, or allegations made against more than one person):

(b) whether the nature of the alleged offence, the identity of the victim, or other considerations suggest the allegation or charge is more appropriately dealt with—

(i) outside of the alleged offender's chain of command; or

(ii) by a civil authority:

(c) how likely it is that, if the allegation or charge is proven, a disciplinary officer's powers of punishment under this Part will not be sufficient.

(4) In this section, **offence that must not be tried summarily** means an offence specified, in a Defence Force Order issued under section 206(1)(ab), to be an offence that must not be tried summarily by any disciplinary officer.

102A Offences that may be disposed of through minor disciplinary sanction system

In this Act, **offence that may be disposed of through the minor disciplinary sanction system** means a minor offence that is specified, in Defence Force Orders issued under section 206, to be an offence that may be disposed of through the minor disciplinary sanction system.

Allegations: investigation, referral, and charging decisions

102B How commanding officer must deal with allegations

(1) This section applies if it is alleged that an offence against this Act has been committed by a person subject to this Act.

Commanding officer must investigate allegation

(2) The person's commanding officer must investigate the allegation.

(3) The commanding officer may carry out an investigation under **subsection (2)** themselves or authorise 1 or more of the following persons to carry out the investigation on their behalf:

(a) a member of the Armed Forces who is under the commanding officer's command:

(b) a member of the Military Police.

Actions commanding officer must take if allegation well founded

(4) If the commanding officer concludes that the allegation is well founded, they must—

(a) consider whether the allegation is suitable for disposal by summary trial; and

(b) if they consider the allegation is suitable for disposal by summary trial, record the allegation in the form of a charge and arrange for it to be tried summarily; or

(c) if they consider the allegation is not suitable for disposal by summary trial,—

(i) refer the allegation to the Director of Military Prosecutions to be dealt with under **section 102D**; or

(ii) refer the allegation to the appropriate civil authority for investigation.

(5) **Subsections (2) to (4)** are subject to **subsections (6) and (7)**.

Exception: alleged serious, complex, or sensitive offences

(6) If the commanding officer considers an allegation against the person is, or may on further investigation amount to, an allegation that the person has committed a serious, complex, or sensitive offence, the commanding officer must refer the allegation, and any other alleged offence arising from the person's alleged conduct, to the Director of Military Prosecutions to be dealt with under **section 102D** instead of dealing with those allegations under **subsections (2) to (4)**.

Exception: alleged offence that may be referred to minor disciplinary sanction system

(7) The commanding officer may decide to deal with the allegation through the minor disciplinary sanction system, with or without an investigation under **subsection (2)**, if—

(a) the person is alleged to have committed an offence that may be disposed of through the minor disciplinary sanction system; and

(b) all of the criteria in **section 102C** are met.

(8) If the commanding officer decides to deal with the alleged offence through the minor disciplinary sanction system, the commanding officer must record their decision, including the reasons for the decision, in writing.

Meaning of serious, complex, or sensitive offence

(9) In this section, **serious, complex, or sensitive offence** means an offence against this Act that is specified in Defence Force Orders to be an offence that, due to its seriousness, complexity, or sensitivity, must be referred to the Director of Military Prosecutions under **subsection (6)**.

Guidance note

Subpart 1A contains further provisions relating to the minor disciplinary sanction system.

102C Criteria for disposal through minor disciplinary sanction system

(1) The criteria referred to in **section 102B(7)(b)** are as follows:

(a) the commanding officer must believe on reasonable grounds that the person is committing, or has committed, the alleged offence:

(b) the commanding officer must be satisfied that the alleged offence can be fairly disposed of without a trial:

(c) the commanding officer's decision under **section 102B(7)** must be made no later than 6 months after the date on which the offence is alleged to have been committed:

(d) the commanding officer's decision under **section 102B(7)** must be consistent with—

(i) any Defence Force Orders that limit the minor disciplinary sanction system to alleged offending by people of specified ranks; and

(ii) any other requirements set by Defence Forces Orders issued for the purposes of this provision.

(2) When considering whether an alleged offence can be fairly disposed of without a trial for the purposes of **section 102B(7)(b)**, the commanding officer must have regard to the following matters:

(a) whether the sanctions available to the commanding officer under **subpart 1A** are sufficient to adequately sanction the person in relation to the alleged offence:

(b) whether the alleged offence involves complex or contested facts:

(c) any other matter specified in Defence Force Orders.

102D What Director of Military Prosecutions may do in relation to allegation

(1) This section applies if an allegation is referred to the Director of Military Prosecutions under **section 102B(4)(c)(i) or (6)**.

(2) The Director of Military Prosecutions may do any of the following in relation to the allegation:

(a) record the allegation in the form of a charge:

(b) decline to record the allegation in the form of a charge:

(c) refer the allegation to the Provost Marshal for investigation under **section 101G**:

(d) refer the allegation to the appropriate civil authority for investigation.

(3) If the Director of Military Prosecutions records the allegation in the form of a charge, the Director of Military Prosecutions must also do one of the following:

(a) refer the charge to a disciplinary officer to be tried summarily under this Part:

(b) lay the charge before the Registrar of the Court Martial.

(4) The Director of Military Prosecutions may refer a charge to a disciplinary officer under **subsection (3)(a)** only if the Director of Military Prosecutions is satisfied that the charge is suitable for disposal by summary trial.

Exercise of commanding officer's powers by other people

102E Superior commander may investigate and refer allegations in specified circumstances

(1) The powers, functions, and duties of a commanding officer under **section 102B** may be exercised and performed by a superior commander in the chain of command of the person who is alleged to have committed an offence if—

(a) the person does not have a commanding officer; or

(b) the person's commanding officer is unable to exercise or perform those powers, functions, and duties (for example, because they are incapacitated); or

(c) the person's commanding officer is personally interested in the alleged offence; or

(d) the superior commander considers, on reasonable grounds, that the person's commanding officer has done 1 or more of the following:

(i) failed to investigate, or to properly investigate, an allegation under **section 102B(2)**:

(ii) made a determination that an allegation is not well founded, under **section 102B(4)**, that cannot be reasonably supported by the evidence:

(iii) failed, after concluding that an allegation is well founded, to take 1 or more of the actions required under **section 102B(4)**:

(iv) recorded a charge, under **section 102B(4)(b)**, that cannot be reasonably supported by the evidence:

(v) failed to refer an allegation to the Director of Military Prosecutions under **section 102B(6)**.

(2) If the commanding officer has made a decision under **section 102B**,—

(a) a superior commander acting under **subsection (1)** may make a new decision about the same subject matter; and

(b) the superior commander's decision replaces the commanding officer's decision.

(3) **Subsections (1) and (2)** are subject to **subsection (4)**.

(4) If the commanding officer has referred an allegation to the Director of Military Prosecutions or to a civil authority, a superior commander acting under **subsection (1)** may not reverse that decision.

(5) In this section, **personally interested**, in relation to an alleged offence, has the meaning given in section 108(4) (with references to a charge read as references to an allegation).

102F Administration of minor disciplinary sanction system by delegate

(1) A commanding officer may, by written notice, delegate all or any of their powers in relation to the minor disciplinary sanction system to a person who is, or a class of persons who are,—

(a) under the commanding officer's command; and

(b) of or above the minimum rank for a delegation under this section specified in Defence Force Orders in relation to the Navy, the Army, or the Air Force (as applicable).

(2) A delegation under this section—

(a) may be made subject to any restrictions and conditions that the commanding officer thinks fit; and

(b) is revocable at any time, in writing; and

(c) does not prevent the commanding officer from exercising their powers in relation to the minor disciplinary sanction system; and

(d) continues in effect, if the commanding officer leaves their command, as if made by the commanding officer's successor in command (but does not continue in effect after that successor leaves their command).

(3) A person to whom a commanding officer's powers are delegated under this section may exercise the powers delegated in the same manner and to the same extent as if they had been conferred on them directly by this Act and not by delegation.

(4) **Subsection (3)** is subject to **subsection (5)**.

(5) The person's delegated powers—

(a) may be exercised only in relation to a person who is of a rank at least 2 rank grades below their rank; and

(b) are subject to any restrictions or conditions imposed—

(i) under the delegation; or

(ii) by Defence Force Orders.

(6) If person appears to act under **subsection (1)**, they are presumed to be acting in accordance with the terms of delegation in the absence of evidence to the contrary.

(7) In this section, a commanding officer's **powers in relation to the minor disciplinary sanction system** include—

(a) the power to investigate an allegation under **section 102B(2)** for the purpose of deciding whether to deal with the allegation through the minor disciplinary sanction system; and

(b) the power to decide to deal with an allegation through the minor disciplinary sanction system under **section 102B(7)**.

43 New subpart 1A of Part 5 inserted

After **section 102F** (as inserted by **section 42** of this Act), insert:

Subpart 1A—Minor disciplinary sanction system

Application of subpart

102G Application of subpart

This subpart applies to a person if the person's commanding officer has decided, under **section 102B(7)**, to deal with an offence that the person is alleged to have committed through the minor disciplinary sanction system.

How alleged offences must be dealt with under minor disciplinary sanction system

102H Information that must be given to person

(1) The person's commanding officer must give the person the following information:

(a) details of the alleged offence that fairly inform the person of the time, place, and nature of the alleged offence:

(b) the sanction, or combination of sanctions, that the commanding officer intends to impose on the person through the minor disciplinary sanction system (the **intended sanction**):

(c) a statement of the reasons for the following decisions:

(i) the decision to deal with the alleged offence through the minor disciplinary sanction system:

(ii) the decision to impose the intended sanction:

(d) an explanation of the person's right to have the intended sanction reviewed under **section 102J**:

(e) an explanation of the person's right of election under **section 102K**:

(f) any other information specified in Defence Force Orders.

(2) The information in **subsection (1)** must be given in writing in the manner and form prescribed in Defence Force Orders.

102I Sanctions that may be imposed through minor disciplinary sanction system

(1) The sanctions that a commanding officer may impose on a person through the minor disciplinary sanction system are specified in **Schedule 5A**.

(2) The person's commanding officer may impose on the person any sanction, or combination of sanctions, that the commanding officer considers just.

(3) When considering whether a sanction, or combination of sanctions, is just in the context of the minor disciplinary sanction system, a commanding officer must have regard to the matters specified in Defence Force Orders (if any).

102J Right to have intended sanction reviewed

(1) This section applies if—

(a) a person has been given all of the information specified in **section 102H**; and

(b) the person has not yet exercised their right of election under **section 102K**; and

(c) the time limit specified in **section 102K(2)(a)** has not yet expired.

(2) The person has the right to require that a sanction, or combination of sanctions, the person has been informed of under **section 102H(1)(b)** (the **intended sanction**) be reviewed by—

(a) the person's commanding officer, if the intended sanction was determined by the commanding officer's delegate; or

(b) a superior commander in the person's chain of command, if the intended sanction was determined by the person's commanding officer.

(3) A review under **subsection (2)** must be applied for, and conducted, in the manner specified in Defence Force Orders.

(4) The person who carries out the review (the **reviewer**) must, after the review is complete, do one of the following in relation to the intended sanction:

(a) uphold the intended sanction; or

(b) replace the intended sanction with a different sanction, or combination of the sanctions, specified in **Schedule 5A** that—

(i) the reviewer considers just; and

(ii) is no more severe than the intended sanction.

(5) If a person applies for a review under this section,—

(a) the time limit within which the person must exercise their right of election under **section 102K(2)(a)** ceases to apply; and

(b) the person must instead exercise their right of election under **section 102K(1)** within—

(i) 24 hours after the person is notified of the outcome of the review; or

(ii) any longer period that the commanding officer thinks fit.

102K Right to elect whether alleged offence disposed of through minor disciplinary sanction system

(1) The person has the right to elect whether to—

(a) accept responsibility for the alleged offence and have it disposed of through the minor disciplinary sanction system; or

(b) have the alleged offence dealt with by the commanding officer under **section 102B(1) to (6)**.

(2) The person must make their decision—

(a) within—

(i) 24 hours after the person is given all of the information required under **section 102H(1)**; or

(ii) any longer period that the commanding officer thinks fit; and

(b) in the manner specified in Defence Force Orders.

(3) If the person elects to have the alleged offence disposed of through the minor disciplinary sanction system, the alleged offence must be disposed of through the minor disciplinary sanction system.

(4) If the person elects to have the alleged offence dealt with by the commanding officer under **section 102B(1) to (6)**, or does not make a decision within the time required under **subsection (2)(a)** or **section 102J(5)(b)**, the alleged offence—

(a) must be dealt with by the commanding officer under **section 102B(1) to (6)** (instead of dealing with it through the minor disciplinary sanction system); and

(b) must not be dealt with through the minor disciplinary sanction system again.

Consequences of disposal through minor disciplinary sanction system

102L What happens when alleged offence is disposed of through minor disciplinary sanction system

(1) If the alleged offence is disposed of through the minor disciplinary sanction system,—

(a) the person is not convicted of the alleged offence; but

(b) the alleged offence is disposed of; and

(c) the commanding officer must—

(i) impose the sanction, or combination of sanctions, specified under **section 102H(1)(b) or 102J(4)(b)** on the person; and

(ii) record the disposal of the offence, and the sanction imposed on the person, in the manner and form specified in Defence Force Orders.

(2) *See also* **sections 21 and 22**, which prevent a person from being tried again in relation to a matter that has been disposed of through the minor disciplinary sanction system.

102M Disposal relevant to subsequent decisions about minor disciplinary sanction system

(1) If a person has had 1 or more alleged offences disposed of through the minor disciplinary sanction system, the person's commanding officer may take that into account when—

(a) deciding, under **section 102B(7)**, whether a subsequent offence the person is alleged to have committed should be dealt with through the minor disciplinary sanction system; and

(b) making decisions about the person and the subsequent offence under this subpart.

(2) **Subsection (1)**—

(a) does not limit the circumstances in which disposal of an alleged offence through the minor disciplinary sanction system may be taken into account; and

(b) is subject to any Defence Force Orders that limit the circumstances in which disposal of an alleged offence through the minor disciplinary sanction system may be taken into account.

Register of alleged offences dealt with through minor disciplinary sanction system

102N Register of alleged offences dealt with through minor disciplinary sanction system

Commanding officer must keep and maintain register

(1) Each commanding officer must keep and maintain a register of alleged offences dealt with through the minor disciplinary sanction system by the commanding officer or a delegate of the commanding officer.

Purposes of register

(2) The purposes for which a register is kept and maintained under this section are as follows:

(a) to allow prior offences disposed of through the minor disciplinary sanction system to be taken into account in the circumstances specified in **section 102M(1)**; and

(b) to enable use of the minor disciplinary sanction system to be monitored and reviewed.

Information register must contain

(3) The register must contain the following information about each alleged offence:

(a) the name and rank of the following persons:

(i) the person alleged to have committed the offence:

(ii) the person who decided that the alleged offence should be dealt with through the minor disciplinary sanction system:

(iii) the person who dealt with the alleged offence through the minor disciplinary sanction system:

(b) a copy of the information given, under **section 102H**, to the person alleged to have committed the offence:

(c) whether the person alleged to have committed the offence requested a review of the intended sanction under **section 102J** and, if they did,—

(i) the name and rank of the person who carried out the review; and

(ii) the outcome of the review:

(d) whether the person alleged to have committed the offence exercised their right under **section 102K** to elect how the alleged offence should be dealt with and, if they did, what their election was:

(e) if the alleged offence was disposed of through the minor disciplinary sanction system, a copy of the record of disposal and sanction prepared under **section 102L(1)(c)(ii)**.

Access to register

(4) The following persons may access a register kept or maintained under this section:

(a) a commanding officer (including a commanding officer other than the commanding officer responsible for keeping and maintaining the register):

(b) a person to whom a commanding officer has delegated functions under **section 102F**:

(c) the Judge Advocate General (or a delegate of the Judge Advocate General):

(d) the Provost Marshal (or a delegate of the Provost Marshal):

(e) a person authorised to access the register by Defence Force Orders.

(5) However, those persons may access the register only—

(a) for the purposes set out in **subsection (2)**; or

(b) to keep and maintain the register; or

(c) as otherwise required by law (for example, to respond to a request under the Privacy Act 2020).

Other procedures and requirements relating to registers

(6) The Chief of Defence Force may issue Defence Force Orders, under section 206, prescribing procedures and requirements relating to registers kept and maintained under this section, including matters relating to—

(a) how a register must be kept (for example, the form in which, and location where, a register must kept):

(b) retention of information on, and removal of information from, a register:

(c) amendment of information on a register:

(d) review of a register.

(7) In this section, an alleged offence is **dealt with through the minor disciplinary sanction system** if a commanding officer, or a delegate of the commanding officer, decides to deal with the offence through the minor disciplinary sanction system (even if the offence is not ultimately disposed of through the minor disciplinary sanction system).

No investigation or referral of alleged offence while it is being dealt with

102O No investigation or referral of alleged offence while it is being dealt with

The person's commanding officer must not deal with an alleged offence under **section 102B(2) or (4)** while it is being dealt with through the minor disciplinary sanction system. 5

44 New subpart 1B heading in Part 5 and cross-heading inserted

After **section 102O** (as inserted by **section 43** of this Act), insert:

Subpart 1B—Summary trial: disciplinary officer's duty to dispose of charges

Duty to dispose of charges in prescribed manner 10

45 Section 103 amended (Disposal of charges by commanding officers)

Replace section 103(1) with:

(1) A commanding officer responsible for disposing of a charge by summary trial must dispose of the charge in accordance with subparts 2 to 5 and the rules of procedure. 15

46 Section 104 amended (Disposal of charges by superior commanders)

Replace section 104(1) with:

(1) A superior commander responsible for disposing of a charge by summary trial must dispose of the charge in accordance with subparts 2 to 5 and the rules of procedure. 20

47 Section 107 amended (Effect of delegation)

After section 107(3), insert:

(3A) A delegation under section 106 continues in effect, as if made by the commanding officer's successor in command, if the commanding officer leaves their command (but does not continue in effect after that successor leaves their command). 25

48 Section 108 amended (Officer is empowered to act as disciplinary officer)

Replace section 108(2)(a) with:

(a) the officer considers, at the relevant time, that—

(i) the charge should be referred to the Director of Military Prosecutions because it is not suitable for disposal by summary trial; or 30

(ii) it is otherwise in the interests of justice for the charge to be referred to another person; or

(iii) it is necessary for the maintenance of discipline for the charge to be referred to another person; or

49 Subpart 2 heading in Part 5 replaced

In Part 5, replace the subpart 2 heading with:

Subpart 2—Summary trial: preliminary procedures and disposal of charges

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

Replace section 111 with:

111 Charge must be referred to Director of Military Prosecutions if there is no disciplinary officer

If there is no person who is empowered to act as a disciplinary officer in relation to a charge, the charge must be referred to the Director of Military Prosecutions.

51 Section 112 amended (Charge must be certified if disciplinary officer may impose certain punishments or make certain compensation orders)

(1) In section 112(1), after "before him or her", insert "for arraignment".

(2) In section 112(4), after "before the disciplinary officer", insert "for arraignment".

52 Section 113 amended (Amendment of charge)

(1) In section 113(1), after "him or her", insert "for arraignment".

(2) After section 113(1), insert:

(1A) When a disciplinary officer exercises their power under subsection (1), the disciplinary officer must consider whether, in their opinion, they are empowered to act as a disciplinary officer in relation to the amended, substituted, or additional charge.

(1B) If the disciplinary officer considers that they are not empowered to act in relation to the amended, substituted, or additional charge, the disciplinary officer must—

(a) refer the charge to a person in the accused's chain of command who is empowered to act as a disciplinary officer in relation to the charge (the **new disciplinary officer**), who becomes the disciplinary officer in relation to the charge; or

(b) refer the charge to the Director of Military Prosecutions.

(3) Replace section 113(3) with:

(3) **Sections 20 and 20A** apply, with all necessary modifications, to the addition of a new charge (but do not prevent a charge from being amended or substituted if it is in the interests of justice to do so).

(4) In section 113(4), after "disciplinary officer", insert "or new disciplinary officer (as applicable)".

53 New section 113A inserted (Amendments of charge after evidence given)

After section 113, insert:

113A Amendments of charge after evidence given

(1) This section applies if a disciplinary officer exercises their power under section 113(1) in relation to a charge (the **original charge**) after the disciplinary officer has taken steps to dispose of the original charge under this subpart (for example, hearing evidence in support of the original charge).

(2) The accused may require the disciplinary officer responsible for disposing of the amended, substituted, or additional charge (the **new charge**) to repeat those steps in relation to the new charge.

(3) **Subsection (2)** is subject to **subsection (4)**.

(4) If a disciplinary officer is required to repeat the steps taken under **section 116** (arraignment by disciplinary officer), the accused may be given an opportunity to make an election under **section 116A** in relation to the new charge only if—

(a) a right of election under **section 116A** is available in relation to the offence to which the new charge relates; and

(b) the new charge differs substantially from the original charge.

(5) If the accused does not require the disciplinary officer to repeat the steps taken in relation to the original charge, the disciplinary officer must treat those steps as having also been taken in relation to the new charge.

54 Section 114 amended (Assistance to accused)

In section 114(1), after "a disciplinary officer", insert "for arraignment".

55 Section 115 amended (Assignment of presenting officer)

In section 115(1), after "a disciplinary officer", insert "for arraignment".

56 Section 116 replaced (Arraignment by disciplinary officer)

Replace section 116 with:

116 Arraignment by disciplinary officer

(1) This section applies if an accused is brought before a disciplinary officer for arraignment under this Part.

Things disciplinary officer must do in every case

(2) The disciplinary officer must—

(a) ensure that the accused is correctly described in the record of proceedings; and

(b) read the charge to the accused; and

(c) 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.

Accused given opportunity to exercise right to elect trial before Court Martial

(3) If the accused has the right to elect trial before the Court Martial under **section 116A**, the disciplinary officer must—

(a) inform the accused of that right; and

(b) adjourn the arraignment and give the accused a reasonable period to consider the accused's election; and

(c) give the accused an opportunity to consult a lawyer in respect of the accused's election if it is reasonably practicable to do so.

(4) The period of adjournment under **subsection (3)(b)** must be at least 24 hours if the accused wishes it.

Things disciplinary officer must do if accused to be tried summarily

(5) If the accused is to be tried summarily, the disciplinary officer must—

(a) inform the accused that the disciplinary officer is going to hear the charge; and

(b) ask the accused whether they plead guilty or not guilty to the charge.

(6) The accused **is to be tried summarily** if—

(a) the accused does not have the right to make an election under **section 116A**; or

(b) the accused, having the right to make an election under **section 116A**,—

(i) elects summary trial by the disciplinary officer; or

(ii) elects trial before the Court Martial but then withdraws the election.

Things disciplinary officer must do if accused to be tried in the Court Martial

(7) The disciplinary officer must refer the charge to the Director of Military Prosecutions if—

(a) the accused—

(i) elects trial before the Court Martial under **section 116A**; and

(ii) does not withdraw the election; or

(b) the accused does not make an election under **section 116A** when required to do so.

(8) However, the disciplinary officer must not refer a charge to the Director of Military Prosecutions under **subsection (7)(a)** until any period within which the accused may withdraw their election as of right has elapsed.

Guidance note

See also sections 117ZB to 117ZD, which specify how an election to proceed by way of summary trial affects an accused's rights in relation to a proceeding and require a disciplinary officer to take reasonable steps to ensure that the implications of an accused's election decision have been fully explained to the accused.

116A Right to elect trial before Court Martial at arraignment

(1) An accused brought before a disciplinary officer for arraignment under this Part has the right to elect, in relation to the charge,—

(a) trial by the Court Martial; or

(b) summary trial by the disciplinary officer.

(2) **Subsection (1)** is subject to **subsection (3)**.

(3) If Defence Force Orders specify that a right of election is not available under **subsection (1)** in relation to an offence against this Act, an accused charged with that offence does not have a right of election under **subsection (1)** in relation to the charge.

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

After section 117D(2), insert:

Guidance note

See also sections 117ZB to 117ZD, which specify how an election to proceed by way of summary trial affects an accused's rights in respect of a proceeding and require a disciplinary officer to take reasonable steps to ensure that the implications of an accused's election decision have been fully explained to the accused.

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

(1) In the heading to section 117F, replace "**Accused must be remanded for trial in Court Martial and charge**" with "**Charge**".

(2) In section 117F(1), delete "remand the accused for trial in the Court Martial and".

(3) In section 117F(1)(b)(i), delete "in the prescribed manner".

(4) Replace section 117F(2) with:

(2) However, the disciplinary officer must not refer a charge to the Director of Military Prosecutions under subsection (1)(b)(i) until any period within which the accused may withdraw their election as of right has elapsed.

59 Cross-heading above section 117I amended

In the cross-heading above section 117I, replace "*Investigation*" with "*Procedure*". 5

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

Replace section 117J(3) and (4) with:

(3) After the disciplinary officer has heard the evidence in support of the charge, they— 10

(a) must determine whether a prima facie case has been made out in relation to the charge; and

(b) may determine whether a prima facie case has been made out in relation to an included offence in respect of the charge. 15

(4) **Subsection (5)** applies if the disciplinary officer is not satisfied that a prima facie case has been made out in relation to at least one of the following:

(a) the charge:

(b) an included offence in respect of the charge.

(5) The disciplinary officer must dismiss the charge, record the finding, and inform the accused. 20

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

(1) Replace section 117K(3)(b) with: 25

(b) must,—

(i) in accordance with section 117J, hear the case in support of the charge and determine whether there is a prima facie case to answer; and

(ii) in doing so, disregard the subordinate commander's prior consideration of the charge under that section (including the case in support of the charge that was presented to the subordinate commander); and 30

(2) In section 117K(4), delete "remand the accused for trial in the Court Martial and". 35

62 Section 117M amended (Disciplinary officer must inform accused if accused has right to elect trial by Court Martial)

After section 117M(2), insert:

Guidance note

See also sections 117ZB to 117ZD, which specify how an election to proceed by way of summary trial affects an accused rights in respect of a proceeding and require a disciplinary officer to take reasonable steps to ensure that the implications of an accused's election decision have been fully explained to the accused.

63 Section 117N amended (Disciplinary officer must remand accused for trial in Court Martial or try charge summarily)

(1) In the heading to section 117N, replace "**remand accused for trial in Court Martial**" with "**refer charge to Director of Military Prosecutions**".

(2) In section 117N(1), delete "remand the accused for trial in the Court Martial and".

(3) In section 117N(1)(a), delete "in the prescribed manner".

(4) Replace section 117N(2) with:

(2) However, the disciplinary officer must not refer a charge to the Director of Military Prosecutions under subsection (1)(a) until any period within which the accused may withdraw their election as of right has elapsed.

(5) In section 117N(3)(b), delete "in the prescribed manner".

64 Section 117Q replaced (Disciplinary officer must determine whether accused is guilty or not guilty)

Replace section 117Q with:

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

(1) After the disciplinary officer has received all the evidence under subpart 2 and this subpart, the disciplinary officer—

(a) must determine whether the accused is guilty or not guilty on the charge; and

(b) may, additionally or alternatively, find the accused guilty of an included offence if the included offence is proved (or not guilty of that offence if the offence is not proved).

(2) A disciplinary officer may find the accused guilty of an included offence, if proved, even if the whole of the offence that the accused is charged with is not proved.

(3) If a disciplinary officer finds an accused guilty or not guilty of an offence, the disciplinary officer must—

(a) record the finding; and

(b) inform the accused.

(4) In this Act, **included offence** means an offence against this Act other than the offence that the accused is charged with (the **offence charged**) that is committed when the offence charged (as described in the enactment creating the offence charged or the charge) is committed.

65 Subpart 4 heading in Part 5 replaced

In Part 5, replace the subpart 4 heading with:

Subpart 4—Punishment of offenders tried summarily

66 Section 117R amended (Procedures to be followed before imposing punishment)

(1) In section 117R(1), replace "on the charge" with "under **section 117Q(3)**".

(2) In section 117R(2), replace "on the charge" with "under **section 117Q(3)**".

(3) Repeal section 117R(4).

67 Section 117T amended (Order to come up for punishment if called on)

In section 117T(3), replace "the charge" with "the finding of guilty".

68 Section 117V amended (Types and maximum amounts of summary punishments)

After section 117V(3), insert:

(3A) However, a disciplinary officer must not impose a combination of punishments that includes both a fine and detention.

69 Section 117Y amended (Provisions relating to punishment of detention)

Replace section 117Y(4) with:

(4) A disciplinary officer must not impose the punishment of detention on a member of the Armed Forces who was under the age of 18 years when the offence was committed.

70 Section 117ZB amended (Accused deemed to have waived certain rights in certain circumstances)

(1) Replace section 117ZB(1) with:

(1) This section applies to an accused, in relation to a charge, if the accused—

(a) has, or is given, under **section 116A**, 117D, or 117M, a right to elect whether the charge is disposed of under this Part or by trial by the Court Martial; and

(b) chooses to have the charge disposed of under this Part (including if the accused initially elects trial by the Court Martial but then withdraws that election).

(1A) The accused is deemed to have irrevocably waived the rights referred to in subsection (2) in connection with the disposal of the charge under subparts 2 to 5 of this Part (which relate to disposal of a charge through the summary trial process).

(2) After section 117ZB(2), insert:

(3) To avoid doubt, the accused is not deemed to have waived the rights referred to in subsection (2) in connection with the disposal of the charge in any other forum (for example, in proceedings before the Court Martial or a civil court).

71 Section 117ZC amended (Implications of election must be explained to accused)

In section 117ZC(1) and (3), replace "117D" with "**116A**, 117D,".

72 New section 117ZDA and cross-heading inserted

After section 117ZD, insert:

Withdrawal of election of trial by Court Martial

117ZDA Withdrawal of election of trial by Court Martial

(1) This section applies if an accused has, or is given, a right of election under section **116A**, 117D, or 117M and exercises that right to elect trial by the Court Martial.

(2) The accused may withdraw their election in the manner and circumstances specified in the rules of procedure.

(3) The accused may not otherwise withdraw their election.

73 Section 117ZH replaced (Reference back of charge by Director of Military Prosecutions)

Replace section 117ZH with:

117ZH Things Director of Military Prosecutions may do when charge is referred

(1) This section applies if a charge is referred to the Director of Military Prosecutions under one of the following provisions:

(a) section 111(b) (no disciplinary officer):

(b) section **116(7)**, 117F(1)(b), or 117N(1) (election or deemed election of trial by the Court Martial):

(c) section **113(1B)(b)**, 117F(1)(a), or 117K(4) (insufficient powers of punishment or otherwise not empowered to act):

(d) section 117ZF (referral of related charges).

(2) The Director of Military Prosecutions may, after giving due consideration to the circumstances of the case, do any of the following in relation to the charge:

(a) direct an officer to act, or continue to act, as the disciplinary officer in relation to the charge and to do one of the following in their capacity as the disciplinary officer:

(i) deal with the charge under this Part:

(ii) dismiss the charge:

(b) refer the charge to the Provost Marshal for investigation (under section 101G):

(c) lay the charge before the Registrar of the Court Martial:

(d) refer the subject matter of the charge to an appropriate civil authority:

(e) decline to prosecute the accused:

(f) stay the proceedings under section 101H in relation to the charge:

(g) amend the charge:

(h) substitute a different charge for the charge:

(i) add a new charge.

(3) A direction under **subsection (2)(a)** may, without limitation, include any of the following:

(a) if the charge is an amended, substituted, or additional charge, a direction that the disciplinary officer must repeat 1 or more steps under this Part in relation to a charge:

(b) a direction that the disciplinary officer must give the accused a right to elect trial by the Court Martial under section 117C(1) or 117L(1) (if the section applies in relation to the charge):

(c) any other procedural directions that the Director of Military Prosecutions thinks fit.

(4) If the Director of Military Prosecutions amends or substitutes a charge under **subsection (2)(g) or (h)**, or adds a new charge under **subsection (2)(i)**, the actions in **subsection (2)(a) to (f)** may be taken in relation to the amended, substituted, or additional charge.

(5) **Subsections (2) and (3)** are subject to **subsections (6) and (7)**.

(6) The Director of Military Prosecutions must not direct an officer to act, or continue to act, as a disciplinary officer in relation to a charge if—

(a) the accused has elected, or is deemed to have elected, trial by the Court Martial and has not withdrawn that election; or

(b) the Director of Military Prosecutions considers that—

(i) the officer is not empowered to act as a disciplinary officer in relation to the charge; or

(ii) the officer, if acting as a disciplinary officer, would have insufficient powers of punishment in relation to the charge.

(7) **Sections 20 and 20A** apply, with all necessary modifications, to the addition of a new charge under **subsection (2)(i)** (but do not prevent a charge from being amended or substituted if it is in the interests of justice to do so).

(8) For the purposes of **subsection (6)(b)(i)**, the Director of Military Prosecutions must make their own assessment of whether, at the time of the Director's decision, the matters referred to in **section 108(2)(a)(i), (ii), or (iii)** mean the officer is not empowered to act as a disciplinary officer (rather than assessing whether the officer considered this was the case at the relevant time).

(9) The Director of Military Prosecutions must inform the accused of any action that is taken in relation to the accused under **subsection (2)**.

177ZHA Disciplinary officer must dispose of charge in accordance with directions

(1) This section applies if the Director of Military Prosecutions refers a charge back to a disciplinary officer under **section 117ZH(2)(a)** with directions as to how the charge must be disposed of.

(2) The disciplinary officer must dispose of the charge in accordance with those directions (including by repeating steps under this Part in relation to an amended, substituted, or additional charge, or by exercising a discretion in the manner directed).

74 Section 117ZI replaced (Director of Military Prosecutions may lay charge before Court Martial)

Replace section 177ZI with:

117ZI Court Martial must not take into account guilty plea

(1) This section applies if,—

(a) under this Part, an accused pleads guilty to a charge; and

(b) the charge is referred to the Director of Military Prosecutions (instead of being disposed of under this Part); and

(c) the Director of Military Prosecutions decides, in relation to the charge, to lay any of the following before the Registrar of the Court Martial:

(i) the charge:

(ii) an amended charge:

(iii) a substitute charge:

(iv) an additional charge.

(2) The Court Martial must not take the accused's guilty plea into account when making a finding on the charge laid before the Registrar of the Court Martial.

75 Section 117ZIA repealed (Director to determine whether offence is specified offence)

Repeal section 117ZIA.

76 New section 117ZJA inserted (Accused under age of 18 years entitled to support person)

After section 117ZJ, insert:

117ZJA Accused under age of 18 years entitled to support person

(1) An accused who is under the age of 18 years is entitled to be accompanied by a support person during proceedings under subparts 2 to 5 of this Part.

(2) The support person must be appointed in the manner specified in Defence Force Orders.

(3) The support person must not help the accused to conduct their case.

77 New section 117ZS inserted (Publication of summary trial decisions)

After section 117ZR, insert:

117ZS Publication of summary trial decisions

(1) This section applies to a disciplinary officer who makes a decision or records a finding under 1 or more of the following provisions:

(a) section 117A(2):

(b) section 117E(2):

(c) **section 117Q(1) and (3)**:

(d) section 117S(1):

(e) section 117T(1) and (3):

(f) section 117ZA(1).

(2) The disciplinary officer must consider whether to publish the decision or finding.

(3) The disciplinary officer may publish the decision or finding if the disciplinary officer considers that publication will support service discipline and the proper administration of justice within the Armed Forces.

(4) However, the disciplinary officer must not publish the decision or finding if—

(a) publishing the decision or finding would contravene a non-publication order made by a disciplinary officer, military court, or civilian court or tribunal (including a civilian court or tribunal that is not exercising criminal jurisdiction); or

(b) publishing the decision or finding would contravene any Defence Force Orders, issued for the purpose of this provision, that restrict, or impose

requirements in relation to, publication of decisions under this section; or

(c) in the disciplinary officer's opinion, publishing the decision or finding may prejudice—

(i) national security interests; or

(ii) service discipline.

(5) When deciding whether publication of a decision or finding will support service discipline and the proper administration of justice within the Armed Forces, the disciplinary officer—

(a) must consider any matters set out in Defence Force Orders issued for the purpose of this provision; and

(b) may consider any other relevant matter.

(6) A decision or finding published under **subsection (3)**—

(a) may be published—

(i) in whole or in part; and

(ii) subject to any conditions that the disciplinary officer thinks fit; and

(b) must be published in the manner specified in Defence Force Orders (if any).

(7) In this section,—

national security interests has the meaning given in section 4 of the Security Information in Proceedings Act 2022

non-publication order means an order that restricts or prohibits publication of information.

78 Section 117ZQ amended (Replacement of disciplinary officer)

In section 117ZQ(2), after "incapacity, found the accused guilty", insert "of the charge or an included offence".

79 Section 122 amended (Chief Judge may delegate to Registrar duty to assign Judges)

After section 122(2)(d), insert:

(e) continues to have effect, as if made by the Chief Judge's successor in office, if the Chief Judge ceases to hold office (but does not continue in effect after that successor ceases to hold office).

80 Section 123 amended (Registrar may delegate functions, duties, or powers to clerk or officer of Summary Appeal Court)

After section 123(2)(d), insert:

(e) continues to have effect, as if made by the Registrar's successor in office, if the Registrar ceases to hold office (but does not continue in effect after that successor ceases to hold office).

81 Cross-heading above section 124 replaced

Replace the cross-heading above section 124 with: 5

Appeal by person found guilty of offence

82 New sections 124A to 124C and cross-headings inserted

After section 124, insert:

Appeal by Director of Military Prosecutions

124A Right of appeal in relation to punishment, etc 10

The Director of Military Prosecutions may appeal to the Summary Appeal Court against the following decisions of a disciplinary officer:

(a) the imposition of a punishment, or combination of punishments, on a person found guilty of an offence:

(b) the discharge under section 117S(1)(c) of a person found guilty of an offence: 15

(c) an order made under section 117T in relation to a person found guilty of an offence:

(d) an order made under section 117ZA in relation to a person found guilty of an offence. 20

124B Appeal on question of law

(1) This section applies if a disciplinary officer has made 1 or more of the following decisions:

(a) a determination, under **section 117J(3)(a) or (b)**, that a prima facie case has not been made out: 25

(b) a finding of not guilty under **section 117Q(1)**.

(2) The Director of Military Prosecutions may, with the leave of the Summary Appeal Court, appeal to the Summary Appeal Court on a question of law against the decision.

Appeal against suppression order decisions 30

124C Right of appeal in relation to suppression orders

(1) A person specified in **subsection (2)** may appeal to the Summary Appeal Court against a decision of a disciplinary officer—

(a) to make or refuse to make a suppression order; or

(b) to renew, vary, or revoke a suppression order under section 208 of the Criminal Procedure Act 2011 (as applied by section 145).

(2) The persons who may appeal are as follows:

(a) the applicant for the suppression order; or

(b) the Director of Military Prosecutions; or

(c) a member of the media to whom section 210(1) of the Criminal Procedure Act 2011 applies.

83 Section 125 replaced (Notice of appeal)

Replace section 125 with:

Procedure

125 Notice of appeal and application for leave to appeal

(1) An appeal under this subpart is made as follows:

(a) an appeal under section 124, **124A**, or **124C(1)** is made by lodging a notice of appeal with the Registrar:

(b) an appeal under **section 124B(2)** is made by lodging a notice of application for leave to appeal with the Registrar.

(2) The notice must be in the prescribed form and must be lodged 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.

(3) An application for further time under **subsection (2)(b)** must—

(a) be in the prescribed form; and

(b) be lodged with the Registrar with the notice to which it relates if made after the prescribed period has expired.

(4) The notice must specify—

(a) the decision appealed against or in relation to which leave to appeal is sought; 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.

(5) If the time for lodging a notice 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.

(6) An applicant for leave to appeal does not need to file a notice of appeal if the Summary Appeal Court gives leave to appeal or determines that leave to appeal is to be determined simultaneously with the appeal.

(7) In this section, the **prescribed period** is a period—

(a) of—

(i) 35 days, for an appeal relating to a proceeding outside New Zealand; or

(ii) 20 days, for an appeal relating to a proceeding in New Zealand; and

(b) that runs from,—

(i) in the case of an appeal under section 124 or **124A**, the day after the day on which the disciplinary officer recorded their finding of guilty under **section 117Q(3)**; or

(ii) in the case of an appeal under **section 124B(2) or 124C(1)**, the day after the day on which the decision appealed against was made.

84 Section 126 amended (Registrar and disciplinary officer must provide copies of documents)

(1) Replace section 126(1) with:

(1) The Registrar must, as soon as practicable after receiving a notice of appeal or a notice of application for leave to appeal, provide a copy of the notice to the following:

(a) the disciplinary officer who made the decision to which the notice relates:

(b) the Director of Military Prosecutions, in the case of an appeal under section 124:

(c) the respondent to the appeal, in the case of an appeal under **section 124A, 124B(2), or 124C(1)**.

(2) In section 126(3), after “appellant”, insert “or respondent (as applicable)”.

85 New section 126A inserted (Reply memorandum)

After section 126, insert:

126A Reply memorandum

(1) The section applies to a respondent who has been given a notice of application for leave to appeal under **section 126(1)(c)** and the documents associated with that application referred to in section 126(3).

(2) The respondent must lodge with the Registrar a memorandum responding to the notice.

(3) The memorandum must—

(a) be in the prescribed form; and

(b) be lodged within—

(i) the period specified in the rules of procedure; or

(ii) any further time that the Summary Appeal Court may allow on application made before or after the expiration of that period; and

(c) state, in relation to the application for leave,—

(i) whether the respondent consents to, opposes, or does not oppose the application, and (if applicable) the reasons for opposing it; and

(ii) whether, if the respondent opposes the application, the respondent considers that the application should be heard separately from, or simultaneously with, the proposed appeal, and the reasons for that view; and

(d) include any other information specified in the rules of procedure.

(4) An application for further time under **subsection (3)(b)(ii)** must—

(a) be in the prescribed form; and

(b) be lodged with the Registrar with the memorandum to which it relates if made after the period for lodging the memorandum has expired.

(5) The Registrar must give a copy of the memorandum to the Director of Military Prosecutions.

86 Section 131 amended (Appeals to proceed by way of rehearing and general power of Summary Appeal Court)

After section 131(1), insert:

(1A) Subsection (1) does not apply to an appeal on a question of law under **section 124B(2)**.

87 Section 132 amended (Power of Summary Appeal Court in respect of finding of guilty)

(1) In section 132(3)(b)(ii), replace “by the disciplinary officer” with “under Part 5”.

(2) After section 132(3)(b)(ii), insert:

(iia) exercise its powers under **section 132A**; or

(3) In section 132(4)(a), after “the disciplinary officer”, insert “who conducts the trial”.

(4) In section 132(5), delete “of the charge”.

88 New sections 132A to 132C inserted

After section 132, insert:

132A Power to substitute finding of guilty and punishment

(1) This section applies if the Summary Appeal Court allows a person's appeal against a finding that the person is guilty of an offence (**offence A**).

(2) If the person was found guilty of offence A at summary trial, the Summary Appeal Court may direct that a finding that the person is guilty of a different offence (**offence B**) be entered if satisfied that—

(a) the person could have been found guilty of offence B at the person's summary trial for offence A; and

(b) the disciplinary officer must have been satisfied of facts that prove the person guilty of offence B.

(3) If the person was found guilty of offence A because they pleaded guilty to offence A before or at trial, the Summary Appeal Court may direct that a finding that the person is guilty of a different offence be entered if—

(a) the Summary Appeal Court is satisfied that the facts admitted by the person in relation to the charge for offence A support a conviction for offence B; and

(b) the person agrees to a conviction for offence B being entered.

(4) On making a direction under **subsection (2) or (3)**, the Summary Appeal Court may—

(a) impose any punishment, or combination of punishments, for offence B that the disciplinary officer would have had the power to impose in relation to that offence; or

(b) take another action that would have been available to the disciplinary officer in relation to offence B under subpart 4 of Part 5.

(5) However, the punishment, or combination of punishments, imposed must, in the opinion of the Summary Appeal Court, be no more severe than the punishment, or combination of punishments, imposed in relation to offence A.

(6) The Summary Appeal Court's finding that the person is guilty of offence B, and any punishments imposed or actions taken by the court in relation to that finding under **subsection (4)**,—

(a) are deemed to have been imposed or taken by the disciplinary officer; and

(b) have effect as if taken or imposed on—

(i) the day on which the disciplinary officer found the person guilty of offence A; or

(ii) if the Summary Appeal Court considers it appropriate in the circumstances, a date specified by the Summary Appeal Court (which may be a date before the date of the Summary Appeal Court's decision).

132B Summary Appeal Court's powers in respect of appeals under section 124B

(1) The Summary Appeal Court must determine an appeal on a question of law under **section 124B(2)** in accordance with **subsections (2) and (3)**.

(2) If the Summary Appeal Court considers that the decision appealed against involves 1 or more wrong decisions on a question of law and that a miscarriage of justice has occurred as a result of those wrong decisions, the Summary Appeal Court—

(a) must quash the decision appealed against; and

(b) may—

(i) direct that a new trial be held under Part 5 or by the Court Martial; or

(ii) make any other order that the Summary Appeal Court considers justice requires (including an order that a new trial not be held).

(3) If **subsection (2)** does not apply, the Summary Appeal Court must dismiss the appeal.

(4) If the Summary Appeal Court directs a new trial under **subsection (2)(b)(i)**, the court—

(a) must advise the disciplinary officer who conducts the trial or the Court Martial (as the case may be) of its reasons for doing so; and

(b) may give to the disciplinary officer or the Court Martial (as the case may be) any directions that it thinks fit.

(5) In conducting the new trial, 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 (2)(b)(i)** and to the court's directions under **subsection (4)(b)** (if any).

132C Summary Appeal Court's powers in respect of appeals under section 124C

The Summary Appeal Court must determine an appeal under **section 124C** by—

(a) confirming the decision appealed against; or

(b) varying the decision appealed against; or

(c) setting aside the decision appealed against; or

(d) making any other order it considers appropriate.

89 Section 133 amended (Power of Summary Appeal Court in respect of punishments)

(1) After section 133(1)(b)(ii), insert:

(iii) in the case of an appeal under **section 124A**, the court considers the punishment, or the combination of punishments, is manifestly inadequate or contrary to principle; or

(2) After section 133(2), insert:

(2A) Subsection (2)(b) is subject to **subsection (2B)**.

(2B) If **subsection (1)(b)(iii)** applies, the Summary Appeal Court may substitute a punishment, or a combination of punishments, that, in the court's opinion, is more severe than the punishment, or the combination of punishments, originally imposed.

(3) Replace section 133(3)(b) with:

(b) has effect as if imposed on—

(i) the day on which the original punishment, or combination of punishments, was imposed; or

(ii) if the Summary Appeal Court considers it appropriate in the circumstances, a date specified by the Summary Appeal Court (which may be a date before the date of the Summary Appeal Court's decision).

(4) After section 133(3), insert:

(4) In this section, a reference to a punishment, or a combination of punishments, includes a reference to a decision to discharge an offender without punishment under section 117S(1)(c).

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

(1) Replace section 134(2)(b)(ii) with:

(ii) has effect as if imposed on—

(A) the day on which the order under section 117T was made; or

(B) if the Summary Appeal Court considers it appropriate in the circumstances, a date specified by the Summary Appeal Court (which may be a date before the date of the Summary Appeal Court's decision).

(2) Replace section 134(4)(b) with:

(b) has effect as if imposed on—

(i) the day on which the original order was made; or

(ii) if the Summary Appeal Court considers it appropriate in the circumstances, a date specified by the Summary Appeal Court (which may be a date before the date of the Summary Appeal Court's decision).

91 Section 136 amended (Decisions of Summary Appeal Court final)

(1) Replace section 136(1) with:

(1) The following decisions of the Summary Appeal Court are final and conclusive with no right of appeal:

(a) a decision on any appeal under this Part:

(b) a decision to make a suppression order under subpart 3 of Part 5 of the Criminal Procedure Act 2011 (as applied by section 145):

(c) a decision to renew, vary, or revoke a suppression order under section 208 of the Criminal Procedure Act 2011 (as applied by section 145).

(2) In section 136(2), replace "on any appeal under this Part" with "referred to in **subsection (1)**".

92 Section 141 amended (Defence of appeals and representation of appellant)

(1) In the heading to section 141, delete "**of appellant**".

(2) After section 141(1), insert:

(1A) Subsection (1) does not apply to—

(a) an appeal brought by the Director of Military Prosecutions; or

(b) an appeal brought by a member of the media under **section 124C(1)**.

(3) In section 141(2), replace "An appellant" with "A party to an appeal".

93 Section 142 amended (Costs of appeal)

Replace section 142(2)(b) with:

(b) the expenses of, and incidental to, the appearance of the following persons at the hearing of the appeal under this Part or at any proceedings preliminary or incidental to that appeal:

(i) in the case of an appeal brought under section 124, the appellant:

(ii) in the case of an appeal brought under **section 124A or 124B**, the respondent:

(iii) in the case of an appeal brought under **section 124C**, the applicant for the suppression order to which the appeal relates:

94 Section 144 amended (Duties of Registrar with respect to appeals)

(1) In section 144(1)(c), after "notices of appeal", insert "and reply memoranda".

(2) In section 144(2), replace "this Part" with "section 124 or **124C** or who are a respondent to an application for leave to appeal under **section 124B**".

95 Section 145 amended (Application of subpart 3 of Part 5 of the Criminal Procedure Act 2011 to proceedings under this Act)

In section 145, insert as subsections (2) and (3):

(2) To avoid doubt, and without limiting **subsection (1)**, subpart 3 of Part 5 of the Criminal Procedure Act 2011—

(a) empowers a disciplinary officer or the Summary Appeal Court to make an order under the following provisions of that Act:

(i) section 199C (temporary suppression of trial-related information):

(ii) section 200 (suppression of identity of defendant):

(iii) section 202 (suppression of identity of witnesses, victims, and connected persons):

(iv) section 205 (court may suppress evidence and submissions); and

(b) requires a disciplinary officer or the Summary Appeal Court to make an order under the following provisions of that Act (if required to do so under the provision):

(i) section 203 (automatic suppression of identity of complainant in specified sexual cases):

(ii) section 204 (automatic suppression of identity of child complainants and witnesses); and

(c) makes it an offence to breach those orders (*see* section 211 of the Criminal Procedure Act 2011).

(3) When applying subpart 3 of Part 5 of the Criminal Procedure Act 2011 under this section, references to an offence against the Crimes Act 1961 must be read as including a reference to an equivalent offence against section 74(1) of this Act.

96 New section 145A inserted (Publication by or at request of authorised member of the Armed Forces, etc)

After section 145, insert:

145A Publication by or at request of authorised member of Armed Forces, etc

(1) If a person has escaped from lawful custody under this Act, or has failed to attend any military tribunal or military court when lawfully required to do so,—

(a) nothing in sections 200 to 205 of the Criminal Procedure Act 2011 prevents the publication by or at the request of a provost officer of the name, address, or occupation of that person if that publication is made for the purpose of facilitating that person's recapture or arrest; and

(b) nothing in sections 199A to 199D of the Criminal Procedure Act 2011 prevents publication by or at the request of a provost officer of any information suppressed under those provisions if that publication is made for the purpose of facilitating that person's recapture or arrest.

(2) Nothing in sections 199A to 205 of the Criminal Procedure Act 2011 prevents publication of any suppressed information to—

(a) an authorised member of the Armed Forces for the purposes of their official duties; or

(b) a lawyer acting for—

(i) the accused or a co-accused (in proceedings under subparts 2 to 5 of Part 5 or before the Court Martial); or

(ii) the appellant (in an appeal to the Summary Appeal Court under section 124 or an appeal to the Court Martial Appeal Court); or

(iii) the respondent (in an appeal to the Summary Appeal Court under **section 124A**.

(3) This section applies in addition to section 209 of the Criminal Procedure Act 2011.

97 Section 150 amended (Rules of procedure)

(1) In section 150(1)(c), delete "investigated or otherwise".

(2) Replace section 150(1)(t) with:

(t) providing for anything that this Act, or the Court Martial Act 2007, says may or must be provided for by rules of procedure:

(u) providing for anything that is necessary for carrying out, or giving full effect to, this Act, or the Court Martial Act 2007, in relation to the disposal and punishment of offences against this Act.

98 Section 150C amended (Power to summon witnesses)

In section 150C(3)(b)(ii), replace "or the appellant" with "the appellant, or the respondent".

99 New section 150DA inserted (Failure to comply with summons or order to attend: persons not subject to this Act)

After section 150D, insert:

150DA Failure to comply with summons or order to attend: persons not subject to this Act

(1) This section applies if, during proceedings held in New Zealand, a military tribunal or court of inquiry considers that a person who is not subject to this Act has failed without reasonable excuse to comply with a summons or an order to attend as a witness before the tribunal or court.

(2) The tribunal or court may order any constable or provost officer, or any person subject to this Act, to arrest the person and take them before the nearest office of the District Court.

(3) If a person is brought before the District Court under **subsection (2)**, the District Court Judge must—

(a) inquire into the alleged failure to comply with the summons or order; and

(b) make a finding under **subsection (4)** after hearing—

(i) any witnesses against or on behalf of the person; and

(ii) any statement that may be offered in defence.

(4) On finding beyond reasonable doubt that the person is guilty of failing without reasonable excuse to comply with the summons or order to attend, the District Court Judge—

(a) must not convict the person; but

(b) may impose on the person a fine not exceeding $1,000.

Guidance note

See also section 70(1)(a), which makes it an offence for a person who is subject to this Act to fail without reasonable excuse to comply with a summons or an order to attend as a witness before a military tribunal, the Court Martial Appeal Court, or a court of inquiry.

100 Cross-heading above section 150E replaced

Replace the cross-heading above section 150E with:

Interpretation of terms used in sections 150E to 150K

101 Sections 150E to 150G replaced

Replace sections 150E to 150G with:

150E Interpretation

In **sections 150E to 150K**,—

appointed Judge has the meaning given in section 2(1) of the Court Martial Appeals Act 1953

judicial member means,—

(a) in relation to the Summary Appeal Court or the Court Martial, a Judge; and

(b) in relation to the Court Martial Appeal Court, a High Court Judge or an appointed Judge

military court means any of the following:

(a) the Summary Appeal Court:

(b) the Court Martial:

(c) the Court Martial Appeal Court

officer of the court means,—

(a) in relation to the Summary Appeal Court,—

(i) the Registrar; and

(ii) a clerk or other officer of the Summary Appeal Court appointed by the Registrar under section 121(2):

(b) in relation to the Court Martial,—

(i) the Registrar of the Court Martial appointed under section 79(1) of the Court Martial Act 2007; and

(ii) a clerk or other officer of the Court Martial appointed by the Registrar of the Court Martial under section 79(2) of that Act: 5

(c) in relation to the Court Martial Appeal Court,—

(i) the Registrar of the Court Martial Appeal Court appointed under the Public Service Act 2020 or deemed to be so appointed by section 5(2) of the Court Martial Appeals Act 1953; and

(ii) any other officer of the Court Martial Appeal Court appointed under the Public Service Act 2020. 10

Disruptive behaviour during proceedings

150F Disruptive behaviour during proceedings before disciplinary officer or court of inquiry

(1) This section applies if a disciplinary officer, or a member of a court of inquiry, believes that any person is— 15

(a) wilfully disrupting proceedings before the disciplinary officer or the court of inquiry; or

(b) wilfully and without lawful excuse disobeying any order or direction of the disciplinary officer or the court in the course of the hearing of any proceedings before the disciplinary officer or court. 20

(2) The disciplinary officer, or member, may do the following:

(a) order that the person be excluded from the place where the proceedings are being held until—

(i) the disciplinary officer or court rises for the day; or 25

(ii) a specified time before the disciplinary officer or court rises for the day:

(b) order that a person excluded until a specified time under **subsection (2)(a)(ii)** be present at the place where the proceedings are being held at the specified time. 30

(3) The following people may execute an order under **subsection (2)(a) or (b)**:

(a) a constable:

(b) a provost officer:

(c) a person who is subject to this Act and who is directed to execute the order by the person who made the order. 35

(4) A person authorised to execute an order under this section may—

(a) execute the order with or without the assistance of any other person; and

(b) execute the order by removing the person the order relates to from the place the proceedings are being held and, if applicable, returning them to that place, in accordance with the order.

150G Disruptive behaviour during proceedings before military court

(1) This section applies if a judicial member of a military court believes that any person is—

(a) wilfully disrupting the proceedings of the military court; or

(b) wilfully and without lawful excuse disobeying any order or direction of the military court in the course of the hearing of any proceedings of the military court.

(2) The judicial member may do 1 or more of the following:

(a) order that the person be excluded from the place where the proceedings are being held until—

(i) the military court rises for the day; or

(ii) a specified time before the military court rises for the day:

(b) order that a person excluded until a specified time under **subsection (2)(a)(ii)** be present at the place where the proceedings are being held at the specified time:

(c) cite the person for disruptive behaviour and, if the military court is in New Zealand, order that the person cited be taken into custody and detained until a time no later than the time the military court rises for the day.

(3) The following people may execute an order under **subsection (2)(a), (b), or (c)**:

(a) a constable:

(b) a provost officer:

(c) an officer of the court who is directed to execute the order by the judicial member who made the order.

(4) In addition, a person who is subject to this Act may execute an order under **subsection (2)(a) or (b)** if directed to do so by the judicial member who made the order.

(5) A person authorised to execute an order under this section may execute the order—

(a) with or without the assistance of any other person; and

(b) in the case of an order under **subsection (2)(a) or (b)**, by removing the person the order relates to from the place the proceedings are being held and, if applicable, returning them to that place, in accordance with the order; and

(c) in the case of an order under **subsection (2)(c)**, by taking the person the order relates to into custody in accordance with the order.

150H Procedure for dealing with person cited for disruptive behaviour

(1) This section applies if a person is cited for disruptive behaviour under **section 150G(2)(c)** by a judicial member of a military court.

(2) Before the military court rises for the day,—

(a) the person cited must be given a reasonable opportunity to—

(i) obtain legal representation; and

(ii) apologise to the military court; and

(b) the judicial member must then review the person's citation.

(3) If, after reviewing the citation, the judicial member considers that further punishment is necessary, the judicial member must—

(a) give the person a written statement that specifies the behaviour that the judicial member believes was disruptive behaviour; and

(b) consider whether there are exceptional circumstances that warrant a different judicial member of the military court hearing the matter; and

(c) set the matter down for determination before a judicial member of the military court within the next 7 days.

(4) At the hearing, the judicial member—

(a) may receive from any person any evidence or statement that the judicial member considers relevant; and

(b) must make a finding under **subsection (5)**.

(5) On finding beyond reasonable doubt that the person is guilty of engaging in disruptive behaviour, the judicial member—

(a) must not convict the person; but

(b) may impose on the person a fine not exceeding $10,000.

Offences relating to proceedings in Court Martial

150I Offence to publish certain Court Martial trial information

(1) Section 7 of the Contempt of Court Act 2019 additionally applies if a person (**person A**) is arrested for or charged with a relevant offence against this Act and, in that case,—

(a) applies from the time of the arrest or charge (whichever happens first) until the delivery of the verdict; and

(b) ceases to apply—

(i) temporarily, while an allegation or a charge is being dealt with under **subparts 1A** to 5 of Part 5; and

(ii) permanently, if any of the following occurs:

(A) person A is not charged:

(B) the alleged offence or charge is disposed of under Part 5:

(C) the Court Martial finds person A not guilty of the offence:

(D) the Court Martial sentences person A in relation to the offence (following a guilty plea or conviction in the Court Martial):

(E) the charge for the offence is withdrawn, dismissed, stayed, or otherwise disposed of.

(2) If section 7 of the Contempt of Court Act 2019 applies because its application is extended by **subsection (2)**, sections 7 and 8 of that Act must be read as if—

(a) references to a juror were references to a military member:

(b) references to a jury were references to the military members of a Court Martial:

(c) references to a jury trial were references to a trial in the Court Martial.

(3) In this section, **relevant offence against this Act** means one of the following:

(a) a mid-level offence:

(b) a serious offence:

(c) a loyalty offence:

(d) an offence against section 74 for which the corresponding civil offence is a category 3 offence or category 4 offence (within the meaning given in section 6 of the Criminal Procedure Act 2011).

Guidance note

This section extends section 7 of the Contempt of Court Act 2019 (offence to publish certain criminal trial information) to cover trials in the Court Martial.

150J Court Martial may make orders under section 9(1) of Contempt of Court Act 2019

(1) If the Court Martial convicts a person of an offence against section 74(1) of this Act for which the corresponding civil offence is an offence against section 7(2) of the Contempt of Court Act 2019, section 9(1) to (3) of the Contempt of Court Act 2019 applies in relation to the conviction as if the person had been convicted of an offence against section 7(2) that Act.

(2) *See also* section 7 of the Court Martial Appeals Act 1953, which provides for appeals against decisions of the Court Martial under section 9(1) of the Contempt of Court Act 2019.

150K Offence to disclose deliberations of military members of Court Martial

Sections 14 and 15 of the Contempt of Court Act 2019 apply in relation to proceedings in the Court Martial as if—

(a) references to a member of a jury or to a juror were references to a military member of the Court Martial:

(b) references to jury service were references to service as a military member of the Court Martial:

(c) in section 15(2), the reference to the jury trial were a reference to the trial in the Court Martial:

(d) section 15(3) additionally referred to the following persons:

(i) the Provost Marshal:

(ii) a member of the Military Police.

Guidance note

This section extends section 14 of the Contempt of Court Act 2019 (offence to disclose jury deliberations) to cover the deliberations of military members of the Court Martial.

102 Section 159 amended (Chief Judge may delegate to Registrar of Court Martial duty to appoint Judge to Authority)

After section 159(2)(d), insert:

(e) continues to have effect, as if made by the Chief Judge's successor in office, if the Chief Judge ceases to hold office (but does not continue in effect after that successor ceases to hold office).

103 Section 160 amended (Armed Forces Discipline Committee established)

(1) In section 160(2), replace "9" with "11".

(2) After section 160(2)(f), insert:

(fa) the Warrant Officer of the Defence Force; and

(fb) the Provost Marshal; and

104 Section 162 amended (Functions of Discipline Committee)

After section 162(1), insert:

(1A) To avoid doubt, the Disciplinary Committee's functions do not include producing guidelines in relation to the imposition of sanctions through the minor disciplinary sanction system.

105 New section 177AA inserted (Deferral of sentence of imprisonment or detention on humanitarian grounds)

After section 177, insert:

177AA Deferral of sentence of imprisonment or detention on humanitarian grounds

(1) This section applies if the Court Martial or a disciplinary officer sentences a person to a term of imprisonment or detention under this Act.

(2) The Court Martial or disciplinary officer may defer the start date of that sentence for a specified period of up to 2 months on humanitarian grounds.

(3) However, **subsection (2)** does not apply if—

(a) the sentence of imprisonment or detention is imposed cumulatively on any other sentence of imprisonment or detention; or

(b) the sentence of imprisonment or detention is imposed in substitution for a sentence of imprisonment or detention that has been quashed or set aside; or

(c) an order under this section has already been made in relation to the sentence; or

(d) the offender has already commenced serving the sentence or is detained under any other sentence or order.

(4) If the start date of an offender's sentence is deferred for a specified period under **subsection (2)**, the offender's term of imprisonment or detention starts on the date on which the offender is taken into custody after the expiry of that specified period.

106 Section 177A amended (Effect of period spent in custody before being sentenced)

In section 177A(2), after "section 177", insert ", **section 177AA**,".

107 Section 186A amended (Compensation to victims of offences causing physical harm)

In section 186A(1) and (2)(b), replace "victim" with "person harmed".

108 Section 198A amended (Application of this Part)

Repeal section 198A(2).

109 Section 198B amended (Interpretation of terms used in this Part)

(1) In section 198B, repeal the definitions of **specified offence** and **victim**.

(2) In section 198B, replace the definition of **victim support officer** with:

victim support officer means a person appointed to be a victim's victim support officer under **section 198BA(2), (4), or (6)**.

(3) In section 198B, insert as subsection (2):

(2) *See also* section 2, which defines specified offence and victim.

110 New section 198BA inserted (Victim support officers: notification and appointment)

After section 198B, insert:

198BA Victim support officers: notification and appointment

(1) This section applies if a person is charged, under Part 5, with having committed an offence that is a specified offence.

(2) For each victim of the offence, a victim support officer must be appointed as follows:

(a) if the victim has a commanding officer, the commanding officer must appoint the victim support officer:

(b) if the victim does not have a commanding officer, the person who made the charging decision in relation to the offence must appoint the victim support officer.

(3) **Subsection (2)** is subject to **subsection (4)**.

(4) If a victim's commanding officer is not an appropriate person to appoint a victim support officer (for example, because they are alleged to have committed the offence), the person who made the charging decision in relation to the offence must appoint the victim support officer instead.

(5) A person who appoints a victim support officer under **subsection (2) or (4)** must advise the Director of Military Prosecutions of the appointment (unless they are the Director of Military Prosecutions).

(6) The Director of Military Prosecutions may appoint a victim support officer at any time (including to replace an appointed victim support officer).

(7) A victim support officer appointed under this section must—

(a) be a member of the Armed Forces; and

(b) be appointed in writing.

(8) In this section, **charged** and **charging decision** include a decision to amend a charge, substitute a different charge, or add a new charge.

111 Section 198D amended (Victim's views about release on bail of accused or offender)

(1) Replace section 198D(1) with:

(1) This section applies if—

(a) a person is accused of having committed a specified offence; and

(b) the Judge Advocate General or a Judge of the Court Martial is considering either or both of the following:

(i) whether to grant bail to the person in respect of the offence:

(ii) the terms and conditions (if any) that should apply to bail granted to the person in respect of the offence.

(2) In subsection (2)(a), replace "the victim has" with "any victims of the offence have".

112 Section 200E amended (Terms of reference)

In section 200E(b), replace "investigation" with "inquiry".

113 Section 200N amended (Rights of person who may be affected by inquiry) 5

In section 200N(1), after "must", insert "take all reasonably practicable steps to".

114 Schedule 1AA amended

In Schedule 1AA,—

(a) insert the Part set out in **Schedule 1** of this Act as the last Part; and 10

(b) make all necessary consequential amendments.

115 New Schedule 5A inserted

After Schedule 5, insert the **Schedule 5A** set out in **Schedule 2** of this Act.

116 New Schedule 9 inserted

After Schedule 8, insert the **Schedule 9** set out in **Schedule 3** of this Act. 15

Part 2
Amendments to Court Martial Act 2007

117 Principal Act

This Part amends the Court Martial Act 2007.

118 Section 5 amended (Interpretation) 20

(1) In section 5(1), insert in their appropriate alphabetical order:

acting Judge means a Judge appointed as an acting Judge under **section 14A(1)**

permanent Judge means a Judge who is not an acting Judge

(2) In section 5(1),— 25

(a) repeal the definition of **defender**; and

(b) definition of **Judge**, replace "and a Deputy Chief Judge" with ", a Deputy Chief Judge, and an acting Judge".

119 Section 11 amended (Eligibility for appointment as Judge)

(1) In the heading to section 11, after "**as**", insert "**permanent**". 30

(2) In section 11(1) and (2), after "appointed as a", insert "permanent".

120 Section 14 amended (Appointment of other Judges)

(1) In the heading to section 14, after "**other**", insert "**permanent**".

(2) In section 14(1), after "as a", insert "permanent".

121 New sections 14A to 14D inserted

After section 14, insert: 5

14A Appointment of acting Judges

(1) The Governor-General may, by warrant, appoint 1 or more acting Judges.

(2) A person must not be appointed as an acting Judge unless they are—

(a) a former—

(i) permanent Judge; or 10

(ii) District Court Judge; and

(b) under the age of 75 years.

(3) The Governor-General may make an appointment under **subsection (1)** only if the Chief Judge has certified in writing that the appointment is necessary for the proper conduct of the Court Martial. 15

(4) Judges who are appointed under this section have seniority among themselves in accordance with the dates of their appointment.

(5) In this section, **former**, in relation to a permanent Judge or District Court Judge, means a person who has retired or resigned from holding office as a permanent Judge or a District Court Judge (as applicable). 20

14B Term of appointment of acting Judge

(1) An acting Judge may be appointed for a term of not more than 2 years and may be reappointed for 1 or more terms.

(2) However, an acting Judge must not be appointed for a term that extends beyond the date on which the Judge attains the age of 75 years. 25

14C Acting Judge must be authorised to act

(1) An acting Judge may act only to the extent that they are authorised to do so by the Chief Judge under **subsection (2)**.

(2) The Chief Judge may authorise an acting Judge to act—

(a) during 1 or more specified periods; and 30

(b) in 1 or more specified places.

(3) An acting Judge, while acting as authorised by the Chief Judge, has the jurisdiction, powers, protections, privileges, and immunities of a permanent Judge.

14D Permanent Judges senior to acting Judges

A permanent Judge is senior to an acting Judge. 35

122 Section 17 replaced (Judges must not hold other offices)

Replace section 17 with:

17 Restrictions on Judges

(1) A Judge must not practise as a lawyer.

(2) A Judge must not undertake any other paid employment or hold any other office (whether paid or not) without the approval of the Chief Judge. 5

(3) However, **subsection (2)** does not apply to another office if an enactment permits or requires the office to be held by a Judge.

(4) The Chief Judge may approve other employment or any other office only if they are satisfied that the other employment or office is consistent with judicial office. 10

123 Section 19 amended (Age of retirement)

(1) In the heading to section 19, after "**retirement**", insert "**for permanent Judges**".

(2) Replace section 19(1) with: 15

(1) Each permanent Judge must retire from office on attaining the age of 70 years.

(1A) **Subsection (1)** is subject to subsection (2).

124 Section 20 amended (Salaries and allowances of Judges)

(1) In section 20(1), after "Each", insert "permanent".

(2) After section 20(2), insert: 20

(2A) For the period that an acting Judge acts as authorised under **section 14C**, the acting Judge must be paid a salary and allowances calculated as a pro rata proportion of the salary and allowances of a permanent Judge (other than the Chief Judge or a Deputy Chief Judge) under subsection (1)(a) and (c).

(3) In section 20(4), after "which a", insert "permanent". 25

125 New section 20A inserted (Superannuation of acting Judges)

After section 20, insert:

20A Superannuation of acting Judges

(1) A superannuation subsidy must not be paid to a person who is appointed as an acting Judge under **section 14A**. 30

(2) **Subsection (1)** does not apply to a compulsory employer contribution within the meaning of section 101A of the KiwiSaver Act 2006.

126 Section 23 replaced (Disqualifications for membership)

Replace section 23 with:

23 Disqualifications for membership

(1) A person is disqualified to sit as a military member if the person—

(a) has been the accused's commanding officer at any time between the date on which the accused is alleged to have committed the offence they are charged with and the date of the trial; or

(b) has investigated, or been involved in the investigation of, the allegation that led to the charge against the accused; or

(c) has dealt with that allegation under **subpart 1A** of Part 5 of the 1971 Act; or

(d) has had the charge against the accused referred to them as a prospective disciplinary officer; or

(e) has acted as a disciplinary officer under **subparts 1B** to 5 of Part 5 of the 1971 Act in relation to—

(i) the charge against the accused; or

(ii) any other charge against the accused; or

(f) was a member of the Court Martial during an earlier proceeding where the accused was tried in relation to—

(i) the offence the accused is charged with; or

(ii) any other offence; or

(g) has held, or was one of the persons holding, an inquiry under the 1971 Act into matters relating to the subject matter of the charge against the accused; or

(h) is personally concerned in the facts of the case; or

(i) is closely connected with one of the parties or with one of the prospective witnesses; or

(j) is a prospective witness in the proceeding; or

(k) is a lawyer; or

(l) is a member of the Military Police.

(2) For the purposes of **subsection (1)(i)**, a person is not **closely connected** to a party or a prospective witness merely because the person and the party or witness both belong to the same component of the Navy, Army, or Air Force.

127 Section 30 amended (Duties of Judge at trial)

(1) In section 30(1)(b), after "court of justice", insert "(including by ensuring that the accused has a fair trial)".

(2) Repeal section 30(2) to (4).

128 Section 32 amended (Failure to attend Court Martial is contempt of court)

Replace section 32(3) and (4) with:

(3) If a military member is alleged to have committed a contempt of the Court Martial under subsection (1), the Judge—

(a) must explain or provide a written statement to the military member that specifies the behaviour that the Judge believes may constitute a breach of subsection (1) and cause the military member to be liable for a fine or to a term of imprisonment; and

(b) must give the military member a reasonable opportunity to obtain legal advice; and

(c) may receive from any person any evidence or statement that the Judge considers relevant; and

(d) must make a finding under **subsection (4)**.

(4) On finding beyond reasonable doubt that the military member is guilty of the conduct described in subsection (1), the Judge—

(a) must not convict the military member; but

(b) may—

(i) issue a warrant committing the military member to imprisonment for a term not exceeding 1 month; or

(ii) impose on the military member a fine not exceeding $5,000.

129 New section 32A inserted (Military members who investigate or research case are liable to fine)

After section 32, insert:

32A Military members who investigate or research case are liable to fine

(1) This section applies if a person who is assigned to be a military member in a trial,—

(a) during the trial period, intentionally investigates or researches information relevant to the trial; and

(b) does so when the person knew or ought reasonably to have known it is or may be information relevant to the trial.

(2) This section does not apply if the person undertakes the investigation or research with the permission, or at the direction, of the trial Judge.

(3) If this section applies, the Judge—

(a) must explain or provide a written statement to the person that specifies the behaviour that the Judge believes may constitute a breach of **subsection (1)** and cause the person to be liable for a fine; and

(b) must give the person a reasonable opportunity to obtain legal advice; and

(c) may receive from any person any evidence or statement that the Judge considers relevant; and

(d) must make a finding under **subsection (4)**.

(4) On finding beyond reasonable doubt that the person is guilty of the conduct described in **subsection (1)**, the Judge—

(a) must not convict the person; but

(b) may impose on the person a fine not exceeding $5,000.

(5) In this section,—

information relevant to the trial means information about any of the following:

(a) the accused:

(b) any other person involved in the events which are the subject of the trial:

(c) any person involved in the trial, including a witness:

(d) the events that are the subject of the trial:

(e) the law relating to the trial:

(f) the law of evidence

investigate or research includes—

(a) to ask a question or have a discussion (by any means) with a person who is not a military member or the trial Judge:

(b) to search any information source, including the Internet:

(c) to visit or inspect a place or an object:

(d) to conduct an experiment:

(e) to ask another person to perform any of the actions listed above

trial period means the period that—

(a) begins when all of the military members are assigned to the trial (after any objections under section 27 are resolved); and

(b) ends when the military members are discharged or, in the case of an individual military member who is discharged during the trial, the member is discharged.

130 Section 39 amended (Judge may limit scope of open court)

In section 39(2)(c)(v), delete “or defender”.

131 Section 42 amended (Special provisions in cases involving sexual violation)

In section 42(1)(f), delete “or defender”.

132 Section 44 amended (Judge may sit alone to rule on question of law or procedure)

(1) Repeal section 44(4)(d).

(2) In section 44(4)(h), replace “referred to in section 30(2)(a)” with “on an informality or a defect in the charge sheet, the constitution of the Court Martial, or any other matter relating to the proceeding”.

(3) After section 44(4)(j), insert:

(ja) a special procedure under Part 2 of the Security Information in Proceedings Act 2022 that applies to a proceeding, or part of a proceeding, before the Court Martial (*see also* **section 74A**, which sets out when a hearing in the Court Martial will be a specified proceeding for the purposes of that Act):

(4) In section 44(4)(k), replace "discovery" with "disclosure".

133 Section 49 replaced (Judge may grant bail pending trial)

Replace section 49 with:

49 Judge may grant bail pending trial

(1) This section applies to a person who—

(a) is accused of committing an offence against the 1971 Act; and

(b) is being held in custody under that Act.

(2) The person may apply to a Judge to be granted bail.

Bail must be granted if person entitled to bail as of right

(3) The Judge must grant bail to the person if the person is entitled to bail as of right (*see* **section 49A**).

Bail may be granted in other cases

(4) The Judge must grant bail to the person—

(a) if the person is 17 or 18 years old and has not previously been sentenced to imprisonment; or

(b) in any other case, unless the Judge is satisfied that there is just cause for continued detention of the person (*see* **section 49B**).

(5) **Subsection (4)** is subject to **section 49C** (which applies provisions of the Bail Act 2000 that restrict when bail may be granted under **subsection (4)** in specified circumstances).

Bail may be granted subject to reasonable terms and conditions

(6) Bail granted under this section may be subject to any reasonable terms and conditions that the Judge thinks fit.

Conditions of bail granted to person charged with family violence offence

(7) Without limiting **subsection (6)**, if a Judge grants bail to a person who is charged with a family violence offence, the Judge may impose any condition that the Judge considers reasonably necessary to protect—

(a) the victim of the alleged offence; and

(b) any particular person in a family relationship with the victim.

Victim of specified offence's views about bail must be taken into account

(8) When considering whether to grant a person bail in respect of a specified offence (including the conditions, if any, that should be imposed if bail is granted), the Judge must take into account any views of a victim of the offence that have been conveyed to the Judge in accordance with section 198D of the 1971 Act.

49A People entitled to bail as of right

(1) This section sets out when a person is entitled to bail as of right for the purposes of **section 49(3)**.

(2) A person is **entitled to bail as of right** if the offence they are charged with—

(a) is not punishable by imprisonment; or

(b) is an offence for which the maximum punishment is less than 3 years' imprisonment.

(3) **Subsection (2)** is subject to **subsection (4)**.

(4) A person is not entitled to bail as of right under **subsection (2)** if—

(a) the person is charged with an offence against section 74(1) of the 1971 Act for which the corresponding civil offence is either of the following:

(i) an offence against section 194 of the Crimes Act 1961 (which relates to assault on a child, or by a male on a female):

(ii) an offence against section 194A of the Crimes Act 1961 (which relates to assault on a person with whom the person charged is, or has been, in a family relationship); or

(b) the person—

(i) is charged with an offence that is punishable by imprisonment; and

(ii) has previously been convicted of an offence punishable by death or imprisonment (including an offence that is not an offence against the 1971 Act); or

(c) the person has been—

(i) released on bail in relation to the charge; and

(ii) arrested under a warrant issued under section 53 in relation to that release.

49B Consideration of just cause for continued detention

(1) When considering whether there is just cause for continued detention of a person under **section 49(4)(b)**, the Judge—

(a) must take into account the following matters:

(i) the matters set out in section 8(1)(a) and (b) of the Bail Act 2000:

(ii) any effect that releasing the person on bail may have on—

(A) service discipline; or

(B) the operations of the Armed Forces; and

(b) may, when considering whether there is just cause for continued detention based on those matters, take into account the matters set out in section 8(2)(a) to (h) of the Bail Act 2000.

(2) **Subsection (1)** is subject to **subsections (3) and (4)**.

(3) If the person is charged with a family violence offence, the Judge's primary consideration must be the need to protect—

(a) the victim of the alleged offence; and

(b) any particular person or people in a family relationship with the victim.

(4) Despite **subsection (3)**, if the person is charged with an offence against section 74(1) of the 1971 Act for which the corresponding civil offence is an offence against section 112 of the Family Violence Act 2018, the Judge's paramount consideration must be the need to protect every person who, in relation to the protection order, is a protected person.

(5) In this section, **protected person**, in relation to a protection order, has the same meaning as in section 8 of the Family Violence Act 2018.

49C Bail Act 2000 restrictions apply to bail decisions under section 49(4)

(1) The following provisions of the Bail Act 2000 apply to bail decisions under **section 49(4)(a) and (b)** with the modifications set out in **subsection (2)** and any other necessary modifications:

(a) section 9A (restriction on bail if defendant charged with murder):

(b) section 10 (restriction on bail if defendant with previous conviction for specified offence charged with further specified offence):

(c) section 11 (restriction on bail if defendant with previous conviction for specified offence found guilty or pleads guilty to further specified offence):

(d) section 12 (further restriction on bail in certain cases):

(e) section 17A (restriction on bail if defendant charged with serious Class A drug offence).

(2) The modifications are as follows:

(a) references to a civil offence that a defendant is charged with, has been found guilty of, or has pleaded guilty to, are references to the equivalent offence against section 74(1) of the 1971 Act:

(b) references to a defendant's previous conviction for a civil offence are a reference to both of the following:

(i) a conviction for that civil offence:

(ii) a conviction for the equivalent offence against section 74(1) of the 1971 Act:

(c) references to another civil offence in relation to which a defendant is awaiting trial are a reference to both that offence and the equivalent offence against section 74(1) of the 1971 Act:

(d) references to a High Court Judge, a District Court Judge, or a Judge are references to a Judge of the Court Martial:

(e) in the case of a person who is aged 17 years who is charged, found guilty, or pleads guilty under this Act, the Bail Act 2000 provisions apply as if the accused were charged, were found guilty, or pleaded guilty in the High Court.

(3) To avoid doubt, section 11 of the Bail Act 2000 does not apply to a person who has pleaded guilty during proceedings under Part 5 of the 1971 Act if **section 117ZI(2)** of that Act applies to the guilty plea.

134 Section 50 amended (Judge may grant bail pending appeal)

(1) In section 50(3)(a), after "appellant", insert "only if the Judge is satisfied on the balance of probabilities that it would be in the interests of justice in the particular case to do so".

(2) In section 50(3)(b), after "any", insert "reasonable".

(3) Replace section 50(4) with:

(4) When considering the interests of justice under subsection (3)(a), the Judge may take into account the following considerations:

(a) the apparent strength of the grounds of appeal:

(b) the length of the sentence that has been imposed on the appellant:

(c) the likely length of time that will pass before the appeal is heard:

(d) the personal circumstances of the appellant and the appellant's immediate family:

(e) any effect that releasing the person on bail may have on—

(i) service discipline; or

(ii) the operations of the Armed Forces:

(f) any other consideration that the Judge considers relevant.

135 Section 52 amended (Procedure for bail generally)

(1) In section 52(1), replace "49(3)" with "**49(2)**".

(2) In section 52(3), replace "should bail be granted" with "while the person is released on bail".

136 Section 56 replaced (Power to convict of offence other than that charged)

Replace section 56 with:

56 Accused may be convicted of included offence

An accused may be convicted of an included offence if the included offence is proved (even if the whole of the offence the accused is charged with is not proved).

137 Section 64 repealed (Other offences may be taken into account in passing sentence)

Repeal section 64.

138 Section 66 amended (Announcement of finding and sentence)

(1) After section 66(1), insert:

(1A) Subsection (1) is subject to any order under section 39 that limits the scope of open court in the proceeding.

(2) Replace section 66(3) and (4) with:

(3) **Subsection (4)** applies if the Court Martial sentences a person to any of the following:

(a) imprisonment:

(b) dismissal from His Majesty's Service:

(c) detention.

(4) When delivering the sentence, the Judge must state—

(a) any additional consequences of the sentence provided for in section 82 of the 1971 Act; and

(b) if the person is sentenced to dismissal or deemed to be dismissed, when the dismissal takes effect.

139 Section 68 amended (Defence of accused)

(1) In section 68, delete "be defended".

(2) Replace section 68(a) and (b) with:

(a) appear and act for themselves; or

(b) be represented by a lawyer.

140 New section 68A inserted (Accused under age of 18 years entitled to support person)

After section 68, insert:

68A Accused under age of 18 years entitled to support person

(1) An accused who is under the age of 18 years is entitled to be accompanied by a support person during proceedings before the Court Martial.

(2) The support person must be appointed in the manner specified in Defence Force Orders.

(3) The support person must not help the accused conduct their case.

141 New section 74A inserted (Application of Security Information in Proceedings Act 2022)

After section 74, insert:

74A Application of Security Information in Proceedings Act 2022

(1) A hearing in the Court Martial in relation to an application described in **subsection (2)** is a specified proceeding for the purposes of section 8(3) of the Security Information in Proceedings Act 2022.

(2) The applications are as follows:

(a) an application by the accused for non-party disclosure of information held by the Crown, which the Crown asserts should be refused in whole, or in part, because disclosure of that information would be likely to prejudice national security interests:

(b) an application by the accused for an order requiring a prosecutor to disclose information that the prosecutor has withheld because disclosure of that information would be likely to prejudice national security interests:

(c) an application by the prosecutor or the accused for an order that evidence is admissible, where either party asserts that the evidence to which the application relates is evidence based on national security information.

(3) In this section,—

Crown has the meaning given in section 26B(5) of the Criminal Disclosure Act 2008

evidence based on national security information has the meaning given in section 5A of the Criminal Procedure Act 2011

national security information has the meaning given in section 4 of the Security Information in Proceedings Act 2022

national security interests has the meaning given in section 4 of the Security Information in Proceedings Act 2022.

142 Section 78 amended (Chief Judge may delegate functions, duties, or powers to Deputy Chief Judge or Registrar)

After section 78(2)(d), insert:

(e) continues to have effect, as if made by the Chief Judge's successor in office, if the Chief Judge ceases to hold office (but does not continue in effect after that successor ceases to hold office).

143 Section 82 amended (Registrar may delegate functions, duties, or powers to clerk or other officer of Court Martial)

After section 82(2)(d), insert:

(e) continues to have effect, as if made by the Registrar's successor in office, if the Registrar ceases to hold office (but does not continue in effect after that successor ceases to hold office).

144 Schedule 1AA amended

In Schedule 1AA,— 5

(a) insert the Part set out in **Schedule 4** of this Act as the last Part; and

(b) make all necessary consequential amendments.

Part 3
Amendments to other legislation and consequential amendment

Subpart 1—Amendments to Court Martial Appeals Act 1953 10

145 Principal Act

This subpart amends the Court Martial Appeals Act 1953.

146 Section 2 amended (Interpretation)

In section 2(1), insert in its appropriate alphabetical order:

member of the media means a member of the media to whom section 210(1) of the Criminal Procedure Act 2011 applies 15

147 Section 7 amended (Appeal against ruling)

(1) After section 7(2), insert:

(2A) In addition,—

(a) a member of the media may, with the leave of the court, appeal to the court against a ruling under subpart 3 of Part 5 of the Criminal Procedure Act 2011, or section 9(1) of the Contempt of Court Act 2019, to which this section applies; and 20

(b) a person who is the subject of a ruling under section 9(1) of the Contempt of Court Act 2019 to which this section apples may, with the leave of the court, appeal to the court against the ruling. 25

(2) Repeal section 7(5)(d).

(3) In section 7(5)(h), replace "referred to in section 30(2)(a) of the Court Martial Act 2007" with "on an informality or a defect in the charge sheet, the constitution of the Court Martial, or any other matter relating to the proceeding". 30

(4) After section 7(5)(j), insert:

(ja) an order under section 9(1) of the Contempt of Court Act 2019 (as applied by **section 150J** of the Armed Forces Discipline Act 1971):

(jb) a special procedure under Part 2 of the Security Information in Proceedings Act 2022 that applies to a proceeding, or part of a proceeding, 35

before the Court Martial (*see also* **section 74A** of the Court Martial Act 2007):

(5) In section 7(5)(k), replace "discovery" with "disclosure".

148 New section 9EC inserted (Right of appeal against finding of guilty or fine in relation to disruptive behaviour by person or other specified misconduct by military member)

After section 9EB, insert:

9EC Right of appeal against finding of guilty or fine in relation to disruptive behaviour by person or other specified misconduct by military member

(1) This section applies to a decision finding a person guilty of the specified conduct, or imposing a punishment on the person in relation to that finding, under the following provisions:

(a) **section 150H(5)** of the 1971 Act:

(b) **section 32(4)** of the Court Martial Act 2007:

(c) **section 32A(4)** of the Court Martial Act 2007.

(2) The person may appeal to the court against either or both of the following:

(a) the finding of guilty:

(b) the punishment imposed.

(3) The Director of Military Prosecutions may appeal to the court against the punishment imposed.

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

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

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

(5) Sections 9A, 9AB, 9D, and 9F apply to an appeal under this section as if—

(a) the finding of guilty were a conviction for an offence; and

(b) the punishment imposed (if any) were a sentence imposed in relation to that conviction; and

(c) in the case of a decision under **section 150H(5)**, the references to the Court Martial in section 9A were references to the judicial member of the Summary Appeal Court or Court Martial who made the decision.

149 New section 9G inserted (Appeal to Court of Appeal against decision of judicial member of court under section 150(5) of 1971 Act)

After section 9F, insert:

9G Appeal to Court of Appeal against decision of judicial member of court under section 150(5) of 1971 Act

(1) This section applies to the following decisions of a judicial member of the court under **section 150H(5)** of the 1971 Act:

(a) a finding that a person is guilty of engaging in disruptive behaviour:

(b) a decision imposing a fine on the person in relation to that finding.

(2) The person may appeal to the Court of Appeal against either or both of the following:

(a) the finding of guilty:

(b) the fine.

(3) The Director of Military Prosecutions may appeal to the Court of Appeal against the fine.

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

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

(b) within any further time that the Court of Appeal may allow.

(5) Sections 9A, 9AB, 9D(2), 9F, and 11 apply to an appeal under this section as if—

(a) the finding of guilty were a conviction for an offence; and

(b) the fine (if any) were a sentence imposed in relation to that conviction; and

(c) the references to the Court Martial in section 9A were references to the judicial member of the court who made the decision under **section 150H(5)**; and

(d) references to the court were references to the Court of Appeal.

150 Section 10 amended (Appeals to Court of Appeal or Supreme Court)

Replace section 10(1) with:

(1) With the leave of the court appealed to,—

(a) a party to an appeal under any of sections 6, 7, 9, or **9EC** may appeal to the Court of Appeal or the Supreme Court against any decision of the court in the appeal; and

(b) a member of the media may appeal to the Court of Appeal or the Supreme Court against a decision of the court under subpart 3 of Part 5 of the Criminal Procedure Act 2011 (even if the member of the media is not a party to the proceeding in which the decision was made).

151 Section 10A amended (Appeals to Supreme Court from Court of Appeal)

In section 10A, replace “section 10” with “section **9G** or 10”.

152 Section 10C amended (Powers and procedure of Court of Appeal and Supreme Court)

In section 10C(a), after "as the court", insert "(or, in the case of an appeal against a decision under **section 9G**, the Court of Appeal)".

153 New section 11A inserted (Failure to comply with summons or order to attend: persons not subject to Armed Forces Discipline Act 1971)

After section 11, insert:

11A Failure to comply with summons or order to attend: persons not subject to Armed Forces Discipline Act 1971

(1) This section applies if the court considers that a person who is not subject to the Armed Forces Discipline Act 1971 has failed without reasonable excuse to comply with an order to attend as a witness before the court.

(2) The court may order any constable or provost officer, or any person subject to the Armed Forces Discipline Act 1971, to arrest the person and take them before the nearest office of the District Court.

(3) If a person is brought before the District Court under **subsection (2)**, the District Court Judge—

(a) must inquire into the alleged failure to comply with the summons or order; and

(b) must make a finding under **subsection (4)** after hearing—

(i) any witnesses against or on behalf of the person; and

(ii) any statement that may be offered in defence.

(4) On finding beyond reasonable doubt that the person is guilty of failing without reasonable excuse to comply with the order to attend, the District Court Judge—

(a) must not convict the person; but

(b) may impose on the person a fine not exceeding $1,000.

Guidance note

See also section 70 of the Armed Forces Discipline Act 1971, which makes it an offence for a person who is subject to that Act to fail without reasonable excuse to comply with an order to attend as a witness before the court.

154 Section 17 amended (Proceedings to be in open court, unless it is necessary to clear the court)

In section 17, insert as subsection (2):

(2) **Subsection (1)** is subject to section 11 of the Security Information in Proceedings Act 2022.

155 Section 20A amended (Judge may grant bail pending appeal)

(1) In section 20A(2)(a), after "appellant", insert "only if the Judge is satisfied on the balance of probabilities that it would be in the interests of justice in the particular case to do so".

(2) In section 20A(2)(b), after "any", insert "reasonable".

(3) Replace section 20A(3) with:

(3) When considering the interests of justice under subsection (2)(a), the Judge may take into account the following considerations:

(a) the apparent strength of the grounds of appeal:

(b) the length of the sentence that has been imposed on the appellant:

(c) the likely length of time that will pass before the appeal is heard:

(d) the personal circumstances of the appellant and the appellant's immediate family:

(e) any effect that releasing the person on bail may have on—

(i) service discipline; or

(ii) the operations of the Armed Forces:

(f) any other consideration that the Judge considers relevant.

156 Schedule 1 amended

In Schedule 1,—

(a) insert the Part set out in **Schedule 5** of this Act as the last Part; and

(b) make all necessary consequential amendments.

Subpart 2—Amendment to Crimes Act 1961

157 Principal Act

This subpart amends the Crimes Act 1961.

158 Section 9 amended (Offences not to be punishable except under New Zealand Acts)

Repeal section 9(1)(b).

Subpart 3—Amendments to Search and Surveillance Act 2012

159 Principal Act

This subpart amends the Search and Surveillance Act 2012.

160 Section 82 amended (Application of this subpart)

(1) In section 82(c), replace "regulations" with "secondary legislation".

(2) In section 82, insert as subsections (2) and (3):

(2) **Subsection (1)** is subject to **subsection (3)**.

(3) For the purposes of section 85 to 87 (which relate to rub-down searches of arrested or detained persons), this subpart also applies to a person who has exercised a power of arrest or detention, or both, by or under the Armed Forces Discipline Act 1971 or secondary legislation made under that Act. 5

Subpart 4—Amendments to Security Information in Proceedings Act 2022

161 Principal Act

This subpart amends the Security Information in Proceedings Act 2022.

162 Section 4 amended (Interpretation) 10

In section 4, definition of **authorised court**, after paragraph (d), insert:

(e) the Court Martial:

(f) the Court Martial Appeal Court

163 Section 8 amended (Application of special procedures to certain proceedings) 15

After section 8(3)(d), insert:

Martial proceedings: national security information

(da) a hearing that is a specified proceeding by virtue of **section 74A** of the Court Martial Act 2007:

Te wāhanga iti 5/Subpart 5—Ngā Panonitanga o Te Ture mō Te Reo Māori 2016/Amendments to Māori Language Act 2016 20

Ngā Panonitanga o Te Ture mō Te Reo Māori 2016

164 Te Ture Matua

E panoni ana tēnei wāhanga iti i Te Ture mō Te Reo Māori 2016.

165 Kua panonitia te Āpitihanga 2 25

(1) I te Āpitihanga 2, i te Wāhanga A, i raro tonu i te mea e pā ana ki Te Kōti Pīra Māori, kuhuna te:

Te Kōti Ope Tauā o Aotearoa

Te Kōti Pīra Ope Tauā o Aotearoa

Te Kōti Pīra Whakaraupapa o Aotearoa 30

(2) I te Āpitihanga 2, i te Wāhanga B, i raro tonu i te mea e pā ana ki Te Rōpū Wawao Tautohe, kuhuna te:

He Āpiha Whakaraupapa (e ai ki te tikanga o taua ingoa i raro i te wehenga 2(1) o te Armed Forces Discipline Act 1971)

Amendments to Māori Language Act 2016

164 Principal Act

This subpart amends the Māori Language Act 2016.

165 Schedule 2 amended

(1) In Schedule 2, Part A, after the item relating to the Māori Appellate Court, insert:

The Court Martial

The Court Martial Appeal Court

The Summary Appeal Court of New Zealand

(2) In Schedule 2, Part B, after the item relating to the Disputes Tribunal, insert:

A disciplinary officer (within the meaning of that term under section 2(1) of the Armed Forces Discipline Act 1971)

Subpart 6—Amendments to New Zealand Sign Language Act 2006

166 Principal Act

This subpart amends the New Zealand Sign Language Act 2006.

167 Schedule amended

(1) In the Schedule, after the item relating to the Environment Court, insert:

- The Court Martial
- The Court Martial Appeal Court
- The Summary Appeal Court of New Zealand

(2) In the Schedule, after the item relating to the Disputes Tribunal, insert:

- A disciplinary officer (within the meaning of that term under section 2(1) of the Armed Forces Discipline Act 1971)

Subpart 7—Consequential amendment

168 Consequential amendment

Amend the Search and Surveillance Act 2012 as set out in **Schedule 6**.

Schedule 1
New Part 2 inserted into Schedule 1AA of Armed Forces Discipline Act 1971

s 114

Part 2
Provisions relating to Armed Forces Discipline Legislation Amendment Act 2025

5 Interpretation

(1) In this Part,—

amendment Act means the Armed Forces Discipline Legislation Amendment Act **2025**

commencement date means the date on which the amendment Act comes into force

new or **amended**, in relation to a provision of this Act or the Act as a whole, means the provision or provisions of this Act in force on and after the commencement date

old or **original**, in relation to a provision of this Act or the Act as a whole, means the provision or provisions of this Act in force immediately before the commencement date.

(2) For the purposes of this Part,—

(a) a person is **charged with** an offence against this Act when an allegation that the person has committed the offence is recorded in the form of a charge; and

(b) if, under section 113, a charge is amended or substituted or a new charge is added, the person must be treated as if they were charged with the amended, substituted, or additional offence on the same date that they were charged with the original offence.

Provisions relating to dealing with offences under Act

6 General rule: amended Act applies to offence unless person was charged before commencement date

(1) If a person has been charged with an alleged offence against this Act before the commencement date, the original Act continues to apply in relation to the offence on and after the commencement date as if the amendment Act had not been enacted (including any rehearing, retrial, or appeal in respect of the offence).

(2) The amended Act otherwise applies in relation to alleged offences against this Act, including—

(a) if an offence against a provision of the original Act is alleged to have been committed before the commencement date; and

(b) for the purposes of searches and other investigations carried out on or after the commencement date to find evidence of such an offence.

(3) This clause is subject to **clauses 7 to 10** (which provide for exceptions to the general rule set out in **subclauses (1) and (2)**).

7 Old limitation provision continues to apply if offence committed before commencement date

If an offence against this Act is alleged to have been committed before the commencement date, old section 20 continues to apply in respect of the offence on and after the commencement date (instead of new **sections 20 and 20A**).

8 Judge Advocate General's bail decisions dealt with under original Act if section 101 report received before commencement date

(1) If the Judge Advocate General receives a report under section 101 before the commencement date, the Judge Advocate General's associated bail decision must be made under the original Act (which continues to apply in relation to that decision as if the amendment Act had not been enacted).

(2) If the Judge Advocate General receives a report under section 101 on or after the commencement date, the Judge Advocate General's associated bail decision must be made under the amended Act.

9 New provisions regulating disruptive behaviour, etc, apply to all proceedings

(1) New **sections 150DA and 150E to 150K** apply in relation to all proceedings on and after the commencement date (including proceedings relating to an offence a person was charged with before the commencement date).

(2) However, those provisions do not apply to non-compliance with an order or a direction on or after the commencement date if that order or direction was made or given before the commencement date.

10 Appeal to Summary Appeal Court against suppression order decision may be brought if decision made on or after commencement date

An appeal under new **section 124C** against a decision of a disciplinary officer may be brought if the decision was made on or after the commencement date (even if the decision was made in a proceeding relating to an offence a person was charged with before the commencement date).

Provisions relating to other matters

11 Existing appointment of Provost Marshal continued

The person who holds office as the Provost Marshal immediately before the commencement date continues to hold that office on and after the commencement date for the unexpired term of their appointment as if they had been appointed under **section 101M(2)**.

12 Savings relating to offences taken into consideration

(1) This clause applies if—

(a) a person has had an offence against this Act (**offence A**) taken into consideration by the Court Martial when sentencing that person for another offence (**offence B**); and

(b) the sentence passed in relation to offence B has not been quashed; and

(c) the decision to take offence A into consideration has not been annulled.

(2) The person must not be charged under this Act, or before a civil court, with having committed an offence that is substantially the same as offence A.

(3) A charge alleging the person has committed offence A must not be tried by the Court Martial or tried summarily, or otherwise dealt with, under **subparts 1B** to 5 of Part 5.

(4) An allegation that the person has committed offence A must not be dealt with through the minor disciplinary sanction system.

13 Delegations deemed to be made by current office holder or commander

If a delegation under old section 101L, 107, 122, 123, or 159 existed immediately before the commencement date, the delegation must be treated, for the purposes of new **sections 101L(4A), 107(3A), 122(2)(e), 123(2)(e), or 159(2)(e)** (as applicable), as having been made by the person who is the relevant office holder or commander on the commencement date.

14 Existing victim support officers deemed to be appointed under new section 198BA

If a person was a victim support officer (within the meaning given in old section 198B) immediately before the commencement date, that person is deemed to have been appointed as a victim support officer under new **section 198BA** on and after the commencement date.

Schedule 2
New Schedule 5A inserted into Armed Forces Discipline Act 1971

s 115

Schedule 5A
Scale of sanctions that may be imposed by commanding officer through minor disciplinary sanction system

s 102I(1)

1 The sanctions that may be imposed on a person by a commanding officer through the minor disciplinary sanction system are as follows:

(a) a reprimand:

(b) extra work and drill:

(c) extra duty not exceeding 2 hours a day:

(d) a caution.

2 The sanctions of extra work and drill and of extra duty, when imposed through the minor disciplinary sanction system, may be imposed for a period not exceeding 21 days.

3 Except as provided in **clauses 4 and 5**, a sanction specified in any paragraph of the scale prescribed by **clause 1** must be regarded as less severe than any of the sanctions that are specified in the preceding paragraphs of that scale.

4(1) One combination of sanctions must be regarded as less severe than any other combination of sanctions if the most or more severe sanction of the first-mentioned combination is less severe than the most or more severe of the other combination of sanctions.

(2) In comparing any 2 combinations of sanctions as provided in **subclause (1)**, any sanction that is the same in kind and amount as a sanction included in the other combination must be excluded from each combination.

5 A combination of sanctions must be regarded as less severe than a single sanction if the most or more severe sanction of the combination is less severe than the single sanction.

Schedule 3
New Schedule 9 inserted into Armed Forces Discipline Act 1971

s 116

Schedule 9
Application of Search and Surveillance Act 2012 to search under section 98A

s 98A(3)

1 Application of Search and Surveillance Act 2012 to search under section 98A

(1) This clause sets out how subparts 1, 3, 4, 5, 9, and 10 of Part 4 of the Search and Surveillance Act 2012 apply for the purposes of **section 98A**.

(2) Subparts 1, 3, 4, 5, 9, and 10 of Part 4 of the Search and Surveillance Act 2012 apply—

(a) subject to the exceptions set out in the second column of the table at the end of this schedule; and

(b) with the following modifications:

(i) the general modifications set out in **subclause (3)** (the **general modifications**); and

(ii) the specific modifications set out in the third column of the table at the end of this schedule (the **specific modifications**).

General modifications

(3) The following modifications apply to every applicable provision of Part 4 of the Search and Surveillance Act 2012:

(a) references to a constable (including the reference in paragraph (a) of the definition of enforcement officer in section 3) must be read as references to a member of the Military Police:

(b) **issuing officer** means a Judge of the Court Martial (instead of the persons referred to in the section 3 definition of issuing officer).

Table of exceptions and specific modifications

(4) The table referred to in **subclause (2)(a) and (b)(ii)** is as follows:

Subpart of Part 4	Exceptions	Specific modifications
Subpart 1 (application of rules)	Section 90(2) to (4) (transfer of things between law enforcement agencies) does not apply (but *see* **section 99G** of this Act)	No specific modifications
Subpart 3 (search warrants)	Section 104 (issuing officer may require search warrant report) does not apply	Section 101 applies as if references to the District Court were references to the Court Martial

Subpart of Part 4	Exceptions	Specific modifications
	Section 108 (issuing officer may require search warrant report) does not apply Section 109 (authorisation of issuing officers) does not apply	Section 107(2) disapplies section 67(1)(a) of the Court Martial Act 2007 if a warrant is invalid under section 107(1)
Subpart 4 (carrying out search powers)	Section 110 (search powers) does not apply (but *see* **section 98B** of this Act) Sections 123A to 123E (seizure of cash found in suspicious circumstances) do not apply	Sections 116(2)(a) and (c), 117(4)(a) and (c), 121(3)(a) and (c), and 129(a) and (c) require the person exercising the power to identify themselves by their name and rank and refer to a person being in uniform (instead of Police uniform)
	Sections 124 to 126 (search of persons) do not apply (but *see* **section 98C** of this Act)	The time limit in section 117(3)(a) is the expiry of 12 hours from when the power is first exercised (instead of the expiry of 6 hours from that time)
	Sections 131 to 135 (identification and notice) do not apply (but *see* **section 98D to 98H** of this Act)	The powers in section 118 and 119 may only be exercised in relation to a person who is subject to this Act, and may only be exercised by a member of the Military Police
Subpart 5 (privilege and confidentiality)	No exceptions	The section 136(3) definition of appropriate court applies as if the references to the High Court and to the District Court were (respectively) references to the Court Martial Appeal Court and the Court Martial Sections 138(3) and 139(2) and (4) apply as if references to the Commissioner were references to the Chief of Defence Force Sections 138(3) and (4) and 140(3) apply as if references to a District Court Judge were references to a Judge of the Court Martial
Subpart 9 (offences)	No exceptions	No specific modifications
Subpart 10 (miscellaneous)	No exceptions	Section 180 applies as if references to the High Court were references to the Court Martial Appeal Court Section 181(1) additionally allows an order or a notice to be given to a person in the manner prescribed in Defence Force Orders

Schedule 4
New Part 2 inserted into Schedule 1AA of Court Martial Act 2007

s 144

Part 2
Provisions relating to Armed Forces Discipline Legislation Amendment Act 2025

4 Interpretation

(1) In this Part,—

commencement date means the date on which the Armed Forces Discipline Legislation Amendment Act **2025** comes into force

new or **amended**, in relation to a provision of this Act or the Act as a whole, means the provision or provisions of this Act in force on and after the commencement date

old or **original**, in relation to a provision of this Act or the Act as a whole, means the provision or provisions of this Act in force immediately before the commencement date.

(2) For the purposes of this Part,—

(a) proceedings in the Court Martial are **commenced**, in respect of an alleged offence, when the Director of Military Prosecutions lays a charge in respect of the offence before the Registrar of the Court Martial; and

(b) if, during those proceedings, the charge is amended or substituted or a new charge is added, the proceedings in relation to the amended, substituted, or new charge must be treated as if they were commenced on the same date as the proceedings in respect of the original alleged offence.

(3) The general rule provided for in **clause 6 of Part 2** of Schedule 1AA of the 1971 Act does not apply in relation to this Act.

5 If military member assigned before commencement date, old disqualification provision continues to apply

If a person was assigned as a military member of the Court Martial before the commencement date, old section 23 continues to apply in relation to that assignment on and after the commencement date (instead of new **section 23**).

6 Applications for bail dealt with under original Act if made before commencement date

(1) If a person applies to a Judge for bail under section 49 or 50 before the commencement date, the Judge must determine the application under the original

Act (which continues to apply in relation to that decision as if the amendment Act had not been enacted).

(2) If a person applies to a Judge for bail under section 49 or 50 on or after the commencement date, the Judge must determine the application under the amended Act.

7 If proceeding commenced before commencement date, some provisions of original Act continue to apply

If a proceeding in the Court Martial was commenced before the commencement date,—

(a) the following provisions of the Act continue to apply, on and after the commencement date, in relation to the proceeding:

(i) old section 30:

(ii) original section 44:

(iii) old section 56:

(iv) old section 64:

(v) original section 66:

(vi) original section 68; and

(b) new **section 68A** does not apply in relation to the proceeding.

8 Security Information in Proceedings Act 2022 does not apply to hearings in proceeding commenced before commencement date

If a proceeding in the Court Martial was commenced before the commencement date, new **section 74A** does not apply in relation to the proceeding.

9 Delegations deemed to be made by current office holder

If a delegation under old section 78 or 82 existed immediately before the commencement date, the delegation must be treated, for the purposes of new **sections 78(2)(e) and 82(2)(e)** (as applicable), as having been made by the person who is the relevant office holder on the commencement date.

Schedule 5
New Part 2 inserted into Schedule 1 of Court Martial Appeals Act 1953

s 156

Part 2
Provisions relating to Armed Forces Discipline Legislation Amendment Act 2025

3 Interpretation

In this Part,—

commencement date means the date on which the Armed Forces Discipline Legislation Amendment Act **2025** comes into force

new or **amended**, in relation to a provision of this Act or the Act as a whole, means the provision or provisions of this Act in force on and after the commencement date

original Act means this Act as it read immediately before the commencement date.

4 Media may appeal under section 7(2A) or 10(1)(b) only if appealed ruling or decision made on or after commencement date

A member of the media may bring an appeal under **section 7(2A)** or **10(1)(b)** only if the ruling or decision to which the appeal relates was made on or after the commencement date.

5 Power to enforce order to attend does not apply to orders made before commencement date

New **section 11A** does not apply in relation to an order to attend as a witness if the order was made before the commencement date.

6 Applications for bail dealt with under original Act if made before commencement date

(1) If a person applies to a Judge of the court for bail under section 20A before the commencement date, the Judge must determine the application under the original Act (which continues to apply in relation to that decision as if the amendment Act had not been enacted).

(2) If a person applies to a Judge of the court for bail under section 20A on or after the commencement date, the Judge must determine the application under the amended Act.

Schedule 6
Consequential amendment to Search and Surveillance Act 2012

s 168

Schedule 2

In Schedule 2, insert in its appropriate alphabetical order: 5

Armed Forces Discipline Act 1971	98A	Member of Military Police may obtain and execute warrant to search place, vehicle, or other thing that is owned, used, or occupied by a person who is subject to Armed Forces Discipline Act 1971 for evidence of offence against Armed Forces Discipline Act 1971	Subparts 1, 3, 4, 5, 9, and 10 (with the exceptions and modifications set out in **Schedule 9** of the Armed Forces Discipline Act 1971)

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