



Military Justice Legislation Amendment Bill

299—1

Report of the Foreign Affairs, Defence and
Trade Committee

May 2018

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Military Justice Legislation Amendment Bill

Recommendation

The Foreign Affairs, Defence and Trade Committee has examined the Military Justice Legislation Amendment Bill and recommends that it be passed without amendment.

About the bill as introduced

The Military Justice Legislation Amendment Bill seeks to re-align a number of areas of military law with the equivalent law applied in the ordinary criminal courts. It would enhance victims' rights and tidy up aspects of the relevant legislation.

We have carefully considered the bill and, while we recommend passing it without amendment, we consider that the bill needs to be amended by Supplementary Order Paper (SOP) to ensure that it achieves its purpose. We explain the need for amendment in this way below.

Our recommendation to pass the bill without amendment

Proposed amendment in Courts Matters Bill before Justice Committee

Clauses 12 to 18 of the bill would amend Part 10 of the Armed Forces Discipline Act 1971 which contains special provisions for dealing with mentally impaired persons. The Courts Matters Bill, which is currently before the Justice Committee, contains a proposed amendment to the Criminal Procedure (Mentally Impaired Persons) Act 2003 regarding the determination of a defendant's fitness to stand trial. The effect of the amendment set out in clause 108 of the Courts Matters Bill would be to reverse the current sequence. It would have the court first determine whether a defendant is fit to stand trial, and then determine whether a defendant was involved in the offence.

Amendment by Supplementary Order Paper due to timing

We are concerned that if the sequence of determinations proposed in the Courts Matters Bill is adopted, there will be a divergence between the ordinary criminal justice process and the military justice system. Therefore, we recommend that the Minister of Defence consider incorporating the effect of clause 108 of the Courts Matters Bill by SOP into the Military Justice Legislation Amendment Bill during its committee of the whole House stage.

We are proposing that the amendment be made by SOP because the Justice Committee is not due to report back on the Courts Matters Bill until 24 May 2018. This means that we cannot know before then whether the Justice Committee will support the necessary amendment. It would be unfortunate if we recommended an amendment to align the two bills only to find that the Justice Committee had not supported the relevant amendment in the Courts Matters Bill.

Appendix

Committee procedure

The Military Justice Legislation Amendment Bill was referred to the committee on 7 December 2017. The closing date for submissions was 2 March 2018. We received and considered four submissions from interested groups and individuals. We heard oral evidence from one submitter at a hearing in Wellington.

We received advice from the New Zealand Defence Force.

Committee members

Simon O'Connor (Chairperson)
Hon Gerry Brownlee (until 21 March 2018)
Golriz Ghahraman
Hon Willie Jackson
Hon Tim Macindoe (from 21 March 2018)
Hon Todd McClay
Hon Mark Mitchell (until 21 March 2018)
Christopher Penk (from 21 March 2018)
Louisa Wall
Dr Duncan Webb

Advice and evidence received

The documents that we received as advice and evidence are available on the Parliament website, www.parliament.nz.