

Visiting Forces Bill

Government Bill

Explanatory note

General policy statement

Overview

Introduction

This Bill replaces the Visiting Forces Act 1939 (the **1939 Act**) with an Act that—

- updates and amends the law relating to visiting forces to reflect recognised international practice;
- enables New Zealand to give effect to status of forces agreements (**SOFAs**) concluded with other States;
- relocates in the Armed Forces Discipline Act 1971 or the Defence Act 1990 provisions of the 1939 Act that are more appropriately dealt with by those other Acts;
- effects consequential amendments to other Acts, particularly the Armed Forces Discipline Act 1971 and the Defence Act 1990, to reflect the approach to visiting forces taken in the Bill.

Background

International law and treaty practice

A State that voluntarily admits a foreign armed force into its territory impliedly undertakes not to exercise any jurisdiction over the force or its members which would be inconsistent with its continuing to exist as an efficient force of the sending State. This principle has been generally recognised under international law.

Prior to the 1951 *Agreement Between the Parties to the North Atlantic Treaty Concerning the Status of Their Forces* (the **NATO SOFA**) there was, however, considerable debate as to the extent to which a visiting force must be considered as subject to the laws of the receiving State.

The solution in the NATO SOFA provided that, for most purposes, jurisdiction is shared by the sending and receiving States. The NATO SOFA allocated primary jurisdiction to the sending State for offences committed in the performance of official duties or against other members of the force or accompanying civilians. Off-duty offences committed against the local population were left to the primary jurisdiction of the receiving State.

The NATO SOFA formula, which pays equal regard to the interests of both parties, had a powerful impact on the treaty-making behaviour of States and has virtually eliminated the controversies of the past. The SOFA that New Zealand signed with Australia in 1998 reflects international practice in this area.

Legislation and international practice

The 1939 Act applies only to the forces of designated Commonwealth countries. This is a problem in itself in view of the broader scope of New Zealand's defence relationships in the modern era.

The 1939 Act deals with the following discrete matters:

- the status of visiting forces from other Commonwealth countries;
- the arrest within New Zealand of deserters and absentees without leave from the forces of certain designated Commonwealth countries;
- the command and disciplinary arrangements when New Zealand's armed forces are serving with the forces of other Commonwealth countries, and when members of New Zealand's armed forces are attached to the forces of another Commonwealth country, and vice versa.

In 1952, the United Kingdom passed the Visiting Forces Act 1952 to implement the arrangements under the NATO SOFA. Besides implementing the new jurisdictional arrangements referred to earlier, the Act included provisions dealing with arrest and custody, double jeopardy, and coroners' inquests, which had been lacking from the previous legislation. The Act also applied to visiting forces

from any State, not just those of the Commonwealth. Similar legislation was passed by Canada and Australia.

Throughout the first half of the 1990s, the New Zealand Government negotiated a SOFA with Australia. Following the accepted international practice, the SOFA conferred on Australia primary criminal jurisdiction over visiting Australian forces in certain circumstances. However, New Zealand could not ratify the SOFA with Australia under the legislative framework of the 1939 Act, because that Act only confers disciplinary jurisdiction. The negotiation process also highlighted that the 1939 Act is deficient in that it does not—

- contain any provision to resolve issues of shared jurisdiction:
- provide for members of visiting forces who commit offences in New Zealand to be arrested and brought before a court in the usual way, pending resolution of the question of jurisdiction:
- provide an effective safeguard against double jeopardy:
- deal with coronial inquests into the death of a member of a visiting force.

The Government signed the SOFA with Australia at Melbourne on 29 October 1998 with the intention of amending the law to bring it into line with the international law and practice relating to SOFAs, which had been observed by New Zealand in its relations with its defence partners for at least 4 decades.

Clause by clause analysis

Clause 1 relates to the Title of the Bill.

Part 1

Preliminary provisions

Clause 2 provides that the Bill comes into force on 1 July 2004.

Clause 3 sets out the purpose of the Bill, being—

- to update and amend the law relating to visiting forces to reflect recognised international practice:
- to enable New Zealand to give effect to status of forces agreements concluded with other States:
- to repeal the Visiting Forces Act 1939 (the **1939 Act**).

Clause 4 defines terms used in the Bill. The main features of this clause are—

- the use of terms that are used in or consistent with similar definitions in SOFAs New Zealand has with Australia, Malaysia, and Singapore:
- the proposed definitions of **civilian component**, **dependant**, **member of a visiting force**, **sending State**, **service authorities of a visiting force**, and **service law** are used in or consistent with similar definitions in the SOFA New Zealand has signed with Australia. They are also consistent with the SOFAs New Zealand has with Malaysia and Singapore, as part of the Five Power Defence Arrangements, governing the status of New Zealand's armed forces in those 2 countries. Similar definitions appear in section 5 of the Defence (Visiting Forces) Act 1963 (Aus) (the **Australian Act**):
- the definition of **visiting force** has been taken from the Crown Proceedings Act 1950 while that of **service tribunal of a visiting force** is derived from the corresponding definition in section 5 of the Defence (Visiting Forces) Act 1963 (Aust).

Clause 5 provides that the Bill applies to any visiting force, its civilian component, and its dependants.

Clause 6 provides that the Bill binds the Crown.

Part 2

Visiting forces

Clause 7 provides that the service authorities of a visiting force have the functions of command, control, and administration of the visiting force. Section 3(1) of the 1939 Act acknowledges the general principle of international law, recognised in cases such as *Wright v Cantrell* (1943) 61 WN (NSW) 38, that a State which admits a visiting force to its territory must be regarded as having conceded, to those in command of the visiting force, all authority necessary for it to continue to exist as an efficient force available for the service of the sending State.

Clause 8 provides that the service authorities of a visiting force may, within New Zealand, exercise both criminal and disciplinary jurisdiction (as conferred by the law of the sending State) over members of the force, members of its civilian component, and dependants to the extent permitted by the applicable SOFA. For this purpose, the clause expressly recognises that powers of arrest, search, and custody are integral to the exercise of criminal jurisdiction.

This clause reflects article 4(1)(a) of the SOFA with Australia, and similar provisions in the SOFAs New Zealand has with Malaysia and Singapore under the Five Power Defence Arrangements.

Clause 9 limits the jurisdiction recognised by *clause 8* to preclude punishments and other acts that may be repugnant to New Zealand public policy (such as the death penalty) or interfere with the rights of persons lawfully in New Zealand other than as members of the visiting force.

Clause 10 provides a mechanism to deal with issues of concurrent jurisdiction. This occurs where a member of a visiting force commits an offence that is punishable under both the service law of the sending State and under the law of New Zealand. The clause allows criminal proceedings to be instituted in New Zealand but they are then stayed and cannot proceed except with the consent of the Attorney-General.

This provision should be considered in the context of the international practice, as reflected in the SOFAs New Zealand has with Australia, Malaysia, and Singapore, that the sending State has the primary right of jurisdiction only for offences committed in the performance of official duties or against other members of the force or accompanying civilians. The host State has the primary right of jurisdiction in all other cases. In every case, however, the State having primary right of jurisdiction is required to give sympathetic consideration to a request by the other State for a waiver of jurisdiction in cases where the other State considers the exercise of jurisdiction by it to be of particular importance.

This clause—

- will ensure that any criminal proceedings brought in a New Zealand court against a member of a visiting force will be in accordance with the applicable SOFA or other arrangement with the sending State;
- makes it clear that the New Zealand authorities are not prevented from arresting a member of a visiting force. Section 10(1) of the Australian Act contains a similar provision. However *subclause (5)* provides that such a person must be dealt with in accordance with *clause 11*.

Clause 11 relates the arrest of members of visiting forces. This clause—

- is based on section 12(2), (3), and (4) of the Australian Act:

- requires the person making the arrest to notify as soon as practicable the service authorities of the visiting force. This reflects an obligation contained in Article 4(4)(b) of the SOFA with Australia. A similar obligation is contained in the SOFAs with Malaysia and Singapore:
- enables a New Zealand court to stay the proceedings for a period to enable inquiries to be made to ascertain the status of the offender:
- enables New Zealand to give effect to its obligations under Article 4(4)(d) of the SOFA with Australia (where New Zealand is to exercise jurisdiction over a member of a visiting force it must give sympathetic consideration to a request by the visiting force to retain custody of the person pending trial).

Section 3(5) of the 1939 Act allows the Armed Forces of New Zealand to assist a visiting force by arresting and handing over members of the force alleged to have committed offences against service law. Such an obligation is contained in Article 4(4)(a) of the SOFA with Australia. Under the Bill, this obligation will now be met by *new section 89A* of the Armed Forces Discipline Act 1971 (as set out in *Schedule 2*) which will authorise members of the police to arrest members of a visiting force under a warrant issued by the officer in command of the visiting force.

Clause 12 provides for some basic provisions of New Zealand service law to apply to a service tribunal of a sending State to enable it to operate effectively in New Zealand, for example, the provisions that compel the attendance of witnesses and protect the judge advocates, counsel, and witnesses.

Section 3(2) of the 1939 Act protects the members of the service tribunals of a visiting force and witnesses appearing before them, while section 4(5)(d) and (e) provides for securing the attendance of witnesses and contempt.

Clause 13 reflects Article 4(4)(f) of the SOFA with Australia and provides that a person tried by the service authorities of the sending State is not to be tried by New Zealand authorities for substantially the same offence. This provision is based on section 11 of the Australian Act.

Clause 14 relates to the manner in which a sentence of imprisonment may be served. Part IX of the Armed Forces Discipline Act 1971,

which contains provisions about detention of service personnel, will apply for this purpose.

The Visiting Forces (Penal Arrangements) Order 1963 (SR 1963/61) makes provision for the detention in prisons or detention barracks in New Zealand of members of a visiting force who are sentenced by a service tribunal of the sending State. Presently, the order merely states more directly what the empowering provision (in section 4(3) of the 1939 Act) does.

Clause 15 prevents the proceedings of a service tribunal of a visiting force being challenged or called into question by a New Zealand court.

Clause 16 prevents any proceedings being brought in a New Zealand court in respect of the conditions of service of a member of a visiting force or a member of its civilian component. This carries over the effect of section 3(4) of the 1939 Act. Such matters may raise issues of sovereign immunity and may be dealt with more appropriately in the courts of the sending State.

Clause 17 relates to the application of New Zealand laws to visiting forces. The main features of this clause are that—

- exemptions conferred on members of the Armed Forces of New Zealand are extended to members of visiting forces;
- the privileges or immunities the sending State enjoys under applicable international law are not affected;
- specific exemptions from enactments, and modifications to enactments, may be provided by Order in Council.

Clause 18 confirms that the New Zealand Bill of Rights Act 1990 applies to acts done in New Zealand on behalf of a visiting force by public bodies and public servants, including members of the Armed Forces of New Zealand.

Clause 19 relates to coronial and other inquiries into a death involving a member of a visiting force, a member of its civilian component, or a dependant.

If the deceased was a member of a visiting force, a member of its civilian component, or a dependant—

- a coroner must not hold an inquest into the death (unless the Attorney-General otherwise directs);
- if the Attorney-General directs that the inquest proceed, the requirement to view the body (section 24 of the Coroners Act

1988) and the requirement to notify a Registrar before removing the body from New Zealand (section 42(2) of the Births, Deaths, and Marriages Registration Act 1995) do not apply:

- the Births, Deaths, and Marriages Registration Act 1995 applies only if a direction referred to above is given, although the provision about notifying the removal of the body does not apply in any case.

Separate provisions apply where a coroner is informed that a member of a visiting force, a member of its civilian component, or a dependant has been or is to be charged over a reported death with an offence against the service law of the sending State. In this case as well, the coroner must not hold an inquest into the death (unless the Attorney-General otherwise directs). However, the coroner is allowed—

- to take evidence of the fact, place, and date of death;
- to provide information about the death to a Registrar for the purpose of registering the death;
- to authorise the release of the body.

Section 7 of the Visiting Forces Act 1952 (UK) and section 14 of the Australian Act contain similar provisions.

Clause 20 prevents a member of a visiting force, a member of its civilian component, or a dependant from being compelled to give evidence at inquests or inquiries into deaths involving a member of a visiting force, its civilian component, or a dependant. The clause also provides that persons who do appear as witnesses at such inquests or inquiries must not be asked questions about sensitive security or defence matters.

Clause 21 relates to civil claims in respect of acts of visiting forces. This clause replaces, and is drawn from, section 10 of the Crown Proceedings Act 1950. It applies to any cause of action that arises in New Zealand in respect of—

- the death of or bodily injury to any person; or
- the damage to any property.

The claim must be made against the Crown and may be made if—

- the claimant suffers in New Zealand any damage, loss, or injury by, through, or in connection with the use of any ship, vehicle, aircraft, or equipment belonging to a visiting force; or

- the person has (or considers that he or she has) a just claim or demand in respect of a cause of action to which this clause applies against a member of a visiting force or a person acting for or on behalf of a visiting force.

The claim must be one that—

- is not barred by section 317 or section 318 of the Injury Prevention, Rehabilitation, and Compensation Act 2001;
- the claimant would have been entitled to make under the Crown Proceedings Act 1950 against the Crown if it had involved the Armed Forces of New Zealand rather than a visiting force.

This clause overcomes the practical difficulties faced by a plaintiff in bringing civil proceedings against a visiting force, and subsequently in effecting judgment, by providing an alternative remedy against the Crown. It is open to the Crown to arrange to be indemnified for the liability it assumes. For example, the SOFA with Australia contains detailed provisions regarding the settlement of claims.

Part 3

Miscellaneous provisions

Clause 22 enables the Attorney-General to give evidence by way of a certificate for the purposes of the Bill.

Clause 23 provides for the making of regulations for the purposes of the Bill.

Clause 24 provides that the Bill is in force in Tokelau.

Clause 25 repeals the Visiting Forces Act 1939 and revokes the orders and regulations specified in *Schedule 1*.

Clause 26 makes consequential amendments, which are set out in *Schedule 2*, as follows:

- *Schedule 2* carries over into the Armed Forces Discipline Act 1971 and the Defence Act 1990 those provisions in the 1939 Act dealing with deserters from overseas forces (section 5) and attachment of personnel and mutual powers of command (section 6):
- section 5 of the 1939 Act is carried over into what will become *new section 92A* of the Armed Forces Discipline Act 1971. A consequential amendment is made to section 93 and

new section 93B is inserted. A consequential amendment is also made to the Extradition Act 1999:

- section 6(2)(a) and (3) of the 1939 Act is carried over into *new section 23A* of the Defence Act 1990:
- consequential amendments are made to sections 9 and 172 of the Armed Forces Discipline Act 1971:
- section 6(2)(b) of the 1939 Act is carried over into *new section 23* of the Defence Act 1990 and a consequential amendment is made to section 173 of the Armed Forces Discipline Act 1971:
- section 6(3A) of the 1939 Act is carried over into section 7(2) of the Armed Forces Discipline Act 1971:
- section 6(4) of the 1939 Act is carried over into *new section 23B* of the Defence Act 1990:
- consequential amendments are made to the definitions of **commanding officer** and **superior commander** in sections 2(1) of the Armed Forces Discipline Act 1971, and to sections 88, 119, and 124 of that Act:
- section 6(5) is carried over into *new section 17* of the Defence Act 1990, and into *new section 23B(2)*. To avoid different terminology, the *new section 17* uses the term “relative rank” to refer both to the relationship between the ranks of the 3 Services in New Zealand, and to the relationship between the ranks of New Zealand’s armed forces and those of other States.

Clause 27 provides that existing status of forces agreements are applicable agreements under this Bill.

Regulatory impact statement

Statement of the problem and the need for action

Throughout the first half of the 1990s, the Government negotiated a SOFA with Australia. Following the accepted international practice, the SOFA conferred on Australia primary criminal jurisdiction over visiting Australian forces in certain circumstances. However, on 9 April 1997, the Crown Law Office provided advice that New Zealand could not ratify the SOFA with Australia under the legislative framework of the 1939 Act, because that Act only confers disciplinary jurisdiction. The Crown Law Office also identified that the 1939 Act is deficient in other areas mentioned below.

The Government signed the SOFA with Australia at Melbourne on 29 October 1998 with the intention of amending the law to bring it into line with the international law and practice relating to SOFAs, which had been observed by New Zealand in its relations with its defence partners for at least 4 decades. The SOFA is intended to regulate the relationship between the forces of each State and the laws and institutions of the other State when the forces of the former are present on the territory of the latter. The SOFA has treaty status. New Zealand is therefore obliged to refrain from acts that would defeat the object and purpose of the SOFA, pending its ratification (Vienna Convention on the Law of Treaties, article 18).

New Zealand is visited by foreign armed forces quite regularly. On an average year, New Zealand would host around 13 military exercises involving approximately 3500 foreign military personnel with their appurtenant ships, aircraft and equipment. As well as Commonwealth forces such as those from Australia, Singapore, Malaysia and the United Kingdom, some of these forces are states which are not members of the Commonwealth, such as the French forces based in New Caledonia. The 1939 Act does not apply to visiting forces from states which are not Commonwealth members. New Zealand is also visited from time to time by ships and naval squadrons from states as diverse as Australia, China, Chile, France, Japan, and the United Kingdom.

Statement of the public policy objectives

The objectives of this proposal are—

- (a) to enable the Government to ratify the SOFA with Australia; and
- (b) to ensure that the legislation relating to visiting forces is in line with developments in New Zealand law and international law and practice.

The second of these objectives is important for reasons of international reciprocity. New Zealand expects to enjoy similar privileges and immunities in respect of jurisdiction in the SOFAs that are routinely negotiated with states to which the NZDF deploys and with which New Zealand has defence relations. This is made difficult when New Zealand is unable to guarantee similar privileges and immunities to the forces of those States when they visit New Zealand.

Statement of options for achieving the desired objectives

Status quo

The key features of the 1939 Act are that it—

- applies to the forces of Commonwealth States only;
- limits visiting forces to the exercise of disciplinary jurisdiction;
- does not contain any provision to resolve issues of concurrent jurisdiction;
- does not provide an effective safeguard against double jeopardy;
- does not deal with coronial inquests into deaths arising from the presence of a visiting force in New Zealand.

The status quo would not achieve the desired objective because—

- (a) the SOFA with Australia confers on Australia criminal jurisdiction in respect of visiting Australian forces in certain circumstances; and
- (b) the 1939 Act does not take sufficient account of developments in New Zealand law and international law and practice.

A new Visiting Forces Bill (preferred option)

The key features of the new Visiting Forces Bill are that it will—

- potentially apply to any visiting force;
- confer disciplinary and criminal jurisdiction on a visiting force, subject to the terms of any status of forces agreement entered into between New Zealand and the sending State;
- contain provisions to resolve issues of concurrent jurisdiction;
- provide an effective safeguard against double jeopardy;
- deal with coronial inquests into deaths arising from the presence of a visiting force in New Zealand;
- give adequate recognition of New Zealand's adherence to human rights norms while respecting the sovereign immunity of visiting forces under international law.

Statement of the net benefit of this proposal [a new Visiting Forces Bill]

Benefits

The proposed Visiting Forces Bill will contribute to the enhancement of New Zealand's role as a good international citizen within international defence and security relationships by providing a clearer and more comprehensive legislative basis for the acceptance of visiting forces into New Zealand, which better accords with international law and practice. The Bill will minimise the possibility of future problems in New Zealand's relationships with sending States as a consequence of misunderstandings surrounding the status, rights and obligations of visiting forces in New Zealand. The Bill will permit New Zealand to ratify the SOFA with Australia, permitting the Government to take a further positive step in its Closer Defence Relations with our trans-Tasman neighbour.

Costs

The Bill will produce a situation where, in some cases, criminal matters and inquests into deaths involving visiting forces in New Zealand will be abdicated to the jurisdiction of a visiting force. The Bill provides for the waiver of territorial sovereignty over such matters in certain cases. This has the potential to lead to negative publicity for the Government in particular cases.

On balance, the expected benefits to New Zealand's capacity to maintain and enhance its defence and security relationships outweigh any potential negative publicity in particular future cases of criminality on the part of a visiting force. There are no compliance costs imposed on business by this proposal.

Consultation

The following departments have been consulted on this proposal:

Crown Law Office

Department of Corrections

Department of Internal Affairs

Department of Labour

Department of Prime Minister and Cabinet

Inland Revenue Department

Ministry of Defence

Ministry of Economic Development
Ministry of Foreign Affairs and Trade
Ministry of Justice
Ministry of Transport
New Zealand Customs Service
New Zealand Police
Parliamentary Counsel Office.

Hon Mark Burton

Visiting Forces Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Visiting Forces Act **2003**.

Part 1
Preliminary provisions

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2 Commencement

This Act comes into force on **1 July 2004**.

3 Purpose

The purpose of this Act is—

- (a) to update and amend the law relating to visiting forces to reflect recognised international practice; and 10
- (b) to enable New Zealand to give effect to status of forces agreements concluded with other States; and
- (c) to repeal the Visiting Forces Act 1939.

4 Interpretation

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(1) In this Act, unless the context otherwise requires,—

applicable agreement, in relation to a visiting force, means the status of forces agreement entered into between New Zealand and the sending State (the text of which agreement may, as provided in **subsection (2)**, be set out in regulations made under **section 23**) 20

armed forces, in relation to a sending State, includes any armed forces raised in any territory for whose international relations the government of that State is responsible

Armed Forces of New Zealand has the same meaning as **Armed Forces** has in section 2(1) of the Defence Act 1990 25

civilian component, in relation to a visiting force, means the civilian personnel who are neither New Zealand citizens nor ordinarily resident in New Zealand, and who—

- (a) are employed by or in the service of the visiting force; 30
or
- (b) are serving with an organisation that, with the approval of the Government of New Zealand, is accompanying the visiting force; or
- (c) are attached to or accompanying the visiting force 35

dependant, in relation to a visiting force, means a person who—

- (a) is not a member of the visiting force or its civilian component; and
- (b) is neither a New Zealand citizen nor ordinarily resident in New Zealand; and 5
- (c) is accompanying a member of the visiting force or its civilian component and—
 - (i) is the spouse of the member; or
 - (ii) is not married to the member, but is living together with the member in a relationship that is recognised by the visiting force (whether the person is of the same or different sex as the member); or 10
 - (iii) is wholly or mainly maintained by the member; or 15
 - (iv) is in the custody, care, or charge of the member; or
 - (v) is one of the family of the member residing with the member 20

member of a visiting force—

- (a) means a person who, in accordance with the law of the sending State, is serving as a member of the visiting force; but
- (b) does not include a member of the armed forces of the sending State if— 25
 - (i) the person is attached to the Armed Forces of New Zealand under **section 23A** of the Defence Act 1990; or
 - (ii) New Zealand and the sending State have mutually determined, under an agreement between them, that the person is not to be regarded as a member of a visiting force 30

Registrar has the same meaning as in section 2 of the Births, Deaths, and Marriages Registration Act 1995 35

sending State, in relation to a visiting force, means the State to which the visiting force belongs

service authorities of a visiting force—

- (a) means the authorities empowered by the law of the sending State to exercise powers of command, control, discipline, or administration over a visiting force, 40

- including (without limitation) any members of the force, members of its civilian component, and dependants; and
- (b) includes a service tribunal of a visiting force
- service law**, in relation to a sending State, means the law governing the discipline of, and the administration of justice within, the armed forces of the sending State
- service tribunal of a visiting force**—
- (a) means any officer, court, or other tribunal empowered by or under the law of the sending State to investigate, try, or otherwise dispose of charges brought against persons subject to the service law of the sending State; and
- (b) includes—
- (i) a court of inquiry; and
- (ii) any officer, court, or other tribunal empowered by or under the law of the sending State to review the proceedings of a service tribunal
- visiting force** means any part of the armed forces of another State that has been granted a right of entry into or passage through or over New Zealand.
- (2) For the purpose of **subsection (1)**, regulations made under **section 23** may set out the text of any status of forces agreement entered into between New Zealand and a sending State, but the fact that a status of forces agreement is not set out in regulations made under that section does not affect its validity as an applicable agreement under this Act.
- Compare: 1939 No 36 s 2; 1950 No 54 s 2; Defence (Visiting Forces) Act 1963 (Aust) s 5
- 5 Application**
- This Act applies in relation to any visiting force, its civilian component, and its dependants.
- 6 Act binds the Crown**
- This Act binds the Crown.

Part 2 Visiting forces

Jurisdiction

- 7 Command, control, and administration** 5
- The service authorities of a visiting force may, within New Zealand, exercise and perform all the functions, duties, and powers conferred or imposed on them by the law of the sending State in relation to the following matters:
- (a) the command of the visiting force:
 - (b) the control of the visiting force: 10
 - (c) the administration of the visiting force.
- Compare: 1939 No 36 s 3(1)
- 8 Criminal and disciplinary jurisdiction**
- (1) To the extent permitted by the applicable agreement, the service authorities of a visiting force may, within New Zealand, exercise over members of the visiting force, members of its civilian component, and its dependants all criminal and disciplinary jurisdiction conferred on them by the law of the sending State. 15
 - (2) Nothing in this Act affects or limits any power conferred on the service authorities of a visiting force by the law of the sending State, being a power to— 20
 - (a) arrest, identify, detain, or search a member of the visiting force, a member of its civilian component, or a dependant; or 25
 - (b) enter and search any ship, aircraft, vehicle, or premises belonging to or occupied by the visiting force or a person referred to in **paragraph (a)**; or
 - (c) seize or take possession of any property, article, or thing found on or in the possession of any person referred to in **paragraph (a)** or in or on any ship, aircraft, vehicle, or premises referred to in **paragraph (b)**. 30
 - (3) Section 99 of the Armed Forces Discipline Act 1971, with the necessary modifications, applies to property, articles, and things referred to in **subsection (2)(c)** that— 35
 - (a) are seized or taken into possession by the service authorities of a visiting force; and

- (b) belong to any person other than a member of the visiting force, a member of its civilian component, or a dependant.
- (4) This section is subject to **section 9**.
Compare: 1939 No 36 s 3(1) 5
- 9 Limits on effect of section 8**
- (1) The service authorities of a visiting force must not—
- (a) impose, or carry out, a sentence of death in New Zealand; or
- (b) do any act in New Zealand that would, if done by a member of the Armed Forces of New Zealand, constitute an offence against the Crimes of Torture Act 1989. 10
- (2) The service authorities of a visiting force must not exercise a power referred to in **section 8(2)(b)** if the ship, aircraft, vehicle, or premises are also occupied by a person who is in New Zealand other than as a member of a visiting force, a member of its civilian component, or a dependant. 15
- (3) The service authorities of a visiting force must not exercise a power referred to in **section 8(2)(c)** if the property, article, or thing is also in the possession of a person who is in New Zealand other than as a member of a visiting force, a member of its civilian component, or a dependant. 20
- (4) If **subsection (2) or subsection (3)** applies, the service authorities of a visiting force may request the Attorney-General to obtain the issue of a search warrant under section 59(1) of the Mutual Assistance in Criminal Matters Act 1992, and the provisions of that Act, with the necessary modifications, apply in relation to the request. 25
- 10 Criminal proceedings in New Zealand against members of visiting forces** 30
- (1) Criminal proceedings may be instituted in a New Zealand court against—
- (a) a member of a visiting force; or
- (b) a member of its civilian component, or a dependant, who is subject to the service law of the sending State. 35
- (2) However, once instituted those proceedings are stayed and must not proceed except with the consent of the Attorney-General.

- (3) The Attorney-General must, before deciding whether or not to give consent under **subsection (2)**, take into account the terms of any applicable agreement, and may make such inquiries as he or she thinks fit.
- (4) **Subsection (2)** does not limit or affect any power exercisable under the law of New Zealand to arrest, identify, detain, or search a member of a visiting force, a member of its civilian component, or a dependant. 5
- (5) The arrest of a member of a visiting force, a member of its civilian component, or a dependant is subject to **section 11**. 10
Compare: Defence (Visiting Forces) Act 1963 (Aust) ss 9, 10

Arrest

11 Arrest of members of visiting forces

- (1) If a person arrests a member of a visiting force, a member of its civilian component, or a dependant, the person making the arrest (or any of the person’s superiors) must notify the service authorities of the visiting force of the arrest as soon as practicable after the arrest. 15
- (2) If a person charged with an offence against the law of New Zealand appears to the court to be a member of a visiting force, a member of its civilian component, or a dependant,— 20
 - (a) the court must determine the period it considers reasonable to enable inquiries to be made for the purpose of determining the status of the person; and
 - (b) further proceedings in respect of the offence charged are stayed for that period. 25
- (3) If a person referred to in **subsection (2)** has been remanded in custody by order of the court and the Attorney-General directs that the person be delivered to the custody of the service authorities of the visiting force, the court must revoke the order and order that the person be delivered to the custody of those authorities. 30

Compare: Defence (Visiting Forces) Act 1963 (Aust) s 12

Proceedings before service tribunal of visiting force

12 Application of provisions of Armed Forces Discipline Act 1971 35

The following provisions of the Armed Forces Discipline Act 1971, with the necessary modifications, apply in relation to

proceedings held in New Zealand by a service tribunal of a visiting force:

- (a) section 141 (privileges and immunities of judge advocates and members of courts-martial, and protection of witnesses and counsel): 5
- (b) section 144 (powers of courts-martial in relation to contempt):
- (c) section 146 (witnesses may be compelled to attend courts-martial):
- (d) section 200(5) to (7) (privileges and immunities of members of and persons appearing before courts of inquiry). 10

Compare: 1939 No 36 s 3(2), 4(5)

13 New Zealand courts not to try offenders for offences already disposed of 15

Section 21 of the Armed Forces Discipline Act 1971 (which relates to the principle that a person is not to be tried under that Act and under the civil law in respect of the same act or omission) applies in relation to a person who has been charged with an offence before, or had an offence taken into consideration by, a service tribunal of the sending State as if the offence had been dealt with under that Act. 20

Compare: Defence (Visiting Forces) Act 1963 (Aust) s 11

Imprisonment

14 Manner in which sentence of imprisonment or detention may be served 25

- (1) If a member of a visiting force, a member of its civilian component, or a dependant has been sentenced by a service tribunal of the visiting force to imprisonment or detention, the sentence may be served in accordance with Part IX of the Armed Forces Discipline Act 1971. 30
- (2) Part IX of the Armed Forces Discipline Act 1971 applies for the purposes of this section as if—
 - (a) the officer in command of the visiting force were a competent service authority; and 35
 - (b) the prisoner were a service prisoner or service detainee (as the case may require).

Compare: 1939 No 36 s 4(3)

*Legal proceedings before New Zealand courts***15 Proceedings of service tribunals**

The proceedings of a service tribunal of a visiting force, including (without limitation) any sentence passed or order made by the tribunal, may not be called into question in any proceedings before a New Zealand court. 5

Compare: 1939 No 36 s 3(3)–(5); 1971 No 53 s 143

16 Proceedings relating to conditions of service of member of visiting force or civilian component

No proceedings in respect of the conditions of service of a member of a visiting force or a member of its civilian component may be brought in a New Zealand court. 10

Compare: 1939 No 36 s 3(4)

Application to visiting forces of laws applying to Armed Forces of New Zealand 15**17 Application of New Zealand laws to visiting forces**

- (1) If an enactment exempts the Armed Forces of New Zealand from all or any of its provisions, or modifies or adapts any of its provisions so far as they apply to the Armed Forces of New Zealand, the exemption, modification, or adaptation applies in relation to a visiting force, subject to such adaptations or modifications as may be necessary. 20
- (2) If an enactment penalises misconduct by any person in relation to the Armed Forces of New Zealand or a member of the Armed Forces of New Zealand, the enactment applies in relation to a visiting force or a member of the visiting force with any necessary modifications. 25
- (3) Any person authorised to perform or exercise any function, duty, or power, in relation to the Armed Forces of New Zealand may perform or exercise that function, duty, or power in relation to a visiting force. 30
- (4) **Subsection (3)** does not limit any privileges or immunities enjoyed by the sending State under applicable international law.
- (5) Without limiting **subsections (1) to (4)**, the Governor-General may, by Order in Council,— 35
 - (a) exempt a visiting force from all or any of the provisions of any enactment; or

- (b) modify or adapt any of the provisions of any enactment so far as they apply to a visiting force.
- (6) An Order in Council made under **subsection (5)** may be made—
 - (a) in relation to visiting forces generally; or
 - (b) for the purpose of implementing any treaty, agreement, or arrangement between New Zealand and the sending State. 5

Compare: 1939 No 36 s 4(1), (5), (6)

Application of New Zealand Bill of Rights Act 1990

- 18 Application of New Zealand Bill of Rights Act 1990 to acts done at request or on behalf of visiting forces** 10
- (1) The New Zealand Bill of Rights Act 1990 applies to acts done in New Zealand at the request or on behalf of a visiting force by a person to whom or body to which section 3 of that Act applies. 15
- (2) This section is for the avoidance of doubt.

Death of members of visiting forces

- 19 Inquests relating to members of visiting forces**
- (1) If a death has been reported to a coroner under section 5 of the Coroners Act 1988 and the coroner is satisfied that the person was a member of a visiting force, a member of its civilian component, or a dependant, then, unless the Attorney-General otherwise directs, the following provisions apply: 20
 - (a) if the coroner has not opened an inquest into the death, he or she must not hold an inquest into the death: 25
 - (b) if an inquest has been opened but is not then completed, the coroner must adjourn the inquest.
- (2) As soon as practicable after becoming aware of a death to which **subsection (1)** applies, the Chief of Defence Force must ensure that the Attorney-General is notified of the death. 30
- (3) The Attorney-General may direct that a coroner or any other authority open or proceed with an inquest or other inquiry into a death to which **subsection (1)** applies. Without limiting the matters the Attorney-General may take into account in deciding whether to give such a direction, the Attorney-General must take into account— 35
 - (a) the wishes of the sending State; and
 - (b) the terms of any applicable agreement.

- (4) When a direction referred to in **subsection (3)** takes effect, the following apply:
 - (a) the provisions of the Births, Deaths, and Marriages Registration Act 1995, other than section 42(2)(a) (which requires the notification of a Registrar before a body is removed from New Zealand); 5
 - (b) the provisions of the Coroners Act 1988, other than section 24 (which requires the viewing of the body during certain inquests).
 - (5) The Births, Deaths, and Marriages Registration Act 1995 applies in relation to a death to which **subsection (1)** applies only to the extent provided in **subsection (4)(a)**. 10
 - (6) If a death has been reported to a coroner under section 5 of the Coroners Act 1988 and the coroner is informed that a member of a visiting force, a member of its civilian component, or a dependant has been or may be charged with an offence against the service law of the sending State relating to the death or its circumstances, then, unless the Attorney-General otherwise directs, the following provisions apply: 15
 - (a) if the coroner has not opened an inquest into the death, he or she must not hold an inquest into the death until the criminal or disciplinary proceedings against the person have been finally concluded; 20
 - (b) if an inquest has been opened but is not then completed, the coroner must adjourn the inquest until the criminal or disciplinary proceedings against the person have been finally concluded. 25
 - (7) **Subsection (6)** does not prevent a coroner from—
 - (a) taking evidence of the fact that the person has died, of the person’s identity, and of the place and date of death; 30
or
 - (b) providing information to a Registrar for the purpose of registering the death; or
 - (c) authorising the release of the body.
- Compare: Visiting Forces Act 1952 (UK) s 7; Defence (Visiting Forces) Act 1963 (Aust) s 14 35

20 Witnesses at inquest or inquiry

- (1) A member of a visiting force, a member of its civilian component, or a dependant is not a compellable witness for the

purposes of an inquest or inquiry opened or proceeded with in accordance with **section 19(2) or (5)**.

- (2) A witness who is summoned to attend before a coroner or some other authority for the purposes of an inquest or inquiry opened or proceeded with in accordance with **section 19(2) or (5)** must not be asked any question the answer to which may prejudice the security or defence of New Zealand or the sending State. 5
- (3) The Chief of Defence Force may give a certificate for the purpose of **subsection (2)** to the effect that any matter may prejudice the security or defence of New Zealand or the sending State. 10
- (4) A certificate given under **subsection (3)** is admissible in any proceedings in a New Zealand court and is, in the absence of proof to the contrary, sufficient evidence of the matters stated in the certificate. 15

Claims

21 Claims against visiting forces

- (1) This section applies to any cause of action that arises in New Zealand in respect of— 20
- (a) the death of or bodily injury to any person; or
 - (b) damage to any property.
- (2) A person (other than a member of a visiting force, a member of its civilian component, or a dependant) is entitled to make a claim or demand against the Crown if— 25
- (a) the person suffers in New Zealand any damage, loss, or injury by, through, or in connection with the use of any ship, vehicle, aircraft, or equipment belonging to a visiting force; or
 - (b) the person has or considers that he or she or it has a just claim or demand in respect of a cause of action to which this section applies against a member of a visiting force or a person acting for or on behalf of a visiting force. 30
- (3) The claim or demand must be one that is not barred by section 317 or section 318 of the Injury Prevention, Rehabilitation, and Compensation Act 2001. 35
- (4) The claim or demand must be one that the person would have been entitled to make under the Crown Proceedings Act 1950 against the Crown if—

- (a) the ship, vehicle, or equipment had belonged to the Crown, or the aircraft had been a service aircraft, or the member or the person so acting had been a member of the Armed Forces of New Zealand; and
 - (b) the Government of the sending State to which the visiting force belongs had been the Crown. 5
- (5) The Crown has, in relation to the person making the claim or demand, the same rights and liabilities as the Crown would have had if—
- (a) the ship, vehicle, or equipment belonging to the visiting force had belonged to the Crown or the aircraft belonging to the visiting force had been a service aircraft; or 10
 - (b) the member of the visiting force or the person acting for or on behalf of the visiting force had been a member of the Armed Forces of New Zealand. 15
- (6) The determination of a claim or demand under this section must have regard to any payment which the person has received or is entitled to receive, whether from the Crown or from any other person or authority, in satisfaction, wholly or partly, of the claim or demand. 20

Compare: 1950 No 54 s 10(1)–(5)

Part 3 Miscellaneous provisions

22 Evidence

- (1) The Attorney-General may, after making any inquiries he or she thinks fit, give a certificate as to the status under this Act of— 25
- (a) any force, person, or property; or
 - (b) any matter or thing for the purposes of any of **sections 13, 15, 16, or 21.** 30
- (2) A certificate given under **subsection (1)** is admissible in any proceedings in a New Zealand court and is, in the absence of proof to the contrary, sufficient evidence of the matters stated in the certificate.

Compare: Defence (Visiting Forces) Act 1963 (Aust) s 27

35

23 Regulations

The Governor-General may, by Order in Council, make regulations providing for any matters contemplated by this Act,

necessary for its administration, or necessary for giving it full effect.

Compare: 1939 No 36 s 10

24 Application to Tokelau

- (1) This Act is in force in Tokelau. 5
- (2) This Act applies in relation to any naval, military, or air forces raised in Tokelau as if those forces were part of the Armed Forces of New Zealand.
- (3) **Subsection (2)** is subject to such exemptions, adaptations, and modifications as may be specified by regulations made under **section 23**. 10

Compare: 1939 No 36 s 7

25 Repeals and revocations

- (1) The Visiting Forces Act 1939 is repealed.
- (2) The orders and regulations specified in **Schedule 1** are revoked. 15

26 Consequential amendments

The Acts specified in **Schedule 2** are amended in the manner set out in that schedule.

27 Saving relating to existing status of forces agreements

- (1) This section applies to every status of forces agreement between New Zealand and the sending State of a visiting force that had effect immediately before the commencement of this section. 20
- (2) Every status of forces agreement to which this section applies is an applicable agreement under this Act. 25

Schedule 1
Revocations

s 25(2)

Armed Forces Equivalent Ranks Order 1983 (SR 1983/233)	
Visiting Forces (Australian Naval Forces) Order 1978 (SR 1978/164)	5
Visiting Forces (Commonwealth Deserters and Absentees) Order 1983 (SR 1983/8)	
Visiting Forces (Fiji Military Forces) Order 1960 (SR 1960/77)	
Visiting Forces (New Zealand with Australia and United Kingdom) Order 1979 (SR 1979/285)	10
Visiting Forces Order 1980 (SR 1980/20)	
Visiting Forces (Penal Arrangements) Order 1963 (SR 1963/61)	
Visiting Forces (Relative Ranks) Regulations 1985 (SR 1985/342)	15
Visiting Forces (Tongan Forces) Order 1983 (SR 1983/7)	

s 26

Schedule 2

Consequential amendments to other Acts

Armed Forces Discipline Act 1971 (1971 No 53)

Repeal the definition of **commanding officer** in section 2(1) and substitute:

“**commanding officer** means—

“(a) an officer for the time being appointed or authorised to be a commanding officer for the purposes of this Act by an officer authorised to convene courts-martial:

“(b) an officer who is named as a commanding officer in accordance with section 16: 10

“(c) the officer who is in command of—

“(i) one of Her Majesty’s New Zealand ships in commission (other than a tender or a boat); or

“(ii) one of Her Majesty’s New Zealand naval establishments in commission; or 15

“(iii) a ship declared by the Chief of Defence Force, the Chief of Naval Staff, the Chief of General Staff, or the Chief of Air Staff to be a service ship; or 20

“(iv) a battalion or regiment:

“(d) an officer of a force of another State that is for the time being declared to be serving together with a New Zealand force under **section 23B** of the Defence Act 1990, who is for the time being appointed or authorised to be a commanding officer for the purposes of this Act by an officer authorised to convene courts-martial”. 25

Repeal the definitions of **New Zealand force** and **force** in section 2(1) and substitute:

“**New Zealand force** or **force** has the same meaning as **New Zealand force** in the section 2(1) of the Defence Act 1990”. 30

Repeal the definition of **superior commander** in section 2(1) and substitute:

“**superior commander** means—

“(a) an officer (not below the rank of captain in the Navy, colonel in the Army, or group captain in the Air Force) who— 35

“(i) is, in accordance with section 119, authorised to convene a general court-martial; or

“(ii) is authorised under the rules of procedure to try summarily or to deal summarily with charges 40

Armed Forces Discipline Act 1971 (1971 No 53)—continued

against junior officers and warrant officers of the rank specified in the Fifth Schedule; or	
“(iii) is appointed by the Chief of Defence Force, the Chief of Naval Staff, the Chief of General Staff, or the Chief of Air Staff to try summarily or to deal summarily with charges against junior officers and warrant officers of the rank specified in the Fifth Schedule; or	5
“(iv) if the force is on active service outside New Zealand, is commanding the force (not being its commanding officer) and any officer (not below the rank of captain in the Navy, colonel in the Army, or group captain in the Air Force) appointed by him or her to try summarily or to deal summarily with charges against junior officers and warrant officers of the rank specified in the Fifth Schedule; or	10
“(b) an officer (not below the relative rank of captain in the Navy, colonel in the Army, or group captain in the Air Force) of a force of another State that is for the time being declared to be serving together with a New Zealand force under section 23B of the Defence Act 1990 who—	20
“(i) is, in accordance with section 119, authorised to convene a general court-martial; or	25
“(ii) is appointed by the Chief of Defence Force to try summarily or to deal summarily with charges against junior officers and warrant officers of the rank specified in the Fifth Schedule”.	
Insert in section 2(1), in their appropriate alphabetical order:	30
“ relative rank means the appropriate rank prescribed under section 17 of the Defence Act 1990	
“ visiting force has the same meaning as in section 4 of the Visiting Forces Act 2003 ”.	
Add to section 7(2):	35
“(e) members of the armed forces of other States who are attached to the Armed Forces under section 23A of the Defence Act 1990.”	
Repeal section 9 and substitute:	

Armed Forces Discipline Act 1971 (1971 No 53)—continued**“9 Members of other forces attached to Armed Forces under section 23A of Defence Act 1990**

A member of the armed forces of another State who is attached to the Armed Forces of New Zealand under **section 23A** of the Defence Act 1990 is, subject to any express provision in the law of that other State to the contrary, subject to this Act.”

5

Add to section 88:

“(4) A member of a force of another State that is for the time being declared to be serving together with a New Zealand force under **section 23B** of the Defence Act 1990 has over members of the New Zealand force the powers of arrest of a member of the Armed Forces of a relative rank.”

10

Insert, after section 89:

“89A Arrest of members of visiting forces

15

“(1) If the officer commanding a visiting force has reasonable grounds to suspect that a member of the force, a member of its civilian component, or a dependant has committed an offence against the service law of the sending State, the officer may issue a warrant for the arrest of that person.

20

“(2) If a warrant is issued under **subsection (1)**,—

“(a) subsections (2), (3), (5), and (6) of section 89 apply; and
“(b) the warrant must specify the maximum punishment for the offence under the service law of the sending State.

“(3) A member of the police who arrests a person in execution of a warrant issued under **subsection (1)** must, as soon as practicable, deliver that person into the custody of the visiting force.

25

“(4) The provisions of this section are in addition to those of **section 92A**.”

Insert, after section 92:

30

“92A Arrest of deserters from other armed forces

“(1) If the Government of a State has specifically requested that a person (other than a New Zealand citizen) who is alleged to be illegally absent from the armed forces of the State be apprehended or dealt with under this section by New Zealand authorities,—

35

“(a) a warrant for the arrest of the person may be issued under section 89 as if the person had committed the

Armed Forces Discipline Act 1971 (1971 No 53)—continued

- offence of desertion or absence without leave under this Act:
- “(b) section 89 applies with the necessary modifications:
- “(c) the warrant must specify the maximum punishment for the offence under the service law of the sending State. 5
- “(2) A person who is delivered into service custody under a warrant issued under **subsection (1)** must, as soon as practicable, be handed over to the authorities of the other State at such place in New Zealand as may be agreed.
- “(3) The authorities of the other State into whose custody a person is delivered under this section may detain the person and may remove the person from New Zealand, but nothing in this subsection limits any other powers that the authority may have in relation to the person. 10
- “(4) The provisions of subsections (3) to (7) of section 101 do not apply to any person to whom **subsection (2)** applies.” 15
- Omit from section 93(1) the words “sections 89, 91, and 92 of this Act” and substitute the words “sections 89, **89A**, 91, 92, and **92A**”.
- Add to section 93:
- “(3) The provisions of subsection (1), with the necessary modifications, apply to any person arrested under **section 89A or section 92A**. 20
- “(4) The provisions of subsection (2), with the necessary modifications, apply to a member of a visiting force, a member of its civilian component, or a dependant who is in the custody of a visiting force when charged with, or with a view to being charged with, an offence against the service law of the sending State.” 25
- Insert, after section 93A:
- “**93B Detention in service custody of members of visiting force** 30
- “(1) A person to whom this subsection applies may be delivered into service custody and detained in service custody pending his or her trial.
- “(2) **Subsection (1)** applies to a member of a visiting force, a member of its civilian component, or a dependant who has been arrested for an offence against— 35
- “(a) the service law of the sending State; or
- “(b) the law of New Zealand.

Armed Forces Discipline Act 1971 (1971 No 53)—continued

“(3) The provisions of subsections (3) to (7) of section 101 do not apply to any person to whom **subsection (1)** applies.

“93C Police not to deliver custody of arrested person without consent of Minister of Justice in certain cases

“(1) This section applies if a person is arrested by the police under **section 89A** or **section 92A** or **section 93B** in respect of an offence against the law of another State that is subject to—

“(a) a sentence of death; or

“(b) a punishment that would, if carried out by a member of the Armed Forces of New Zealand, constitute an offence against the Crimes of Torture Act 1989.

“(2) If this section applies, the police must not deliver that person into the custody of the visiting force or, as the case may be, the authorities of the other State without the written consent of the Minister of Justice.”

Repeal section 119(1)(d) and substitute:

“(d) an officer of a force of another State that is for the time being declared to be serving together with a New Zealand force under **section 23B** of the Defence Act 1990 in such circumstances and subject to such conditions as may be specified in a warrant issued to the officer by the Chief of Defence Force.”

Repeal section 119(2)(c) and substitute:

“(c) an officer of a force of another State that is for the time being declared to be serving together with a New Zealand force under **section 23B** of the Defence Act 1990 in such circumstances and subject to such conditions as may be specified in a warrant issued to the officer by the Chief of Defence Force.”

Repeal section 124 and substitute:

“124 Eligibility of officers of other forces to be members of court-martial

“(1) If it is necessary to convene a court-martial to try an accused at a place where, or in circumstances in which, in the opinion of the convening officer, the minimum requisite number of eligible officers cannot, having regard to the exigencies of the Armed Forces, be appointed as members of the court, any officer of a force of another State that is for the time being declared to be serving together with a New Zealand force

Armed Forces Discipline Act 1971 (1971 No 53)—continued

under **section 23B** of the Defence Act 1990 is eligible to be appointed as the president or as a member of the court.

- “(2) **Subsection (1)** is subject to **subsections (3) and (4)**. 5
- “(3) No officer is eligible to be appointed as a member of a court-martial under **subsection (1)** unless— 5
- “(a) that officer has served as an officer for one or more periods totalling not less than 3 years; and
- “(b) the rank held by that officer is not lower than a relative rank to that prescribed by section 120 or section 121 of this Act as a qualification for a member of a court-martial to try the accused. 10
- “(4) The number of officers appointed to a court-martial under **subsection (1)** must not exceed the number of officers of the Armed Forces of New Zealand who are appointed to the court.” 15
- Repeal section 172 and substitute:
- “172 **Imprisonment and detention of members of other forces attached to Armed Forces**
- “(1) This section applies if— 20
- “(a) a member of the armed forces of another State is attached to any Service under **section 23A** of the Defence Act 1990 and is sentenced by court-martial under this Act to imprisonment or detention; and 20
- “(b) an arrangement is for the time being in force with the appropriate authority of that State that enables the return of the member for the purpose of serving any such sentence in that State. 25
- “(2) A competent service authority may give directions for the delivery of the member so sentenced into the custody of the forces of that State (whether in New Zealand or elsewhere) and his or her removal to that State for the purpose of serving the sentence. 30
- “(3) Any member of the forces of any State in respect of whom any such directions are given by a competent service authority may, until that member is delivered into the custody of those forces, be kept in service custody or civil custody, or partly in service custody or partly in civil custody. 35

Armed Forces Discipline Act 1971 (1971 No 53)—continued

- “(4) Any such member may, by order of a competent service authority, from time to time be transferred from service custody to civil custody or from civil custody to service custody, as the occasion may require.
- “(5) Any such member may during his or her transfer from one place to another, whether on board a ship or an aircraft or other means of transport, be subjected only to such restraint as may be necessary to ensure his or her safe conduct and removal.” 5
- Repeal section 173 and substitute: 10
- “173 **Imprisonment and detention of members of Armed Forces attached to other forces**
- “(1) This section applies if—
- “(a) a member of the Armed Forces is attached to the forces of another State under **section 23** of the Defence Act 1990 and is sentenced by court-martial of those forces to imprisonment or detention; and 15
- “(b) an arrangement is for the time being in force with the appropriate authority in that State that enables the return of the member to serve his or her sentence— 20
- “(i) in New Zealand; or
- “(ii) in a penal institution, or in a service prison or detention quarter established under this Act (whether in New Zealand or elsewhere); and
- “(c) under that arrangement the member is received into the custody of a New Zealand force (whether in New Zealand or elsewhere). 25
- “(2) The provisions of this Act apply to that member in all respects, with the necessary modifications, as if the member had been sentenced by court-martial under this Act.” 30

Arms Act 1983 (1983 No 44)

Insert in section 3(2)(a), after subparagraph (i):

- “(ia) a member of a visiting force under the Visiting Forces Act **2003**; or”.

Births, Deaths, and Marriages Registration Act 1995 (1995 No 16) 35

Repeal section 34 and substitute:

Births, Deaths, and Marriages Registration Act 1995	
(1995 No 16)—continued	
“34 Deaths in New Zealand to be notified and registered	
“(1) Every death in New Zealand must be notified and registered in accordance with this Part.	
“(2) Subsection (1) does not apply to a death to which section 19(1) of the Visiting Forces Act 2003 applies.”	5
Coroners Act 1988 (1988 No 111)	
Insert in Part I, after section 3:	
“3A Application of Act to deaths of members of visiting forces	10
This Act is subject to section 19 of the Visiting Forces Act 2003 , which applies to inquests relating to members of visiting forces.”	
Crown Proceedings Act 1950 (1950 No 54)	
Repeal section 10.	15
Defence Act 1990 (1990 No 28)	
Insert in section 2(1), in their appropriate alphabetical order:	
“ New Zealand force means a force comprising a part or parts of the Armed Forces or any Service	
“ relative rank means the appropriate rank prescribed under section 17 ”.	20
Repeal section 17 and substitute:	
“17 Relative ranks	
“(1) For the purpose of this Act and the Armed Forces Discipline Act 1971, the Chief of Defence Force may prescribe the relative ranks of the Armed Forces and of the armed forces of other States.	25
“(2) Any order made for the purposes of subsection (1) may prescribe the relationship that is to be regarded as existing between relative ranks for the purposes of this Act and the Armed Forces Discipline Act 1971.”	30
Omit from section 22(1) the words “section 6 of the Visiting Forces Act 1939” and substitute the expression “ section 23 ”.	
Repeal section 22(3) and substitute:	
“(3) A member of the Armed Forces transferred for employment under subsection (1) remains subject to this Act and to the Armed Forces Discipline Act 1971, and to the law applicable to the forces to which the member is transferred.”	35

Defence Act 1990 (1990 No 28)—continued

Repeal section 23 and substitute:

- “23 **Attachment of members of New Zealand Armed Forces to other armed forces**
- “(1) The Chief of Defence Force may place a specified member, or a specified class of members, of the Armed Forces at the disposal of the service authorities of another State for the purpose of being attached by those authorities to the armed forces of that State. 5
- “(2) The power conferred on the Chief of Defence Force by **subsection (1)** may be exercised only in respect of— 10
- “(a) members of the regular forces; and
- “(b) members of the territorial or reserve forces who are for the time being—
- “(i) liable for continuous service under a Proclamation issued under section 39 or section 40; or 15
- “(ii) liable to serve outside New Zealand under an offer under section 50.
- “(3) Except in time of war or other like emergency, or in the event of an actual or imminent emergency involving the deployment of members of the Armed Forces outside New Zealand, a member of the Armed Forces may not be dealt with under **subsection (2)(b)(ii)** without that member’s consent. 20
- “(4) A member of the Armed Forces attached to the armed forces of another State under **subsection (1)** remains subject to this Act and the Armed Forces Discipline Act 1971 and to the law applicable to those forces. 25
- “23A **Attachment of members of other armed forces to New Zealand Armed Forces**
- “(1) The Chief of Defence Force may attach to any of the Services a specified member, or a specified class of members, of the armed forces of another State if that member or class of members is placed at the disposal of the Chief of Defence Force for the purpose of being attached to a Service. 30
- “(2) If a member of the armed forces of another State is attached to a Service under **subsection (1)**, the member— 35
- “(a) has, in the Service to which he or she has been attached, the same powers under this Act and the Armed Forces

Defence Act 1990 (1990 No 28)—continued

Discipline Act 1971 as if he or she were a member of that Service holding a relative rank; and

“(b) must be treated for the purposes of this Act and the Armed Forces Discipline Act 1971 as if he or she were a member of that Service holding a relative rank. 5

“(3) **Subsection (2)** applies subject to such other exemptions or modifications as may be prescribed.

23B Mutual powers of command when forces acting together

“(1) When a New Zealand force and a force of another State are serving together, whether alone or not, members of the other force— 10

“(a) must be treated as if they were members of the Armed Forces of a relative rank; and

“(b) have over members of the New Zealand force the powers of command of a member of the Armed Forces of a relative rank. 15

“(2) For the purpose of **subsection (1)**, a New Zealand force and a force of another State are serving together only if they are declared to be so serving together by order of the Chief of Defence Force.” 20

Extradition Act 1999 (1999 No 55)

Repeal section 109 and substitute:

109 Arrest of deserters from other armed forces

This Act does not limit or affect **section 92A or section 93C** of the Armed Forces Discipline Act 1971.” 25

Immigration Act 1987 (1987 No 74)

Repeal section 11(1)(b) and substitute:

“(b) a member of a visiting force, a member of its civilian component, or a dependant, or a member of the crew of any craft used to transport them to New Zealand, while— 30

“(i) members of that force are in New Zealand at the request or with the consent of the Government of New Zealand; and

“(ii) that member’s presence in New Zealand is in the ordinary course of that member’s duty or employment, or that person is in New Zealand as 35

Immigration Act 1987 (1987 No 74)—continued

a member of the civilian component or as a dependant of that force:”.

Add to section 11:

“(4) Terms used in subsection (1)(b) and defined in **section 4** of the Visiting Forces Act **2003** have the same meanings as in that section.” 5