

REPEALED: See Act, 19 No.



#### ANALYSIS

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1959, No. 26

### An Act to amend the New Zealand Army Act 1950

[30 September 1959]

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**—This Act may be cited as the New Zealand Army Amendment Act 1959, and shall be read together with and deemed part of the New Zealand Army Act 1950 (hereinafter referred to as the principal Act).

**2. Meaning of "Naval Discipline Act"**—Section two of the principal Act is hereby amended by repealing the definition of the term "Naval Discipline Act" in subsection one, and substituting the following definition:

“ ‘Naval Discipline Act’ means the Navy Act 1954; and, where not inconsistent therewith, includes the Naval Discipline Act 1957 of the United Kingdom Parliament and all enactments of that Parliament passed in amendment or substitution of the last-mentioned Act:”.

REP. 196 .  
No. 8.

**3. Period of service in Regular Force**—Section twelve of the principal Act, as substituted by section two of the New Zealand Army Amendment Act 1957, is hereby amended by inserting in the proviso to subsection one, after the word “discharge”, the words “or transfer to the Army Reserve”.

REP. 196 .  
No. 8.

**4. Gratuities to members of Regular Force and Territorial Force**—Section seventeen of the principal Act is hereby amended by repealing paragraph (c) of subsection one, and substituting the following paragraph:

“(c) Prescribing the gratuities that may be paid to officers and soldiers of the Regular Force on their retirement therefrom and to officers and soldiers of the Territorial Force on the completion of specified periods of service, and prescribing the conditions upon or subject to which those gratuities will become payable:”.

**5. Acting as sentry while drunk**—Section twenty-six of the principal Act is hereby amended by inserting, after subsection two, the following subsection:

“(2A) For the purposes of subsection two of this section, a person shall be treated as being drunk if, owing to the influence of alcohol or any drug, whether alone or in combination with any other circumstance, he is unfit to be entrusted with his duty.”

**6. Drunkenness defined**—Section thirty-nine of the principal Act is hereby amended by adding the following subsection as subsection two thereof:

“(2) For the purposes of this section, a person is guilty of drunkenness if, owing to the influence of alcohol or any drug, whether alone or in combination with any other circumstance, he is unfit to be entrusted with his duty or with any duty which he may be called upon to perform, or behaves in a disorderly manner or in any manner likely to bring discredit on Her Majesty’s service.”

**7. Negligent driving of motor vehicles, etc.**—Section sixty of the principal Act is hereby amended by adding the following subsections as subsections two, three, and four thereof:

“(2) An accused charged before a Court Martial with an offence against paragraph (b) of subsection one of this section may be found guilty of any other offence against that paragraph or any offence against paragraph (c) or paragraph (d) of that subsection.

“(3) An accused charged before a Court Martial with an offence against paragraph (c) of subsection one of this section may be found guilty of any other offence against that paragraph or any offence against paragraph (d) of that subsection.

“(4) An accused charged before a Court Martial with any offence against paragraph (d) of subsection one of this section may be found guilty of any other offence against that paragraph.”

**8. Limitation of powers of summary dealing with charges**—The principal Act is hereby amended by inserting in Part IV, after section eighty-seven, the following heading and section:

*“Charges that may be Dealt with Summarily*

“87A. (1) Subject to the provisions of subsection two of section seventy-five of this Act, but notwithstanding any other provision of this Part of this Act, the charges that may be dealt with summarily by a commanding officer and the charges that may be dealt with summarily by an authority under section eighty-six of this Act shall be such as may be prescribed by Army Orders.

“(2) In such cases as may be prescribed in that behalf by Army Orders, the powers of a commanding officer or of an authority dealing with the case under section eighty-six of this Act to award punishment shall, notwithstanding anything in this Part of this Act, be subject to such limitations as may be so prescribed.

“(3) Nothing in this section shall prevent a commanding officer or an authority dealing with the case under section eighty-six of this Act from dismissing any charge.”

**9. Petition against finding or sentence**—The principal Act is hereby amended by inserting, after section one hundred and twenty-two, the following heading and section:

*“Petitions Against Findings or Sentences*

“122A. At any time after a Court Martial has sentenced an accused, but not later than the prescribed time after confirmation is completed, the accused may in the prescribed manner present a petition against finding or sentence or both.”

**10. New sections substituted—**(1) The principal Act is hereby amended by repealing section one hundred and twenty-three, and substituting the following sections:

**“123. Commutation, remission, and postponement of sentences—**(1) The confirming authority may, when confirming the sentence of any Court Martial, remit in whole or in part the punishment thereby awarded or commute that punishment for one or more punishments provided in this Act, being less than the punishment commuted.

“(2) The confirming authority may, when confirming any sentence, postpone the carrying out of the sentence for such time as seems expedient, and may extend or terminate any postponement ordered under this subsection.

“(3) Subject to the provisions of subsection five of section seven of the Courts Martial Appeals Act 1953, a sentence of imprisonment or detention awarded by a Court Martial which is postponed under this section shall begin to run from the beginning of the day on which the sentence was originally pronounced by the Court Martial.

“(4) An authority having power under this section to remit or commute any punishment may, if he thinks fit, do both or either of those things in respect of a person subject to that punishment.

“(5) The provisions of this Act with respect to an original sentence of imprisonment or detention shall apply to a sentence of imprisonment or detention imposed by way of commutation.

**“123A. Review of findings and sentences of Courts Martial—**(1) A finding or sentence of a Court Martial which has been confirmed may at any time be reviewed by a reviewing authority, and, if, after confirmation of a finding or sentence, a petition is duly presented under section one hundred and twenty-two A of this Act against the finding or sentence, then, subject to the provisions of this section, the finding or sentence shall be so reviewed as soon as may be after the presentation of the petition and after consideration of the matters alleged therein.

“(2) The reviewing authorities for the purposes of this Act are the following:

“(a) The Governor-General:

“(b) The Army Board, or (so far as the delegation extends) any officer to whom the powers of the Army Board as reviewing authority, or any of those powers, may be delegated by the Army Board:

“(c) Any officer superior in command to the confirming officer.

“(3) If an application for leave to appeal is received by the Registrar of the Courts Martial Appeal Court, or the said Registrar receives particulars of such an application furnished in pursuance of paragraph (b) of subsection three of section seven of the Courts Martial Appeals Act 1953, so much of subsection one of this section as requires the review of a finding or sentence against which a petition has been presented shall thereupon cease to apply to the finding to which the application for leave to appeal relates and the sentence in consequence of that finding.

“(4) On a review under this section, the reviewing authority may,—

“(a) In so far as the review is of a finding, quash the finding and, if the sentence relates only to the finding quashed, the sentence:

“(b) In so far as the review is of a sentence, quash the sentence:

“(c) In any case, exercise the like powers of remitting or commuting punishment as are conferred on a confirming authority by subsection one of section one hundred and twenty-three of this Act;—

and any sentence having effect after the remission or commutation of punishment shall be treated for all purposes as a sentence of the Court duly confirmed.

“(5) Where a reviewing authority exercises any of the powers conferred by subsection four of this section, the determination of the authority shall be promulgated and shall have effect as from the promulgation thereof.

**“123B. Reconsideration of sentences of imprisonment and detention—**(1) Sentences of imprisonment and detention awarded by Court Martial may be reconsidered by such officers (not below the rank of brigadier or corresponding naval or air force rank) as may be so appointed for the purpose by the Army Board; and, if on any such reconsideration it appears that the conduct of the offender since his conviction has been such as to justify remission of the sentence, whether in whole or in part, it shall be remitted accordingly.

“(2) The power to reconsider a sentence may be exercised at any time after confirmation, and,—

“(a) Where the sentence is in execution, it shall be reconsidered at intervals of not more than six months:

“(b) Where the sentence is suspended under section one hundred and twenty-five of this Act, it shall be reconsidered at intervals of not more than three months.”

(2) Subsection four of section two and subsection two of section eight of the *New Zealand Army Amendment Act 1954* are hereby consequentially repealed.

**11. Suspension of sentences**—(1) The principal Act is hereby amended by repealing section one hundred and twenty-five, and substituting the following section:

“125. (1) Where a soldier has been sentenced by Court Martial to imprisonment or detention, the confirming authority may, when confirming the sentence, order that the sentence be suspended.

“(2) Any such sentence of imprisonment or detention which is not for the time being suspended may, on the review or reconsideration of the sentence, be suspended by order of the authority reviewing or reconsidering the sentence.

“(3) The suspension of any such sentence may (without in any way limiting the power of again suspending the sentence) be terminated on the review or reconsideration of the sentence by the order of the reviewing or reconsidering authority committing the soldier to imprisonment or detention, as the case may be.

“(4) Where a soldier, while a sentence on him is so suspended, is sentenced by Court Martial to imprisonment or detention for another offence (whether committed before or after the offence the sentence for which is so suspended), then—

“(a) The Court may terminate the suspension of the earlier sentence by an order committing the soldier to imprisonment or detention, as the case may be, and, if so, the Court shall direct whether the two sentences are to run concurrently or consecutively:

“(b) If the Court does not exercise the powers conferred by paragraph (a) of this subsection, the confirming authority may exercise those powers on the confirmation of the later sentence:

“(c) If neither the Court nor the confirming authority exercises those powers, a reviewing authority may exercise those powers on the review of the later sentence:

“(d) Where those powers are exercised (whether by the Court, the confirming authority, or a reviewing authority), any power of suspension or remission exercisable in relation to the later sentence shall be exercisable also in relation to the earlier sentence:

“Provided that this subsection shall have effect subject to the provisions of subsection five of section sixty-four of this Act:

“Provided further that any suspended sentence of detention shall be deemed to be remitted on the confirmation of any subsequent sentence of imprisonment.

“(5) Without in any way limiting the power to suspend further the earlier sentence, an order under subsection four of this section directing that the suspension of that sentence shall be terminated shall not be affected by the later sentence not being confirmed or by its being quashed.

“(6) Where a sentence of imprisonment or detention is suspended under this section before the soldier has been committed to prison or detention barracks, the soldier if in custody shall be released, and, notwithstanding anything in this Act, the sentence shall not begin to run until the soldier is ordered to be committed to prison or detention barracks under that sentence:

“Provided that, where the sentence is suspended by the confirming authority and the reviewing authority terminates the suspension, the reviewing authority may direct that the sentence shall run from such earlier date, not earlier than the day on which the sentence was originally pronounced by the Court Martial, as the reviewing authority may specify.

“(7) Where a sentence of imprisonment or detention is suspended under this section after the soldier has been committed to prison or detention barracks, he shall be released, and the currency of the sentence shall be suspended from the day on which he is released until he is again ordered to be committed to prison or detention barracks under the same sentence.

“(8) Every sentence suspended under this section shall be deemed to be remitted at the expiration of one year or the

term of the sentence (whichever is the longer period) computed from the date on which the original sentence was signed, unless before the expiration of that period the sentence has been remitted under the provisions of section one hundred and twenty-three or section one hundred and twenty-three B of this Act or the soldier has since the suspension been committed to prison or detention barracks.”

(2) Section fifteen of the New Zealand Army Amendment Act 1954 is hereby consequentially repealed.

**12. Amending provisions as to Royal New Zealand Artillery Fund**—Section one hundred and fifty-seven of the principal Act is hereby amended by omitting from subsection two the words “Royal New Zealand Artillery” wherever they occur, and substituting in each case the words “Royal Regiment of New Zealand Artillery”.

REP. 19  
No. 2

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