



## ANALYSIS

Title		2. Term of sentence passed under sections 9, 9A, 9B, and 9C
1. Short Title and commencement		3. Appeal against finding of disability

1985, No. 200

**An Act to amend the Courts Martial Appeals Act 1953**

[17 December 1985]

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 Courts Martial Appeals Amendment Act 1985, and shall be read together with and deemed part of the Courts Martial Appeals Act 1953 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of January 1986.

**2. Term of sentence passed under sections 9, 9A, 9B, and 9C**—Section 9D of the principal Act (as substituted by section 208 (1) of the Armed Forces Discipline Act 1971) is hereby amended by adding the following subsections:

“(3) Except in a case to which subsection (4) of this section applies, where the Court substitutes a sentence of imprisonment or of detention for the sentence of imprisonment or of detention passed by a court martial, the term of the substituted sentence shall be deemed to have commenced or shall commence on the date when the term of the original sentence commenced or would have commenced.

“(4) Where—

“(a) A sentence of imprisonment or of detention passed by a court martial was directed to be cumulative on any earlier sentence; and

“(b) The Court substitutes a sentence of imprisonment or of detention for the sentence of imprisonment or of detention passed by the court martial, but does not direct the sentence to be cumulative on the earlier sentence referred to in paragraph (a) of this subsection,—

the term of the substituted sentence shall be deemed to have commenced or shall commence on the date when the sentence passed by the court martial would have commenced had that sentence not been directed to be cumulative on the earlier sentence.

“(5) Where—

“(a) A sentence of imprisonment or of detention passed by a court martial is directed to be cumulative on any earlier sentence of imprisonment or of detention; and

“(b) The Court substitutes a sentence other than one of imprisonment or of detention for that earlier sentence,—

the sentence passed by the court martial shall commence when the earlier sentence would have commenced.”

**3. Appeal against finding of disability**—The principal Act is hereby amended by inserting, after section 9E (as substituted by section 208 (1) of the Armed Forces Discipline Act 1971), the following section:

“9EA. (1) A person who is found by a court martial to be under disability shall have the same right of appeal against the finding of the court martial as he would have if the finding were a conviction.

“(2) If, on any such appeal, the court is satisfied, on the evidence of 2 medical practitioners, that the appellant is mentally disordered, it shall, after giving the appellant and the respondent an opportunity to be heard and to call evidence on the matter, determine whether the appellant is under disability.

“(3) If the court determines that the appellant is under disability, it shall confirm the finding under appeal.

“(4) If the court determines that the appellant is not mentally disordered, or is mentally disordered but is not under disability, it shall quash the finding under appeal, and, by order in writing addressed to the appropriate convening officer, shall direct him to convene a court-martial to try the charge on which the appellant was previously remanded for trial by court martial.”