

New Zealand.



ANALYSIS.

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| <p>Title.</p> <ol style="list-style-type: none"> 1. Short Title and commencement. 2. Interpretation. 3. Discipline and internal administration of visiting forces. 4. Relations of visiting forces to the civil power and civilians. 5. Deserters from overseas forces. | <ol style="list-style-type: none"> 6. Attachment of personnel and mutual powers of command. 7. Application of Act in respect of colonies and other territories. 8. Saving of other enactments. 9. Limitation of penalties. 10. Regulations. |
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1939, No. 36.

AN ACT to make Provision with respect to Forces of His Majesty from other Parts of the British Commonwealth or from a Colony when visiting the Dominion of New Zealand, and with respect to the Exercise of Command and Discipline when Forces of His Majesty from Different Parts of the Commonwealth are serving together, and with respect to the Attachment of Members of one such Force to another such Force, and with respect to Deserters from such Forces.

Title.

[6th October, 1939.]

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

1. (1) This Act may be cited as the Visiting Forces Act, 1939.

Short Title
and
commencement.

(2) This Act shall come into force on a date to be specified in that behalf by the Governor-General by a Proclamation approved in Executive Council (being not earlier than the date of the publication of the Proclamation in the *Gazette*).

Interpretation.
Cf. Visiting
 Forces (British
 Commonwealth)
 Act, 1933;
 23 Geo. V, c. 6,
 s. 8 (Imp.)

2. In this Act, unless the context otherwise requires,—
- “The Commonwealth” means the British Commonwealth of Nations :
- “Colony” includes Aden and any territory which is under His Majesty’s protection :
- “Court” includes a service court of inquiry and any officer of a visiting force who is empowered by the law of that part of the Commonwealth to which the force belongs to review the proceedings of a service court, or to investigate charges, or himself to dispose of charges ; and the expression “sentence” shall be construed accordingly :
- “Forces” includes reserve and auxiliary forces :
- “Home forces” means the naval, military, and air forces of His Majesty raised in New Zealand ; and “home force” includes any body, contingent, or detachment of any of the home forces, wherever serving :
- “Internal administration”, in relation to any visiting force, includes the administration of the property of a deceased member of the force :
- “Member”, in relation to a visiting force, includes any person who is by the law of that part of the Commonwealth to which the force belongs subject to the naval, military, or air force law thereof, and who, being a member of another force, is attached to the visiting force or, being a civilian employed in connection with the visiting force, entered into his engagement outside New Zealand :
- “Visiting force” means any body, contingent, or detachment of the naval, military, and air forces of His Majesty raised in the United Kingdom, the Dominion of Canada, the Commonwealth of Australia, the Union of South Africa, Eire, or Newfoundland which is, with the consent of His Majesty’s Government in New Zealand, lawfully present in New Zealand.

3. (1) When a visiting force is present in New Zealand it shall be lawful for the naval, military, and air force courts and authorities (in this Act referred to as the “service courts” and the “service authorities”) of that part of the Commonwealth to which the force belongs

Discipline and
 internal
 administration
 of visiting
 forces.
Cf. 23 Geo. V,
 c. 6, s. 1 (Imp.)

to exercise within New Zealand in relation to members of such force in matters concerning discipline and in matters concerning the internal administration of such force all such powers as are conferred upon them by the law of that part of the Commonwealth.

(2) The members of any such service court as aforesaid exercising jurisdiction by virtue of this Act, and witnesses appearing before any such court, shall enjoy the like immunities and privileges as are enjoyed by a service court exercising jurisdiction by virtue of any enactment in force in New Zealand and by witnesses appearing before such a court.

(3) Where any sentence has, whether within or without New Zealand, been passed upon a member of a visiting force by a service court of that part of the Commonwealth to which the force belongs, then for the purposes of any legal proceedings within New Zealand the court shall be deemed to have been properly constituted, and its proceedings shall be deemed to have been regularly conducted, and the sentence shall be deemed to be within the jurisdiction of the court and in accordance with the law of that part of the Commonwealth and, if executed according to the tenor thereof, shall be deemed to have been lawfully executed, and any member of a visiting force who is detained in custody in pursuance of any such sentence, or pending the determination by such a service court as aforesaid of a charge brought against him, shall for the purposes of any such proceedings as aforesaid be deemed to be in lawful custody. For the purposes of any such proceedings as aforesaid a certificate under the hand of the officer commanding a visiting force that a member of that force is being detained for either of the causes aforesaid shall be conclusive evidence of the cause of his detention, but not of his being such a member, and a certificate under the hand of such an officer that the persons specified in the certificate sat as a service court of that part of the Commonwealth to which the force belongs shall be conclusive evidence of that fact.

(4) No proceedings in respect of the pay, terms of service, or discharge of a member of a visiting force shall be entertained by any court of New Zealand.

(5) For the purpose of enabling such service courts and such service authorities as aforesaid to exercise

more effectively the powers conferred upon them by this section, the Minister of Defence, if so requested by the officer commanding a visiting force or by the Government of that part of the Commonwealth to which the force belongs, may from time to time, by general or special orders to any home force, direct the members thereof to arrest members of the visiting force alleged to have been guilty of offences against the law of that part of the Commonwealth, and to hand over any person so arrested to the appropriate authorities of the visiting force.

Relations of
visiting forces
to the civil
power and
civilians.
Cf. 23 Geo. V,
c. 6, s. 2 (Imp.)

4. (1) The Governor-General may by Order in Council authorize any Government Department, Minister of the Crown, or other person in New Zealand, to perform, at the request of such authority or officer as may be specified in the Order, but subject to such limitations as may be so specified, any function in relation to a visiting force and members thereof which that Department, Minister, or person performs or could perform in relation to a home force of like nature to the visiting force, or in relation to members of such a force, and for the purpose of the exercise of any such function any power exercisable by virtue of any enactment by the Department, Minister, or person in relation to a home force or members thereof shall be exercisable in relation to the visiting forces and members thereof:

Provided that nothing in this subsection shall authorize any interference in matters relating to discipline or to the internal administration of the force.

(2) For the purposes of this section, the Naval Board of New Zealand, the Army Board, and the Air Board shall be deemed to be Government Departments.

(3) If the Governor-General by Order in Council so provides, members of a visiting force if sentenced by a service court of that part of the Commonwealth to which the force belongs to penal servitude, imprisonment, or detention may, under the authority of the Minister of Defence, given at the request of the officer commanding the visiting force, be temporarily detained in custody in prisons or detention barracks in New Zealand; and, if so sentenced to imprisonment, may, under the like authority, be imprisoned during the whole or any part of the term of their sentences in prisons in New Zealand, and the Governor-General may by the same

or a subsequent Order in Council make provision with respect to any of the following matters, that is to say:—

- (a) The reception of such persons from, and their return to, the service authorities concerned;
- (b) Their treatment while in such custody or while so imprisoned;
- (c) The circumstances under which they are to be released; and
- (d) The manner in which they are to be dealt with in the event of their unsoundness of mind while in such custody, or while so imprisoned.

(4) Any costs incurred in the maintenance and return of or otherwise in connection with any person dealt with in accordance with the provisions of the last preceding subsection shall be defrayed in such manner as may with the approval of the Minister of Finance be agreed between the Minister of Defence and the Government of that part of the Commonwealth which is concerned.

(5) Subject to this and the next succeeding subsection, any enactment in force in New Zealand which—

- (a) Exempts, or provides for the exemption of, any vessel, vehicle, aircraft, machine, or apparatus of or employed for the purposes of the home forces or any of them from the operation of any enactment; or
- (b) In virtue of a connection with the home forces, or any of them, confers a privilege or immunity on any person; or
- (c) In virtue of such a connection excepts any property, trade, or business, in whole or in part, from the operation of any enactment, or from any tax, rate, imposition, toll, or charge; or
- (d) Imposes upon any person or undertaking obligations in relation to the home forces, or any of them, or any member or service court thereof; or
- (e) Penalizes misconduct by any person in relation to the home forces, or any of them, or any member or service court thereof,—

shall, with any necessary modifications, apply in relation to a visiting force as it would apply in relation to a home force of a like nature to the visiting force:

Provided that the Governor-General may by Order in Council direct that any such enactment shall not apply, or shall apply with such exceptions and subject to such adaptations or modifications as may be specified in the Order.

(6) An Order in Council under this section may apply either generally or in relation to visiting forces from any particular part of the Commonwealth, or in relation to any particular visiting force, or in relation to any particular place.

Deserters from
overseas forces.
Cf. 23 Geo. V,
c. 6, s. 3 (Imp.)

5. (1) The forces to which this section applies are such of the naval, military, and air forces of His Majesty raised in the United Kingdom, the Dominion of Canada, the Commonwealth of Australia, the Union of South Africa, Eire, or Newfoundland as the Governor-General may by Order in Council direct.

(2) Subject to the provisions of this section, the law in force in New Zealand relating to the apprehension of deserters and absentees without leave from a home force shall within New Zealand apply in relation to a deserter or an absentee without leave from any force to which this section applies (including any member of a reserve or auxiliary force who, having failed to obey a notice calling upon him to appear at any place for service, is by the law of that part of the Commonwealth to which the force belongs, liable to the same punishment as a deserter, or to the same punishment as an absentee without leave), as they apply in relation to a deserter or absentee without leave from a home force.

(3) No person who is alleged to be a deserter from any such force as aforesaid shall be apprehended or dealt with under this section except in compliance with a specific request from the Government of that part of the Commonwealth to which the force belongs, and a person so dealt with shall be handed over to the authorities of that part of the Commonwealth at such place in New Zealand as may be agreed :

Provided that a person who is alleged to be a deserter or absentee without leave from a visiting force may also be apprehended and dealt with under this section in compliance with a request, whether specific or general,

from the officer commanding that force, and shall, if that force is still present in New Zealand, be handed over to the officer commanding that force at the place where the force is stationed.

(4) For the purposes of any proceedings under this section,—

(a) A document purporting to be a certificate under the hand of the Minister of Defence or of a prescribed officer that a request has been made under subsection three of this section shall be admissible without proof as evidence of such a request:

(b) A document purporting to be a certificate under the hand of the officer commanding a unit or detachment of any force to which this section applies that a named and described person was at the date of the certificate a deserter, or absentee without leave, from that force shall be admissible without proof as evidence of the facts so certified.

6. (1) The forces, other than home forces, to which this section applies are the naval, military, and air forces of His Majesty raised in the United Kingdom, the Dominion of Canada, the Commonwealth of Australia, the Union of South Africa, Eire, or Newfoundland.

Attachment
of personnel
and mutual
powers of
command.

Cf. 23 Geo. V,
c. 6, s. 4 (Imp.)

(2) The Naval Board of New Zealand, the Army Board, or the Air Board, as the case may be,—

(a) May attach temporarily to a home force any member of another force to which this section applies who is placed at its disposal for the purpose by the service authorities of that part of the Commonwealth to which such other force belongs:

(b) Subject to anything to the contrary in the conditions applicable to his service, may place any member of a home force at the disposal of the service authorities of another part of the Commonwealth for the purpose of being attached temporarily by those authorities to a force to which this section applies belonging to that part of the Commonwealth.

(3) Whilst a member of another force is by virtue of this section attached temporarily to a home force he shall be subject to the law relating to the Naval Forces, the Army, or the Royal New Zealand Air Force, as the case may be, in like manner as if he were a member of the home force, and shall be treated and have the like powers of command and punishment over members of the home force to which he is attached as if he were a member of that force of relative rank:

Provided that the Governor-General may by Order in Council direct that in relation to members of a force of any part of the Commonwealth specified in the Order the law relating to the home forces shall apply with such exceptions and subject to such adaptations and modifications as may be so specified.

(4) When a home force and another force to which this section applies are serving together, whether alone or not,—

(a) Any member of the other force shall be treated and shall have over members of the home force the like powers of command as if he were a member of the home force of relative rank ;
and

(b) If the forces are acting in combination, any officer of the other force duly appointed to command the combined force, or any part thereof, shall be treated and shall have over members of the home force the like powers of command and punishment, and may be invested with the like authority to convene, and confirm the findings and sentences of, courts-martial as if he were an officer of the home force of relative rank and holding the same command.

(5) For the purposes of this section forces shall be deemed to be serving together or acting in combination if and only if they are declared to be so serving by order of the Governor-General or of any person acting under the authority of the Governor-General, and the relative rank of members of the home forces and of other forces shall be such as may be prescribed by regulations made by His Majesty, or, in default of any such regulations or so far as they do not extend, shall be such as may be prescribed by regulations made under this Act.

7. (1) Subject to such exceptions, adaptations, and modifications as the Governor-General may by Order in Council direct, this Act shall apply—

(a) In relation to any naval, military, and air forces raised in any colony of the United Kingdom or in any territory administered by the Government of any part of the Commonwealth, and in relation to the members of such forces, as if those forces had been raised in the United Kingdom or in that part of the Commonwealth, as the case may be:

(b) In any territory administered by His Majesty's Government in New Zealand as if that territory were part of New Zealand.

(2) For the purposes of this section any territory in respect of which a mandate on behalf of the League of Nations is being exercised by the Government of any part of the Commonwealth shall be deemed to be administered by that Government.

8. So far as regards any naval force and the members of any such force, the provisions of this Act shall be deemed to be in addition to and not in derogation of such of the provisions of any Act of the Parliament of the United Kingdom or of the Parliament of any other part of the Commonwealth as are for the time being applicable to that force and the members thereof.

9. Nothing in this Act shall be construed to authorize any service court of any part of the Commonwealth to impose on a member of a visiting force in respect of any offence any penalty exceeding the penalty to which a member of the home forces would under the law of New Zealand be liable for a similar offence.

10. The Governor-General may from time to time, by Order in Council, make such regulations, not inconsistent with this Act, as may be deemed necessary or convenient for the purpose of giving full effect to this Act.

Application of Act in respect of colonies and other territories.

Cf. 23 Geo. V, c. 6, ss. 5, 6 (Imp.)

Saving of other enactments.

Ibid., s. 7 (1)

Limitation of penalties.

Cf. Defence (Visiting Forces) Act, 1939, No. 5, s. 12 (Australia)

Regulations.

Ibid., s. 13