

NEW ZEALAND ARMY AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill makes miscellaneous amendments to the New Zealand Army Act 1950.

Clause 2: Subclause (1) defines the term "Army Secretary", and includes any person for the time being authorized to exercise or perform any of the powers or functions of the Army Secretary. For instance, this provision would enable the Assistant Army Secretary and other officers of the Department to act for the Army Secretary during his absence on leave or through sickness or other causes.

Subclause (2) defines the term "enemy", and extends the present definition to persons engaged in armed operations against any New Zealand or Allied Force. This amendment would cover armed persons opposing United Nations Forces where a state of war has not been declared, as in Korea.

Subclause (3) amends the definition of the term "superior military authority" by extending this definition to include the Army Board.

Clause 3: The effect of this clause is that dependants of any person subject to military law who accompany him on active service outside New Zealand will also be subject to military law.

Clause 4: Section 12 of the principal Act provides that, subject to the approval of the Army Board, officers and soldiers may purchase their discharge on payment of certain prescribed amounts. In some cases officers and soldiers enter into special contracts with the Crown, for example contracts containing an agreement to serve a specified minimum period after completion of a course of instruction overseas. The purpose of this clause is to make it clear that where such a contract has been entered into the money payable under that contract must be paid in addition to the amount specified under section 12 of the principal Act.

Clause 5 provides that where a person subject to military law is convicted of being in possession of liquor in camp or other similar offences relating to liquor the liquor is to be forfeited to the Crown and may be disposed of and the proceeds are to be paid into the Public Account.

Clause 6: Section 52 (a) of the principal Act makes it an offence to give a false answer to any question set forth in an attestation paper put "by direction of" the attesting officer. This clause makes it an offence to give a false answer to such a question put by the attesting officer himself.

Clause 7: Section 60 of the principal Act includes provisions making it an offence for a person subject to military law to be in charge of any service motor vehicle while in a state of intoxication. This clause substitutes the words "while under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle" for the words "while in a state of intoxication". This amendment brings the wording of the section into conformity with the wording of the corresponding civil offence under the Transport Act 1949 as amended by the Transport Amendment Act 1953.

Clause 8: Section 62 (b) of the principal Act provides that where a person subject to military law is convicted by Court-martial of the offence of murder he shall be liable to suffer death "or such less punishment as is in this Act mentioned". When that Act was passed the death penalty for murder had been abolished in New Zealand, but it has since been revived, and the civil Courts must now impose the death penalty on every conviction for murder. This clause omits the words quoted, so that on conviction by Court-martial of any person for murder the Court must impose the death penalty, subject to any commutation of the sentence under section 123 of the principal Act. (Under section 122 (2) of the principal Act every sentence of death, in addition to confirmation, requires the approval of the Governor-General before it can be carried into effect.)

Clause 9: The purpose of this clause is to make it clear that where a commanding officer is dealing summarily with a charge he may award one or more of the minor punishments referred to in section 77 of the principal Act, without the offender being entitled to a Court-martial unless the finding involves a forfeiture of pay.

Clause 10: Section 78 (1) of the principal Act provides that a commanding officer may inflict on a non-commissioned officer below the rank of warrant officer a fine exceeding £1 but not exceeding £5 and stoppages of pay in accordance with regulations. Under subsection (2) he may, in addition to or without any other punishment inflicted under the principal Act, inflict on such a non-commissioned officer certain minor punishments. The effect of *paragraph (a)* of this clause is that the commanding officer may inflict the minor punishments in addition to or without any other punishment inflicted under section 78. Any other punishment inflicted under other provisions of the Act could be inflicted only by Court-martial, and to allow the commanding officer to award a further minor punishment under section 78 (2) would amount to punishing the offender twice for the same offence.

Section 78 (3) of the principal Act empowers a commanding officer to order any soldier (not being a warrant officer) holding any temporary rank to revert to the rank he held at the time of appointment to temporary rank. *Paragraph (b)* of this clause amends this provision, and limits the powers of a commanding officer under the subsection to cases where the soldier holds acting rank and not temporary rank.

Clause 11 similarly provides that a commanding officer may take away only the acting rank of a warrant officer. The proviso to section 79 of the principal Act at present enables him to take away temporary or acting rank.

Clause 12: The effect of this clause is that a company, squadron, or battery commander to whom a commanding officer has delegated power to deal with an offence may award the punishment of admonition.

Clause 13: The effect of *paragraph (a)* is to empower the Army Board or a superior officer as defined in section 87 (4) of the principal Act to cancel any punishment awarded by a commanding officer or by an authority dealing summarily with the charge if it appears that the finding, though not illegal, involves substantial injustice to the accused.

Paragraph (b) amends the definition of the term "superior officer" in section 87 (4) of the principal Act. The effect of the amendment is that a punishment awarded by an authority dealing summarily with a charge may be reviewed, in the case of charges dealt with in New Zealand, by the Adjutant-General, and, in the case of charges dealt with outside New Zealand, by the general officer commanding the portion of the Army to which the accused belongs.

Clause 14 re-enacts in an amended form the provisions of section 92 (2) of the principal Act, which confers powers of search in relation to the civil offence of bringing liquor into camp. At present the power of search is limited to the searching of vessels and vehicles, but the new provision gives power to search in addition bags and other containers in the possession of persons reasonably suspected of being in possession of liquor in breach of the section. The clause also provides that any liquor forfeited to the Crown under the section may be sold and the proceeds are to be paid into the Public Account.

Clause 15: Section 125 (1) of the principal Act provides that where a soldier is sentenced by Court-martial to imprisonment or detention the confirming authority may, after confirming the sentence, suspend the sentence. The effect of *subclause (1)* of this clause is that the power of suspending sentences will in future be exercised by a superior military authority and not by the confirming authority. When confirming a sentence the confirming authority may direct that the soldier be not committed to prison or detention barracks until the orders of a superior military authority have been obtained.

The effect of *subclause (2)* is that the provisions of section 125 of the principal Act relating to the steps to be taken when a sentence is suspended under that section are also to apply to sentences that have been suspended under section 123 (3) of the principal Act after the soldier has commenced to serve the sentence.

Clause 16: Section 127 (1) of the principal Act contains a provision that where a person has ceased to be subject to military law he may not be tried for any offence committed while subject to military law (with certain exceptions) unless his trial commences within three months after he ceased to be subject to military law. The effect of this clause is that a person may be tried at any time for an offence committed while subject to military law if the offence was committed outside New Zealand and is one which if committed in New Zealand would be punishable by the law of New Zealand and the Attorney-General consents to the trial.

Clause 17: The purpose of this clause is to enable a joint service Court of Inquiry to be set up where the matter to be investigated concerns the New Zealand Naval Forces or the Royal New Zealand Air Force as well as the Army.

Clause 18: Section 147 (4) of the principal Act provides that the relative ranks of naval, military, and air force officers for the purpose of that section is to be prescribed by Order in Council. The table of equivalent ranks prescribed under that subsection has relation to other provisions of the principal Act, and this clause amends the subsection so as to make that table applicable for all the purposes of the Act.

Clause 19: Section 150 of the principal Act provides for the attachment of officers and soldiers to other Commonwealth forces, but except in time of war or other like emergency no officer or soldier may be so dealt with without his consent. The effect of this clause is that the consent of the officer or soldier is necessary only in the case of officers and soldiers of the Territorial Force, and that those of the Regular Force may be so attached without their consent.

Hon. Mr Macdonald

NEW ZEALAND ARMY AMENDMENT

ANALYSIS

Title.	
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2. Interpretation.	12. Powers of company, etc., commanders.
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4. Purchase of discharge.	14. Bringing liquor into camp.
5. Forfeiture of intoxicating liquor on conviction.	15. Suspension of sentences.
6. Answers to questions on attestation paper.	16. Trial of persons who have ceased to be subject to military law.
7. Being in charge of motor vehicle while under the influence of drink or a drug.	17. Courts of Inquiry.
8. Penalties for offences.	18. Relative rank of naval, military, and air force officers.
9. Summary disposal of charges.	19. Attachment of officers and soldiers to other Commonwealth forces.
10. P u n i s h m e n t s for non-commissioned officers.	

A BILL INTITULED

AN ACT to amend the New Zealand Army Act 1950. Title.

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

1. This Act may be cited as the New Zealand Army Amendment Act 1954, and shall be read together with and deemed part of the New Zealand Army Act 1950 (hereinafter referred to as the principal Act). Short Title.
1950, No. 39
- 10 2. (1) Section two of the principal Act is hereby amended by inserting in subsection one, after the definition of the term "Army Order", the following definition: Interpretation.

“ ‘Army Secretary’ means the Army Secretary appointed for the purposes of this Act; and includes any person for the time being authorized to exercise or perform any of the powers or functions of the Army Secretary:” 5

(2) Section two of the principal Act is hereby further amended by repealing the definition of the term “enemy” in subsection one, and substituting the following definition:

“ ‘Enemy’ includes all persons engaged in armed operations against any New Zealand or allied force; and also includes all armed mutineers, armed rebels, armed rioters, and pirates:” 10

(3) Section two of the principal Act is hereby further amended by inserting in the definition of the term “superior military authority” in subsection one, after the word “means”, the words “the Army Board or” 15

(4) Section one hundred and twenty-three of the principal Act is hereby consequentially amended by inserting in the second proviso to subsection two, after the words “superior military authority”, the words “other than the Army Board” 20

Persons subject to military law

3. Section two of the principal Act is hereby further amended by repealing paragraph (f) of subsection two, and substituting the following paragraph: 25

“(f) All persons not otherwise subject to military law who—

“(i) Are attached to or employed by or carry out duties which necessitate their accompanying the Army or any portion thereof when on active service; or 30

“(ii) Are dependants of any person who is subject to military law and accompany that person when he is on active service outside New Zealand.” 35

Purchase of discharge.

4. Section twelve of the principal Act is hereby amended by adding the following subsection as subsection two thereof:

“(2) Any amount payable by any officer or soldier under subsection one of this section shall be in addition to any amount payable by him to the Crown under any bond, agreement, or contract for any special purpose,” 40

5. Section forty of the principal Act is hereby amended by adding the following subsection as subsection two thereof:

Forfeiture of intoxicating liquor on conviction.

“(2) Where any person is convicted of an offence under subsection one of this section, the liquor in respect of which the offence was committed, together with the vessels containing the liquor, shall be deemed to be forfeited to the Crown, and may be disposed of by public auction or private contract as the Army Secretary directs, and the proceeds of the sale shall be paid into the Public Account.”

6. Section fifty-two of the principal Act is hereby amended by inserting in paragraph (a), after the words “put to him”, the words “by or”.

Answers to questions on attestation paper.

7. Section sixty of the principal Act is hereby amended by omitting from paragraph (b) the words “while in a state of intoxication”, and substituting the words “while under the influence of drink or a drug to such an extent as to be incapable of having proper control of the motor vehicle”.

Being in charge of motor vehicle while under the influence of drink or a drug.

8. (1) Section sixty-two of the principal Act is hereby amended by omitting from paragraph (b) the words “or such less punishment as is in this Act mentioned”.

Penalties for offences.

(2) Section one hundred and twenty-three of the principal Act is hereby amended as follows:

(a) By inserting in subsection one, after the words “by the said Court-Martial”, the words “or, if that punishment is death awarded for the offence of murder, then for such less punishment as is in this Act mentioned”:

(b) By inserting in subsection two, after the words “by the said Court-Martial”, the words “or, if that punishment is death awarded for the offence of murder, then for such less punishment as is in this Act mentioned”.

9. Section seventy-five of the principal Act is hereby amended by omitting from subsection five the words “one of the minor punishments”, and substituting the words “one or more of the minor punishments”.

Summary disposal of charges.

Punishments for non-commissioned officers.

10. Section seventy-eight of the principal Act is hereby amended as follows:

(a) By omitting from subsection two the words "this Act", and substituting the words "this section":

(b) By omitting from subsection three the word "temporary" wherever it occurs, and substituting in each case the word "acting".

Powers of commanding officer in relation to warrant officers.

11. Section seventy-nine of the principal Act is hereby amended by repealing the proviso, and substituting the following proviso:

"Provided that a soldier who holds the acting rank of warrant officer may be ordered by his commanding officer (for an offence or for any other reason) to revert to the rank (whether substantive or temporary) which he was holding at the time of his appointment to acting rank."

Powers of company, etc., commanders.

12. Section eighty-one of the principal Act is hereby amended by adding to the proviso to subsection one the following paragraph:

"(d) Admonition:".

Revision of summary punishments.

13. Section eighty-seven of the principal Act is hereby amended as follows:

(a) By inserting in subsection one, after the word "illegal", the words "or if the finding involved in the award appears to the Army Board or to such a superior officer to involve substantial injustice to the accused":

(b) By omitting from subsection four the words "on active service", and substituting the words "the Adjutant-General where the charge is dealt with in New Zealand and, where the charge is dealt with outside New Zealand,":

(c) By omitting from subsection four the words "in the field", and substituting the words "to which the accused for the time being belongs".

Bringing liquor into camp.

14. (1) Section ninety-two of the principal Act is hereby amended by repealing subsection two, and substituting the following subsection:

“(2) Any officer or non-commissioned officer, with or without persons under his command, may—

5 “(a) Enter into or upon and search any ship, boat, vessel, aircraft, conveyance, or vehicle of any kind, hovering about or approaching, or that may have hovered about or approached any such camp, barrack, fort, or other place as aforesaid; and

10 “(b) Detain any person whom he reasonably suspects has committed a breach of any of the provisions of subsection one of this section, and search any parcel, package, case, bag, luggage, jar, bottle, vessel, or other container in his possession; and

15 “(c) If any intoxicating liquor is found as the result of any such search, seize the liquor, together with the vessels containing the liquor, unless it is for delivery to any such canteen or duly authorized mess as aforesaid or for delivery to any premises occupied as married quarters.”

20 (2) Section ninety-two of the principal Act is hereby further amended by adding the following subsection:

25 “(4) Any liquor seized under the authority of this section shall, on the conviction of any person of an offence under this section in respect of that liquor, together with the vessels containing the liquor, be deemed to be forfeited to the Crown, and may be disposed of by public auction or private contract as the Army Secretary directs, and the proceeds of the sale shall be paid into the Public

30 Account.”

15. (1) Section one hundred and twenty-five of the principal Act is hereby amended by repealing subsection one, and substituting the following subsections:

Suspension
of sentences.

35 “(1) Where a soldier is sentenced to imprisonment or detention, the confirming authority to whom the sentence is submitted for confirmation may, when confirming the sentence, direct that the soldier be not committed to prison or detention barracks until the orders of a superior military authority have been obtained.

“(1A) A superior military authority may in the case of a soldier so sentenced—

“(a) Direct that the soldier shall not be committed to prison or detention barracks until the orders of the superior military authority have been obtained; or

“(b) Suspend the sentence, whether or not the soldier has already been committed to prison or detention barracks.”

(2) Section one hundred and twenty-five of the principal Act is hereby further amended as follows:

(a) By inserting in subsection three, after the words “this section”, the words “or under subsection three of section one hundred and twenty-three of this Act”:

(b) By inserting in subsection four, after the words “this section”, the words “or under subsection three of section one hundred and twenty-three of this Act”:

(c) By inserting in subsection five, after the words “this section”, the words “or under subsection three of section one hundred and twenty-three of this Act”:

(d) By inserting in subsection six, after the words “this section”, the words “or under subsection three of section one hundred and twenty-three of this Act”.

Trial of persons
who have
ceased to be
subject to
military law.

16. Section one hundred and twenty-seven of the principal Act is hereby amended by inserting in the proviso to subsection one, after the words “after he has ceased to be subject to military law”, the words “or unless the offence was committed outside New Zealand and is an offence which when committed in New Zealand is punishable by the law of New Zealand and the Attorney-General consents to the trial”.

Courts of
Inquiry.

17. Section one hundred and thirty-seven of the principal Act is hereby amended by adding to subsection two the following proviso:

“Provided that, where in the opinion of the authority assembling the Court any of the matters to be referred to it concerns any part of the Naval Forces or the Air Force, that authority may, with the consent of the proper

naval or air force authority, appoint one or more naval officers or one or more air force officers, as the case may require, to be members of the Court, but in any such case an army officer shall be the President."

5 18. Section one hundred and forty-seven of the principal Act is hereby amended by omitting from subsection four the words "this section", and substituting the words "this Act".

Relative rank of naval, military, and air force officers.

10 19. Section one hundred and fifty of the principal Act is hereby amended by inserting in subsection two, after the word "soldier", the words "of the Territorial Force".

Attachment of officers and soldiers to other Commonwealth forces.