

ARMED FORCES

EXPLANATORY NOTE

THIS Bill amends both the Defence Act 1971 and the Armed Forces Discipline Act 1971.

A major purpose of the Bill is to provide a basis for the establishment of national joint forces and for matters of command and discipline relating to joint forces.

The Bill also removes a number of cross-service barriers affecting disciplinary matters and powers of arrest, updates various procedural matters in light of recent changes to criminal justice legislation, lowers from 20 to 18 years the age at which minors may enlist without consent, and contains a large number of miscellaneous amendments of a more minor character.

Part 1 of the Bill amends the Defence Act 1971.

Clause 3 (1) deletes from the definition of the term "defence area" a reference to the Calliope Dock, in light of the sale of the dock from the Auckland Harbour Board to the Crown in February 1987.

Subclause (2) inserts into the principal Act definitions of the terms "joint force" and "joint force commander".

Subclause (3) makes a minor technical amendment to the definition of the term "warrant officer".

Clause 4 provides that the 3 services (Navy, Army, and Air Force) may each be divided into such branches or corps, formations, commands, units, and other parts as the Defence Council determines from time to time. This provision essentially combines the separate provisions for each service currently contained in sections 6 (3), 7 (3), and 8 (2) of the principal Act, and those provisions are consequentially repealed.

Clause 5 inserts a new *section 5A* into the principal Act relating to the establishment of joint forces.

Subsection (1) of the new section provides that the Chief of Defence Staff may from time to time, under the Defence Council, establish joint forces comprising parts of 2 or more services and appoint an officer of one of the services to command any such force. The Chief of Defence Staff may also place a joint force under the command of the Chief of Staff of any service.

Subsection (2) provides that anything required or authorised by or under the principal Act or the Armed Forces Discipline Act 1971 to be done by, to, or before the Chief of Staff of the service to which any particular part or serviceman of a joint force belongs may be done by, to, or before the Chief of Defence Staff or, where the joint force is placed under the command of one of the Chiefs of Staff, that Chief of Staff. The application of the 2 Acts to joint forces will also be subject to such necessary modifications as may be prescribed.

Clause 6 repeals section 13 of the principal Act, which relates to cross-service powers of command, discipline, and arrest when the different services are acting together. This section is in part overtaken by the new provisions relating to joint forces, in part by the amendment to the definition of the term “superior officer” in the Armed Forces Discipline Act 1971 (see *clause 18 (4)*), and in part by the amendment to that Act relating to powers of arrest (see *clause 23*). Not specifically provided for are powers of cross-service command in situations where members of the separate services come in contact with each other but where a joint force has not been formally established under new *section 5A* of the principal Act.

Clause 7 amends section 24 (3) of the principal Act. Under that subsection as it is presently worded, the Chief of Defence Staff may only command the services through their respective Chiefs of Staff. The proposed new *paragraph (aa)* now includes as a function of the Chief of Defence Staff the power to command a joint force either through one of the Chiefs of Staff, or directly through the joint force commander.

Clause 8 amends section 25 of the principal Act to allow the Secretary of Defence to directly acquire and dispose of land and interests in land.

Clause 9 amends section 27 of the principal Act to refer to the functions of the Chiefs of Staff in relation to joint forces.

Clause 10 lowers from 20 to 18 years the age at which minors require the consent of a parent or guardian to enlist in the armed forces.

Clause 11 repeals sections 40 and 41 of the principal Act relating to the liability of minors for overseas service.

Clause 12 amends section 48 (fa) of the principal Act, which relates to the fixing by Defence Council Order of certain terms and conditions relating to return of service obligations. The reference in paragraph (fa) to specified training or exchange service is changed to refer to prescribed training or overseas service.

Clause 13 similarly alters the reference to exchange service in section 54A of the principal Act to refer to overseas service.

Clause 14 (1) updates a number of the penalties that may be imposed in respect of offences under the principal Act, and substitutes the term “member of the Police” for the word “constable” in 2 sections of the Act. The new penalties are set out in the Schedule to the Bill.

Subclause (2) repeals the sections of the principal Act which create the offences of pretending to be a deserter, aiding escape from a service penal establishment, and the unlawful purchase, etc., of service stores. These offences can be adequately dealt with under the Crimes Act 1961.

Clause 15 repeals section 78 of the principal Act. This section is no longer necessary following the sale of the Calliope Dock by the Auckland Harbour Board to the Crown in February 1987.

Clause 16 adds to the regulation-making powers contained in section 88 of the principal Act the power to apply to military aerodromes and aircraft those parts of the Civil Aviation Regulations 1953 that relate to obstructions to air navigation and lights.

Part II of the Bill contains amendments to the Armed Forces Discipline Act 1971.

Clause 18 (1) repeals the definition of the term “constable” in section 2 of the principal Act (and *subclause (6)* substitutes the expression “member of the Police” in all the sections of the Act where it occurs).

Subclause (2) inserts a definition of the term “joint force”.

Subclause (3) amends the definition of the term “service” to include references to parts of any of the services.

Subclause (4) inserts a reference to the Chief of Defence Staff into the definition of the term “superior commander”. This allows for the appointment of superior commanders by the Chief of Defence Staff in relation to joint forces.

Subclause (5) amends the definition of the term “superior officer” by removing the requirement that, in relation to any serviceman, the superior officer must be in the same service as that serviceman. This amendment has implications for the offences specified in the principal Act in section 35 (violence to a superior officer), section 36 (insubordinate behaviour), and section 38 (disobeying a lawful command), and also for the powers of arrest specified in section 88.

Clause 19 amends section 16 (7) of the principal Act, partly to remove an out-dated reference to separate service courts-martial and partly as a consequence of the amendments contained in *clauses 28 to 30* of the Bill.

Clause 20 updates the cross-reference to the civil offence of rape in section 74 of the principal Act to refer to sexual violation, consequent upon the enactment of the Crimes Amendment Act (No. 3) 1985.

Clause 21 inserts a new *section 81A* into the principal Act dealing with how periods of pre-trial custody are to be taken into account when sentencing. This provision is based on the former section 81 of the Criminal Justice Act 1985. (See also *clauses 25, 34 (4), and 35*).

Clause 22 amends section 82 of the principal Act, which relates to dismissal from service and reduction in rank. The amendment makes it clear that, where a sentence involves both imprisonment and dismissal, it is only the dismissal part of the sentence that will not take effect until it has been approved by a reviewing authority.

Clause 23 repeals section 88 (4) of the principal Act, which provides that the power of arrest without warrant may not generally be exercised over a serviceman belonging to a different service.

Clause 24 updates the reference to narcotics in section 96 (2) of the principal Act to refer to controlled drugs.

Clause 25 makes amendments relating to pre-trial custody (see *clause 21*).

Clause 26 provides that where an officer proposes to remand an offender to a superior officer for sentence on any charge, the offender (and any other offender involved) should also be so remanded on any other charges arising from the same incident. This is similar to the principle contained in section 168A of the Summary Proceedings Act 1957.

Clause 27 amends section 117 of the principal Act to recognise reviewing authorities appointed by the Chief of Defence Staff in respect of servicemen serving in joint forces.

Clause 28 amends section 119 of the principal Act to allow general and restricted courts-martial to be convened by the Chief of Defence Staff or an officer appointed by the Chief of Defence Staff. This power is needed in respect of servicemen serving in joint forces. New *subsection (1A)* makes it clear that the Chief of Defence Staff may not convene a general court-martial in respect of the Chief of Staff of any service; this may only be done by the Governor-General.

Clause 29 corrects a misprint that occurs in the principal Act as it is printed in Volume 3 of the 1971 bound volumes of New Zealand Statutes.

Clause 30 repeals and replaces section 124 of the principal Act. Subsection (1) of the existing section provides that where a court-martial is convened to try an accused serviceman, the members of the court are to be officers of the same service as the accused. Subsection (2) allows officers from other services to be members of the court where it is not possible to obtain the requisite number of eligible officers of the appropriate service. Subsection (3) sets down minimum requirements as to the rank and length of service that must be met by such officers. Subsection (4) refers to the position of Commonwealth forces acting together with New Zealand forces.

The main point to note about the new *section 124* is that it does not repeat the existing requirement for members of the court to be from the same service as an accused. They may now come from any of the 3 services.

With this requirement removed, the new *section 124*, while its provisions remain substantially the same as existing subsections (2) to (4), now applies only in respect of Commonwealth forces serving or acting together with New Zealand forces under section 6 of the Visiting Forces Act 1939.

Clauses 31 and 32 adopt the principles contained in section 375A of the Crimes Act 1961, relating to privacy for complainants in cases involving sexual violation.

Clause 33 amends section 151 of the principal Act to make provision for the constitution of reviewing authorities appointed by the Chief of Defence Staff in respect of servicemen serving in joint forces outside New Zealand.

Clause 34 makes similar provision in respect of reconsidering authorities under section 166 of the principal Act. It also deals with the effect of periods of pre-trial custody on the timing of any reconsideration of sentence (*subclauses (4) and (5)*).

Clause 35 deals with the effect of periods of pre-trial custody in determining the date at which an offender will become eligible for remission of sentence.

Clause 36 makes a minor technical amendment to section 194 of the principal Act.

Clause 37 alters footnotes that appear in the Fourth and Fifth Schedules to the principal Act.

Clause 38 amends the Courts Martial Appeals Act 1953 to remove an out-dated reference to separate service courts-martial.

Right Hon. R. J. Tizard

ARMED FORCES

ANALYSIS

Title	19. Certain civilians closely associated with Armed Forces subject to this Act
1. Short Title and commencement	20. Offences against the civil law of New Zealand
PART I	
AMENDMENTS TO DEFENCE ACT 1971	
2. This Part to be read with Defence Act 1971	21. Effect of period spent in custody awaiting trial
3. Interpretation	22. Dismissal from service and reduction in rank
4. The Armed Forces of New Zealand	23. Arrest without warrant
5. Joint forces	24. Searches to prevent smuggling, etc.
6. Services acting together	25. Summary punishments
7. Chief of Defence Staff	26. Delegation of powers by commanding officers
8. Secretary of Defence	27. Summary findings and punishments to be reviewed by reviewing authorities
9. Chiefs of Staff	28. Authority to convene courts-martial
10. Enlistment of minors	29. Constitution of general courts-martial
11. Liability of minors for overseas service	30. Eligibility of officers of Commonwealth forces to be members of courts-martial
12. Defence Council Orders fixing certain terms and conditions of service	31. Courts-martial to sit in open court
13. Return of service obligation	32. Special provisions in cases involving sexual violation
14. Offences and penalties, etc.	33. Constitution of reviewing authorities
15. Powers of Minister and Auckland Harbour Board in relation to dockyard at Auckland	34. Constitution and powers of reconsidering authorities
16. Regulations	35. Effect of period spent in custody awaiting trial
PART II	
AMENDMENTS TO ARMED FORCES DISCIPLINE ACT 1971	
17. This Part to be read with Armed Forces Discipline Act 1971	36. Power of court-martial to commit to hospital on conviction
18. Interpretation	37. Fourth and Fifth Schedules amended
	38. Amendment to Courts Martial Appeals Act 1953 Schedules

A BILL INTITULED

An Act to amend the Defence Act 1971 and the Armed Forces Discipline Act 1971

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Armed Forces Act 1987.

(2) This Act shall come into force on the 28th day after the date on which it receives the Governor-General's assent.

PART I

5

AMENDMENTS TO DEFENCE ACT 1971

2. This Part to be read with Defence Act 1971—This Part of, and the **First Schedule** to, this Act shall be read together with and deemed part of the Defence Act 1971* (in this Part of this Act referred to as the principal Act).

10

*1971, No. 52

Amendments: 1974, No. 24; 1976, No. 14; 1980, No. 40; 1985, No. 198

3. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by repealing paragraph (a) of the definition of the term “defence area”.

(2) Section 2 (1) of the principal Act is hereby further amended by inserting, after the definition of the term “enemy”, the following definitions:

15

“‘Joint force’ means a joint force established under **section 5A (1) (a)** of this Act:

“‘Joint force commander’, in relation to a joint force, means the officer appointed under **section 5A (1) (a)** of this Act to command that force:”

20

(3) Section 2 (1) of the principal Act is hereby further amended by omitting from paragraph (b) of the definition of the term “warrant officer” (as amended by section 2 (8) of the Defence Amendment Act 1985) the expressions “class I” and “class II”, and substituting the expressions “class one” and “class two” respectively.

25

4. The Armed Forces of New Zealand—(1) Section 5 of the principal Act is hereby amended by adding the following subsection:

30

“(5) The New Zealand Naval Forces, the New Zealand Army, and the Royal New Zealand Air Force may each be divided into such branches or corps, formations, commands, units, and other parts as the Defence Council determines from time to time.”

35

(2) Sections 6 (3), 7 (3), and 8 (2) of the principal Act are hereby repealed.

5. Joint forces—The principal Act is hereby amended by inserting, after section 5, the following section:

“5A. (1) The Chief of Defence Staff may from time to time, under the Defence Council,—

5 “(a) Establish a joint force comprising parts of 2 or more services, and appoint an officer of one of the services to command that force:

“(b) Place a joint force under the command of the Chief of Staff of any service.

10 “(2) Where a joint force is established under this section, this Act and the Armed Forces Discipline Act 1971 shall apply to those parts of any service that comprise the joint force, and to any serviceman serving in the joint force, subject to the following modifications:

15 “(a) Anything required or authorised by or under this Act or the Armed Forces Discipline Act 1971 to be done by, to, or before the Chief of Staff of the service to which the part belongs, or to which the serviceman belongs or is attached, may be done by, to, or before the Chief of Defence Staff or, where the Chief of Defence Staff has placed the joint force under the command of a Chief of Staff, that Chief of Staff:

20 “(b) Such other necessary modifications as may be prescribed.”

6. Services acting together—Section 13 of the principal Act is hereby repealed.

25 **7. Chief of Defence Staff**—Section 24 (3) of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraph:

30 “(aa) Under the Defence Council, command any joint force either directly through the joint force commander or through the Chief of Staff of any service:”.

8. Secretary of Defence—Section 25 (5) of the principal Act (as added by section 4 of the Defence Amendment Act 1985) is hereby amended by repealing paragraph (b), and substituting the following paragraphs:

35 “(b) Purchase, take on lease, or otherwise acquire any land or interest in land; and

“(c) Sell or otherwise dispose of, or grant any lease, licence, or easement over, any land or interest in land under the control of the Ministry of Defence.”

9. Chiefs of Staff—Section 27 of the principal Act is hereby amended by inserting, after subsection (3), the following subsection:

“(3A) Where the Chief of Defence Staff places a joint force under the command of a Chief of Staff pursuant to **section 5A (1) (b)** of this Act, that Chief of Staff shall, under the Chief of Defence Staff, command that force through the joint force commander, and nothing in **subsections (1) to (3)** of this section authorises a Chief of Staff to exercise command over a joint force, or any part of a joint force, unless the Chief of Defence Staff has placed that joint force under the command of that Chief of Staff.”

10. Enlistment of minors—(1) Section 39(1) of the principal Act is hereby amended by omitting the word “minor”, and substituting the words “person under 18 years of age (in this section referred to as a minor)”.

(2) Section 39(6) of the principal Act is hereby amended by omitting the words “and of section 40 of this Act”, and also the words “or of the said section 40”.

11. Liability of minors for overseas service—(1) Sections 40 and 41 of the principal Act are hereby repealed.

(2) Section 17(4)(b) of the Volunteers Employment Protection Act 1973 is hereby consequentially repealed.

12. Defence Council Orders fixing certain terms and conditions of service—Section 48 of the principal Act is hereby amended by repealing paragraph (fa) (as inserted by section 7 of the Defence Amendment Act 1985), and substituting the following paragraph:

“(fa) Prescribing the nature, extent, terms, and conditions of return of service obligations to be fulfilled by servicemen in respect of any prescribed training or overseas service.”.

13. Return of service obligation—Section 54A of the principal Act (as inserted by section 5 of the Defence Amendment Act 1980) is hereby amended by omitting the words “exchange service”, and substituting the words “overseas service”.

14. Offences and penalties, etc.—(1) The principal Act is hereby amended in the manner indicated in the **First Schedule** to this Act.

(2) The principal Act is hereby further amended by repealing sections 65, 69, and 71.

15. Powers of Minister and Auckland Harbour Board in relation to dockyard at Auckland—Section 78 of the principal Act is hereby repealed.

16. Regulations—Section 88 (1) of the principal Act is hereby amended by inserting, after paragraph (f), the following paragraph:

“(fa) Providing that any specified regulations of the Civil Aviation Regulations 1953, being—
 “(i) Regulations which relate to obstructions to air navigation and lights; or
 “(ii) General regulations relating to the administration or enforcement of regulations which so relate,—
shall, with any necessary modifications, apply in respect of any military aerodrome and aircraft using such aerodromes.”

PART II

AMENDMENTS TO ARMED FORCES DISCIPLINE ACT 1971

17. This Part to be read with Armed Forces Discipline Act 1971—This Part of, and the **Second Schedule** to, this Act shall be read together with and deemed part of the Armed Forces Discipline Act 1971* (in this Part of this Act referred to as the principal Act).

*1971, No. 53

Amendments: 1976, No. 13; 1980, No. 37; 1981, No. 48; 1985, No. 199

18. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term “constable”.

(2) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “is liable”, the following definition:

“Joint force” means a joint force established under section 5A (1) (a) of the Defence Act 1971:”.

(3) Section 2 (1) of the principal Act is hereby further amended by adding to the definition of the term “service” the words “or any part of one or more of those services”.

(4) Section 2 (1) of the principal Act is hereby further amended by inserting in paragraph (c) of the definition of the term “superior commander” (as amended by section 2 (3) of

the Armed Forces Discipline Amendment Act 1981), after the words “appointed by”, the words “the Chief of Defence Staff,”.

(5) Section 2 (1) of the principal Act is hereby further amended by omitting from the definition of the term “superior officer” the words “in the same service” in both places where they occur. 5

(6) The principal Act is hereby amended in the manner indicated in the **Second Schedule** to this Act.

19. Certain civilians closely associated with Armed Forces subject to this Act—Section 16 (7) of the principal Act 10 is hereby amended by repealing paragraphs (a), (b), and (c).

20. Offences against the civil law of New Zealand—Section 74 (4) of the principal Act is hereby amended by omitting the word “rape”, and substituting the words “sexual violation”. 15

21. Effect of period spent in custody awaiting trial—The principal Act is hereby amended by inserting, after section 81, the following section:

“81A. (1) In determining the length of any sentence of imprisonment or detention a court-martial shall not take into account any period during which the offender was held in custody awaiting trial but shall specify any such period on the committal order. 20

“(2) This section shall not apply in respect of any time spent in custody while the offender was already serving a sentence of imprisonment or detention. 25

“(3) In this section, the term “custody” means detention in civil custody or under close arrest; but does not include open arrest.”

22. Dismissal from service and reduction in rank— 30 Section 82 of the principal Act is hereby amended by repealing subsection (4), and substituting the following subsection:

“(4) Where a serviceman is sentenced to be dismissed from Her Majesty’s Service, or is sentenced to imprisonment involving dismissal pursuant to subsection (1) of this section, the dismissal shall not take effect until the sentence has been approved by a reviewing authority.” 35

23. Arrest without warrant—Section 88 of the principal Act is hereby amended by repealing subsection (4).

24. Searches to prevent smuggling, etc.—Section 96 (2) of the principal Act is hereby amended by omitting the word “narcotics”, and substituting the words “controlled drugs”.

25. Summary punishments—Section 102 of the principal Act is hereby amended by inserting, after subsection (5), the following subsections:

“(5A) In determining the period of any detention to be imposed an officer exercising summary powers shall not take into account any period during which the offender was held in custody awaiting to be tried summarily or dealt with summarily, but shall specify any such period on the committal order.

“(5B) Subsection (5A) of this section shall not apply in respect of any time spent in custody while the offender was already serving a sentence of imprisonment or detention.

“(5C) In this section, the term “custody” means detention in civil custody or under close arrest; but does not include open arrest.”

26. Delegation of powers by commanding officers—(1) Section 115 of the principal Act is hereby amended by inserting, after subsection (4A) (as inserted by section 13 of the Armed Forces Discipline Amendment Act 1981), the following subsection:

“(4B) Where an officer to whom powers have been delegated under this section decides to remand an accused found guilty on any charge to a commanding officer under subsection (4A) of this section, the officer shall also,—

“(a) Where the accused has been found guilty on any other charge arising from the same incident or series of incidents, remand the accused to the commanding officer on all other such charges:

“(b) Where any other accused is found guilty on any charge arising from the same incident or series of incidents, remand that other accused to the commanding officer on all such charges.”

(2) Section 115 (5) of the principal Act is hereby amended by omitting the word “such”.

27. Summary findings and punishments to be reviewed by reviewing authorities—(1) Section 117 (1) of the principal Act (as amended by section 3 of the Armed Forces Discipline Amendment Act 1981) is hereby amended by inserting in

paragraph (c), after the word “servicemen”, the words “(including servicemen serving in a joint force)”.

(2) Section 117 (1) of the principal Act (as so amended) is hereby further amended by adding the following paragraph:

“(d) An officer (including an officer of an allied force), not inferior in rank to the officer who tried or dealt with the offence, appointed by the Chief of Defence Staff to be a reviewing authority in respect of servicemen serving in a joint force.”

(3) Section 117 (2) of the principal Act (as substituted by section 23 (1) of the Armed Forces Discipline Amendment Act 1985) is hereby amended by repealing paragraph (c), and substituting the following paragraph:

“(c) By the Board of Review on being referred to the Board at any time by the Chief of Defence Staff, the Chief of Staff of any service, or the Defence Council.”

28. Authority to convene courts-martial—(1) Section 119 (1) of the principal Act is hereby amended by inserting, at the beginning of paragraph (b), the words “The Chief of Defence Staff,”.

(2) Section 119 (1) is hereby further amended by inserting in paragraph (c), after the words “authorised by”, the words “the Chief of Defence Staff,”.

(3) Section 119 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Nothing in subsection (1) of this section shall authorise any person other than the Governor-General to convene a general court-martial in respect of a Chief of Staff of any service.”

(4) Section 119 (2) of the principal Act is hereby amended by inserting in paragraph (b), after the words “authorised by”, the words “the Chief of Defence Staff,”.

29. Constitution of general courts-martial—Section 120 of the principal Act is hereby amended by repealing subsection (7), and substituting the following subsection:

“(7) If the accused holds the rank of commander, lieutenant-colonel, wing commander, or a lower rank, at least 2 of the members of the court, other than the president, shall be holders of a rank not below that of the accused.”

30. Eligibility of officers of Commonwealth forces to be members of courts-martial—(1) The principal Act is

hereby amended by repealing section 124, and substituting the following section:

“124. (1) If it is necessary to convene a court-martial to try an accused at a place where, or in circumstances in which, in the opinion of the convening officer, the minimum requisite number of eligible officers cannot, having regard to the exigencies of the Armed Forces, be appointed as members of the court, any officer of a service that forms part of the naval, military, or air forces of any part of the Commonwealth for the time being declared to be serving together, or serving together and acting in combination, with any part of the Armed Forces for the purposes of section 6 of the Visiting Forces Act 1939, shall, subject to subsections (2) and (3) of this section, be eligible to be appointed as the president or as a member of the court.

“(2) No officer shall be eligible to be appointed as a member of a court-martial under subsection (1) of this section unless—

“(a) That officer has served as an officer for one or more periods totalling not less than 3 years; and

“(b) The rank held by that officer is not lower than a rank corresponding to that prescribed by section 120 or section 121 of this Act as a qualification for a member of a court-martial to try the accused.

“(3) The number of officers appointed to a court-martial under subsection (1) of this section shall not exceed the number of officers of the Armed Forces of New Zealand who are appointed to the court.”

(2) Section 120 (3) and section 121 (3) of the principal Act are hereby consequentially amended by omitting in each case the words “Subject to section 124 of this Act,”.

31. Courts-martial to sit in open court—(1) Section 131 (1) of the principal Act (as substituted by section 24 (1) of the Armed Forces Discipline Amendment Act 1985) is hereby amended by inserting, after the words “of this section”, the words “and to section 131A of this Act,”.

(2) Section 131 (3) of the principal Act (as so substituted) is hereby amended by repealing paragraph (c), and substituting the following paragraph:

“(c) Subject to subsection (4) of this section, an order excluding all or any persons other than the following:

“(i) Any member of the court:

“(ii) The Judge Advocate:

“(iii) Any officer under instruction:

“(iv) The prosecutor:

“(v) The accused and any escort:

“(vi) Any barrister or solicitor or serviceman instructed by the accused to act on the accused’s behalf:

“(vii) The clerk of the court and the court orderly:

“(viii) Any person who is for the time being responsible for recording the proceedings: 5

“(ix) Any interpreter required in the proceedings:

“(x) Any person expressly permitted by the convening officer or the court to be present.”

32. Special provisions in cases involving sexual violation—The principal Act is hereby amended by inserting, after section 131, the following section: 10

“131A. (1) For the purposes of this section, ‘case involving sexual violation’ means any proceedings under this Act in which a person is charged with, or to be sentenced for, an offence against— 15

“(a) Section 74 of this Act, where the corresponding civil offence is—

“(i) Sexual violation:

“(ii) Attempted sexual violation: 20

“(iii) Assault with intent to commit sexual violation:

“(iv) An offence against section 129A of the Crimes Act 1961 (inducing sexual connection by coercion):

“(v) An offence against section 142A of the Crimes Act 1961 (compelling indecent act with animal): 25

“(b) Section 75 of this Act, where the offence is one of aiding, abetting, inciting, counselling, or procuring, or conspiring with, any person to commit any offence referred to in any of subparagraphs (i) to (v) of paragraph (a) of this subsection. 30

“(2) While the complainant in a case involving sexual violation is giving oral evidence (whether in chief or under cross-examination or on re-examination), no person shall be present except the following:

“(a) Members of the court-martial: 35

“(b) The judge advocate:

“(c) Any officer under instruction:

“(d) The prosecutor:

“(e) The accused and any escort:

“(f) Any barrister or solicitor or serviceman instructed by the accused to act on the accused’s behalf: 40

“(g) The clerk of the court and the court orderly:

“(h) Any person who is for the time being responsible for recording the proceedings:

“(i) Any interpreter required in the proceedings:

“(j) Any accredited news media reporter:

5 “(k) Any person whose presence is requested by the complainant:

“(l) Any person expressly permitted by the convening officer or the court to be present.

10 “(3) Before the complainant in a case involving sexual violation commences to give evidence, the president shall—

“(a) Ensure that no person other than one referred to in subsection (2) of this section is present; and

“(b) Advise the complainant of the complainant’s right to request the presence of any person under paragraph (k) of that subsection.

15 “(4) Where in a case involving sexual violation the court is of the opinion that the interests of the complainant so require, it may make an order forbidding publication of any report or account giving details of the criminal acts alleged to have been performed on the complainant or of any acts that the complainant is alleged to have been compelled or induced to perform or to consent to or acquiesce in.

20 “(5) Nothing in this section shall limit or affect the powers of a convening officer or court-martial to exclude any person or forbid any report or account of any evidence under section 131 of this Act.”

33. Constitution of reviewing authorities—(1) Section 151 (1) of the principal Act is hereby amended by inserting paragraph (c), after the word “servicemen”, the words
30 “(including servicemen serving in a joint force)”.

(2) Section 151 (1) of the principal Act is hereby further amended by adding the following paragraph:

35 “(d) An officer (including an officer of an allied force) appointed by the Chief of Defence Staff to review convictions and sentences of courts-martial held outside New Zealand, in respect of servicemen serving in a joint force.

40 (3) Section 151 (2) of the principal Act is hereby amended by inserting, after the expression “paragraph (c)”, the expression “or paragraph (d)”.

34. Constitution and powers of reconsidering authorities—(1) Section 166 (1) of the principal Act is hereby amended by inserting in paragraph (b), after the word

“servicemen”, the words “(including servicemen serving in a joint force)”.

(2) Section 166 (1) of the principal Act is hereby further amended by adding the following paragraph:

“(c) An officer appointed by the Chief of Defence Staff to reconsider sentences of courts-martial in respect of servicemen serving in a joint force.”

(3) Section 166 (3) of the principal Act is hereby amended by inserting, after the words “Board of Review”, the words “, the Chief of Defence Staff,”.

(4) Section 166 of the principal Act is hereby further amended by inserting, after subsection (4), the following subsections:

“(4A) For the purpose of determining the date on which a sentence should be reconsidered, an offender shall be deemed to have been serving the sentence during the whole of any period that the offender was held in custody awaiting trial, as specified on the committal order by a court-martial under section 81A of this Act.

“(4B) Nothing in subsection (4A) of this section shall limit or affect the provisions of section 177 or section 179 of this Act.”

(5) Subsection (4) of this section shall not apply in respect of any sentence imposed before the commencement of this Act.

35. Effect of period spent in custody awaiting trial—

(1) The principal Act is hereby amended by inserting, after section 177, the following section:

“177A. (1) For the purpose of determining the date on which an offender will become eligible for remission of sentence, the offender shall be deemed to have been serving the sentence during the whole of any period that the offender was held in custody awaiting trial, as specified on the committal order by a court-martial under section 81A of this Act or by an officer exercising summary powers under section 102 (5A) of this Act.

“(2) Nothing in this section shall limit or affect the provisions of section 177 or section 179 of this Act.”

(2) This section shall not apply in respect of any sentence imposed before the commencement of this Act.

36. Power of court-martial to commit to hospital on conviction—Section 194 (1) of the principal Act (as substituted by section 38 of the Armed Forces Discipline Amendment Act 1985) is hereby amended by inserting, immediately before the words “medical practitioner”, the word “qualified”.

37. Fourth and Fifth Schedules amended—The principal Act is hereby amended by omitting from the Fourth Schedule (in both places where it occurs), and also from the Fifth Schedule, the note relating to sea service, and substituting in
5 each case the following note:

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

38. Amendment to Courts Martial Appeals Act 1953—Section 1 of the Courts Martial Appeals Act 1953 is hereby amended by repealing subsection (3).

SCHEDULES**Section 14 (1)****FIRST SCHEDULE****AMENDMENTS TO DEFENCE ACT 1971**

Provision amended	Amendment
Section 66	By omitting the expression "\$400", and substituting the expression "\$2,000".
Section 67	By omitting the words "6 months or to a fine not exceeding \$400", and substituting the words "3 months or to a fine not exceeding \$1,000".
Section 68	By omitting the expression "\$100", and substituting the expression "\$1,000".
Section 70	By omitting the words "or parade".
Section 72 (1)	By omitting the expression "\$400", and substituting the expression "\$2,000".
Section 72 (1)	By omitting the words "12 months or to a fine not exceeding \$500", and substituting the words "6 months or to a fine not exceeding \$2,000".
Section 73	By omitting from subsections (2) and (3) the expression "\$200", and substituting in each case the expression "\$1,000". By repealing paragraphs (a) and (b) of subsection (3).
Section 74	By omitting the words "6 months or to a fine not exceeding \$200", and substituting the words "3 months or to a fine not exceeding \$1,000".
Section 75 (1)	By omitting the expression "\$100", and substituting the expression "\$500".
Section 75 (3)	By omitting the word "constable", and substituting the words "member of the Police".
Section 81 (2)	By omitting from paragraph (c) (i), in both places where it occurs, and also from paragraph (e), the word "constable", and substituting in each case the words "member of the Police". By omitting from paragraph (g) the expression "\$200", and substituting the expression "\$1,000".

SECOND SCHEDULE Section 18 (6)
 AMENDMENTS TO ARMED FORCES DISCIPLINE ACT 1971

Provision amended	Amendment
Section 89 (3) ..	By omitting the words "constable or serviceman", and substituting the words "member of the Police".
Section 89 (4) ..	By omitting the words "constable or serviceman", and substituting the words "member of the Police".
Section 89 (5) ..	By omitting the word "constables", and substituting the words "members of the Police".
Section 89 (6) ..	By omitting the word "constables", and substituting the words "member of the Police".
Section 91 (1) ..	By omitting the word "constable", and substituting the words "member of the Police".
Section 91 (2) ..	By omitting the word "constable" in both cases where it occurs, and substituting in each case the words "member of the Police".
Section 91 (3) ..	By omitting the word "constable", and substituting the words "member of the Police".
Section 92 (1) ..	By omitting the word "constable", and substituting the words "member of the Police".
Section 92 (2) ..	By omitting the word "constable", and substituting the words "member of the Police".
Section 93 (1) ..	By omitting the word "constable", and substituting the words "member of the Police".
Section 144 (2) ..	By omitting the word "constable" in both cases where it occurs, and substituting in each case the words "member of the Police".
Section 147 (2) (k) ..	By omitting the word "constable" in both cases where it occurs, and substituting in each case the words "member of the Police".