



ANALYSIS

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1981, No. 48

An Act to amend the Armed Forces Discipline Act 1971
 [20 October 1981]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Armed Forces Discipline Amendment Act 1981, and shall be read together with and form part of the Armed Forces Discipline Act 1971 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the date appointed for the commencement of the principal Act.

2. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “court-martial”, the following definition:

“‘Deal summarily with’, in relation to the summary disposal of any charge, means to deal summarily with the charge in the manner prescribed by, and in accordance with the provisions of, the rules of procedure; and ‘dealt with summarily’ has a corresponding meaning:”.

(2) Section 2 (1) of the principal Act is hereby further amended by omitting the definition of the term “detachment commander”, and substituting the following definition:

“‘Detachment commander’,—

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

“(i) A tender or boat; or

“(ii) A body of persons stationed or employed at a distance from the ship or establishment to which they belong:

“(b) In relation to the Army and the Air Force, means an officer who is for the time being authorised by his commanding officer to act as detachment commander of a part of a unit stationed or employed at a distance from its unit headquarters:”.

(3) Section 2 (1) of the principal Act is hereby further amended by inserting in paragraphs (b), (c), and (d) of the definition of the term “superior commander”, before the words “to deal summarily with” in each case, the words “to try summarily or”.

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

“‘Try summarily’, in relation to the summary disposal of any charge, means to try that charge summarily in the manner prescribed by, and in accordance with the provisions of, the rules of procedure; and ‘tried summarily’ has a corresponding meaning:”.

3. Summary procedure generally—The provisions of the principal Act specified in the first column of the Schedule to this Act are hereby amended in the manner set out in the second column of that Schedule.

4. Certain civilians closely associated with Armed Forces subject to this Act—Section 16 (4) (c) of the principal Act is hereby amended by omitting the expression “87”, and substituting the expression “87A”.

5. Person may not be tried under principal Act and under civil law in respect of same act or omission—(1) Section 21 (1) (b) of the principal Act is hereby amended by omitting the words “has been” where they secondly occur, and substituting the words “the charge was, on investigation, dismissed, or he was”.

(2) Section 21 (4) (a) of the principal Act is hereby amended by omitting the words “on the charge on which he was tried”, and substituting the words “, under this Act or otherwise, on the same facts”.

6. Offences relating to proceedings of courts-martial, etc.—Section 70 (2) (a) (ii) of the principal Act is hereby amended by omitting the words “or servicewoman”.

7. Detention in service custody of person charged by civil authority—The principal Act is hereby amended by inserting, after section 93, the following section:

“93A. (1) In this section—

“‘Treaty’ means an agreement between New Zealand and any other country requiring, providing for, or relating to the presence in that country of any persons subject to this Act:

“‘Treaty country’, in relation to a treaty, means any country (other than New Zealand) that is a party to the treaty.

“(2) This section applies to every case where any person subject to this Act (in this section referred to as the defendant)—

“(a) Is to be tried for an offence by any court of competent jurisdiction in a treaty country, and, by virtue of the treaty or of any order of the court made in accordance with the terms of the treaty, the defendant is to be held in service custody pending his trial; or

“(b) Is to be tried for an offence by any court of competent jurisdiction in New Zealand or elsewhere, and the court has ordered the release of the defendant from civil custody pending his trial on an undertaking given by any person authorised

in that behalf in accordance with Defence Council orders to ensure that the defendant appears before the court at the appointed time to answer the charge against him.

“(3) In any case to which this section applies, the defendant may be arrested and delivered into service custody, and detained in service custody pending his trial.

“(4) Nothing in subsections (3) to (7) of section 101 of this Act shall apply in respect of any case to which this section applies.

“(5) Except as provided in subsection (4) of this section, the provisions of this Part of this Act, with all necessary modifications, shall apply where any person is arrested, delivered into service custody, and detained in service custody under this section.”

8. Three new sections (relating to summary disposal of charges) substituted in principal Act—The principal Act is hereby amended by repealing sections 103 to 105, and substituting the following sections:

“103. **Investigation of charges**—If at any time it is alleged that any person subject to this Act has committed an offence against this Act, the commanding officer of that person shall, unless he considers that the allegation is not well founded, either—

“(a) Cause the allegation to be recorded in the form of a charge and to be investigated in accordance with, and in the manner prescribed by, the rules of procedure; or

“(b) Cause the allegation to be referred to the appropriate civil authority for investigation.

“104. **Disposal of charges by commanding officers**—
(1) Every commanding officer shall investigate and, except in a case to which subsection (2) of this section applies, dispose of any charge before him in accordance with, and in the manner prescribed by, the rules of procedure.

“(2) Where, in the course of investigating a charge, it appears to the accused’s commanding officer that proceedings in respect of the matters to which the charge relates could be, and in the interests of the better administration of justice ought to be, taken against the accused otherwise than under this Act, he may stay proceedings on the charge under this Act for such time as may be necessary.

“(3) No commanding officer shall impose one or more of the punishments of an amount or of amounts exceeding that or those authorised by the third column of the Fourth Schedule to this Act unless the accused has been given the right to elect trial by court-martial in accordance with, and in the manner prescribed by, the rules of procedure.

“(4) If the accused elects to have the charge tried by court-martial and does not withdraw his election in accordance with, and in the manner prescribed by, the rules of procedure, the commanding officer shall apply to a convening officer to convene a court-martial to try the accused.

“(5) If the accused elects to be tried summarily or dealt with summarily or withdraws an election to have the charge tried by court-martial, the commanding officer may, after being satisfied that the accused committed the offence charged and recording a finding of guilty, impose on the accused, to the extent authorised by the second column of the Fourth Schedule to this Act, such punishment or punishments as he considers just.

“105. Disposal of charges by superior commanders---

(1) Every superior commander shall investigate and dispose of any charge before him in accordance with, and in the manner prescribed by, the rules of procedure.

“(2) No superior commander shall impose one or more of the punishments of an amount or of amounts exceeding that or those authorised by the third column of the Fifth Schedule to this Act unless the accused has been given the right to elect trial by court-martial in accordance with, and in the manner prescribed by, the rules of procedure.

“(3) If the accused elects to have the charge tried by court-martial and does not withdraw his election in accordance with, and in the manner prescribed by, the rules of procedure, the superior commander shall either—

“(a) Apply to a convening officer to convene a court-martial to try the charge; or

“(b) If he is himself a convening officer, convene a court-martial to try the charge.

“(4) If the accused elects to be tried summarily or dealt with summarily or withdraws an election to have the charge tried by court-martial, the superior commander may, after being satisfied that the accused committed the offence charged and recording a finding of guilty, impose on the

accused, to the extent authorised by the second column of the Fifth Schedule to this Act, such punishment or punishments as he considers just.”

9. Reference back of a charge by a convening officer—The principal Act is hereby amended by repealing section 108, and substituting the following section:

“108. (1) Where an application for the trial of a charge by court-martial has been made to a convening officer in accordance with, and in the manner prescribed by, the rules of procedure, he may, after giving due consideration to the circumstances of the case, refer the charge back to the officer who made the application with a direction that the officer shall—

“(a) If he is a commanding officer or a superior commander in the Navy and the accused has not elected to have the charge tried by court-martial, try the charge summarily; or

“(b) If he is a commanding officer, a detachment commander, or a superior commander in the Army or the Air Force, further investigate the charge to such extent as he thinks fit and either dismiss it or, unless the accused has elected to have the charge tried by court-martial, deal with it summarily; or

“(c) In any case, dismiss the charge.

“(2) On reference back of a charge under subsection (1) of this section, the officer shall dispose of the charge in accordance with the direction.

“(3) Reference back of a charge to an officer under this section shall be without prejudice to the power of the officer to prefer another charge if the convening officer so directs or if the officer thinks fit.

“(4) The convening officer shall cause the accused to be informed of any action that is taken in respect of him under this section.”

10. Replacement of officer investigating or disposing of charge—The principal Act is hereby amended by repealing section 109, and substituting the following section:

“109. (1) If at any time an officer who is empowered to do so has begun to investigate, try summarily, or deal summarily with any charge, and, because of death, illness, or any other reason, he is unable to dispose of the charge, the officer who

becomes empowered to act in his place may investigate, try summarily, or deal summarily with the charge, as the case may be, as if the officer whom he replaced had not commenced to do so.

“(2) Notwithstanding subsection (1) of this section, if the officer who has become incapacitated had, before his incapacity, found the accused guilty, the officer who becomes empowered to act in his place shall not so try or deal with the charge but may instead, after inquiring into the circumstances of the charge, impose a punishment or punishments or make an order under section 106 of this Act as if he had found the accused guilty himself.”

11. Confession of desertion—Section 110 (2) of the principal Act is hereby amended by omitting the word “transferred”, and substituting the word “released”.

12. Powers and functions of a detachment commander—Section 114 of the principal Act is hereby amended by omitting the words “by this Part of this Act”, and substituting the words “in the same service by or in accordance with this Part of this Act”.

13. Delegation of powers by commanding officers—Section 115 of the principal Act is hereby amended by inserting, after subsection (4), the following subsection:

“(4A) Where an officer to whom powers have been delegated under subsection (1) of this section tries a charge summarily and finds the accused guilty he may, in accordance with, and in the manner prescribed by, the rules of procedure, instead of imposing any punishment or punishments, remand the accused to his commanding officer to enable the commanding officer, in the manner prescribed by the rules of procedure, to impose a punishment or punishments or make an order under section 106 of this Act as if the commanding officer had found the accused guilty himself.”

14. Summary findings and punishments to be reviewed by reviewing authorities—Section 117 (9) (c) of the principal Act is hereby amended by omitting the expression “section 86”, and substituting the expression “section 106”.

15. Rules of procedure—(1) Section 150 (2) (t) (i) of the principal Act is hereby amended by omitting the word “of” where it first occurs, and substituting the word “and”.

(2) Section 150 of the principal Act is hereby further amended by adding the following subsection:

“(3) The rules of procedure may make different provision for different services of the Armed Forces.”

16. Reviewing authority to review decision to take other offences into consideration—(1) The principal Act is hereby amended by inserting, after section 160, the following section:

“160A. Where it appears to a reviewing authority that a court-martial, in sentencing the accused for an offence, exceeded or erroneously exercised its powers under section 139 of this Act to take other offences into consideration, the authority shall, whether or not it substitutes a different sentence or remits or commutes any punishment, annul the decision to take into consideration the other offence or offences in question and any orders dependent thereon; and where the authority does so, the offence or offences shall be deemed for all purposes not to have been taken into consideration.”

(2) Section 21 (4) (d) of the principal Act is hereby amended by inserting, after the word “quashed”, the words “, or where the decision to take the offence into consideration has been annulled by a reviewing authority,”.

(3) Section 22 (2) (b) of the principal Act is hereby amended by inserting, after the word “quashed”, the words “, or where the decision to take the offence into consideration has been annulled by a reviewing authority”.

17. Regulations—Section 205 of the principal Act is hereby amended by renumbering subsection (1A) (as inserted by section 21 (2) of the Armed Forces Discipline Amendment Act 1980) as subsection (1B), and by inserting, before that subsection, the following subsection:

“(1A) In subsection (1) (a) of this section the term “civil court”, in relation to any offence, means a court exercising ordinary criminal jurisdiction whether in New Zealand or elsewhere; and includes a court of summary jurisdiction.”

SCHEDULE

Section 3

AMENDMENTS CONSEQUENTIAL UPON CHANGES IN SUMMARY PROCEDURE

Section	Amendment
Section 16 (7) (d) ..	By inserting in the proviso, before the words "dealt with summarily", the words "tried summarily or".
Section 20	By inserting in subsection (1), before the words "dealt with summarily", the words "tried summarily or". By inserting in that subsection, before the words "dealt with", the words "tried or". By inserting in subsection (5), before the words "dealt with summarily", the words "tried summarily or". By inserting in paragraph (a) of that subsection, before the words "dealt with", the words "tried or".
Section 22 (1)	By inserting, before the words "dealt with summarily", the words "tried summarily or".
Section 69 (1) (b)	By inserting, before the words "deal summarily with", the words "try summarily or".
Section 101	By inserting in subsections (4), (5), and (6), before the words "dealt with summarily" in each case, the words "tried summarily or".
Section 102	By inserting in subsections (1), (2), (3), (5), and (6) (as substituted by section 3 (2) of the Armed Forces Discipline Amendment Act 1980), before the words "dealt with summarily" in each case, the words "tried summarily or".
Section 107 (a)	By inserting, before the words "deal with summarily", the words "try summarily or".
Section 111	By inserting, before the words "dealt with summarily", the words "tried summarily or".
Section 112	By inserting, before the words "dealt with summarily", the words "tried summarily or".
Section 115	By inserting in subsections (1) and (6), before the words "deal summarily with" in each case, the words "try charges summarily or". By inserting in subsection (2), before the words "deal with", the words "try or".

SCHEDULE—*continued*

Section	Amendment
Section 117	<p>By inserting in paragraphs (b) and (c) of subsection (1), before the words “dealt with” in each case, the words “tried or”.</p> <p>By inserting in subsection (2), before the words “dealt with summarily”, the words “tried summarily or”.</p> <p>By inserting in paragraph (a) of subsection (5), before the words “dealt with summarily”, the words “tried summarily or”.</p> <p>By inserting in paragraph (b) of that subsection, before the words “dealt with”, the words “tried or”.</p> <p>By inserting in subsections (7) and (8), before the words “dealt summarily with”, the words “tried the case summarily or”.</p> <p>By inserting in subsection (9) (c), before the words “dealing with a charge summarily”, the words “trying a charge summarily or”.</p> <p>By inserting in subsection (10), before the words “dealt summarily with the offence”, the words “tried the offence summarily or”.</p> <p>By inserting in subsection (11), before the words “dealt summarily with the case”, the words “tried the case summarily or”.</p> <p>By inserting in that subsection, before the words “dealt with”, the words “tried or”.</p>
Section 150 (2) (i) . . .	<p>By inserting, before the words “dealt with summarily”, the words “tried summarily or”.</p>

This Act is administered in the Ministry of Defence.
