

Armed Forces Discipline Legislation Amendment Bill

Government Bill

As reported from the Foreign Affairs, Defence and Trade Committee

Commentary

Recommendation

The Foreign Affairs, Defence and Trade Committee has examined the Armed Forces Discipline Legislation Amendment Bill and recommends that it be passed. We recommend all amendments unanimously.

About the bill as introduced

This bill is an omnibus bill that would amend the Armed Forces Discipline Act 1971, the Court Martial Act 2007, and the Court Martial Appeals Act 1953. Together, these Acts establish New Zealand's military justice system.

The military justice system applies to uniformed Armed Forces personnel within the New Zealand Defence Force. Unlike the civilian justice system, the military justice system applies to Armed Forces personnel worldwide, not only in New Zealand.

The bill aims to make the military justice system easier to navigate and administer, fairer and more transparent, and more closely aligned with the civilian criminal justice system. It seeks to maintain the protection of rights recognised in the New Zealand Bill of Rights Act 1990.

The bill would:

- establish a new minor disciplinary sanction system to address low-level offending that is disciplinary rather than criminal in nature
- transfer responsibility for serious, complex, or sexual offending out of the chain of command to the Director of Military Prosecutions
- extend the right to elect trial by the Court Martial
- align bail provisions with the Bail Act 2000 by reversing the current presumption that bail is not available as of right, except in limited circumstances

- create a new power for the Summary Appeal Court to increase an offender's punishment on appeal by the Director of Military Prosecutions
- update powers to search for evidence of offending under the Armed Forces Discipline Act, and to reflect developments in the civilian system, particularly the Search and Surveillance Act 2012
- increase protection for people under the age of 18, recognising that a person may join the Armed Forces at age 17
- extend the special procedures in Part 2 of the Security Information in Proceedings Act 2022 to the Court Martial and Court Martial Appeal Court to deal with disclosure of sensitive security information, to align with the civilian system
- empower a commanding officer to require an Armed Forces member to submit to a drug or alcohol test in certain circumstances
- update powers to address contempt of court and disruptive behaviour.

The bill would also make a range of minor and technical amendments to update and address inefficiencies in the current legislation.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House, other than those identified by the Regulations Review Committee in its letter to us dated 12 March 2026. They relate to regulation-making powers in clauses 42 and 56 of the bill as introduced, and the bill's interaction with section 206 of the Armed Forces Discipline Act 1971. We address those matters later in this report.

Proposed amendments

This commentary covers the main amendments we recommend to the bill, including amendments in response to Regulations Review Committee advice. We do not discuss minor or technical amendments.

New issue: change to Defence Force Orders and creation of Defence Rules as secondary legislation

We considered a minor policy proposal during our scrutiny of the bill. As a result, we are proposing the creation of a new category of orders to be issued by the Chief of Defence Force (CDF) under the Armed Forces Discipline Act (AFDA) and the Defence Act 1990, to be called Defence Rules. Defence Rules would have the status of secondary legislation and be subject to presentation and disallowance oversight.

Currently, CDF is empowered to issue Defence Force Orders, which can cover a range of matters. They include administrative matters, such as human resources and pay entitlements, and military operational matters, such as security procedures. They also include legislative matters, such as those that relate to the functioning of the military justice system.

Currently, Defence Force Orders are secondary legislation which must be drafted as legislation and dealt with in accordance with the requirements of the Legislation Act 2019.

We consider that this is excessive for orders that are administrative or operational in nature. Instead, we propose that only orders issued by CDF that have legislative effect should be secondary legislation. To make the legislative status of these orders clear, we propose that they be called Defence Rules. Orders relating to any aspect of military justice would be considered legislative and therefore be required to be issued as Defence Rules.

Administrative and operational orders issued by CDF that do not have legislative effect should not be treated as secondary legislation and would not be subject to either presentation or disallowance procedures. These orders should continue to be described as “Defence Force Orders”.

This amendment would not introduce any new powers. It re-categorises orders issued under existing powers to distinguish between those that are legislative in nature, and those that are administrative or operational.

We recommend the following main amendments to create the category of Defence Rules in the relevant Acts:

- Clause 113D would replace section 206 of the AFDA (which currently relates to Defence Force Orders), to provide for the issuing of Defence Rules as secondary legislation. The standard publication, presentation, and disallowance requirements for new powers would apply to Defence Rules issued under the section.
- Clause 156H would replace section 27A of the Defence Act 1990. New section 27A would provide for the issuing of Defence Rules, in relation to specified matters that we consider to be legislative in character (which are currently dealt with by Defence Force Orders). Defence Force Orders issued under section 27 in relation to any other matter would no longer be secondary legislation.

Other minor and technical amendments are proposed to incorporate references to Defence Rules, to make drafting improvements to provisions that would be updated, and to make other changes to reflect that Defence Force Orders would be administrative instruments rather than legislative ones.

New section 206 includes modern standard wording for catch-all powers to make secondary legislation

In its letter to us, the Regulations Review Committee recommended that the catch-all power to make Defence Force Orders in section 206(1)(h) of the AFDA should be replaced with the modern standard wording for catch-all powers to make secondary legislation.

Our proposed amendments relating to Defence Rules would replace section 206 with a new provision that empowers the Chief of Defence Force to issue Defence Rules.

As new section 206 would be a new power to make secondary legislation, it uses the modern standard wording for catch-all powers to make secondary legislation.

Personal searches

In clause 27 of the bill, we propose several amendments to section 98 of the AFDA, which authorises searches of persons arrested or detained.

Carrying out personal searches

We recommend amending clause 27 of the bill to remove proposed new section 98C(6). This provision relates to the search of an officer, and would require the search to be carried out by another officer or on the order of another officer, subject to conditions under new section 98C(5)(a) and (b). We consider that proposed section 98C(6) would create a hierarchy of conditions, with the potential to undermine the rank structure of the Armed Forces. Removing subsection (6) would mean that all three criteria listed in new section 98C(5) would need to be met to carry out a search of an officer, which we understand was the original policy intention.

Searches of persons arrested or detained

New sections 98 to 98K, inserted by clause 27, would confer search powers (in addition to those provided for in new section 95A and 95B) and set rules for searches under the AFDA.

We recommend amending section 98(1) to extend the power to search a person when they are arrested to cover arrests under the Court Martial Appeals Act. We also recommend amending section 98D to extend the power to make Defence Rules about how searches are carried out to personal searches under section 98. These amendments would ensure that the search power in section 98 applies consistently to all arrests in the military justice system. Amendments to new section 98D would ensure consistency in the application of Defence Rules regulating the conduct of all personal searches under section 98.

We also recommend limiting the purpose of searches of persons who are not subject to the AFDA so that they may only be conducted to secure the safety of the person conducting the arrest or any other person. We recommend inserting new sections 98(2A) to (2C) to incorporate this limitation as an extra protection.

Alignment with the Land Transport Act

The Land Transport Act 1998 was amended on 15 December 2025 by the Land Transport (Drug Driving) Amendment Act 2025. We propose two amendments to the bill as introduced to ensure consistency with the Act, in relation to authorisation of drug and alcohol testing.

We recommend amending clause 28, new section 99I of the AFDA. This would replace the reference to an “oral fluid testing device” with an “oral fluid screening device” as defined in section 2(1) of the Land Transport Act.

We also recommend amending section 99N to make provision for obtaining further oral fluid samples and to set a procedure for laboratory analysis of oral fluid samples. Our amendments would incorporate safeguards equivalent to those in the Land Transport Act.

Remove reference to the death penalty

We recommend amending clause 31 (new section 101AB of the AFDA) and clause 133 (new section 49A of the Court Martial Act) to remove references to an offence punishable by death. Public submissions pointed out that these were inconsistent with the bill's amendment to section 13 of the AFDA to remove a reference to death sentences.

Scope of trial rights

The Regulations Review Committee recommended that we scrutinise new section 116A of the AFDA, as proposed in clause 56 of the bill. We have done so and propose amending it.

New section 116A creates a new automatic right at the start of the trial process for an accused to elect trial by Court Martial, instead of summary trial by a disciplinary officer. New subsection (3) provides that if Defence Rules specify that a right of election is not available in relation to an offence against the AFDA, an accused charged with that offence does not have a right of election in relation to the charge. The Regulations Review Committee expressed concern that secondary legislation (in this case, Defence Rules) would be empowered to determine the scope of trial rights, potentially without sufficient scrutiny.

We recommend amending subsection (3) to replace the wording “against this Act” with “...in relation to an offence that may be disposed of through the minor disciplinary sanction system”. This would ensure that only low-level offences, that have also been specified in secondary legislation as being able to be disposed of through the minor disciplinary sanction system, would not give rise to an automatic right to elect trial by Court Martial. The minor disciplinary sanction system would be an optional pathway to dispose of low-level disciplinary offending without the need to record a formal charge. We are satisfied that Defence Rules would be appropriate to determine which offences do not give rise to an automatic right to elect trial in the Court Martial.

Definition of included offences

Clauses 64 of the bill would replace section 117Q of the AFDA to address an issue identified through public submissions.

New section 117Q of the AFDA provides that a disciplinary officer may find an accused guilty of an included offence. We understand that this amendment is intended to align the military justice system with the civilian system.

One public submission suggested that the definition of “included offence” in clause 64 (new section 117Q of the AFDA) could be interpreted to prevent a finding of

an included offence if both the first offence and the included offence were offences against the civil law of New Zealand under section 74(1) of the AFDA. This created the potential for the military justice system to treat certain included offences differently from how they would be treated in the civilian criminal justice system.

To avoid potential confusion, we recommend amending section 117Q so that “included offence” is defined using the terminology in section 143 of the Criminal Procedure Act 2011. This would also ensure that the body of case law on section 143 of the Criminal Procedure Act 2011 can inform interpretation of “included offence” in new section 117Q.

Other issues considered

We also considered the following matters, but do not propose any amendments to the bill relating to them.

Henry VIII powers

The Regulations Review Committee identified some Henry VIII powers in the bill as introduced; that is, powers that would allow secondary legislation to amend primary legislation. They are in clause 42, new sections 102A and 102B, which relate to the bill’s proposed creation of a minor disciplinary sanction system and the transfer of serious, complex or sensitive offences out of the chain of command. The Regulations Review Committee raised concerns that the categorisation of offences would affect the rights of persons charged. We considered these carefully during our scrutiny of the bill.

New section 102A

This section would authorise CDF to designate certain offences as being able to be disposed of through the new minor disciplinary sanctions system. This system would only deal with low-level disciplinary matters. It would not affect the rights of persons charged, but would offer a voluntary alternative pathway to address minor disciplinary conduct. It would have some similarities to the Police Adult Diversion Scheme in that it would provide a means, not set out in primary legislation, for addressing offending without the need for a trial. The power for CDF to designate offences that can be disposed of through the minor disciplinary sanctions system mirrors the existing power in section 206(1)(ab) of the AFDA to designate offences that may not be tried summarily.

We are satisfied that this is appropriate, and that no further safeguards are required.

New section 102B

This section would authorise the Chief of Defence Force to designate certain offences as serious, complex, or sensitive offences that must be referred out of the chain of command to the Director of Military Prosecutions (DMP). The rights of a person under investigation (or charged) remain the same regardless of who investigates or charges the allegation. For example, rights such as the presumption of innocence and the right to silence would apply in the same way whether an allegation is investigated

by the DMP or within the chain of command. The power for the Chief of Defence Force to designate serious, complex, and sensitive offences would mirror the existing power in section 206(1)(ab) of the AFDA to designate the types of offences that may not be tried summarily.

We are satisfied that this is appropriate, and that no further safeguards are required. We also note that the powers described above are legislative in nature and would therefore be categorised as Defence Rules. This means that they would be subject to presentation and disallowance oversight, which would assist further in addressing the committee's concerns.

Three-strikes sentencing regime and other civil laws

One submitter drew to our attention the fact that the three-strikes sentencing regime, and other civil laws such as the Child Protection (Child Sex Offender Government Agency Registration) Act 2016, do not apply to charges laid under the AFDA. Such charges would include civil offences prosecuted under section 74(1) of the AFDA.

The submitter pointed out that this means different consequences would result for the same offending, committed by the same person, and resulting in the same sentence of imprisonment. If prosecuted in a civil court, the offender would face strike consequences if they were convicted again. However, if the offending was prosecuted under section 74(1) of AFDA, any further civil offence once the individual had left service would not carry automatic strike consequences.

We agree with the submitter's view that this, together with convictions from the Court Martial not being entered on an offender's Ministry of Justice-administered record, represents gaps in current legislation. We considered whether any improvement could be made by amending the bill, and sought information from advisers. We have concluded that more extensive work would be needed. Addressing this gap would likely require amending the Sentencing Act 2002, and potentially other legislation as well. It would also require operational changes to how information about offences is recorded and shared. We strongly encourage the Government to pursue this.

Appendix

Committee process

The Armed Forces Discipline Legislation Amendment Bill was referred to this committee on 16 December 2025. We invited the Minister of Defence to provide an oral submission on the bill. He did so on 23 April 2026.

We called for submissions on the bill with a closing date of 25 March 2026. We received and considered submissions from six interested groups and individuals. We heard oral evidence from two submitters.

Advice on the bill was provided by the New Zealand Defence Force | Te Ope Kātua o Aotearoa. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee wrote to us about regulation-making powers contained in the bill.

Committee membership

Tim van de Molen (Chairperson)

Tim Costley

Hon Peeni Henare (until 15 March 2026)

Dana Kirkpatrick (until 13 May 2026)

Laura McClure

Hon Damien O'Connor

Hon Dr Shane Reti (from 13 May 2026)

Teanau Tuiono

Vanushi Walters (from 25 March 2026)

Related resources

The documents we received as advice and evidence are available on the Parliament website.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Chris Penk

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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

Defence Rules means orders issued as Defence Rules under **section 206** of this Act, **section 27A** of the Defence Act 1990, or section 21 of the Court Martial Appeals Act 1953

drug means—

(a) a controlled drug: 20

(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

drug or alcohol test has the meaning given in **section 99I(1)** 25

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

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

5

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

included offence has the meaning given in **section 117Q(4)(2)**

10

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

15

(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)**

20

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)**

25

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

30

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):

35

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

- (1A) In section 2(1), definition of **Defence Force Orders**, delete “section 206 of this Act or”.
- (2) In section 2(1), definition of **disciplinary officer**, paragraph (a), after “under”, insert “**subparts 1B** to 5 of”.
- (2A) In section 2(1), definition of **prescribed**, replace “or by Defence Force Orders issued under this Act or the Defence Act 1990” with “, or by Defence Rules or Defence Force Orders”. 5
- (3) In section 2(1), definition of **provost officer**, replace paragraph (b) with:
- (b) is any of the following:

 - (i) the Provost Marshal: 10
 - (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: 15
 - (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: 20
- (4) In section 2(7), after “dealt with”, insert “by a disciplinary officer or the Summary Appeal Court”.
- (5) In section 2(7)(a), after “guilty on the charge,”, insert “or guilty of an included offence,”.
- 4A Section 5 amended (Active service)** 25
- In section 5(2)(b), replace “an” with “on”.
- 5 Section 13 amended (Spies, etc)**
- (1) In section 13(a), delete “, on investigation,”.
- (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)** 30
- ~~In section 16(6), replace “summary disposal of charges, trial and” with “disposal of charges,”.~~
- In section 16(6),—
- (a) replace “summary disposal of charges, trial and” with “disposal of charges,”: 35

- (b) replace “orders, not inconsistent with the Act, as may be prescribed” with “Defence Rules as may be issued”.

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**”. 5
- (2) ~~In section 18(3)(b), replace “investigation and trial” with “disposal”.~~
- (2) In section 18(3)(b),—
- (a) replace “investigation and trial” with “disposal”;
- (b) replace “in orders” with “in Defence Rules”.

8 Section 20 replaced (Limitation of time within which charges may be dealt with summarily or tried under this Act) 10

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: 15

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: 20
- (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: 25
- (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 5
- (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— 10
- (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 15
- (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** 20
- (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: 25
- (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 30 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 35 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 5
- (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. 10

(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)**”. 15

(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). 20

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— 25
 - (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 30
 - (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 35
 - (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.	5
(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:	10
(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)	15
In section 37(1)(b), after “do so”, insert “under section 101P or otherwise”.	
11A Section 39 amended (Failure to comply with written orders)	
In section 39(a), after “Defence Force Order”, insert “or Defence Rule”.	
12 Section 69 amended (Delay or denial of justice)	
In section 69(2A),—	20
(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,”.	25
(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.	30
(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.	35

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)”.

5

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:

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- (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

15

- (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:

20

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).

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

After section 82, insert:

82A Reinstatement if sentence of dismissal quashed

30

- (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

35

- (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. 5
- (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 10
 - (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). 15

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 20
 - (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): 25
 - (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) 30

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: 35
 - (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). 5
- 19 Part 4 heading amended**
In the Part 4 heading, replace “**and search**” with “**, detention, search, preservation–orders directions and production–~~directions~~ orders, and drug and alcohol testing**”.
- 20 New subpart 1 heading in Part 4 inserted** 10
After the Part 4 heading, insert:
- Subpart 1—Arrest
- 20A Section 91 amended (Arrest of person unlawfully at large)**
In section 91(2), replace “orders issued by or under the authority of the Chief of Defence Force” with “Defence Rules”. 15
- 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. 20
- 22 New subpart 2 heading in Part 4 inserted**
Before section 93, insert:
- Subpart 2—Detention
- 22A Section 93A amended (Detention in service custody of person charged by civil authority)** 25
In section 93A(1), insert in its appropriate alphabetical order:
- authorised person** means a person authorised by Defence Rules to give the undertaking referred to in subsection (2)(b)
- (2) In section 93A(2)(b), replace “any person authorised in that behalf in accordance with Defence Force Orders” with “an authorised person”. 30
- 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** 5
- (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. 10
- (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 15
 - (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: 20
- (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. 25
- (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,— 30
- 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 35
 - (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)”. 5

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

In section 97, replace “sections 95” with “**sections 95A, 95B,**”.

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

Replace section 98 with:

10

Other search powers

98 Search of person arrested or detained

Power to search any person arrested under Act, including persons who are not subject to this Act

- (1) If a person is arrested in accordance with this Act or the Court Martial Appeals Act 1953, the person making the arrest (**B**), or a person acting under B’s direction, may search the person. 15

Power to search person in service custody: persons who are subject to this Act

- (2) If a person who is subject to this Act is in service custody, the following people may search the person: 20
- (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.

Power to search person in service custody: persons who are not subject to this Act

25

- (2A) If a person who is not subject to this Act is in service custody due to an order made under **section 150G(2)**, the following people may search the person:

- (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. 30

Persons who are not subject to this Act may be searched only to address threat to safety

- (2B) **Subsections (1) and (2A)** are subject to **subsection (2C)**.

- (2C) A search under **subsection (1) or (2A)** of a person who is not subject to this Act may be carried out only for the purpose of ensuring the safety of the person 35

who is carrying out the search, the person who is being arrested or detained, or any other person.

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. 5
- (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).
- (5) Part 4 of the Search and Surveillance Act 2012 does not apply in relation to the rub-down search. 10

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)**. 15
- (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— 20
 - (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**. 25
- (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. 30
- 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: 35

- (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: 5
- (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: 10
- (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 15
 - (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**,— 20
 - (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): 25
- (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. 30
- (3) **Subsection (2)** is subject to any Defence ~~Force Orders~~ Rules issued for the purposes of **section 98D**. 35
- 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— 5
- (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 10
 - (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: 15
 - (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 20
 - (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 25
 - (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 30
 - (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 35
 - (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.	5
(3)	Subsection (2) is subject to—	
	(a) subsection (4) ; and	
	(b) any Defence Force Orders <u>Rules</u> issued for the purposes of section 98D .	10
(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.	15
	<i>How personal search must be carried out</i>	
(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	20
	(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.	25
(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.	30
98D	Defence Force Orders <u>Rules</u> relating to search under section 95A or, 95B, or 98	
(1)	The Chief of Defence Force may issue, under section 206 , Defence Force Orders <u>Rules</u> for the following purposes:	35
	(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, or 98** may, or must, be carried out. 5
- (2) ~~Defence Force Orders~~ Rules issued for the ~~purpose~~ purposes of **subsection (1)(c)**—
- (a) may—
 - (i) specify how a person carrying out a search under **section 95A(1) or, 95B(1), or 98(1), (2), or (2A)** 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 10
 - (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 15
 - (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, or 98** must be carried out in accordance with any ~~Defence Force Orders~~ Rules issued for the ~~purpose~~ purposes of **subsection (1)(c)**. 20
- 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). 25
 - (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 30
 - (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,— 5
- (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 10
- (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,— 15
- (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 20
- (B) the reason for the search; and
- (C) any other information specified in Defence Force Orders Rules.
- (2) The person exercising the search power is not required to comply with **subsection (1)** if they have reasonable grounds to believe that— 25
- (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 30
- (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. 35
- (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~~ Rules.
- (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~~ Rules:
 - (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—	5
(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	10
(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:	15
(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.	20
(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	25
(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	30
(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—	35
(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	5
	(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.	10 15
(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—	20
	(a) endanger the safety of any person; or	
	(b) prejudice ongoing investigations.	
(2)	An application may be made under subsection (1) —	25
	(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—	30
	(a) endanger the safety of any person; or	
	(b) prejudice ongoing investigations.	35
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 dispen-	

- sation 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. 5
- (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 10
 - (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 15
 - (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). 20

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— 25
 - (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: 30
 - (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: 35
 - (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.

5

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

Replace section 99 with:

Subpart 4—Production orders and preservation directions

Interpretation

10

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

15

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

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- (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.

25

Judge may make production order

30

- (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)**. 5
- (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): 10
 - (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**: 15
 - (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. 20

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): 25
 - (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): 30
 - (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): 35
 - (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: 5
- (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) disappplies section 69(a) of the Court Martial Act 2007 in relation to a production order that is invalid under section 107(1): 10
- (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— 15
 - (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~~ Rules 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: 20
- (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 25
 - (ii) allows such an order or notice to be given to a person in the manner prescribed in Defence ~~Force Orders~~ Rules (in addition to the other means by which an order or notice may be given under that subsection). 30

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. 35

- (2) Subpart 2A of Part 3 (~~preservation directions~~) and section 180 of the Search and Surveillance Act 2012 (~~preservation directions~~) ~~applies~~ apply in relation to an application under **subsection (1)**—
- (a) as if the application were an application under section 79B of that Act; and 5
- (b) with the modifications set out in **subsection (3)**.
- (3) The modifications are as follows:
- (a) section 79B of ~~that Act~~ the Search and Surveillance Act 2012 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): 10
- (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: 15
- (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;:
- (f) section 79M(2) of the Search and Surveillance Act 2012 disappplies section 69(a) of the Court Martial Act 2007 in relation to a production order that is invalid under section 79M(1) of the Search and Surveillance Act 2012: 20
- (g) in section 180(3), (5)(a)(ii), and (5)(b) of the Search and Surveillance Act 2012, references to the High Court must be read as references to the Court Martial Appeal Court. 25
- (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 30

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. 35
- (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.	5
99F	Seized or produced materials must be dealt with in accordance with Defence-Force Orders Rules	
(1)	The Chief of Defence Force may issue Defence-Force Orders Rules , 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—	10
(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 Rules issued for the purpose purposes 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.	15
(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 Rules 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,—	20
(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.	25
(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).	30
(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.	35
(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: 5
 - (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~~ Rules.
- (2) The report—
 - (a) must include any information about those matters that is specified in ~~Defence Force Orders~~ Rules; and 10
 - (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,— 15
 - (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. 20

Subpart 6—Drug and alcohol testing*Drug and alcohol testing***99I Interpretation**

- (1) In this subpart,—

approved process for taking an oral fluid sample means a process, prescribed in Defence Rules, for taking an oral fluid sample without using an oral fluid screening device 25

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 30
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 35
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):	5
(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)	10
drug or alcohol test means a procedure for drug or alcohol testing prescribed in Defence Force Orders Rules.	
(2) The Chief of Defence Force may, by Defence Force Order Rules, approve the following types of device for use in testing under this subpart:	
(a) a breath screening device:	15
(b) an evidential breath-testing device:	
(c) a passive-breath testing device:	
(d) an oral fluid-testing screening device.	
(3) In subsection (2) this section , breath screening device , evidential breath-testing device , oral fluid screening device , and passive 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.	20
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.	25
(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.	30
(3) Sections 99K and 99L apply to a drug or alcohol test under subsection (1) or (2) .	
(4) <i>See also</i> 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	35
(1) A drug or alcohol test must be carried out—	
(a) using an approved testing device <u>or an approved process for taking an oral fluid sample, or both</u> ; and	

(b) in accordance with the procedure for the test set out in Defence Force Orders <u>Rules</u> .	
(2) A commanding officer who requires a person to submit to a drug or alcohol test must—	
(a) inform the person of—	5
(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—	10
(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	15
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).	20
(2) A test result certificate—	
(a) must be issued in the manner and form prescribed in Defence Force Orders <u>Rules</u> ; and	
(b) may be admitted as evidence of the results of the drug or alcohol test in proceedings in relation to—	25
(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.	30
(4) In this section, authorised person means a person authorised by Defence Force Orders <u>Rules</u> to issue a test result certificate in relation to a drug or alcohol test.	35

*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~~ Rules, under **section 206**, prescribing 1 or more procedures for the purpose of either or both of the following: 5
- (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— 10
- (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 by specifying the approved testing device or devices that may be used to carry out the procedure, when testing using an approved testing device may be carried out more than once during the procedure, and when the procedure may be carried out using an approved process for taking an oral fluid sample): 15
 - (iii) prescribe how any samples obtained from the procedure may be analysed or stored, or both (including by specifying who is authorised to carry out laboratory analysis of oral fluid samples and by making provision for a person to elect to have their oral fluid additionally analysed by a private analyst at their own expense): 20
 - (iv) provide for disposal of samples obtained from the procedure: 25
 - (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 30

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: 35

(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).	
	<i>Bail may be granted subject to reasonable terms and conditions</i>	
(5)	Bail granted under this section may be subject to any reasonable terms and conditions that the Judge Advocate General thinks fit.	5
	<i>Conditions of bail granted to person charged with family violence offence</i>	
(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—	10
	(a) the victim of the alleged offence; and	
	(b) any particular person in a family relationship with the victim.	
	<i>Victim of specified offence's views about bail must be taken into account</i>	
(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.	15
	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.	20
	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) .	25
(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.	30
(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):	35

- (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): 5
 - (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): 10
 - (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): 15
 - (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 20
 - (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: 25
 - (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. 30
- (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)

35

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.

5

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)

10

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—

15

- (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.

20

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)

25

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:

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- (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		5
(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:		10
(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):		15
(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:		20
(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.		25
(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.		30
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: 5
 - (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. 10
- (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). 15

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. 20
- (2) **Subsection (1)** is subject to **subsection (3)**. 25
- (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— 30
- (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 35

(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) ,—	5
(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	10
(b) section 1010 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.	15
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.	20
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	25
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:	
<i>Key concepts</i>	
102 When allegation or charge is suitable for disposal by summary trial	30
(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.	35

- (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 Rule issued under **section 206(1)(ab)(b)**, 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 Rules 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.

<i>Actions commanding officer must take if allegation well founded</i>	
(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	5
(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,—	10
(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) .	15
<i>Exception: alleged serious, complex, or sensitive offences</i>	
(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) .	20
<i>Exception: alleged offence that may be referred to minor disciplinary sanction system</i>	
(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—	25
(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.	30
(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.	
<i>Meaning of serious, complex, or sensitive offence</i>	
(9) In this section, serious, complex, or sensitive offence means an offence against this Act that is specified in Defence Force Orders <u>Rules</u> to be an offence that, due to its seriousness, complexity, or sensitivity, must be referred to the Director of Military Prosecutions under subsection (6) .	35

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: 5
 - (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: 10
 - (d) the commanding officer's decision under **section 102B(7)** must be consistent with—
 - (i) any ~~Defence Force Orders~~ Rules that limit the minor disciplinary sanction system to alleged offending by people of specified ranks; and 15
 - (ii) any other requirements set by ~~Defence Forces Orders~~ Rules 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: 20
 - (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: 25
 - (b) whether the alleged offence involves complex or contested facts:
 - (c) any other matter specified in ~~Defence Force Orders~~ Rules.

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)**. 30
- (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**: 35
 - (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. 5
- (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 10

- (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 15
 - (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 20
 - (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; 25
 - (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; 30
 - (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 35
 - (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). 5
- 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,— 10
- (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~~ Rules in relation to the Navy, the Army, or the Air Force (as applicable). 15
- (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 20
- (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. 25
- (4) **Subsection (3)** is subject to **subsection (5)**.
- (5) The person's delegated powers— 30
- (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~~ Rules. 35
- (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)**.

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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

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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.

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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 Rules~~.
- (2) The information in **subsection (1)** must be given in writing in the manner and form prescribed in ~~Defence Force Orders Rules~~.

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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. 5
- (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~~ Rules (if any). 10

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 15
 - (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— 20
 - (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~~ Rules. 25
- (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— 30
 - (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 35
 - (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

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- (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)**. 10
- (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 15
 - (b) in the manner specified in ~~Defence Force Orders~~ Rules.
- (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— 20
 - (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 25
 - (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

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- (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 35
 - (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 <u>Orders Rules</u>.	5
(2) <i>See also sections 21 and 22</i> , 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	10
(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.	15
(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 Rules that limit the circumstances in which disposal of an alleged offence through the minor disciplinary sanction system may be taken into account.	20 25
<i>Register of alleged offences dealt with through minor disciplinary sanction system</i>	
102N Register of alleged offences dealt with through minor disciplinary sanction system	
<i>Commanding officer must keep and maintain register</i>	30
(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.	
<i>Purposes of register</i>	
(2) The purposes for which a register is kept and maintained under this section are as follows:	35

	(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.	5
	<i>Information register must contain</i>	
(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:	10
	(b) a copy of the information given, under section 102H , to the person alleged to have committed the offence:	15
	(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:	20
	(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) .	25
	<i>Access to register</i>	
(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):	30
	(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):	35
	(d) the Provost Marshal (or a delegate of the Provost Marshal):	
	(e) a person authorised to access the register by Defence Force Orders <u>Rules</u> .	

- (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).
- 5
- Other procedures and requirements relating to registers*
- (6) The Chief of Defence Force may issue ~~Defence Force Orders~~ Rules, 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 be 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.
- 10
- (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).
- 15
- No investigation or referral of alleged offence while it is being dealt with*
- 20
- 1020 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.
- 44 New subpart 1B heading in Part 5 and cross-heading inserted**
- 25
- After **section 1020** (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*
- 45 Section 103 amended (Disposal of charges by commanding officers)**
- 30
- 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.

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.

5

46A Section 105 amended (Disposal of charges by detachment commanders)

In section 105(2), replace “orders of the Chief of Defence Force” with “Defence Rules”.

46B Section 106 amended (Disposal of charges by subordinate commanders)

- (1) In section 106(4)(a), replace “orders issued by the Chief of Defence Force” with “Defence Rules”.

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- (2) In section 106(4)(b), replace “Defence Force Orders” with “Defence Rules”.

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).

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48 Section 108 amended (Officer is empowered to act as disciplinary officer)

Replace section 108(2)(a) with:

20

- (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
 - (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

25

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

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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:

35

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.

5

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”.

10

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.

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(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—

20

(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.

25

- (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)”.

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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).

35

- (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)** 15
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: 20
- 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— 25
- (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. 30
- 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 35

	(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.	5
	<i>Things disciplinary officer must do if accused to be tried summarily</i>	
(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	10
	(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 ,—	15
	(i) elects summary trial by the disciplinary officer; or	
	(ii) elects trial before the Court Martial but then withdraws the election.	
	<i>Things disciplinary officer must do if accused to be tried in the Court Martial</i>	20
(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	25
	(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.	30
	Guidance note	
	See <i>also</i> 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.	35
	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 Rules specify that a the right of election in subsection (1) is not available under subsection (1) in relation to an offence against this Act that may be disposed of through the minor disciplinary sanction system, an accused charged with that offence does not have a right of election under subsection (1) in relation to the charge.	5
57	Section 117D amended (Accused who pleads guilty must be informed if he or she has right to elect trial by Court Martial)	10
	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.	15
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 ”.	20
(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:	25
(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 “ <i>Investigation</i> ” with “ <i>Procedure</i> ”.	30
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—	35

- (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.
- (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.

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:
 - (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
- (2) In section 117K(4), delete “remand the accused for trial in the Court Martial and”.

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”.

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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

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- (1) After the disciplinary officer has received all the evidence under subpart 2 and this subpart, the disciplinary officer— must determine whether the accused is guilty or not guilty on the charge.
- (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.~~
- (2) However, if the commission of the offence alleged (as described in the enactment creating the offence or in the charge) includes the commission of any other offence against this Act (an **included offence**), the disciplinary officer may find the accused guilty of the included offence if it is proved, even if the whole offence in the charge is not proved.
- (2A) To avoid doubt, an offence against section 74(1) may be an included offence in relation to another offence against the same section if it relates to a different civil offence.
- (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.~~

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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)

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- (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”.

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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.

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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.

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69A Section 117ZA amended (Orders for compensation and restitution)

Replace section 117ZA(2) with:

- (2) However, the amount an offender is ordered to pay by way of compensation under this section must not exceed the following:
 - (a) if the offender was given the right to elect trial by the Court Martial under section 117D or 117M, an amount equal to the offender’s basic pay for a period of 28 days:
 - (b) if the offender was not given the right to elect trial by the Court Martial under section 117D or 117M, an amount equal to the offender’s basic pay for a period of 14 days:
 - (c) in all cases, any applicable limit, prescribed by Defence Rules, on the amount of compensation an offender may be ordered to pay under this section.

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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): 5
 - (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: 10
 - (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: 15
 - (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: 20
 - (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. 25
- (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: 30
 - (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. 35
- (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)**.

~~177~~117ZHA 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~~ 117ZI 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:	5
(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.	10
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)	15
	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 Foree Orders <u>Rules</u> .	20
(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	25
(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):	30
(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.	35

- (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 Rules, issued for the ~~purpose~~ purposes 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 Rules issued for the ~~purpose~~ purposes 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 Rules (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). 5

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). 10

81 Cross-heading above section 124 replaced

Replace the cross-heading above section 124 with:

Appeal by person found guilty of offence 15

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

The Director of Military Prosecutions may appeal to the Summary Appeal Court against the following decisions of a disciplinary officer: 20

- (a) the imposition of a punishment, or combination of punishments, on a person found guilty of an offence: 25
- (b) the discharge under section 117S(1)(c) of a person found guilty of an offence:
- (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.

124B Appeal on question of law

(1) This section applies if a disciplinary officer has made 1 or more of the following decisions: 30

- (a) a determination, under **section 117J(3)(a) or (b)**, that a prima facie case has not been made out: 35
- (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

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. 5
 - (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. 10
 - (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 15
 - (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 20
 - (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) 25**
- (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: 30
 - (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)**. 35
 - (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). 5
- (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 10
 - (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,— 15
 - (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 20
 - (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. 25
- (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) 30

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) 35

- (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”.

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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**). 10
- (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 15
 - (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— 20
 - (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— 25
 - (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. 30
- (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)**,— 35

(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).	5
132B Summary Appeal Court’s powers in respect of appeals under section 124B	10
(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—	15
(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).	20
(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.	25 30
(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	35
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)	5
(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:	10
(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.	15
(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).	20
(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).	25
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)	30
(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).	35

- (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).

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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:

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- (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).

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- (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**”.

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- (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”.

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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:

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93A Section 143 amended (Removal of prisoners for purposes of proceedings under this Part)

In section 143, replace “orders made by the Chief of Defence Force” with “Defence Rules”.

94 Section 144 amended (Duties of Registrar with respect to appeals) 5

- (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) 10

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: 15
 - (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 20
 - (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): 25
 - (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. 30

96 New section 145A inserted (Publication by or at request of authorised member of the Armed Forces, etc) 35

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 5
 - (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. 10
- (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 15
 - (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 20
 - (iii) the respondent (in an appeal to the Summary Appeal Court under **section 124A**). 25
- (3) This section applies in addition to section 209 of the Criminal Procedure Act 2011. 25

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: 30
 - (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”. 35

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

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(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.

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(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

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(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—

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(a) must not convict the person; but

(b) may impose on the person a fine not exceeding \$1,000.

Guidance note

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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

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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

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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:
- (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.

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—
 - (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.

- (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
 - (ii) a specified time before the disciplinary officer or court rises for the day: 5
 - (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.
- (3) The following people may execute an order under **subsection (2)(a) or (b)**: 10
- (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.
- (4) A person authorised to execute an order under this section may— 15
- (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** 20
- (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. 25
- (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 30
 - (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. 35

- (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. 5
- (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— 10
- (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 15
 - (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. 20
- (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 25
 - (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 30
 - (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— 35
- (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

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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 10
 - (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: 15
 - (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): 20
 - (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) (1)**, sections 7 and 8 of that Act must be read as if— 25
- (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. 30
- (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). 35

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	5
(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.	10
(2) <i>See also</i> 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—	15
(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:	20
(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.	25
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)	30
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).	35
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.

104A Section 163 amended (Chief of Defence Force must publish sentencing guidelines)

In section 163, replace “Force Orders” with “Rules”.

104B Section 168 amended (Manner in which sentences of imprisonment and detention are to be served)

In section 168(3), replace “orders made by the Chief of Defence Force” with “Defence Rules issued”.

104C Section 175 amended (Establishment and regulation of service prisons and detention quarters)

- (1) In section 175(2), replace “orders” with “Defence Rules” in each place.
- (2) In section 175(3), replace “orders made under this” with “Defence Rules issued for the purposes of this”.

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.	5
106	Section 177A amended (Effect of period spent in custody before being sentenced) In section 177A(2), after "section 177", insert ", section 177AA,".	10
107	Section 186A amended (Compensation to victims of offences causing physical harm) In section 186A(1) and (2)(b), replace "victim" with "person harmed".	
107A	<u>Section 191 amended (Order to be made if person unfit to stand trial or insane)</u> <u>In section 191(6), replace "Defence Force Orders" with "any applicable Defence Rules".</u>	15
108	Section 198A amended (Application of this Part) Repeal section 198A(2).	20
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).	25
	(3) In section 198B, insert as subsection (2):	
	(2) <i>See also</i> section 2, which defines specified offence and victim.	
110	New section 198BA inserted (Victim support officers: notification and appointment) After section 198B, insert:	30
	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:	35

- (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. 5
- (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. 10
- (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). 15
- (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. 20

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 25
 - (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. 30
- (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) 35

In section 200N(1), after “must”, insert “take all reasonably practicable steps to”.

113A Section 202 amended (Pay, service, and effects of deserters and absentees)

In section 202(3), replace “Force Orders” with “Rules”.

113B Cross-heading above section 205 amended

In the cross-heading above section 205, replace “*Force Orders*” with “*Rules*”.

113C Section 205 amended (Regulations)

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In section 205(3), after “may”, insert “, without limitation,”.

113D Section 206 replaced (Defence Force Orders)

Replace section 206 with:

206 Defence Rules

- | | | |
|-----|---|----|
| (1) | <u>The Chief of Defence Force may issue orders as Defence Rules for the following purposes:</u> | 10 |
| (a) | <u>determining the nature and content of the punishments of stay of seniority, confinement to ship or barracks, extra work and drill, stoppage of leave, and extra duty:</u> | |
| (b) | <u>limiting the types of offences that a disciplinary officer may try summarily, or otherwise deal with, under Part 5:</u> | 15 |
| (c) | <u>restricting, by fixing the limitations as to rank as the Chief of Defence Force considers necessary, the exercise of powers under Part 5 by disciplinary officers:</u> | |
| (d) | <u>providing for the following matters in relation to certificates of competency issued to members of the Armed Forces who are to be appointed disciplinary officers, presenting officers, or defending officers:</u> | 20 |
| | (i) <u>the classes of certificates of competency that may be issued:</u> | |
| | (ii) <u>the procedure for the issue, revocation, suspension, expiry, and renewal of those certificates of competency:</u> | 25 |
| | (iii) <u>the minimum standards that must be met (including standards relating to required competence, qualifications, and experience) for a certificate of competency to be issued for each class of certificate:</u> | |
| | (iv) <u>the terms and conditions subject to which certificates of competency may or must be issued:</u> | 30 |
| (e) | <u>providing for officers and warrant officers to attend proceedings in the Court Martial for the purpose of being instructed in the Court’s procedure:</u> | |
| (f) | <u>providing for the assembling and constitution of courts of inquiry:</u> | 35 |
| (g) | <u>providing for legal aid to be granted at public expense—</u> | |

- (i) in respect of proceedings in the Court Martial, appeals to the Summary Appeal Court, and appeals to the Court Martial Appeal Court (whether those proceedings are in New Zealand or elsewhere); or
- (ii) to an unrepresented person who (whether in New Zealand or elsewhere) is—
 - (A) being questioned, or is wanted for questioning, by the service authorities in relation to the person's commission or possible commission of an offence; and
 - (B) advised by the service authorities, before or in the course of the questioning, that they may consult a lawyer; or
- (iii) to an unrepresented person who (whether in New Zealand or elsewhere) is under close arrest; or
- (iv) either generally or in prescribed cases, to persons subject to this Act who are tried by a civil court outside of New Zealand;
- (h) prescribing the conditions subject to which any legal aid referred to in **paragraph (g)(i) to (iv)** may be granted;
- (i) providing for the removal of a person who is unfit to stand trial within the meaning of Part 10, or who is acquitted on account of their insanity,—
 - (i) from an overseas country to New Zealand; or
 - (ii) from one place of custody to another; or
 - (iii) from a place of custody to a hospital;
- (j) providing for anything this Act says may or must be provided for by Defence Rules;
- (k) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act.
- (2) Defence Rules issued under this section must be consistent with this Act and the Defence Act 1990.
- (3) Defence Rules issued under this section—
 - (a) may, without limitation, make different provision for different services, commands, branches, corps, formations, units, and ranks of the Armed Forces; and
 - (b) come into force—
 - (i) on the date or dates specified in the Defence Rules; or
 - (ii) if no date is specified, on the date the Defence Rules are issued; and
 - (c) commence in accordance with **paragraph (b)** even if the Defence Rules have not yet been published.

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

113E Section 206A repealed (Application of Legislation Act 2019 to Defence Force Orders)

Repeal section 206A.

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114 Schedule 1AA amended

In Schedule 1AA,—

- (a) insert the Part set out in **Schedule 1** of this Act as the last Part; and
- (b) make all necessary consequential amendments.

114A Schedule 1 amended

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In Schedule 1, clause 1, replace “Force Orders” with “Rules”.

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.

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Part 2

Amendments to Court Martial Act 2007

117 Principal Act

This Part amends the Court Martial Act 2007.

118 Section 5 amended (Interpretation)

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- (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),—

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- (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”.; and
- (c) definition of **sentencing guidelines**, replace “Force Orders” with “Rules”.

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119 Section 11 amended (Eligibility for appointment as Judge)

- (1) In the heading to section 11, after “as”, insert “**permanent**”.

- (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

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After section 14, insert:

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
 (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.
 (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).

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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.

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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
 (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.

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14D Permanent Judges senior to acting Judges

A permanent Judge is senior to an acting Judge.

122 Section 17 replaced (Judges must not hold other offices)

Replace section 17 with:

17 Restrictions on Judges

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- (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.
- (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.

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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:
 - (1) Each permanent Judge must retire from office on attaining the age of 70 years.
 - (1A) **Subsection (1)** is subject to subsection (2).

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124 Section 20 amended (Salaries and allowances of Judges)

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- (1) In section 20(1), after “Each”, insert “permanent”.
- (2) After section 20(2), insert:
 - (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”.

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125 New section 20A inserted (Superannuation of acting Judges)

After section 20, insert:

20A Superannuation of acting Judges

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- (1) A superannuation subsidy must not be paid to a person who is appointed as an acting Judge under **section 14A**.
- (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 5
 - (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 10
 - (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— 15
 - (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 20
 - (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 25
 - (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. 30
- (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)”. 35
- (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 5
 - (b) must give the military member a reasonable opportunity to obtain legal advice; and 10
 - (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— 15
 - (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. 20

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,— 25
 - (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. 30
 - (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 35
 - (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”. 5
- (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): 10
- (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. 20
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— 25
 - (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). 30
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. 35

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 5
- (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. 10

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)**. 15

- (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)**. 20

- (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): 25
 - (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 30
 - (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— 35
 - (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: 5
 - (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. 10
- (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 15
 - (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. 20
- (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: 25
- (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): 30
 - (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). 35
- (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: 5
 - (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: 10
- (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. 15
- (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. 20

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”. 25
- (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: 30
 - (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 35
 - (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) 5

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).

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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: 15

(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: 20

- (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 25
- (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”. 30

- (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. 5
- (2) The support person must be appointed in the manner specified in Defence Force Orders Rules.
- (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)

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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 **sub-section (2)** is a specified proceeding for the purposes of section 8(3) of the Security Information in Proceedings Act 2022. 15
- (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: 20
 - (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. 25
- (3) In this section,—

Crown has the meaning given in section 26B(5) of the Criminal Disclosure Act 2008 30

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 35

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). 5

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). 10

144 Schedule 1AA amended

In Schedule 1AA,—

- (a) insert the Part set out in **Schedule 4** of this Act as the last Part; and 15
(b) make all necessary consequential amendments.

Part 3**Amendments to other legislation and consequential amendment****Subpart 1—Amendments to Court Martial Appeals Act 1953****145 Principal Act 20**

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 25

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 30

- (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 ~~applies~~ applies may, with the leave of the court, appeal to the court against the ruling.
- (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”. 5
- (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): 10
- (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, before the Court Martial (*see also* **section 74A** of the Court Martial Act 2007):
- (5) In section 7(5)(k), replace “discovery” with “disclosure”. 15
- 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** 20
- (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: 25
- (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: 30
- (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. 35
- (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.	5
149	New section 9G inserted (Appeal to Court of Appeal against decision of judicial member of court under section 150(5) 150H(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) 150H(5) of 1971 Act	10
(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:	15
(a)	the finding of guilty:	
(b)	the fine.	
(3)	The Director of Military Prosecutions may appeal to the Court of Appeal against the fine.	20
(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—	25
(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	30
(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,—	35

- (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).

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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)

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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)

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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.

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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) 5

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) 10

- (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: 15

- (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: 20
- (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: 25
- (f) any other consideration that the Judge considers relevant.

155A Section 21 amended (Removal of prisoners for purposes of proceedings under this Act)

- (1) In section 21(a), replace “made” with “issued as Defence Rules under this section”. 30

- (2) In section 21, insert as subsection (2):

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

156 Schedule 1 amended

In Schedule 1,—

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- (a) insert the Part set out in **Schedule 5** of this Act as the last Part; and
- (b) make all necessary consequential amendments.

Subpart 1A—Amendments to Defence Act 1990

156A Principal Act

This subpart amends the Defence Act 1990.

5

156B Section 2 amended (Interpretation)

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

Defence Rules means orders issued as Defence Rules under **section 27A** of this Act, **section 206** of the Armed Forces Discipline Act 1971, or section 21 of the Court Martial Appeals Act 1953

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- (2) In section 2(1), definition of **defence area**, replace paragraph (c) with:

(c) any land, building, or part of a building, declared by Order in Council to be a defence area for the purposes of this Act (*see* subsection (5));

(d) any land, building, or part of a building, declared by a Defence Force Order issued under section 27(1) to be a defence area for the purposes of this Act

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- (3) In section 2(1), definition of **prescribed**, after “regulations made under this Act”, insert “, by Defence Rules,”.

156C New section 2A inserted (Transitional, savings, and related provisions)

After section 2, insert:

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2A Transitional, savings, and related provisions

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

156D Section 12 amended (Joint forces)

In section 12(2)(b), after “prescribed”, insert “by Defence Rules issued under **section 27A**”.

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156E Section 20 amended (Modification of Acts for members of one Service attached or deemed attached to another Service)

In section 20(c), after “prescribed”, insert “by Defence Rules issued under **section 27A**”.

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156F Section 23A amended (Attachment of members of other armed forces to New Zealand Armed Forces)

In section 23A(3), after “prescribed”, insert “by Defence Rules issued under **section 27A**”.

156G Section 27 amended (Defence Force Orders)

- (1) Before section 27(1), insert:

Power to issue Defence Force Orders

- (2) After section 27(1), insert:

Special requirements for Defence Force Orders that declare defence area

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- (1A) However, a Defence Force Order that declares land, a building, or a part of a building in New Zealand or elsewhere to be a defence area for the purposes of this Act may be issued under subsection (1) only if—

- (a) the land, building, or part of a building is owned by the Crown, requisitioned under section 10(2)(b), or otherwise used or occupied with the consent of the owner; and

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- (b) the Chief of Defence Force considers, taking into account the purposes of this Act, that it is appropriate for the area to be set aside, used, or occupied for the purposes of the Defence Force.

- (3) Before section 27(2), insert:

15

*Other matters relating to Defence Force Orders***156H Section 27A replaced (Application of Legislation Act 2019 to Defence Force Orders)**

Replace section 27A with:

27A Defence Rules

20

- (1) The Chief of Defence Force may issue orders as Defence Rules prescribing modifications or exemptions (as applicable) for the purposes of section 12(2)(b), 20(c), or 23A(3).

- (2) Defence Rules issued under this section must be consistent with this Act, the Armed Forces Discipline Act 1971, and any other legislation that is applicable to the matters to which the Defence Rules relate.

25

- (3) To avoid doubt,
- subsection (2)**
- does not prevent Defence Rules issued under this section from modifying the application of, or provide for exemptions from, the provisions of this Act or the Armed Forces Discipline Act 1971 in the manner and circumstances contemplated by section 12(2)(b), 20(c), or 23A(3) of this Act (as applicable).

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

156I New Schedule 1AA insertedInsert the **Schedule 1AA** set out in **Schedule 5A** of this Act as the first schedule to appear after the last section of the principal Act.

35

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)

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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)

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(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.

15

Subpart 4—Amendments to Security Information in Proceedings Act 2022

161 Principal Act

20

This subpart amends the Security Information in Proceedings Act 2022.

162 Section 4 amended (Interpretation)

In section 4, definition of **authorised court**, after paragraph (d), insert:

(e) the Court Martial:

(f) the Court Martial Appeal Court

25

163 Section 8 amended (Application of special procedures to certain proceedings)

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:

30

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

E panoni ana tēnei wāhanga iti i Te Ture mō Te Reo Māori 2016. 5

165 Kua panonitia te Āpitihianga 2

- (1) I te Āpitihianga 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 | 10 |
| Te Kōti Pīra Whakaraupapa o Aotearoa | |
- (2) I te Āpitihianga 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) | 15 |
|--|----|

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) | 25 |
|---|----|

Subpart 6—Amendments to New Zealand Sign Language Act 2006

166 Principal Act

This subpart amends the New Zealand Sign Language Act 2006. 30

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)

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Subpart 7—Consequential ~~amendment~~ amendments

168 ~~Consequential amendment~~ amendments

Amend the Search and Surveillance Act 2012 as set out in legislation specified in **Schedule 6** as set out in that schedule.

Schedule 1

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

s 114

Part 2

5

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** 10

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 15

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,— 20

(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. 25

Provisions relating to dealing with offences under Act

6 General rule: amended Act applies to offence unless person was charged before commencement date 30

(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). 35

- (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)**. 5

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 10
- (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. 15

(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. 20

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. 25

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. 30

15 Defence Force Orders issued under old section 206 continue in force as Defence Rules

(1) This clause applies to Defence Force Orders (within the meaning given in old section 2) that were issued under old section 206 and that were in force immediately before the commencement date. 35

-
- (2) The Defence Force Orders—
- (a) continue in force on and after the commencement date as if issued as Defence Rules under new **section 206**; and
 - (b) may be amended or revoked as if issued under that section.

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

5

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: 10
 - (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. 15
- 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. 20

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

5

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**. 10

(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 15

(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**). 20

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: 25

(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: 30

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 <i>see section 99G</i> 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
Subpart 4 (carrying out search powers)	Section 108 (issuing officer may require search warrant report) 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)
	Section 109 (authorisation of issuing officers) does not apply	
	Section 110 (search powers) does not apply (but <i>see</i> section 98B of this Act)	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 123A to 123E (seizure of cash found in suspicious circumstances) do not apply	
	Sections 124 to 126 (search of persons) do not apply (but <i>see</i> 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)
Subpart 5 (privilege and confidentiality)	Sections 131 to 135 (identification and notice) do not apply (but <i>see</i> <u>section 98D to 98H sections 98F to 98J</u> 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
	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
Subpart 9 (offences)	No exceptions	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 10 (miscellaneous)	No exceptions	No specific modifications
		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 <u>Rules</u>

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.	5
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:	10
(i)	old section 30:	
(ii)	original section 44:	
(iii)	old section 56:	
(iv)	old section 64:	15
(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.	20
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.	25

Schedule 5

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

s 156

Part 2

5

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 10

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. 15

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. 20

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. 25

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). 30

(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.

- 7 Orders issued under section 21(a) continue in force as Defence Rules**
- (1) This clause applies to orders made by the Chief of Defence Force under section 21(a) that were in force immediately before the commencement date.
- (2) The orders—
- (a) continue in force on and after the commencement date as if issued as
- (b) may be amended or revoked as if issued under that section.

5

Schedule 5A
New Schedule 1AA inserted into Defence Act 1990

s 156I

Schedule 1AA
Transitional, savings, and related provisions

5

s 2A

Part 1
Provision relating to Armed Forces Discipline Legislation
Amendment Act 2025

- 1** **Certain Defence Force Orders become Defence Rules** 10
- (1) This clause applies to Defence Force Orders that were—
- (a) issued under section 27(1) for 1 or more of the purposes described in section 12(2)(b), 20(c), or 23A(3); and
- (b) in force immediately before the commencement date.
- (2) On and after the commencement date, the Defence Force Orders— 15
- (a) continue in force as if they were Defence Rules issued under **section 27A(1)**; and
- (b) may be amended or revoked as if issued under that section.
- (3) In this clause, **commencement date** means the date on which the Armed Forces Discipline Legislation Amendment Act **2025** comes into force. 20

Schedule 6
Consequential amendments ~~amendment to Search and Surveillance~~
~~Act 2012~~

s 168

Legislation Act 2019 (2019 No 58) 5

In Schedule 3, item relating to Defence Act 1990, replace “Section 27” with “**Section 27A**”.

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

In section 7(1)(e)(ii), replace “Defence Force Orders” with “Defence Rules”.

~~Schedule 2 Search and Surveillance Act 2012 (2012 No 24)~~ 10

In Schedule 2, insert in its appropriate alphabetical order:

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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Legislative history

16 December 2025
10 February 2026

Introduction (Bill 239–1)
First reading and referral to Foreign Affairs, Defence and Trade
Committee