

NEW ZEALAND
DEFENCE FORCE
TE OPE KAATUA O AOTEAROA



DM 69 (2 ed) **Volume 3**

MANUAL OF ARMED FORCES LAW

Volume 3
Legislation

Amendment No. 2 to Manual of Armed Forces Law (2nd ed) Volume 3

1. This amendment updates the contents page, Section 1 of the Geneva Conventions Act 1958 to resolve a minor page numbering issue, and Section 2 of the Oaths and Declarations Act 1957 with the latest list of officers who are authorised to take statutory declarations, and section 1 of the Visiting Forces Act 2004 to resolve a minor page numbering issue.

2. Delete and replace the listed pages of DM 69 (2 ed) Volume 3, as indicated below. Note that the amendment certificate is being reissued, so the date for Amendment No. 1 will need to be transposed to the new certificate, as well as adding the date for Amendment No. 2.

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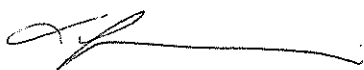
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Dated at WELLINGTON this 7th day of July 2017.



L.M. FERRIS
Colonel
Director of Legal Services

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AMENDMENT SHEET

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DM 69 (2 ED) MANUAL OF ARMED FORCES LAW**VOLUME 3 - LEGISLATION**

1. This volume of the Manual of Armed Forces Law is designed as a legislation reference to supplement Volume 1 (*Commander's Handbook on Military Law*) and Volume 2 (*Court Martial Handbook*). It contains statutes, regulations and some associated notes for guidance.
2. No non-statutory provision in this volume is to be construed as prevailing over any applicable Act of Parliament or any regulations or rules made under it. In the event of conflict between the provisions of the Manual of Armed Forces Law and any other orders or procedures issued within the New Zealand Defence Force, this manual is to prevail. Any such conflict is to be reported through service channels to the Chief of Defence Force, for the attention of the Director General of Defence Legal Services, without delay. Any other errors or omissions are to be similarly reported.
3. The Manual of Armed Forces Law is administered by the Directorate of Legal Services, Headquarters New Zealand Defence Force, Wellington.
4. In any case of doubt as to the proper interpretation of any provision of military law, a legal officer is to be consulted without delay.
5. The first edition of the Manual of Armed Forces Law (Volume I and Volume II) is cancelled with effect from 1 July 2009.

30 June 2009

By order of



J. MATEPARAE
Lieutenant General
Chief of Defence Force

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ARMED FORCES DISCIPLINE ACT 1971

Public Act 1971 No 53

Date of assent 12 November 1971

Incorporating

Armed Forces Discipline Amendment Act (No 2) 2007

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An Act to consolidate and amend certain enactments of the Parliament of New Zealand and the Parliament of the United Kingdom relating to the discipline of Her Majesty's Armed Forces of New Zealand, and to provide for the discipline of and the administration of justice within those forces

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

1 Short Title and commencement

- (1) This Act may be cited as the Armed Forces Discipline Act 1971.
- (2) This Act shall come into force on a date to be fixed by the Governor-General by Order in Council.

2 Interpretation

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

Able rank, in relation to the Navy, includes ordinary rank and apprentices

Accused, in relation to a person subject to this Act, means a person charged with having committed an offence against this Act

Acquittal includes an acquittal on account of insanity; and acquitted has a corresponding meaning

Aircraft has the meaning assigned to that term by section 2(1) of the Defence Act 1990

Aircraft material includes—

- (a) Parts of, and components of or accessories for, aircraft, whether for the time being in aircraft or not:
- (b) Engines, armaments, ammunition, and bombs and other missiles of any description in, or for use in, aircraft:
- (c) Any other gear, apparatus, or instruments in, or for use in, aircraft:
- (d) Any apparatus used in connection with the taking-off or landing of aircraft or for detecting the movement of aircraft:
- (e) Any fuel used for the propulsion of aircraft and any material used as a lubricant for aircraft or aircraft material:

Air Force means the Royal New Zealand Air Force constituted under section 11(5) of the Defence Act 1990

air force base has the meaning assigned to that term by section 2(1) of the Defence Act 1990

airman has the meaning assigned to that term by section 2(1) of the Defence Act 1990

allied force means a force or part of a force of another country acting in cooperation with a part of the Armed Forces

Armed Forces means the Navy, the Army, and the Air Force collectively; and includes any branch, corps, command, formation, unit, or other part of the Armed Forces; but does not include any part of the cadet forces

Armed Forces Canteen Council means the Armed Forces Canteen Council constituted under the Armed Forces Canteens Act 1948

armoured fighting vehicle includes a track-based self-propelled gun or missile

Army means the New Zealand Army constituted under section 11(4) of the Defence Act 1990

army camp has the meaning assigned to that term by section 2(1) of the Defence Act 1990

Authority means the Reconsidering Authority established under section 151

basic pay, in relation to a member of the Armed Forces, means the daily amount payable to the member as determined by the Chief of Defence Force, but excluding allowances

before the enemy, in relation to any person subject to this Act, means that he is in the presence or vicinity of the enemy, or is engaged in any action or operation against the enemy, or is under orders to be prepared for any action or operation by or against the enemy

cadet forces means the cadet forces raised and maintained under Part 6 of the Defence Act 1990

Chief Judge means the Chief Judge of the Court Martial

Chief of Defence Force means the officer appointed under section 8 of the Defence Act 1990

civil court in relation to any offence, means a court exercising ordinary criminal jurisdiction in New Zealand; and includes a court of summary jurisdiction

civil custody means the custody of the police or other civil authority authorised to retain persons in civil custody; and includes confinement in a civil prison

claim of right has the same meaning as it has in section 2(1) of the Crimes Act 1961

commanding officer—

(a) means—

- (i) an officer for the time being appointed or authorised to be a commanding officer for the purposes of this Act by a superior commander:
- (ii) an officer who is named as a commanding officer under section 16:
- (iii) the officer who is in command of one of Her Majesty's New Zealand ships in commission (other than a tender or a boat):
- (iv) the officer who is in command of one of Her Majesty's New Zealand naval establishments in commission:

- (v) the officer who is in command of a ship declared by the Chief of Defence Force, the Chief of Navy, the Chief of Army, or the Chief of Air Force to be a service ship:
 - (vi) the officer who is in command of a battalion or regiment:
 - (vii) an officer of a force of another State that is 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 a superior commander; but
- (b) does not include any midshipman or officer cadet or chaplain

Commonwealth force means a naval, military, or air force raised in any part of the Commonwealth

competent service authority—

- (a) means every superior commander; and
- (ab) includes every judge; and
- (b) includes any officer, not below the rank of lieutenant commander in the Navy, major in the Army, or squadron leader in the Air Force, appointed as a competent service authority by a superior commander; but
- (c) does not include any chaplain

controlled drug means a controlled drug within the meaning of the Misuse of Drugs Act 1975

corps means such part of the Army as may from time to time be declared by Defence Force Order to be a corps for the purposes of this Act

Court Martial means the Court Martial of New Zealand established under section 8 of the Court Martial Act 2007

decoration means the insignia of any decoration or order, or any medal, clasp, or good conduct badge; and includes any miniature of any of them

defence area has the meaning assigned to that term by section 2(1) of the Defence Act 1990

Defence Force Orders means orders issued under section 206 of this Act or section 27 of the Defence Act 1990

dental practitioner means a health practitioner who is, or is deemed to be, registered with the Dental Council established by section 114(2) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of dentistry

Deputy Chief Judge means a Deputy Chief Judge of the Court Martial

detachment commander,—

- (a) in relation to the Navy, means an officer who is for the time being posted, or authorised by his or her commanding officer to be, in command of—
 - (i) a tender or boat; or

- (ii) a body of persons stationed or employed at a distance from the ship or establishment to which they belong; and
- (b) in relation to the Army and the Air Force, means an officer who is for the time being authorised by his or her commanding officer to act as detachment commander of a part of a unit stationed or employed at a distance from its unit headquarters; but
- (c) does not include any midshipman or officer cadet or chaplain

detainee means a person under a sentence that includes the punishment of detention imposed under this Act by the Court Martial or a disciplinary officer

detention quarter means a building or part of a building set aside under this Act as a detention quarter

Director of Military Prosecutions means the person appointed under section 101E

disciplinary officer—

- (a) means any officer who exercises the summary powers of discipline under Part 5; but
- (b) does not include any chaplain

Discipline Committee means the Armed Forces Discipline Committee established under section 160

dismissed from Her Majesty's Service, in relation to a member of the Armed Forces sentenced for an offence against this Act, means that he is dismissed from the service to which he belongs; and **dismissal from Her Majesty's Service** has a corresponding meaning

enemy has the meaning assigned to that term by section 2(1) of the Defence Act 1990

is liable means is liable on conviction by the Court Martial

joint force means a joint force established under section 12(1) of the Defence Act 1990

Judge—

- (a) means a Judge of the Court Martial; and
- (b) includes the Chief Judge and a Deputy Chief Judge

Judge Advocate General means the Judge Advocate General of the Armed Forces appointed under section 203 of this Act

lawyer means a person who holds a current practising certificate as a barrister or as a barrister and solicitor

leading aircraftman includes an aircraftman, a general service hand, and an Air Force cadet

medical practitioner means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by

section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine.

member of the Armed Forces means a person subject to this Act by virtue of section 6, or section 9, or section 10, or section 11 of this Act

member of the Court Martial means a Judge or a military member

Military member, in relation to the Court Martial, means an officer or a warrant officer who is assigned by the Registrar of the Court Martial to be a member of that Court

military tribunal means any of the following

- (a) a disciplinary officer:
- (b) the Summary Appeal Court:
- (c) the Court Martial

Minister means the Minister of Defence; and includes any other Minister for the time being lawfully exercising his powers

mutiny means a combination between 2 or more persons subject to service law, or between persons of whom at least 2 are persons subject to service law, to overthrow or resist lawful authority in a part of the Armed Forces or in a force of another country acting in cooperation with a part of the Armed Forces

naval establishment and **naval ship** have the meanings assigned to those terms by section 2(1) of the Defence Act 1990

Navy means the New Zealand Naval Forces constituted under section 11(3) of the Defence Act 1990

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

non-commissioned officer has the meaning assigned to that term by section 2(1) of the Defence Act 1990

oath includes an **affirmation**; and references to swearing shall be construed accordingly

officer has the meaning assigned to that term by section 2(1) of the Defence Act 1990

part of the Commonwealth means a country (other than New Zealand) which is a member of the Commonwealth of Nations; and includes every territory for whose international relations the Government of any such country is responsible

prescribed means prescribed by this Act, or by rules of procedure or regulations made under this Act, or by regulations made under the Defence Act 1990 or by Defence Force Orders issued under this Act or the Defence Act 1990

president means the president of a court of inquiry

prison means any prison established or deemed to be established under the Corrections Act 2004

private includes a gunner, trooper, sapper, signalman, driver, or craftsman

provost officer—

- (a) means a provost marshal, assistant provost marshal, or other officer of the Navy, the Army, or the Air Force duly appointed to exercise the functions conferred by this Act on a provost officer; and
- (b) includes a person duly attached or lent as a provost officer to, or seconded for service or appointed for duty as a provost officer with, any part of the Armed Forces; but
- (c) does not include any midshipman or officer cadet or chaplain

rank, in relation to any member of the Armed Forces, means the rank held by him for the time being, whether substantive, temporary, acting, or honorary

rating has the meaning assigned to that term by section 2 of the Defence Act 1971

record officer means any person who has custody of any records of any of the Armed Forces and whose duty it is to make or record entries in those records or to take extracts from them

relative rank means the appropriate rank prescribed under section 17 of the Defence Act 1990

Registrar means the Registrar of the Summary Appeal Court

Rules of procedure means rules of procedure made under section 150 of this Act

service means either the Navy, the Army, or the Air Force; and, when used adjectivally, means belonging or pertaining to, or connected with, one or more of those services or any part of one or more of those services

service law includes the provisions of this Act and the law of another country whose forces are acting in cooperation with a part of the Armed Forces which provides for the disciplinary control of that country's forces

service penal establishment includes—

- (a) Any service prison or detention quarter (whether in New Zealand or elsewhere); and
- (b) Any prison, naval detention quarters, military or air force prison, detention barrack, corrective training centre, detention room, cell, or similar establishment set aside in New Zealand or elsewhere for the confinement of members of the Armed Forces of an allied force undergoing punishment.

service prison means a building or part of a building set aside under this Act as a service prison

service prisoner means a person under a sentence that includes imprisonment imposed under this Act by the Court Martial

service property means any property belonging to the Crown in right of New Zealand; and also includes any other property (whether belonging to the Crown or not) used by or in the possession or under the control of the Armed Forces or an allied force, or a service mess, band, club, institution, or the Armed Forces Canteen Council

ship has the meaning assigned to that term by section 2 of the Defence Act 1971

soldier has the meaning assigned to that term by section 2 of the Defence Act 1971

stealing has the meaning assigned to that term by section 219 of the Crimes Act 1961

subject to this Act, in relation to any person, means that he is subject to the law established by this Act

subordinate commander means an officer to whom all or any of the powers to act as a disciplinary officer have been delegated under section 106

Summary Appeal Court means the Summary Appeal Court of New Zealand established under section 118

superior commander—

- (a) means any of the following:
- (i) the Chief of Defence Force; or
 - (ii) the Vice Chief of Defence Force; or
 - (iii) the Chief of Navy; or
 - (iv) the Chief of Army; or
 - (v) the Chief of Air Force; or
 - (vi) the Commander Joint Forces New Zealand; or
 - (vii) an officer who is not below the rank of captain in the Navy, colonel in the Army, or group captain in the Air Force and who is appointed by any of the officers referred to in subparagraphs (i) to (vi) to act as a disciplinary officer under Part 5 in respect of charges against officers who—
 - (A) are not below the rank of lieutenant commander in the Navy, major in the Army, or squadron leader in the Air Force; and
 - (B) are under his or her command; and
 - (C) hold a rank at least 2 grades below his or her own rank; or
 - (viii) an officer of a force of another State that is declared to be serving together with a New Zealand force under section 23B of the Defence Act 1990 who is not below the relative rank of captain in the Navy, colonel in the Army, or group captain in the Air Force and who is authorised by the Chief of Defence Force to act as a disciplinary officer under Part 5 in respect of charges against other officers who—
 - (A) are not below the rank of lieutenant commander in the Navy, major in the Army, or squadron leader in the Air Force; and
 - (B) are under his or her command; and
 - (C) hold a relative rank at least 2 grades below his or her own rank; but

(b) does not include a commanding officer or chaplain

superior officer, in relation to any member of the Armed Forces,—

- (a) means another member holding a higher rank (not being an honorary rank); and
- (b) includes another member of equal rank (except an honorary rank) who is entitled to exercise powers of command over him or her; but
- (c) does not include,—
 - (i) for the purposes of sections 35, 36, and 38, a midshipman or an officer cadet except if, in the course and for the purposes of the training he or she is undergoing or the instruction he or she is receiving, he or she is posted to a naval ship or he or she is authorised in writing by his or her commanding officer to exercise powers of command;
 - (ii) for the purposes of section 38, a chaplain

visiting force has the same meaning as in section 4 of the Visiting Forces Act 2004.

warrant officer has the meaning assigned to that term by section 2 of the Defence Act 1971.

- (2) For the purposes of this Act, in all matters relating to the sailing or handling of a ship or the flying or handling of an aircraft, or affecting the safety of a ship or aircraft every person subject to this Act who is in or near the ship or aircraft shall, whatever his rank or whatever his rank is deemed to be, be under the direction of the person in command of the ship or aircraft, as the case may be, whether the person in command is a member of the Armed Forces or not.
- (3) In this Act and in any instrument made under this Act, unless the context otherwise requires, mention of a person by reference to the designation of his office or appointment includes a reference to any person who for the time being is lawfully performing the functions or duties of, or acting in, that office or appointment—
 - (a) by virtue of a permanent, temporary, or acting appointment; or
 - (b) by assumption of the functions or duties of the office or appointment pursuant to this Act or any other Act; or
 - (c) pursuant to an order, or to a custom of the service which pertains to the office or appointment.
- (4) In this Act, a reference to the relationship between rank grades is a reference to the relationship that is to be regarded as existing between those rank grades as prescribed under section 17 of the Defence Act 1990.
- (5) In this Act, a reference to this Act includes, unless the context otherwise requires, a reference to the Court Martial Act 2007.
- (6) In this Act, a reference to counsel for an accused includes, unless the context otherwise requires, a reference to a member of the Armed Forces who undertakes the defence of an accused in the Court Martial.
- (7) If a charge against a person in respect of an offence is tried summarily, or otherwise dealt with, under Part 5 or 5A, the following paragraphs apply for the

purposes of references in this Act to conviction, acquittal, sentence or passing sentence, or to any related expressions:

- (a) if a disciplinary officer finds the accused guilty on the charge, that must be treated as a conviction:
- (b) any punishment imposed by a disciplinary officer, or by the Summary Appeal Court, must be treated as a sentence passed by the officer or Summary Appeal Court:
- (c) if a disciplinary officer dismisses the charge or finds the accused not guilty on the charge, or the Summary Appeal Court directs a finding of not guilty of having committed the offence to be entered, that must be treated as an acquittal.

3 Special provisions relating to the interpretation, etc, of Part 2

- (1) All the provisions of Part 3 of the Crimes Act 1961, so far as they are applicable and with any necessary modifications, shall apply in respect of every offence against this Act as if it were a crime within the meaning of section 2 of that Act.
- (1A) The following provisions of the Sentencing Act 2002 apply to proceedings under this Act and to proceedings on appeal from any decision under this Act:
 - (a) section 6 (which provides that penal enactments are not to have retrospective effect to the disadvantage of an offender):
 - (b) sections 102 to 104 (which relate to the sentencing of offenders convicted of murder).
- (2) Where an accused charged with an offence against this Act relies for his defence on any excuse, exception, exemption, or qualification contained in the provision creating the offence, whether or not the excuse, exception, exemption, or qualification accompanies the description of the offence charged, the accused shall, in order to establish the defence, prove the excuse, exception, exemption, or qualification on a balance of probabilities; and this subsection shall apply notwithstanding that the charge contains an allegation negating the excuse, exception, exemption, or qualification.

4 Extraterritorial operation of this Act

- (1) This Act applies to all acts done or omitted whether in New Zealand or elsewhere.
- (2) Except as provided in section 21 of this Act, this Act applies to persons who are subject to the law established by this Act, whether they are within New Zealand or not.

5 Active service

- (1) For the purposes of this Act, any part of the Armed Forces is on active service when—
 - (a) there is for the time being in force an active service order posting it for active service; or

- (b) it is engaged in operations against the enemy; or
 - (c) it is in armed occupation of any foreign country.
- (2) For the purposes of this Act, every member of the Armed Forces is on active service when—
- (a) there is for the time being in force an active service order posting that member for active service; or
 - (b) the part of the Armed Forces with which that member is serving or which that member is visiting is an active service.
- (3) No person or part of the Armed Forces that is for the time being on active service shall cease to be on active service until the issue of an active service order to that effect.
- (4) For the purposes of this section, the term active service order means an order of the Chief of Defence Force, or of an officer authorised by the Chief of Defence Force, for the purpose of—
- (a) posting a part of the Armed Forces or any member of the Armed Forces on active service; or
 - (b) declaring that a part of the Armed Forces or any member of the Armed Forces has ceased to be on active service.

PART 1

Jurisdiction

6 Persons in the Navy, the Army, and the Air Force

- (1) The following members of the Navy shall be subject to this Act:
- (a) all officers of the Royal New Zealand Navy, the Royal New Zealand Naval Reserve, the Royal New Zealand Naval Volunteer Reserve, or the Naval Reserves, or of any additional naval force raised in accordance with section 11(3)(e) of the Defence Act 1990:
 - (b) all ratings of the Royal New Zealand Navy:
 - (c) all ratings of the Royal New Zealand Naval Reserve, the Royal New Zealand Naval Volunteer Reserve, or the Naval Reserves who for the time being are—
 - (i) undergoing or required to undergo training, whether in uniform or not; or
 - (ii) performing or required to perform any naval duty, whether in uniform or not; or
 - (iii) in or on any naval ship, aircraft, vehicle, or establishment, or performing any work for the Navy; or
 - (iv) going to or from any place of parade, training, or naval duty; or

- (v) absent on leave or without leave from any naval ship, aircraft, vehicle, or establishment, or from any work being performed by them for the Navy; or
 - (vi) declared liable for continuous service pursuant to a Proclamation issued under section 39 or section 40 of the Defence Act 1990; or
 - (vii) called out under any enactment in aid of the civil power; or
 - (viii) called out under any enactment to render assistance in a disaster; or
 - (ix) present, whether in uniform or not, when members of the Armed Forces are parading or undergoing training; or
 - (x) in uniform:
- (d) all ratings of any additional naval force raised in accordance with section 11(3)(e) of the Defence Act 1990.
- (2) The following members of the Army shall be subject to this Act:
- (a) all officers of the Regular Force, the Territorial Force, the Army Reserve, or any additional New Zealand Army force raised in accordance with section 11(4)(d) of the Defence Act 1990:
 - (b) all soldiers of the Regular Force:
 - (c) all soldiers of the Territorial Force and the Army Reserve who for the time being are—
 - (i) undergoing or required to undergo training, whether in uniform or not; or
 - (ii) performing or required to perform any army duty, whether in uniform or not; or
 - (iii) in or on any army camp, unit, ship, aircraft, or vehicle, or performing any work for the Army; or
 - (iv) going to or from any place of parade, training, or army duty; or
 - (v) absent on leave or without leave from any army camp, unit, ship, aircraft, or vehicle, or from any work being performed by them for the Army; or
 - (vi) declared liable for continuous service pursuant to a Proclamation issued under section 39 or section 40 of the Defence Act 1990; or
 - (vii) called out under any enactment in aid of the civil power; or
 - (viii) called out under any enactment to render assistance in a disaster; or
 - (ix) present, whether in uniform or not, when members of the Armed Forces are parading or undergoing training; or
 - (x) in uniform:
 - (d) all soldiers of any additional New Zealand army force raised in accordance with section 11(4)(d) of the Defence Act 1990.

- (3) The following members of the Air Force shall be subject to this Act:
- (a) all officers of the Regular Air Force, the Territorial Air Force, or the Air Force Reserve, or of any additional air force raised in accordance with section 11(5)(d) of the Defence Act 1990:
 - (b) all airmen of the Regular Air Force:
 - (c) all airmen of the Territorial Air Force or the Air Force Reserve who for the time being are—
 - (i) undergoing or required to undergo training, whether in uniform or not; or
 - (ii) performing or required to perform any air force duty, whether in uniform or not; or
 - (iii) in or on any air force base, unit, ship, aircraft, or vehicle, or performing any work for the Air Force; or
 - (iv) going to or from any place of parade, training, or air force duty; or
 - (v) absent on leave or without leave from any air force base, unit, ship, aircraft, or vehicle, or from any work being performed by them for the Air Force; or
 - (vi) declared liable for continuous service pursuant to a Proclamation issued under section 39 or section 40 of the Defence Act 1990; or
 - (vii) called out under any enactment in aid of the civil power; or
 - (viii) called out under any enactment to render assistance in a disaster; or
 - (ix) present, whether in uniform or not, when members of the Armed Forces are parading or undergoing training; or
 - (x) in uniform:
 - (d) all airmen of any additional air force raised in accordance with section 11(5)(d) of the Defence Act 1990.

7 *Repealed*

8 **Members of the Armed Forces attached to forces of another country remain subject to this Act**

A member of the Armed Forces who is temporarily attached to the forces of another country, or who is a member of a United Nations force, shall not cease to be subject to this Act by reason only of his being so temporarily attached.

9 **Members of other forces attached to Armed Forces under section 23A of Defence Act 1990**

- (1) 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.

- (2) However, the Governor-General may, by Order in Council,—
- (a) exempt all or any class of the persons specified in subsection (1) from all or any of the provisions of this Act; or
 - (b) modify any of the provisions of this Act so far as they relate to all or any class of the persons specified in subsection (1).

10 Volunteers

- (1) Subject to subsection (2) of this section, where any person, not otherwise subject to this Act, volunteers or engages for service, training, or exercise with any part of the Armed Forces (not being a person or a member of a class of persons excepted from the provisions of this subsection by Defence Force Order), he shall be subject to this Act during the period of service, training, or exercise.
- (2) Subject to any Defence Force Order to the contrary, where, by virtue of this section, this Act applies to a person who is not a member of the Armed Forces, the following provisions shall apply:
- (a) if the person holds a rank in an armed force, this Act shall, subject to such exceptions and modifications as may be prescribed, apply to him in the same manner and to the same extent as it applies to a person holding the corresponding rank in the Armed Forces:
 - (b) in any other case, this Act shall, subject to such exceptions and modifications as may be prescribed, apply to him in the same manner and to the same extent as it applies to a rating of able rank or to a private or a leading aircraftman.

11 Trainees

- (1) Subject to subsection (2) of this section, where any person, not otherwise being subject to this Act, is a member of any armed force other than the Armed Forces of New Zealand (not being a force excepted from the provisions of this subsection by Defence Force Order), he shall be subject to this Act during any period when he is under orders to carry out any training or exercise in any defence area or ship or with any unit or other part of the Armed Forces.
- (2) Subject to any Defence Force Order to the contrary, where, by virtue of this section, this Act applies to a person who is not a member of the Armed Forces of New Zealand, the following provisions shall apply:
- (a) if the person holds a rank in an armed force, this Act shall, subject to such exceptions and modifications as may be prescribed, apply to him in the same manner and to the same extent as it applies to a person holding the corresponding rank in the Armed Forces:
 - (b) in any other case, this Act shall, subject to such exceptions and modifications as may be prescribed, apply to him in the same manner and to the same extent as it applies to a rating of able rank or to a private or a leading aircraftman.

12 Prisoners of war

- (1) Subject to the provisions of the Geneva Conventions Act 1958 and of subsection (2) of this section, a prisoner of war in the custody of any part of the Armed Forces shall be subject to this Act.
- (2) The following sections of this Act do not apply to prisoners of war:
 - (a) section 28 (cowardly behaviour):
 - (b) section 30 (offences in relation to capture by the enemy):
 - (c) paragraph (c) of subsection (5) of section 34 (threat of force against a person who is on guard duty or watch):
 - (d) section 33 (failure to suppress or report mutiny):
 - (e) paragraph (b) of subsection (1) of section 37 (refusing to assist a provost officer or person assisting a provost officer):
 - (f) section 47 (desertion).

13 Spies, etc

Where a person (being a person not otherwise subject to this Act) is alleged to have committed an offence against section 26 or section 27 of this Act, that person shall, on the recording of the allegation in the form of a charge, be deemed to be subject to this Act,—

- (a) until the charge against that person is, on investigation, dismissed by a disciplinary officer; or
- (b) until the disciplinary officer finds that person not guilty on the charge; or
- (ba) until that person is acquitted by the Court Martial; or
- (c) If that person is convicted, until the sentence has been carried out or that person has served his sentence (including any further sentence imposed upon him while serving that sentence) or that person is released in due course of law from any imprisonment or detention imposed under the sentence.

14 Commanding officer in relation to prisoners of war and spies

Every person subject to this Act by virtue of section 12 or section 13 of this Act shall, for the purposes of this Act, be deemed to be under the command of the commanding officer of the defence area or ship in which, or the unit or other part of the Armed Forces with which, he is for the time being held in custody.

15 Application of Act to passengers in HM ships, aircraft, and vehicles

Where any person (being a person who would not, apart from this section, be subject to this Act) is for the time being a passenger in any ship, aircraft, or vehicle of the Armed Forces, whether in New Zealand or elsewhere, that person shall be subject to this Act to such extent as may be prescribed; and the provisions of this Act, subject to such exceptions and modifications as may be prescribed, shall apply to him accordingly.

16 Certain civilians closely associated with Armed Forces subject to this Act

- (1) Subject to subsections (5) to (7) of this section, where any New Zealand force is on active service—
- (a) every person employed in the service of that force; and
 - (b) every person employed in the service of a part of that force or any member of the force; and
 - (c) every person who accompanies the force or any part of it—
- shall, while so employed or while accompanying the force or part of the force, as the case may be, be subject to this Act in the same manner and to the same extent as if he were a rating, soldier, or airman, unless there is for the time being in force a certificate issued by the officer commanding that part of the force with which he is employed or which he is accompanying stating that he is entitled to be treated as if he were an officer, in which case he shall, so long as the certificate remains in force, be treated as if he were an officer for the purposes of any proceedings against him for an offence against this Act.
- (2) Every person who is subject to this Act by virtue of subsection (1) of this section shall be deemed to be on active service.
- (3) Without limiting the provisions of subsection (1) of this section, but subject to subsections (4) to (7) of this section, any member of a class of persons specified in Schedule 1 to this Act who is for the time being within the limits of the command of any officer commanding any New Zealand force outside New Zealand shall, while within those limits, be subject to this Act in the same manner and to the same extent as if he were a rating, soldier, or airman, unless there is for the time being in force a certificate issued by the officer commanding that part of the force with which he is employed or which he is accompanying stating that he is entitled to be treated as if he were an officer, in which case he shall, so long as the certificate remains in force, be treated as an officer for the purposes of any proceedings against him for an offence against this Act.
- (4) The provisions of Parts 2 and 3 of this Act shall not apply to persons who are subject to this Act by virtue only of subsection (3) of this section except—
- (a) section 37, sections 39 and 40, sections 44 and 45, sections 70, 71, and 74, and subsections (5) and (6) of section 34:
 - (b) sections 75 to 77, so far as they relate to offences against those sections specified in paragraph (a) of this subsection:
 - (c) sections 78 to 80 and sections 85 to 87A.
- (5) Every person to whom subsections (1) and (3) of this section apply shall for the purposes of this Act be deemed to be under the command of any officer who may for the time being be named as that person's commanding officer by the officer commanding the New Zealand force which is on active service or is outside New Zealand, as the case may be.
- (6) All the provisions of this Act relating to arrest, investigation of offences, summary disposal of charges, trial and punishment of offences, and insanity, and, so far as they are applicable, the provisions of Part 11 of this Act, shall, subject to the modifications specified in subsection (7) of this section, and to such orders, not

inconsistent with this Act, as may be prescribed by the Chief of Defence Force, apply to those persons who are subject to this Act by virtue of this section.

- (7) The modifications to which subsection (6) of this section refers are as follows:
- (a) - (c) *Repealed*
- (d) any person to whom this section applies may, on being convicted of an offence against this Act, be fined a sum not exceeding \$3,000 in addition to or instead of any other penalty that may be imposed on him; but no other punishment less severe than imprisonment may be imposed on him:
- Provided that where any such person is tried summarily, or otherwise dealt with, under Part 5, no punishment other than a fine not exceeding \$1,000, may be imposed:
- (e) if a disciplinary officer finds an accused guilty of a charge, he or she must not record a finding until the accused has been given the right to elect trial by the Court Martial and, if the accused so elects,—
- (i) a finding must not be recorded; and
- (ii) the officer must take the steps that are necessary to have the charge tried by the Court Martial:
- (f) the amount of compensation that any such person may be ordered to pay under section 86 must not exceed \$1,000, whether the order is made by the Court Martial or a disciplinary officer:
- (g) any such person may be arrested—
- (i) by a provost officer; or
- (ii) by a non-commissioned officer exercising authority under a provost officer; or
- (iii) by any person acting on the order of an officer.
- (8) Any certificate issued by an officer under this section may at any time be revoked by that officer or by any other officer of an equivalent or higher rank.
- (9) Nothing in this section shall apply to any person who is subject to service law by virtue of any other section of this Act.

17 Certain persons sentenced under this Act to remain subject to this Act

- (1) Where a member of the Armed Forces—
- (a) is sentenced to a term of imprisonment or detention by the Court Martial or to a term of detention by a disciplinary officer; and
- (b) is by virtue of that sentence deemed to be dismissed from Her Majesty's Service or is sentenced to dismissal from Her Majesty's Service or is discharged from the service of the Armed Forces to which he belongs—
- he shall remain subject to this Act until he has served the sentence of imprisonment or detention or any further sentence of imprisonment or detention imposed in accordance with subsection (1) or subsection (4) of section 178 of this Act or has been released from that imprisonment or detention in due course of law.

- (2) Where a person (other than a member of the Armed Forces) who is subject to this Act is sentenced by the Court Martial to a term of imprisonment and serves his sentence in a service penal establishment, he shall remain subject to this Act until he has served the sentence or is released from that imprisonment in due course of law.

18 Trial and punishment of person who has ceased to be subject to this Act

- (1) Where it is alleged that a person who has ceased to be subject to this Act has committed an offence while he was so subject, he may, subject to section 20 of this Act, be charged under this Act with the commission of that offence, and the charge may be tried by the Court Martial.
- (2) On the recording of the allegation in the form of a charge, the person charged shall be deemed—
- (a) to be a person subject to this Act until the charge is disposed of; and
 - (b) to hold the same status and rank as he held immediately before he ceased to be a person subject to this Act.
- (3) Where, by virtue of this section, a person is to be deemed to be subject to this Act—
- (a) he is not liable to arrest under this Act except under a warrant; and
 - (b) for the purposes of investigation and trial of the charge and his punishment, if convicted, every reference in this Act or in the rules of procedure or in regulations made under this Act, or in orders issued by the Chief of Defence Force, to his commanding officer shall be read as a reference to the officer who, in accordance with any such orders, is deemed to be his commanding officer for those purposes.
- (4) Where a person to whom this section applies is convicted by the Court Martial of an offence and sentenced to a term of imprisonment or detention, he shall be deemed to be subject to this Act until he has served his sentence or is lawfully released in due course of law from imprisonment or detention, as the case may be.

19 Status and rank of person deemed to be subject to this Act when imprisoned or detained

Where, by virtue of section 17 or section 18 of this Act, a person is deemed to be subject to this Act during any term of imprisonment or detention the following provisions shall apply:

- (a) if, before he was sentenced to dismissal from Her Majesty's Service, or was sentenced to imprisonment involving dismissal from Her Majesty's Service, or was discharged or otherwise ceased to be a member of the Armed Forces, that person was a member of the Navy, the provisions of this Act shall apply to him in the same manner and to the same extent as they apply to a rating of able rank:
- (b) if, before he was sentenced to dismissal from Her Majesty's Service, or was sentenced to imprisonment involving dismissal from Her Majesty's Service, or was discharged or otherwise ceased to be a member of the Armed Forces, that person was a member of the Army, the provisions of this Act

shall apply to him in the same manner and to the same extent as they apply to a soldier holding the rank of private:

- (c) if, before he was sentenced to dismissal from Her Majesty's Service, or was sentenced to imprisonment involving dismissal from Her Majesty's Service, or was discharged or otherwise ceased to be a member of the Armed Forces, that person was a member of the Air Force, the provisions of this Act shall apply to him in the same manner and to the same extent as they apply to an airman holding the rank of leading aircraftman:
- (d) if, by virtue of subsection (2) of section 17 of this Act, a person continues to be subject to this Act for the duration of the term of his imprisonment or detention, the provisions of this Act shall apply to him in the same manner and to the same extent as if he were a soldier holding the rank of private.

20 Limitation of time within which charges may be dealt with summarily or tried under this Act

- (1) A charge alleging that a person has committed an offence against this Act may be tried summarily, or otherwise dealt with, under Part 5 or tried by the Court Martial only if it is so tried or dealt with, or referred to the Director of Military Prosecutions, within 3 years after the alleged commission of the offence.

- (1A) Subsection (1) is subject to subsections (2) to (6).

- (2) Any time during which a person accused of an offence was a prisoner of war, or has been declared by a court of inquiry under section 201 of this Act to have been absent without leave or other sufficient reason or was serving a sentence of imprisonment in a civil prison shall not be counted towards completion of the period of 3 years referred to in subsection (1) of this section.

- (3) Notwithstanding anything to the contrary in this section, where—

- (a) any person subject to this Act is charged with having committed an offence against section 74 of this Act in relation to any act or omission which would, if the act or omission had taken place in New Zealand, have constituted a civil offence within the meaning of that section; and
- (b) the Act constituting that civil offence or, if that Act does not so provide, any other Act provides for a limited period within which an indictment or information may be laid in respect of that offence—

that period of limitation shall apply in respect of the person charged with having committed an offence against the said section 74.

- (4) A charge alleging that a person who, by virtue of section 18 of this Act, is to be deemed to be subject to this Act has committed an offence against this Act while he was in fact so subject shall not be tried by the Court Martial unless—

- (a) the charge is referred to the Director of Military Prosecutions within 6 months after the person ceased in fact to be subject to this Act; or
- (b) the offence is against any of the following provisions of this Act:

- (i) subsection (1) of section 23 (aiding the enemy with intent to assist the enemy):

- (ii) subsection (1) of section 24 (communicating with the enemy with intent to assist the enemy):
 - (iii) section 26 (spying):
 - (iv) section 32 (mutiny):
 - (v) section 33 (failure to suppress or report a mutiny):
 - (vi) section 47 (desertion):
 - (vii) section 74 (an offence against the civil law of New Zealand).
- (5) A charge alleging that a member of the Armed Forces who has ceased to be employed on full-time service has committed an offence against this Act while he was so employed shall not be tried summarily, or otherwise dealt with, under Part 5 or be tried by the Court Martial unless—
- (a) the person is so tried or dealt with or the charge is referred to the Director of Military Prosecutions within 6 months after the person ceased to be so employed; or
 - (b) the offence is against any of the following provisions of this Act:
 - (i) subsection (1) of section 23 (aiding the enemy with intent to assist the enemy):
 - (ii) subsection (1) of section 24 (communicating with the enemy with intent to assist the enemy):
 - (iii) section 26 (spying):
 - (iv) section 32 (mutiny):
 - (v) section 33 (failure to suppress or report a mutiny):
 - (vi) section 47 (desertion):
 - (vii) section 74 (an offence against the civil law of New Zealand).
- (6) A charge alleging that a person has committed an offence against—
- (a) subsection (1) of section 23 (aiding the enemy with intent to assist the enemy); or
 - (b) subsection (1) of section 24 (communicating with the enemy with intent to assist the enemy); or
 - (c) section 26 (spying); or
 - (d) section 32 (mutiny); or
 - (e) section 33 (failure to suppress or report a mutiny); or
 - (f) section 47 (desertion)—

of this Act may be tried by the Court Martial at any time after the alleged commission of the offence.

21 Person may not be tried under this Act and under the civil law in respect of same act or omission

- (1) Where under this Act a person—
- (a) has been charged with an offence before the Court Martial and has been acquitted or convicted of the offence; or
 - (b) has been charged with an offence before a disciplinary officer and the charge was, on investigation, dismissed, or he was acquitted or found guilty of the offence; or
 - (c) has had an offence taken into consideration by the Court Martial in sentencing him for another offence—
- he shall not subsequently be charged before a civil court with having committed any offence that is substantially the same as the offence of which he was acquitted, convicted, or found guilty or that is substantially the same as the offence contained in the charge that was dismissed, or that is substantially the same as the offence taken into consideration, as the case may be.
- (2) Except as provided in subsection (1) of this section, nothing in this Act shall restrict the jurisdiction of a civil court to try a charge alleging that a person subject to this Act has committed an offence against any Act other than this Act.
- (3) Subsection (4) applies if, whether in New Zealand or elsewhere, a person—
- (a) has been acquitted or convicted by a competent court of ordinary criminal jurisdiction, or by a court-martial or other military tribunal of the armed forces of another State, of an offence against a law in force in the country or place in which that court, court-martial, or tribunal has jurisdiction; or
 - (b) has had an offence taken into consideration by that court, court-martial, or tribunal in sentencing him or her for another offence; or
 - (c) has been found by that court, court-martial, or tribunal to be unfit to stand trial in relation to an offence and the proceedings against that person in the course of which the finding was made have been stayed.
- (4) The person must not subsequently be charged before the Court Martial or before a disciplinary officer with an offence against this Act that is substantially the same as—
- (a) the offence of which he or she was acquitted or convicted; or
 - (b) the offence that was taken into consideration; or
 - (c) the offence that was the subject of the stayed proceedings.
- (5) For the purposes of this section,—
- (a) a reference to an offence that is substantially the same as another offence is a reference to an offence of which the accused could have been convicted, under this Act or otherwise, on the same facts;
 - (b) a reference to a person having been convicted by the Court Martial includes a reference to a person in respect of whom that Court found the charge proved but did not convict him or her:

- (c) a reference to a person having been convicted by a competent court of ordinary criminal jurisdiction or by a court-martial or other military tribunal of the armed forces of another State includes a reference to a person in respect of whom that court, court-martial, or tribunal found the charge proved but did not convict him or her:
- (d) a person must not be considered to have had an offence taken into consideration if the sentence passed on him or her is subsequently quashed, or if the decision to take the offence into consideration has been annulled by an appellate court:
- (e) a person is deemed to have been found guilty of an offence by a disciplinary officer even if the finding made by that officer has been quashed or the punishment imposed and any order made by the officer was quashed or varied on appeal.

22 Persons cannot be tried under this Act for offences already disposed of

- (1) This section applies if—
 - (a) a person has been charged with having committed an offence against this Act and the charge was, on investigation, dismissed, or he or she was acquitted or found guilty of the offence by a disciplinary officer; or
 - (b) a person has been acquitted or convicted of an offence by the Court Martial; or
 - (c) a person has had an offence taken into consideration by the Court Martial in sentencing him or her for another offence; or
 - (d) the proceedings against a person who was charged with having committed an offence against this Act have been stayed under section 101H; or
 - (e) a person who was charged with having committed an offence against this Act has been found to be unfit to stand trial and the proceedings against that person in the course of which the finding was made have been stayed.
- (2) A subsequent charge alleging that the person committed the offence disposed of in the manner referred to in subsection (1) must not be tried by the Court Martial or tried summarily, or otherwise dealt with, under Part 5.
- (3) For the purposes of this section,—
 - (a) if a person was convicted of an offence by the Court Martial or found guilty of an offence by a disciplinary officer and the conviction or finding was quashed on appeal, he or she is deemed to have been acquitted of the offence by the Court Martial or the disciplinary officer, unless a new trial of the charge of having committed that offence was ordered by an appellate court:
 - (b) a person must not be regarded as having had another offence taken into consideration if the sentence passed on him or her is subsequently quashed, or if the decision to take the offence into consideration has been annulled, by an appellate court.

PART 2

Offences

Offences involving treachery, cowardice, and looting

23 Aiding the enemy

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for life, who, with intent to assist the enemy,—
- (a) abandons or surrenders any place or any ship, aircraft, or armoured fighting vehicle, that it is his duty to defend or to destroy; or
 - (b) causes the capture or destruction by the enemy of any ship, aircraft, or armoured fighting vehicle of the Armed Forces or of an allied force; or
 - (c) engages in conduct which is likely to imperil the success of any operation against the enemy being carried out by a part of the Armed Forces or by an allied force; or
 - (d) provides the enemy with, or permits or enables the enemy to have access to, supplies of any description whatsoever; or
 - (e) harbours or gives comfort or protection to enemy personnel (other than prisoners in custody); or
 - (f) gives a false signal, message, or other communication, or materially alters or interferes with a signal, message, or other communication; or
 - (g) interferes with any apparatus used for giving a signal, message, or other communication; or
 - (h) when ordered by his superior officer to prepare for or carry out an operation against the enemy, or when otherwise under a duty or under lawful orders to do so, fails to use his utmost efforts to carry those orders into effect or to perform that duty, as the case may be; or
 - (i) having been captured by the enemy, serves with or aids the enemy in the prosecution of hostilities against New Zealand or against the Armed Forces or any allied force.
- (2) Every person subject to this Act commits an offence, and is liable to imprisonment for life, who, knowingly and without lawful excuse,—
- (a) abandons or surrenders to the enemy any place, or any ship, aircraft, or armoured fighting vehicle, that it is his duty to defend or to destroy; or
 - (b) causes the capture or destruction by the enemy of any ship, aircraft, or armoured fighting vehicle of the Armed Forces or of an allied force; or
 - (c) engages in conduct which to his knowledge is likely to imperil the success of any operation against the enemy being carried out by a part of the Armed Forces or by an allied force; or
 - (d) provides the enemy with, or permits or enables the enemy to have access to, supplies of any description whatsoever; or

- (e) harbours or gives comfort or protection to enemy personnel (other than prisoners in custody); or
- (f) gives a false signal, message, or other communication, or materially alters or interferes with a signal, message, or other communication, so as to be likely to assist the enemy; or
- (g) interferes with any apparatus used for giving a signal, message, or other communication with the result that the enemy is assisted in the prosecution of hostilities against New Zealand; or
- (h) when ordered by his superior officer to prepare for or carry out an operation against the enemy, or when otherwise under a duty or under lawful orders to do so, fails to use his utmost efforts to carry those orders into effect or to perform that duty, as the case may be; or
- (i) having been captured by the enemy—
 - (i) aids the enemy to carry out measures designed to lower the morale of the Armed Forces or any allied force; or
 - (ii) aids the enemy in any other manner whatsoever unless the act is authorised or required by international law or usage.

24 Communication with the enemy

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for life, who, with intent to assist the enemy,—
 - (a) communicates with or gives intelligence to the enemy; or
 - (b) fails to report any information received by him from or about the enemy that would or might be directly or indirectly useful in the prosecution of hostilities against the enemy.
- (2) Every person subject to this Act commits an offence, and is liable to imprisonment for life, who—
 - (a) without authority, communicates with or gives intelligence to the enemy; or
 - (b) without lawful excuse, fails to report any information received by him from or about the enemy that to his knowledge would or might be directly or indirectly useful in the prosecution of hostilities against the enemy.
- (3) For the purposes of this section, the term intelligence means information that would or might be, or purports to be, directly or indirectly useful to the enemy.

25 Unauthorised disclosure of information

- Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who knowingly, and with knowledge that he is acting without proper authority, communicates to any other person any official information (as defined in section 78A of the Crimes Act 1961), not being official information that is publicly available, or delivers to any other person any object (as defined in that provision of that Act), knowing that the communication of that information or the delivery of that object is likely—
- (a) to prejudice the security or defence of New Zealand; or

- (b) to prejudice the entrusting of information, being information relating directly or indirectly to the security or defence of New Zealand or otherwise of use or interest to the Armed Forces of New Zealand, to the Government of New Zealand on a basis of confidence by—
 - (i) the government of any other country or any agency of such a government; or
 - (ii) any international organisation.

26 Spying in ships or establishments abroad

Every person commits an offence, and is liable to imprisonment for life, who, being on board a naval ship outside New Zealand or within a defence area outside New Zealand, spies for the enemy.

27 Seduction from duty or allegiance

Every person commits an offence, and is liable to imprisonment for life, who, being on board a naval ship outside New Zealand or within a defence area outside New Zealand, seduces or endeavours to seduce a member of the Armed Forces from his duty or from his allegiance to Her Majesty the Queen.

28 Cowardly behaviour

Every person subject to this Act commits an offence, and is liable to imprisonment for life, who, when before the enemy, in such a manner as to show cowardice—

- (a) leaves his post or position or any other place of duty where it is his duty to be; or
- (b) abandons his weapons or any other equipment in his charge; or
- (c) by any act or omission, fails to carry out the duty required of him.

29 Offence to create alarm or despondency

(1) Every person subject to this Act commits an offence, and is liable to imprisonment for life, who—

- (a) spreads (either orally, or by writing or by signal, or by any other means whatsoever) any report relating to any war or warlike operations in which the Armed Forces or any allied forces are engaged which to his knowledge is likely to create despondency or unnecessary alarm amongst any persons (not being the enemy); or
- (b) when before the enemy, uses words which to his knowledge are likely to create despondency or unnecessary alarm amongst any persons (not being the enemy).

(2) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 5 years, who, when before the enemy, uses words which create or are likely to create despondency or unnecessary alarm amongst any persons (not being the enemy).

30 Offences in relation to capture by the enemy

(1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 10 years, who is captured by the enemy either—

- (a) as a result of failing to take reasonable precautions; or
 - (b) by reason of wilful neglect of duty.
- (2) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 5 years, who, having been captured by the enemy, fails to take reasonable steps to rejoin the Armed Forces.
- (3) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 10 years, who, having been captured by the enemy—
- (a) with intent to secure favourable treatment for himself from the enemy,—
 - (i) does any act to the detriment of his fellow prisoners; or
 - (ii) omits to do an act with the result that his fellow prisoners are detrimentally affected; or
 - (b) when in a position of authority over other prisoners, ill-treats any of them; or
 - (c) discourages or knowingly prevents any other person subject to this Act from taking reasonable steps to rejoin the Armed Forces.

31 Looting

Every person subject to this Act commits the offence of looting, and is liable to imprisonment for life, who—

- (a) steals from, or with intent to steal searches, the person of anyone killed, wounded, or captured in the course of any war or warlike operations in which New Zealand is engaged, or killed, injured, or detained in the course of operations undertaken by any service of the Armed Forces for the preservation of law and order or otherwise in aid of the civil power; or
- (b) steals any property which has been left exposed or unprotected in consequence of any such war or operations as are mentioned in paragraph (a) of this section; or
- (c) appropriates, otherwise than on behalf of Her Majesty the Queen in right of New Zealand, any supplies of any description whatsoever captured from or abandoned by the enemy.

Offences involving mutiny

32 Mutiny

Every person subject to this Act commits an offence, and is liable to imprisonment for life, who takes part in any mutiny.

33 Failure to suppress or report mutiny

Every person subject to this Act commits an offence, and is liable to imprisonment for life, who, knowing that a mutiny is taking place or is intended,—

- (a) fails to use his utmost efforts to suppress or prevent the mutiny; or
- (b) fails to use his utmost efforts to report forthwith that the mutiny is taking place or is intended.

*Offences involving guard duty, violence, and insubordination***34 Offences by or in relation to a person on guard duty or on watch**

- (1) Every reference in this section to a person on guard duty shall be construed as a reference to a person who is ordered to patrol, or who is a member of a guard or other party mounted or ordered to patrol, or who is posted, for the purpose of—
- (a) protecting any person, place, or premises, or any ship, vehicle, aircraft, weapons, or other equipment or stores; or
 - (b) preventing or controlling entry to or departure from any place, premises, ship, vehicle, or aircraft; or
 - (c) regulating traffic by land, water, or air.
- (2) Every person subject to this Act commits an offence who, while on guard duty or watch—
- (a) sleeps at his post or on watch; or
 - (b) not being on duty at a post, sleeps at a time when it is his duty to be awake; or
 - (c) is drunk; or
 - (d) without lawful excuse, leaves his post or otherwise absents himself from a place where it is his duty to be.
- (3) For the purposes of paragraph (c) of subsection (2) of this section, a person is drunk if, owing to the influence of alcohol or a drug (not being a drug administered by, or taken in accordance with the directions of, a person lawfully authorised to administer the drug), whether alone or in combination with each other or in combination with any other circumstances, he is unfit to be entrusted with his duty.
- (4) Every person who commits an offence against subsection (2) of this section while on active service is liable to imprisonment for life or, if the offence is committed at any other time, to imprisonment for a term not exceeding 2 years.
- (5) Every person subject to this Act commits an offence who—
- (a) strikes any person (not being an enemy) who is on guard duty or on watch; or
 - (b) otherwise than by striking, uses force against any person (not being an enemy) who is on guard duty or on watch; or
 - (c) by threat of force, compels any person (not being an enemy) who is on guard duty or on watch to allow him or any other person to pass.
- (6) Every person who commits an offence against subsection (5) of this section while on active service is liable to imprisonment for a term not exceeding 10 years or, if the offence is committed at any other time, to imprisonment for a term not exceeding 2 years.

35 Violence to a superior officer

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 5 years, who—

- (a) strikes; or
- (b) otherwise than by striking, uses violence to; or
- (c) offers violence to—

his superior officer.

- (2) In any proceedings in respect of a charge for an offence against subsection (1) of this section, it is a defence to the charge if the accused proves that he neither knew nor had reasonable cause to believe that the person against whom the offence was alleged to have been committed was his superior officer.

36 Insubordinate behaviour

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who—
 - (a) uses threatening language to his superior officer; or
 - (b) uses insubordinate language to his superior officer; or
 - (c) uses insulting language to his superior officer; or
 - (d) in the presence of his superior officer, behaves with contempt towards him.
- (2) In any proceedings in respect of a charge for an offence against subsection (1) of this section, it is a defence to the charge if the accused proves that he neither knew nor had reasonable cause to believe that the person against whom the offence was alleged to have been committed was his superior officer.

37 Obstruction of provost officers

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who—
 - (a) obstructs; or
 - (b) after being called on to do so, refuses to assist—

a provost officer while acting in the execution of his duty, or a person (whether subject to this Act or not) lawfully exercising authority under or on behalf of a provost officer.
- (2) In any proceedings in respect of a charge for an offence against subsection (1) of this section, it is a defence to the charge if the accused proves that he neither knew nor had reasonable cause to believe that the person against whom the offence was alleged to have been committed was a provost officer or, as the case may be, a person lawfully exercising authority under or on behalf of a provost officer.

38 Disobeying a lawful command

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 5 years, who disobeys a lawful command of his superior officer by whatever means communicated to him.
- (2) In any proceedings in respect of a charge for an offence against subsection (1) of this section, it is a defence to the charge if the accused proves that he neither knew nor had reasonable cause to believe that the person against whom the offence was alleged to have been committed was his superior officer.

39 Failure to comply with written orders

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who fails to comply with a lawful order of which he has knowledge or of which he could, with reasonable diligence, have had knowledge—

- (a) being a Defence Force order; or
- (b) being a general, standing, daily, or routine order made for any service, force, command, formation, or corps, or any ship or defence area, or any unit, detachment, or other part of the Armed Forces.

40 Failure to comply with directions given by the captain of a ship or aircraft

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 5 years, who, when in or near any ship or aircraft, fails to comply with a lawful direction given to him by or with the authority of the person in command of the ship or aircraft—

- (a) in relation to the sailing or handling of the ship or flying or handling of the aircraft; or
- (b) affecting the safety of the ship or aircraft—

whether the person in command is a member of the Armed Forces or not.

41 Ill-treatment of person of lower rank

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who—

- (a) strikes; or
- (b) otherwise than by striking, ill-treats—

any other person subject to this Act who holds a lower rank.

42 Cruel or disgraceful conduct

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who—

- (a) behaves in a cruel manner towards any person, or any animal used for the purposes of the Armed Forces or kept in a state of captivity; or
- (b) behaves in a disgraceful and indecent manner.

43 Fighting or causing a disturbance

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 3 months, who—

- (a) fights any person other than an enemy; or
- (b) uses threatening, insulting, or provocative language to any person not being an enemy; or
- (c) causes a disturbance or behaves in a manner likely to cause a disturbance.

*Offences relating to arrest and escape from custody***44 Resisting arrest**

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who refuses to obey a member of the Armed Forces who has lawfully ordered him into arrest.
- (2) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who—
- (a) strikes; or
 - (b) otherwise than by striking, uses violence to; or
 - (c) offers violence to—
- any member of the Armed Forces (whether that member of the Armed Forces is his superior officer or not) who has lawfully ordered him into arrest.
- (3) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who—
- (a) strikes; or
 - (b) otherwise than by striking, uses violence to; or
 - (c) offers violence to—
- any person (whether subject to this Act or not) who attempts to arrest him or is holding him in custody pursuant to this Act.

45 Escape from custody

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who escapes from custody in which he is being held in accordance with this Act.

45A Failure to answer bail

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 1 year, who, having been released from custody on bail,—

- (a) fails without reasonable excuse to attend personally at the time and before the military tribunal or the Court Martial Appeal Court specified in the grant of bail; or
- (b) fails without reasonable excuse to attend personally at any time and place to which, during the course of the proceedings, the hearing has been adjourned.

46 Permitting the escape of prisoners

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 5 years, who, wilfully and without authority, releases or wilfully permits the escape of any person who is committed to his charge or whom it is his duty to guard.

- (2) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who—
- (a) without authority, releases a person who is committed to his charge or whom it is his duty to guard; or
 - (b) without lawful excuse, permits the escape of a person who is committed to his charge or whom it is his duty to guard; or
 - (c) with intent to facilitate the escape of any person lawfully detained in a prison or a service penal establishment—
 - (i) conveys or causes to be conveyed into any such institution or establishment any thing whatsoever; or
 - (ii) otherwise facilitates the escape of any person so detained.

Desertion, absence, and malingering

47 Desertion

- (1) Every person subject to this Act who deserts commits an offence, and—
- (a) if the offence is committed on active service or after having been warned for active service, is liable to imprisonment for life; or
 - (b) if the offence is committed at any other time, is liable to imprisonment for a term not exceeding 2 years.
- (2) For the purposes of this section, the term deserts, in relation to any person subject to this Act, means that—
- (a) with intent to remain permanently absent from duty, he leaves or fails to attend at his place of duty without authority; or
 - (b) having left or failed to attend at his place of duty, he behaves in a manner which shows intent to remain permanently absent from duty without authority; or
 - (c) having been warned for active service, he is absent from duty without authority, with intent to avoid that service.

48 Absence without leave

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 12 months, who absents himself without leave.

49 Avoidance of duty

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 6 months, who, without reasonable excuse—

- (a) fails to attend a muster or parade, or for any other service duty; or
- (b) leaves a muster or parade, or stops performing any other service duty, before he is authorised to do so.

50 Malingering

- (1) Every person subject to this Act commits an offence who—
- (a) falsely represents that he is suffering from any sickness or disability, with intent to avoid service or duty; or
 - (b) injures himself with intent to render or keep himself unfit for service or duty; or
 - (c) with intent to render or keep himself unfit for service or duty, causes or permits some other person to injure him; or
 - (d) with intent to render or keep himself unfit for service or duty, does or fails to do anything by which he produces, prolongs, or aggravates any sickness or disability.
- (2) Every person who commits an offence against this section is liable—
- (a) if the offence is committed on active service, to imprisonment for life; or
 - (b) if the offence is committed at any other time, to imprisonment for a term not exceeding 2 years.
- (3) For the purposes of subsection (1) of this section, the term **unfit** includes temporarily unfit.

*Offences involving alcoholic liquor and drugs***51 Drunkenness and being under the influence of drugs**

- (1) Every person subject to this Act who is drunk, whether on duty or not, commits an offence, and—
- (a) if the offence is committed on active service, is liable to imprisonment for a term not exceeding 2 years; or
 - (b) if the offence is committed at any other time, is liable to imprisonment for a term not exceeding 12 months.
- (2) For the purposes of subsection (1) of this section, a person is drunk if, owing to the influence of alcohol or a drug (not being a drug administered by, or taken in accordance with the directions of, a person lawfully authorised to administer the drug), whether alone or in combination with each other or in combination with any other circumstances, he is unfit to be entrusted with his duty or with any duty that he may be required to perform.

52 Being in possession of alcoholic liquor in a ship, establishment, camp, or base

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 6 months, who, knowingly and without authority, is in possession of alcoholic liquor within the bounds of any naval ship or defence area, or any other place where members of the Armed Forces are quartered, stationed, or serving, or are undergoing exercises or training.
- (2) Where any person is convicted of an offence under subsection (1) of this section, the liquor in respect of which the offence was committed, together with the

receptacles containing it, shall be forfeited to the Crown, and may be disposed of by public auction or private contract as the Chief of Defence Force directs, and the proceeds of the sale shall be paid into an appropriate bank account in accordance with the Public Finance Act 1989.

False statements, documents, and corruption

53 False statements on appointment or enlistment

Every person commits an offence, and is liable to imprisonment for a term not exceeding 6 months, who, if having become and remaining subject to this Act, at or before the time of his appointment or enlistment to any part of the Armed Forces—

- (a) knowingly gave a false answer to any question set out in a document required to be completed in connection with his appointment or enlistment; or
- (b) knowingly gave any false information or document in connection with his appointment or enlistment.

54 Official corruption

- (1) Every person subject to this Act for the time being acting as an official commits an offence, and is liable to imprisonment for a term not exceeding 7 years, who corruptly accepts or obtains, agrees, or offers to accept, or attempts to obtain any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his official capacity.
- (2) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 3 years, who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any person subject to this Act for the time being acting as an official in respect of any act or omission by him in his official capacity.
- (3) For the purposes of this section—

Bribe means any money, valuable consideration, office or employment, or any benefit, whether direct or indirect

Official means any person subject to this Act who is acting in his official capacity in or in connection with the Armed Forces; and in particular includes any person subject to this Act who is for the time being acting—

- (a) as an official of a service mess, band, club, canteen, or other service institution; or
- (b) as a trustee of any unit, mess, or canteen fund, or of any other non-public service fund; or
- (c) under the control or direction of the Armed Forces Canteen Council.

55 Falsification of service documents

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who—
 - (a) makes or signs an official document knowing that the document is false in a material particular; or

- (b) makes or signs an entry in an official document knowing that the entry is false in a material particular; or
 - (c) makes an alteration to an official document with intent to render the document false in a material particular; or
 - (d) fails to make an entry in an official document with intent to render the document false in a material particular; or
 - (e) wilfully suppresses, defaces, makes away with, or destroys an official document which he is under a duty to keep or to produce to any person.
- (2) For the purposes of this section, the term official document includes a book, record, return, report, map or plan, signal, tape recording, or any form of computer input or output, or any other document or similar material (whether produced mechanically, electronically, or manually, or by any other means whatsoever), which is used by or for the purposes of the Armed Forces.

56 False statement in order to obtain benefit

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 6 months, who, in or in connection with or in support of an application for any service grant, payment, allotment of money, allowance, leave of absence, travel warrant, or any other benefit, either for himself or for some other person (whether that person is subject to this Act or not)—

- (a) makes to any person any statement, either written or oral, which he knows to be false or misleading in a material particular; or
- (b) without lawful excuse, fails to disclose any material information that it is his duty to disclose.

Offences relating to property

57 Stealing service property or property of comrade

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 7 years, who—
- (a) steals—
 - (i) any service property; or
 - (ii) any property belonging to a person subject to service law or in which a person subject to service law has a special property or interest; or
 - (b) fraudulently misapplies—
 - (i) any service property; or
 - (ii) any property belonging to a person subject to service law or in which a person subject to service law has a special property or interest.
- (2) Where any person is charged with an offence against subsection (1) of this section, it shall not be necessary to prove the stealing or fraudulent misapplication of any specific amount of money or any specific goods if, as a result of an examination of any accounts or records, it is proved that there is a general deficiency in any amount of money or in any quantity of goods for which the accused was

responsible, and it is also proved that the accused stole or fraudulently misapplied the amount of money or quantity of goods which was deficient, or any part of it.

58 Receiving service property or property of comrade

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 7 years, who receives—
- (a) any service property; or
 - (b) any property belonging to a person subject to service law or in which a person subject to service law has a special property or interest—
- knowing the property to have been stolen or fraudulently misapplied.
- (2) The provisions of section 246(2) to (5) of the Crimes Act 1961, with all necessary modifications, shall apply in respect of the receiving by any person subject to this Act of any property to which this section relates.

59 Unlawful possession of service property or property of comrade

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 6 months, who, without authority or other lawful excuse, is in possession of—

- (a) any service property; or
- (b) any property belonging to a person subject to service law or in which a person subject to service law has a special property or interest.

60 Conversion of vehicles, etc

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who, unlawfully and without claim of right, but not so as to be guilty of stealing, takes or converts to his own use or to the use of any other person—
- (a) any motor vehicle, or other vehicle or carriage of any description, or ship, or aircraft, or aircraft material, which belongs to the Crown or to any person subject to service law or in which any person subject to service law has a special property or interest; or
 - (b) any part of any such vehicle, carriage, ship, aircraft, or aircraft material; or
 - (c) any animal (being an animal capable of being stolen) which belongs to the Crown or to any person subject to service law or in which any person subject to service law has a special property or interest.
- (2) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who, unlawfully and without claim of right, interferes with or gets into or upon any vehicle, carriage, ship, or aircraft referred to in paragraph (a) of subsection (1) of this section, or interferes with or gets upon any animal, referred to in paragraph (c) of that subsection.

61 Destruction of or damage to service property or property of comrade

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 10 years, who, without authority or other lawful excuse, wilfully causes or permits damage to or the destruction of—

- (a) any service property; or
 - (b) any property belonging to a person subject to service law or in which a person subject to service law has a special property or interest.
- (2) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who negligently causes or permits damage to or the destruction of—
- (a) any service property; or
 - (b) any property belonging to a person subject to service law or in which a person subject to service law has a special property or interest.

62 Loss of service property

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who—
- (a) loses; or
 - (b) wastefully expends—
- any service property issued for his use or entrusted to his care in connection with his duties.
- (2) In any proceedings in respect of an offence against subsection (1) of this section, it is a defence to the charge if the accused proves that he took reasonable steps for the care and preservation of the property to which the proceedings relate.

63 Improper disposal of decorations and issued property

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 6 months, who, without the authority of the Minister or the Chief of Defence Force, sells, pawns, exchanges, gives away, or otherwise disposes of any military decoration awarded to him by or with the approval of Her Majesty the Queen, whether in right of New Zealand or otherwise.
- (2) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who, without authority, sells, exchanges, pawns, gives away, or otherwise disposes of any clothing, arms, ammunition, or other equipment issued to him for his own use or for service purposes.

Offences involving ships, aircraft, vehicles, etc

64 Losing or hazarding a ship, aircraft, or armoured fighting vehicle

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 10 years, who, while responsible for the navigation, control, operation, or propulsion of a ship, aircraft, or armoured fighting vehicle, wilfully and without authority causes or permits the ship, aircraft, or vehicle, as the case may be, to be lost, stranded, or hazarded.
- (2) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who, while responsible for the navigation,

control, operation, or propulsion of a ship, aircraft, or armoured fighting vehicle, negligently causes or permits the ship, aircraft, or vehicle, as the case may be, to be lost, stranded, or hazarded.

65 Dangerous acts or omissions

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 10 years, who, while operating, handling, servicing, or storing a ship, aircraft, armoured fighting vehicle, weapon, missile, explosive, or other dangerous thing, which is used by or is under the control of the Armed Forces or an allied force, wilfully and without authority does or omits any act which to his knowledge is likely to cause loss of life or bodily injury to any person other than an enemy (whether loss of life or bodily injury actually occurs or not).
- (2) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 5 years, who, while operating, handling, servicing, or storing a ship, aircraft, armoured fighting vehicle, weapon, missile, explosive, or other dangerous thing, which is used by or is under the control of the Armed Forces or an allied force, negligently does or omits any act which he knows, or which having regard to all the circumstances of the case he ought to know, is likely to cause loss of life or bodily injury to any person other than an enemy (whether loss of life or bodily injury actually occurs or not).

66 Inaccurate certification

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who—

- (a) gives, makes, or signs; or
- (b) makes or signs an entry in—

a certificate, book, record, or other document relating to any matter affecting the safety or efficiency of a service ship, aircraft, armoured fighting vehicle, field gun, or missile which is inaccurate in a material particular, without having taken reasonable care to ensure the accuracy of the certificate, book, record, document, or entry.

67 Offences in relation to the driving of vehicles

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who, being the driver of a vehicle, whether service property or not—
 - (a) drives the vehicle in any place, whether public or otherwise, recklessly or at a speed or in a manner which, having regard to all the circumstances of the case, is or might be dangerous to any person or to the property of any person; or
 - (b) drives the vehicle while under the influence of alcohol or of a drug (not being a drug administered by or taken in accordance with the directions of a person lawfully authorised to administer that drug) to such an extent as to be incapable of having proper control of the vehicle.
- (2) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 3 months, who drives a vehicle (whether service property or not) in any place (whether public or otherwise)—

- (a) carelessly; or
 - (b) without consideration for persons in or near that place.
- (3) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 3 months, who uses any service vehicle for an unauthorised purpose.

Offences relating to judicial proceedings, etc

68 False accusation

Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who—

- (a) makes an accusation against a person subject to service law knowing that accusation to be false; or
- (b) in making a complaint claiming that he has been wronged—
 - (i) makes a statement which detrimentally affects the character of a person subject to service law and which he knows to be false; or
 - (ii) suppresses a material fact with intent to affect detrimentally the character of a person subject to service law.

69 Delay or denial of justice

- (1) Every person subject to this Act commits an offence who, being under a duty—
- (a) to take steps to bring any person subject to service law (being a person who is under arrest or in custody for an offence alleged to have been committed against this Act) before the proper authority for investigation of the alleged offence; or
 - (b) to investigate, try summarily, or otherwise deal under Part 5 with a charge against any such person or bring any such person before the Court Martial—

without lawful excuse, fails to carry out his duty as soon as practicable after that person has been arrested or taken into custody.

- (2) Every person subject to this Act commits an offence who, being under a duty to release or order the release of a person subject to service law who is in custody, without lawful excuse fails to fulfil that duty.
- (2A) Every person subject to this Act commits an offence who influences or attempts to influence, by threats or bribes or other improper means, an election under section 117D or 117M or a decision concerning the withdrawal of an election made under either of those sections.
- (3) Every person who commits an offence against this section is liable to imprisonment for a term not exceeding 2 years.

70 Offences relating to proceedings of military tribunal or court of inquiry

- (1) Every person who is subject to this Act commits an offence if the person—
- (a) fails without reasonable excuse to comply with a summons or order to attend as a witness before a military tribunal or court of inquiry; or

- (b) refuses to swear an oath when required to do so by a military tribunal or court of inquiry; or
 - (c) refuses to produce any papers, documents, records, or things in that person's possession or under that person's control that a military tribunal or court of inquiry has lawfully required the person to produce; or
 - (d) being a witness, refuses to answer any question that a military tribunal or court of inquiry has lawfully required the person to answer; or
 - (e) disobeys or evades any order or direction made or given by a military tribunal or court of inquiry in the course of the hearing of any proceedings before it; or
 - (f) wilfully publishes any statement in respect of the proceedings before a military tribunal or court of inquiry that—
 - (i) without foundation states or implies that the military tribunal or court of inquiry has not acted or is not acting impartially; or
 - (ii) is likely to interfere with the proper administration of justice; or
 - (g) insults, threatens, or interferes with a disciplinary officer or any member of the Summary Appeal Court, the Court Martial, or a court of inquiry while the disciplinary officer or member is attending, or is on the way to or from, the proceedings before the disciplinary officer, the Summary Appeal Court, the Court Martial, or the court of inquiry; or
 - (h) insults, threatens, or interferes with any witness or other person under a duty to attend the proceedings before a military tribunal or court of inquiry while the witness or other person is attending, or is on the way to or from, the proceedings; or
 - (i) interrupts the proceedings before a military tribunal or court of inquiry or otherwise misbehaves during the proceedings.
- (2) A person who commits an offence under subsection (1) is liable to imprisonment for a term not exceeding 6 months.
- (3) Despite subsection (2), if a person commits an offence against subsection (1) (e) to (i) in relation to the Court Martial, that Court may, by order of the Judge, sentence the person for the offence,—
- (a) in the case of a convicted member of the Armed Forces,—
 - (i) to imprisonment for a term not exceeding 21 days; or
 - (ii) except in the case of an officer, to detention for a term not exceeding 21 days; or
 - (iii) to a fine not exceeding the amount of the person's basic pay for 28 days; or
 - (b) in the case of any other person subject to this Act, to a fine not exceeding \$1,000.

71 False evidence

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who, having been sworn as a witness or

as an interpreter in proceedings before a military tribunal or a court of inquiry, makes a statement in those proceedings which he knows to be false.

- (2) A person shall not be liable to be convicted of an offence against this section on the evidence of only one witness as to the falsity of any statement alleged to be false.

Miscellaneous offences

72 Endangering the health of members of the Armed Forces

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who, without lawful excuse, refuses or fails to submit himself to medical, surgical, or dental treatment or procedures by a medical practitioner or dental practitioner, as the case may require, after being ordered to do so—

- (a) by a medical or dental officer who is a medical practitioner or dental practitioner; or
- (b) by a competent officer acting on the advice of any such medical or dental officer—

if any such treatment or procedure, whether preventive, protective, or curative, is stated by the medical or dental officer who gives the order or advice to be, in his opinion, essential in the interests of the health of other members of the Armed Forces, or to be such that refusal or failure to submit thereto would constitute a potential menace to the health of other members of the Armed Forces or would prejudice the operational efficiency of any part of the Armed Forces.

- (2) In any proceedings in respect of an offence against subsection (1) of this section, where the order involves curative surgery, it is a defence to the charge if the accused proves that the provisions of Defence Force Orders relating to the right of a member of the Armed Forces to ask for a second opinion in such cases have not been observed.

73 Conduct prejudicial to service discipline

- (1) Every person subject to this Act commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who—
- (a) does or omits any act that is likely to prejudice service discipline; or
- (b) does or omits any act that is likely to bring discredit on the service of the Armed Forces to which he belongs or, if he is attached to any such service, either to that service or to the service to which he belongs; or
- (c) negligently fails to perform a duty imposed on him or her by service order, training, or custom; or
- (d) negligently performs a duty imposed on him or her by service order, training, or custom.
- (2) No person shall be charged with an offence against this section in respect of any act or omission that constitutes an offence against sections 23 to 72 or sections 74 to 77 of this Act:

Provided that if any person is charged with an offence against this section and is found guilty of the offence, the finding shall not be invalidated by reason only of the charge being in contravention of this subsection, unless it appears that injustice has been done to the person charged by reason of the contravention; but the conduct of the person laying any charge in contravention of this subsection shall not be vindicated by reason of that finding.

- (3) Despite anything to the contrary in any enactment or rule of law, if a person is charged with an offence against this section, the statement of offence may allege in the alternative 1 or more of the following:
- (a) that the person behaved in a manner that was likely to prejudice service discipline:
 - (b) that the person behaved in a manner that was likely to bring discredit on the service to which he or she belongs or is attached, as the case may be:
 - (c) that the person has negligently failed to perform a duty imposed on him or her by service order, training, or custom:
 - (d) that the person negligently performed a duty imposed on him or her by service order, training, or custom.

74 Offences against the civil law of New Zealand

- (1) Every person subject to this Act commits an offence against this section who, whether in New Zealand or elsewhere, does or omits any act which would, if done or omitted in New Zealand, be an offence against any Act other than this Act (in this section referred to as a civil offence).
- (2) Every person convicted of an offence against this section is liable to be sentenced in accordance with the following provisions:
- (a) if the civil offence is punishable by a fixed punishment, he shall be sentenced to that punishment:
 - (b) if the civil offence is punishable by a maximum punishment, he may be sentenced to—
 - (i) a punishment not exceeding that maximum; or
 - (ii) a punishment that, under this Act, is less severe than imprisonment:

Provided that no person found guilty of an offence against this section shall be liable under this paragraph to a fine exceeding the maximum prescribed in respect of the civil offence.

- (2A) Notwithstanding anything in subsection (2) of this section, no person who is convicted of an offence against this section shall be liable to any punishment of a kind that is not specified in clause 1 of Schedule 2, or clause 1 of Schedule 3, to this Act.
- (3) Where a person is charged with an offence against this section and the corresponding civil offence is one in respect of which, if he were tried for the civil offence before a civil court in New Zealand, that court could convict him of a civil offence other than the one charged, he may nevertheless be convicted of an offence against this section in respect of that other civil offence, and may be sentenced to the punishment prescribed in respect of that other civil offence in accordance with the provisions of subsection (2) of this section.

- (4) Except with the consent of the Attorney-General, a person subject to this Act may not be tried by the Court Martial for an offence against this section which is alleged to have been committed in New Zealand if the corresponding civil offence is treason, murder, manslaughter, sexual violation, or bigamy.
- (5) Where the corresponding civil offence is murder or manslaughter, an offence against this section shall be deemed, for the purposes of subsection (4) of this section, to have been committed at the place of the commission of the act or occurrence of the neglect which caused the death, irrespective of the place of the death.
- (6) For the purposes of subsections (4) and (5) of this section, the term murder includes inciting, counselling, procuring, aiding, or abetting suicide.

Parties, accessories, and attempts

75 Parties to the commission of offences against this Act

- (1) Every person subject to this Act is a party to an offence against this Act who—
- (a) actually commits the offence; or
 - (b) does or omits any act for the purpose of aiding any person to commit the offence; or
 - (c) abets any person in the commission of the offence; or
 - (d) incites, counsels, or procures any person to commit the offence; or
 - (e) conspires with one or more other persons to commit the offence.
- (2) If a person subject to this Act aids, abets, incites, counsels, or procures, or conspires with, any person who is not subject to this Act to do or omit any act which would be an offence against this Act if that person were subject to this Act, the act or omission shall, for the purposes of this section, but for no other purpose, be deemed to be an offence against this Act.
- (3) Where 2 or more persons subject to this Act form a common intention to prosecute an unlawful purpose, and to assist each other in that purpose, and one of them commits an offence against this Act, the other or others of them shall be a party or parties to the offence if the offence was committed in the prosecution of the common purpose and the commission of the offence was known by the last-mentioned person or persons to be a probable consequence of the common purpose.
- (4) Every person subject to this Act who is, by virtue of paragraphs (b) to (e) of subsection (1) of this section, a party to an offence against this Act (whether or not the offence is actually committed) commits an offence, and is liable to imprisonment for a term not exceeding 7 years if the maximum punishment for that offence exceeds 7 years' imprisonment, and, in any other case, is liable to the same punishment as if he had actually committed the offence.
- (5) Every person subject to this Act who incites, counsels, or procures any other person subject to this Act to be a party to an offence against this Act of which that other person is afterwards convicted is a party to that offence, although it may have been committed in a way different from that which was incited, counselled, or suggested.

- (6) Every person subject to this Act who incites, counsels, or procures any other person subject to this Act to be a party to an offence against this Act is a party to every offence which that other person commits in consequence of the incitement, counselling, or procurement, and which the first-mentioned person knew to be likely to be committed in consequence thereof.
- (7) For the purposes of this section, a person is capable of conspiring with his or her husband, wife, or civil union partner, or with any of them and any other person.

76 Attempts to commit offences against this Act

- (1) Every person subject to this Act who, having an intent to commit an offence against any provision of this Act, does or omits an act for the purpose of accomplishing his object, is guilty of an attempt to commit the offence intended, whether in the circumstances it was possible to commit the offence or not.
- (2) The question as to whether an act done or omitted with intent to commit an offence against this Act is or is not only preparation for the commission of that offence, and too remote to constitute an attempt to commit it, is a question of law.
- (3) An act done or omitted with intent to commit an offence against this Act may constitute an attempt if it is immediately or proximately connected with the intended offence, whether or not there was any act unequivocally showing intent to commit that offence.
- (4) Every person who is convicted of an attempt to commit an offence against this Act is liable to the same punishment as if that person had actually committed the offence.

77 Accessories after the fact

- (1) Every person subject to this Act commits an offence who is an accessory after the fact to any other offence against this Act, and—
 - (a) if the maximum punishment for that other offence is imprisonment for life, is liable to imprisonment for a term not exceeding 7 years, and, if the maximum punishment for that other offence is imprisonment for 10 or more years, to imprisonment for a term not exceeding 5 years; and
 - (b) in any other case, is liable to not more than half the maximum to which he could have been liable if he had committed that other offence.
- (2) For the purposes of this section, an accessory after the fact to an offence is one who, knowing any person to have been a party to the offence, receives, comforts, or assists that person or tampers with or actively suppresses any evidence against him, in order to enable him to escape after arrest or to avoid arrest or conviction.
- (3) No person subject to this Act who is married or in a civil union and whose spouse or civil union partner has been a party to an offence becomes an accessory after the fact to that offence by doing any act to which this section applies in order to enable the spouse or civil union partner (or the spouse, civil union partner, and any other person who has been a party to the offence) to escape after arrest or to avoid arrest or conviction.

PART 3

Jurisdiction of Court Martial and punishment of offenders

78 Jurisdiction of Court Martial

Subject to the provisions of this Act, the Court Martial has jurisdiction to try any charge against a person subject to this Act in respect of an offence against this Act, whether committed in New Zealand or elsewhere.

79 Court Martial to pass one sentence only

Where the Court Martial convicts a person of more than one offence or, on convicting a person of one or more offences, agrees to take other offences which he admits to have committed into consideration when sentencing him, the Court shall pass only one sentence in respect of all the offences of which he has been convicted (including any offences which he has admitted):

Provided that the sentence may, subject to the provisions of this Act, include more than one of the punishments prescribed by Schedule 2 to this Act.

80 Discretion of Court Martial as to punishment

- (1) Where under this Act a person is liable on conviction by the Court Martial to imprisonment for life or for any other term of imprisonment, the Court may sentence him to imprisonment for any shorter term, being, in the case of a person liable to imprisonment for life, a term not exceeding 14 years, or to one or more of the less severe punishments specified in Schedule 2 to this Act.
- (2) *Repealed*
- (3) No officer may be sentenced by the Court Martial to detention.

81 *Repealed*

81A Effect of period spent in custody before being sentenced

- (1) In determining the length of any sentence of imprisonment or detention the Court Martial shall not take into account any period during which the offender has been held in custody but shall specify any such period on the committal order.
- (2) This section shall not apply in respect of any time spent in custody that is unrelated to any charge before the Court Martial.
- (3) In this section, the term custody means detention in civil custody or under close arrest; but does not include open arrest.

82 Dismissal from service and reduction in rank

- (1) Subject to the provisions of this Part of this Act, every officer sentenced by the Court Martial to imprisonment shall be deemed to be dismissed from Her Majesty's Service.
- (2) Where a rating, soldier, or airman is sentenced by the Court Martial to imprisonment, he may also be sentenced to be dismissed from Her Majesty's Service.

- (3) Where a non-commissioned officer is sentenced by the Court Martial to imprisonment or detention (whether or not such sentence includes dismissal from Her Majesty's Service), he shall be deemed to be reduced to the lowest rank to which he can be reduced, being such rank as may be prescribed.
- (4) *Repealed*
- (5) If a member of the Armed Forces is sentenced to dismissal from Her Majesty's Service and also to imprisonment or detention, or is dismissed from Her Majesty's Service by virtue of subsection (1) of this section, the dismissal shall not take effect until he has served the term of imprisonment or detention and any further sentence of imprisonment or detention imposed in accordance with subsection (1) or subsection (4) of section 178 of this Act.

83 Maximum term of detention

In no case shall any person be sentenced by the Court Martial to detention for a term exceeding 2 years.

84 Reduction in rank and forfeiture and stay of seniority of service

- (1) If the Court Martial sentences a member of the Armed Forces to reduction in rank, forfeiture of seniority, or stay of seniority it may reduce his rank, or forfeit or stay his seniority, to such extent and subject to such conditions as may be prescribed by regulations made under this Act.
- (2) Where the Court Martial reduces the rank of any member of the Armed Forces convicted by it, it shall specify the period of seniority to be credited to him in the rank to which he is reduced.
- (3) Subsections (1) and (2), so far as they are applicable and with any necessary modifications, apply to a reduction in rank or stay of seniority imposed on a person under Part 5 or 5A.

85 Punishment by fine

- (1) Every fine imposed for an offence against this Act shall be a specified amount of money.
- (2) Any fine imposed for an offence against this Act may be recovered from the offender—
 - (a) if he is a member of the Armed Forces, by means of deductions from pay in accordance with regulations made under this Act; or
 - (b) in the case of any other person subject to this Act who is paid by the Crown in right of New Zealand, by means of deductions from his salary or wages, or from any other emoluments payable to him.
- (3) Except when imposing punishment on a person convicted of a civil offence under section 74 of this Act, the Court Martial shall not impose a fine exceeding—
 - (a) in the case of a member of the Armed Forces, an amount equal to his basic pay for 84 days; or
 - (b) in the case of any other person, \$3,000.
- (4) Subsections (1) and (2), so far as they are applicable, apply to a fine imposed on a person by any military tribunal.

86 Compensation for loss of or damage to property

- (1) Subject to the provisions of this section, on convicting any person for an offence against this Act, the Court Martial may, in addition to or in substitution for any punishment that it has power to impose, order the offender to pay to any person (including the Crown in right of New Zealand) such sum as it thinks just by way of compensation for any emotional harm, or for any loss or destruction of or damage to property, or for any expense, suffered by the last-mentioned person through or by means of the offence.
- (2) Where on the arrest of the offender any money was found in his possession, the Court Martial may, in its discretion, if it is satisfied that the money was obtained through or by means of the offence, order the whole or any part of the money to be applied to any such payment.
- (3) The provisions of sections 85 (except subsection (3)) and 185 of this Act shall apply with respect to any payment ordered under this section as if it were a fine imposed for an offence.
- (3A) When determining the amount of compensation to be paid, the Court Martial must take into account any offer, agreement, response, measure, or action as described in section 10 of the Sentencing Act 2002.
- (4) Except as provided in subsection (2) of this section, the total amount of compensation awarded by the Court Martial shall not exceed—
 - (a) in the case of a member of the Armed Forces, an amount equal to his basic pay for 28 days; or
 - (b) in the case of any other person, \$1,000.
- (5) Any order under this section shall not affect the right of any person to recover by civil proceedings any sum in excess of the amount recovered under the order.

87 Restitution of property

- (1) Where the Court Martial convicts anyone of an offence against sections 57 to 60 and section 74 of this Act (being an offence relating to the unlawful acquisition or possession of property), the Court may, in addition to or in substitution for any punishment that it may impose, order the whole or any part of any such property found in his possession, or in the possession of any other person acting on his behalf, to be delivered to such person as appears to be entitled to it.
- (2) If any property (other than money) that appears to the Court Martial to have been obtained by the conversion or exchange of any property unlawfully obtained is found as aforesaid, the Court may order that the property so found be delivered to such person as appears to be entitled to it.
- (3) Where an order is made under subsection (1) of this section, and it appears to the Court Martial that a purchaser has bought the property in good faith and without knowledge that it was unlawfully acquired or possessed, the Court may order that on the restitution of the property the offender shall pay to the purchaser a sum not exceeding the amount paid by him. The provisions of subsections (2) to (5) of section 86 of this Act shall apply to any such order.
- (4) Where anyone is convicted of an offence against sections 57 to 60 of this Act, and it appears to the Court Martial convicting him that the property has been pawned to a pawnbroker, the Court may order the pawnbroker to deliver it to the

person appearing to the Court to be entitled to it, either on payment or without payment to the pawnbroker of the amount of the loan or any part of it, as the court in all the circumstances of the case thinks just:

Provided that before an order is made for the delivery of the property without payment to the pawnbroker, he shall be given the opportunity to be heard.

- (5) If the person in whose favour any order under subsection (4) of this section is made thereby obtains delivery or possession of the property, he shall not afterwards question the validity of the pawn.
- (6) Except as provided in subsection (5) of this section, no order made under this section shall have any further effect than to change possession of the property; and no such order shall prejudice any right of property, or any right of action in respect of any property, existing or acquired in it either before or after the offence was committed.
- (7) Subsections (4) and (5) of this section shall apply only in respect of pawnbrokers carrying on business in New Zealand, or in places over which New Zealand is for the time being exercising sovereignty, or in respect of pawnbrokers over which New Zealand or the Armed Forces or any part of the Armed Forces has jurisdiction by virtue of any treaty or agreement with the country in which the pawnbrokers are carrying on business.

87A Suspension of compensation and restitution orders made by Court Martial, etc

- (1) Where the Court Martial makes an order for compensation under section 86 of this Act, or an order for restitution under section 87 of this Act (with or without compensation under subsection (3) of that section), or convicts anyone of an offence to which subsection (1) of section 26 of the Sale of Goods Act 1908 applies, the operation of that order or the provisions of that subsection shall be suspended to such extent as may be prescribed in the rules of procedure pending—
 - (a) the completion of such proceedings; or
 - (b) the expiration of such period; or
 - (c) the giving of such consent; or
 - (d) the occurrence of such event or circumstance—as may be so prescribed.
- (2) Without limiting section 160 of this Act or section 19 of the Court Martial Appeals Act 1953, where the operation of any such order or the operation of the said provisions is so suspended, the order or provisions shall not take effect if the conviction is quashed on review or appeal.
- (3) Subsection (1), with any necessary modifications, applies to—
 - (a) a finding of guilty made by a disciplinary officer, being a finding to which section 26(1) of the Sale of Goods Act 1908 applies:
 - (b) an order for compensation or restitution made by a disciplinary officer under section 86 or 87.

- (4) If the operation of an order for compensation or restitution or the operation of section 26(1) of the Sale of Goods Act 1908 is suspended by virtue of subsection (3), the order or provisions must not take effect if the finding of guilty is quashed on appeal.
- (5) Subsection (4) does not limit section 134.

PART 4

Arrest and search

88 Arrest without warrant

- (1) A member of the Armed Forces may, without warrant, arrest a person subject to this Act whom he is empowered to arrest in accordance with this section if—
- (a) he finds the person committing an offence against this Act; or
 - (b) he has reasonable grounds to suspect that the person is committing or has committed such an offence.
- (2) For the purposes of this section—
- (a) an officer is empowered to arrest—
 - (i) a rating, soldier, or airman; or
 - (ii) an officer who is not his superior officer; or
 - (iii) any officer (though of higher rank), if the offence or suspected offence is mutiny or the officer is behaving in a disorderly or violent manner:
 - (b) a non-commissioned officer is empowered to arrest—
 - (i) a rating, soldier, or airman who is not his superior officer; or
 - (ii) any rating, soldier, or airman (though of higher rank) if the offence or suspected offence is mutiny or the rating, soldier, or airman is behaving in a disorderly or violent manner:
 - (c) a provost officer, or a person lawfully exercising authority under or on behalf of a provost officer, is empowered to arrest any person subject to this Act:

Provided that an officer may be arrested under paragraph (c) of this subsection only by or on the order of a provost officer.

- (3) In the exercise of his power of arrest over a person, a member of the Armed Forces may—
- (a) arrest the person himself; or
 - (b) order that person into arrest; or
 - (c) give an order for that person's arrest,—

and it shall be the duty of every member of the Armed Forces to whom any such order has been given to carry out the order forthwith.

- (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.

89 Arrest under warrant

- (1) Where the commanding officer of any person subject to this Act, or an officer superior in command to that officer, has reasonable grounds to suspect that that person has committed an offence against this Act, that commanding officer or officer superior in command, as the case may be, may issue a warrant for the arrest of that person.
- (2) Every warrant issued under subsection (1) of this section shall specify the name of the person to be arrested and the offence that he is alleged to have committed.
- (3) A member of the Police¹ may, in the execution of a warrant issued under subsection (1) of this section, arrest the person named in it.
- (4) On making any such arrest, the member of the Police shall, as soon as practicable, deliver that person into service custody to be dealt with in accordance with this Act.
- (5) Any such warrant may be addressed to all members of the Police and shall be valid if it purports to be issued pursuant to this section.
- (6) Any such warrant may be executed by a member of the Police whether it has been delivered to him or not, and on any day of the week.
- (7) The provisions of this section are in addition to those of sections 90 to 92 of this Act.

89A Arrest of members of visiting forces

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

¹ **Member of the Police** must be read as a reference to a constable: section 116(a) of the Policing Act 2008.

90 Arrest of spies, etc, abroad

- (1) Where any provost officer or any other member of the Armed Forces, or any person exercising authority under a provost officer or on his behalf, finds any person outside New Zealand committing an offence against section 26 or section 27 of this Act (which sections relate to spying and seduction from allegiance), or whom he has reasonable grounds to suspect is committing or has committed any such offence, he may arrest that person without warrant.
- (2) On making an arrest under subsection (1) of this section, the provost officer, member of the Armed Forces, or person exercising authority under a provost officer shall, as soon as practicable, deliver the arrested person into service custody to be dealt with in accordance with this Act.

91 Arrest of person unlawfully at large

- (1) Where a member of the Police² has reasonable grounds to suspect that a person who has been sentenced under this Act to imprisonment or detention is unlawfully at large, he may arrest that person without warrant.
- (2) Where any person serving a sentence of imprisonment or detention imposed under this Act has been temporarily released from that imprisonment or detention in accordance with orders issued by or under the authority of the Chief of Defence Force and a member of the Police has reasonable cause to suspect that that person has failed to comply with any of the conditions subject to which his release was ordered, the member of the Police may arrest him without warrant.
- (3) On making any such arrest, the member of the Police shall as soon as practicable deliver the arrested person into service custody or to the officer in charge of the place where he was imprisoned or detained before he escaped or was temporarily released.

92 Arrest of deserters and absentees

- (1) Where a member of the Police² has reasonable grounds to suspect that any member of the Armed Forces is committing the offence of desertion or absence without leave, he may arrest that member without warrant.
- (2) On making an arrest under subsection (1) of this section, the member of the Police shall as soon as practicable deliver the member into service custody to be dealt with in accordance with this Act.

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,—
- (a) a warrant for the arrest of the person may be issued under section 89 as if the person had committed the offence of desertion or absence without leave under this Act:
- (b) section 89 applies with the necessary modifications:

2 See footnote 1.

- (c) the warrant must specify the maximum punishment for the offence under the service law of the sending State.
- (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.
- (4) Section 101(3) to (5) does not apply to any person to whom subsection (2) applies.

93 Detention in civil custody of arrested persons

- (1) Notwithstanding anything to the contrary in sections 89, 89A, 91, 92, and 92A, where a member of the Police³ arrests any person in accordance with any of those sections, he may detain the arrested person at a police station, or some other place provided for the holding of persons in custody, for such period, but no longer, as may be reasonably necessary to enable the arrested person to be delivered into service custody or, if the arrested person is one to whom section 91 of this Act relates, to the officer in charge of the place where he was imprisoned or detained before he escaped or was temporarily released.
- (2) Where a person is in service custody when charged with, or with a view to his being charged with, an offence against this Act, it shall be the duty of the prison manager of a prison, or of the person having charge of any police station or other place in which prisoners may be lawfully detained, upon delivery to him of a written order purporting to be signed by the commanding officer of the person in custody, to receive that person into his custody for a period not exceeding 7 days.
- (3) The provisions of subsection (1), with the necessary modifications, apply to any person arrested under section 89A or section 92A.
- (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.

93A Detention in service custody of person charged by civil authority

- (1) In this section—

Treaty means an agreement between New Zealand and any other country requiring, providing for, or relating to the presence in that country of any persons subject to this Act

Treaty country, in relation to a treaty, means any country (other than New Zealand) that is a party to the treaty.

- (2) This section applies to every case where any person subject to this Act (in this section referred to as the defendant)—
- (a) is to be tried for an offence by any court of competent jurisdiction in a treaty country, and, by virtue of the treaty or of any order of the court made

3 See footnote 1.

in accordance with the terms of the treaty, the defendant is to be held in service custody pending his trial; or

- (b) is to be tried for an offence by any court of competent jurisdiction in New Zealand or elsewhere, and the court has ordered the release of the defendant from civil custody pending his trial on an undertaking given by any person authorised in that behalf in accordance with Defence Force orders to ensure that the defendant appears before the court at the appointed time to answer the charge against him.
- (3) In any case to which this section applies, the defendant may be arrested and delivered into service custody, and detained in service custody pending his trial.
- (4) Nothing in subsections (3) to (7) of section 101 of this Act shall apply in respect of any case to which this section applies.
- (5) Except as provided in subsection (4) of this section, the provisions of this Part of this Act, with all necessary modifications, shall apply where any person is arrested, delivered into service custody, and detained in service custody under this section.

93B Detention in service custody of members of visiting force

- (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—
 - (a) the service law of the sending State; or
 - (b) the law of New Zealand.
- (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 or held in custody 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.

94 Reasonable force may be used to arrest or search

Where any person arrests or searches any person pursuant to this Act, he may use only such force as may be reasonably necessary to carry out the arrest or search.

95 Search in connection with suspected offence

- (1) If a commanding officer has reasonable grounds to suspect that a person subject to this Act has in his possession any property which has been unlawfully obtained or any article or thing which is or may be evidence relating to the commission of an offence (whether against this Act or otherwise), the commanding officer may—
- (a) detain and search that person; or
 - (b) search any premises within the limits of his command occupied or used by that person; or
 - (c) take possession of any property or any article or thing previously referred to in this subsection, in which event the property, article, or thing shall, subject to this section, be disposed of in accordance with section 99 of this Act.
- (2) The powers conferred on a commanding officer by subsection (1) of this section may be exercised by him personally or by any person authorised or ordered by him in that behalf.
- (3) Where any person is authorised or ordered by or under this section to search any premises, he may, so far as it is necessary to do so (but no further), break into those premises and seize any property or any article or thing referred to in subsection (1) of this section, and for that purpose may break open any container found on those premises which he has reasonable grounds to suspect contains any such property, article, or thing.
- (4) Where, as the result of a search of premises, a person has suffered economic loss by reason of damage to or destruction or loss of any property belonging to him or in which he has a special property or interest, and—
- (a) no evidence of an offence against this Act is found; or
 - (b) the suspected offender is acquitted or not proceeded against; or
 - (c) the property belongs to a person other than the suspected offender; or
 - (d) a person other than the suspected offender has a special property or interest in the property—

the Chief of Defence Force shall, at his option and without further appropriation than this section, either cause the property to be repaired or replaced, or pay to the person suffering the economic loss such amount as he considers necessary to enable that person to have the property repaired or replaced.

- (5) For the purposes of this section, the term premises includes any defence area, ship, vehicle, or aircraft.

96 Searches to prevent smuggling, etc

- (1) Where any commanding officer has, in order to discourage smuggling, or trafficking in duty-free goods or in controlled drugs, or illegal possession of controlled drugs, established a checking area or checkpoint within the limits of his command and ordered any member of the Armed Forces under his command to carry out searches, that member may detain and search—

- (a) any person subject to this Act (including any clothing or any other article of any description worn by him) who is within the checking area or about to pass through the checkpoint, as the case may be; or
 - (b) any ship, vehicle, or aircraft, or any container, receptacle, or parcel, or any other thing whatsoever, that is in the possession or under the control of any such person who is within the checking area or about to pass through the checkpoint.
- (2) If on any such search a member of the Armed Forces has reasonable grounds to suspect that any goods in the possession of the person searched are being smuggled or trafficked, or are controlled drugs, he may take possession of them, in which event they shall be disposed of in accordance with section 99 of this Act.

97 Customary powers of search not affected

The powers conferred on commanding officers by sections 95 and 96 of this Act are in addition to the inherent powers of search exercisable by commanding officers under service custom.

98 Search of person in service custody, etc

- (1) Where any person has been arrested in accordance with this Act, the person making the arrest, or any person acting under his direction, may search the arrested person and take from him any thing found on him or in his possession.
- (2) Where any person subject to this Act is in service custody, a provost officer, or any other member of the Armed Forces to whose charge that person has been committed, or any person acting under the direction of any such provost officer or other member of the Armed Forces, may search the person in custody and take from him any thing found on him or in his possession.
- (3) Subject to subsection (4) of this section, where an officer is to be searched pursuant to this Part of this Act, that search may be carried out only by or on the order of another officer.
- (4) Where a woman is to be searched pursuant to this Part of this Act, that search may be carried out only by another woman; and where a man is to be searched pursuant to this Part, that search may be carried out only by another man.

99 Disposal of property taken in search

- (1) Where any property is taken from the possession of any person as the result of a search carried out under this Part of this Act, the following provisions shall apply:
 - (a) if the property is not required as evidence in proceedings in respect of an offence against this Act, or if the Court Martial or, as the case may be, a disciplinary officer finds that the property was not used in the commission of any such offence, it shall be returned to the person from whose possession it was taken or to such other person as may lawfully be entitled to it;
 - (b) subject to section 87 and except as provided in section 52 of this Act, any property found by the Court Martial or, as the case may be, a disciplinary officer to be used in the commission of an offence against this Act and appearing to that Court or officer to belong to the offender or to be in his

possession with the consent of its owner shall, if the Court or officer so directs, be forfeited to the Crown; and in that event the Chief of Defence Force shall cause the property to be sold either by public auction or private contract, and, on the completion of any such sale, shall cause the proceeds of the sale to be paid into the Crown Bank Account:

Provided that if it would, apart from this section, be unlawful to sell the property, or if it appears to the Chief of Defence Force that the property has no value, he shall cause it to be destroyed or to be otherwise disposed of in such manner as he thinks fit.

- (2) An order of forfeiture made under subsection (1)(b) must be treated, for the purposes of—
- (a) Part 5A, as a punishment imposed on the offender; and
 - (b) an appeal to the Court Martial Appeal Court, as part of the sentence imposed on the offender.

100 Duty of persons arresting

Where a person subject to this Act has been placed under arrest pursuant to this Part of this Act, the person ordering the arrest, or, if no such order has been given, the person making the arrest, shall ensure that, as soon as practicable after the arrest, and in any event not later than 24 hours thereafter, the person arrested is informed of the offence for which the arrest was made.

101 Delay in dealing with person after arrest

- (1) Where any person has been committed to service custody, the person who committed him shall cause to be delivered at the time of the committal, or, if it is not practicable to do so at that time, not later than 24 hours afterwards, to the person to whose custody the arrested person has been committed a report signed by himself stating the offence that the arrested person is alleged to have committed.
- (2) The person to whose custody any such arrested person is committed shall, as soon as practicable after the time of committal, or, if it is not practicable to do so at that time, not later than 24 hours afterwards, notify in writing to the officer to whom it is his duty to report—
- (a) so far as may be known to him,—
 - (i) the name of the arrested person and the offence that he is alleged to have committed; and
 - (ii) the name and the rank or other description of the person who is making the allegation; and
 - (b) if he has received it, the report required by subsection (1) of this section.
- (3) Where a person subject to this Act has been placed under arrest in respect of any alleged offence, his commanding officer shall, within 48 hours after the arrest, unless it is impracticable to do so, ensure either—
- (a) That proceedings for the hearing and determination of the allegation are set in motion; or
 - (b) That he is released from arrest.

- (4) If any person subject to this Act remains in service custody after the expiration of 4 days from the date of his or her arrest without the alleged offence being referred to the Director of Military Prosecutions for trial by the Court Martial or without him or her being tried summarily, or otherwise dealt with, under Part 5, his or her commanding officer must make a report in writing to the Judge Advocate General stating the reasons for the delay.
- (5) The commanding officer must make a report in writing to the Judge Advocate General stating the reasons for the delay at the conclusion of each subsequent period of 8 days, if the person is still held in service custody without the alleged offence being referred to the Director of Military Prosecutions for trial by the Court Martial or without him or her being tried summarily, or otherwise dealt with, under Part 5.

101A Judge Advocate General may grant bail pending trial

- (1) This section applies to a person in service custody in relation to whom the Judge Advocate General has received a report under section 101.
- (2) The person in service custody is not entitled to bail as of right.
- (3) The Judge Advocate General may—
 - (a) grant bail to the person in service custody:
 - (b) impose any conditions of bail that the Judge Advocate General thinks fit.
- (4) In determining whether to grant bail under this section, the Judge Advocate General—
 - (a) must take into account the considerations set out in section 8(1) and (3) of the Bail Act 2000 and all of the following considerations:
 - (i) the seriousness of the alleged offence:
 - (ii) whether there are urgent and exceptional circumstances that favour the grant of bail:
 - (iii) the effect on service discipline of remanding the person on bail; and
 - (b) may take into account the considerations set out in section 8(2) of the Bail Act 2000; and
 - (c) must not grant bail unless satisfied on the balance of probabilities that it would be in the interests of justice in the particular case to do so.

101B Issue of warrant to arrest person absconding or breaching bail condition

- (1) A Judge may issue a warrant in the prescribed form for the arrest of a person who has been released on bail under section 101A if—
 - (a) the Judge is satisfied by evidence on oath that—
 - (i) for the person has absconded or is about to abscond for the purpose of evading justice; or
 - (ii) the person has contravened or failed to comply with any condition of bail; or
 - (b) the person—

- (i) does not attend personally at the time and place specified in the grant of bail; or
 - (ii) does not attend personally at any time and place to which, during the course of the proceedings, the hearing has been adjourned.
- (2) The warrant—
 - (a) must be directed to every provost officer and every member of the police⁴; and
 - (b) may be executed by—
 - (i) a provost officer:
 - (ii) a person lawfully exercising authority under or on behalf of a provost officer:
 - (iii) a member of the police.
- (3) For the purpose of executing the warrant, a person referred to in subsection (2) (b) may, at any time, enter on to any premises, by force if necessary, if he or she has reasonable grounds to believe that the person against whom the warrant is issued is on those premises.
- (4) The person executing the warrant—
 - (a) must have the warrant with him or her; and
 - (b) must produce it on initial entry and, if requested, at any subsequent time; and
 - (c) if he or she is not in uniform, produce evidence that he or she is 1 of the persons referred to in subsection (2)(b).

101C Person arrested under warrant for absconding or breaching bail condition must be brought before Judge Advocate General

- (1) A person who is arrested under a warrant issued under section 101B must be brought before the Judge Advocate General as soon as possible.
- (2) The Judge Advocate General must reconsider the question of bail if satisfied that the person—
 - (a) had absconded or was about to abscond; or
 - (b) had contravened or failed to comply with any condition of bail.

101D Restrictions in relation to midshipmen, officer cadets, and chaplains

- (1) A midshipman, an officer cadet, or a chaplain may not—
 - (a) exercise the powers of arrest conferred by section 88 or 90; or
 - (b) issue or execute a warrant for arrest under section 89.
- (2) A chaplain may not be—
 - (a) ordered to arrest a person subject to this Act under any of sections 88, 89, and 90; or

- (b) ordered to carry out a search under section 96; or
 - (c) directed to search any arrested person under section 98.
- (3) A chaplain may not be authorised or ordered by a commanding officer to exercise any of the powers conferred on a commanding officer by section 95(1).

PART 4A

Director of Military Prosecutions

101E Appointment of Director of Military Prosecutions

- (1) The Governor-General may, by warrant, appoint the Director of Military Prosecutions.
- (2) A person must not be appointed under subsection (1) unless he or she—
- (a) is an officer; and
 - (b) has held a practising certificate as a barrister or solicitor of the High Court for at least 7 years.
- (3) The Chief of Defence Force must arrange for notice of an appointment under subsection (1) to be published in the Gazette as soon as practicable after the appointment.

101F Functions and duties of Director of Military Prosecutions

The functions and duties of the Director of Military Prosecutions are—

- (a) to determine whether an accused is to be committed for trial in the Court Martial:
- (b) to decide on what charge an accused should be tried:
- (c) to prepare and certify the charge sheet or charge sheets against an accused:
- (d) to give a copy of the certified charge sheet to the accused (including any amended charge sheet so certified):
- (e) to lay the charge sheet or charge sheets before the Registrar of the Court Martial:
- (f) if 2 or more persons are accused, to direct whether they are to be tried jointly or separately:
- (g) to appoint counsel for the prosecution:
- (h) to perform any other functions or duties imposed by this Act or any other enactment.

101G Power of Director of Military Prosecutions to direct investigation

- (1) The Director of Military Prosecutions may direct a provost officer to—
- (a) investigate any matter that the Director considers to be relevant to a charge referred to the Director; or

(b) arrange the investigation of that matter.

(2) A provost officer must comply with a direction given under subsection (1).

101H Power of Director of Military Prosecutions to stay proceedings

(1) The Director of Military Prosecutions may, on the application of a disciplinary officer or on his or her own motion, issue an order that the proceedings against an accused under this Act be stayed for the period that he or she thinks fit.

(2) The Director of Military Prosecutions must provide a copy of the order, together with his or her written reasons for the stay, to—

- (a) the Solicitor-General; and
- (b) the disciplinary officer; and
- (c) the accused in question.

101I Director of Military Prosecutions to perform functions and duties, and exercise powers, independently of ministerial control and of command

(1) In performing his or her functions and duties, and exercising his or her powers, the Director of Military Prosecutions is not subject to—

- (a) the control of the Minister; or
- (b) the command of any other officer.

(2) Subsection (1) applies despite sections 7 and 8 of the Defence Act 1990.

(3) To avoid doubt, subsection (1) does not limit or affect the command relationship that exists between the Director of Military Prosecutions and any member of the Armed Forces in respect of any of the Director's functions and duties other than those that are specified in section 101F.

101J Director of Military Prosecutions must report annually to Attorney-General on performance of functions and duties, and exercise of powers

The Director of Military Prosecutions must, not later than 30 June in each year, report to the Attorney-General on the performance of any functions and duties, and the exercise of any powers, imposed or conferred on the Director under this Act.

101K Director of Military Prosecutions must act under general supervision of Solicitor-General

(1) In performing functions or duties, or exercising powers, imposed or conferred by this Act, by the Court Martial Act 2007, or by the Court Martial Appeals Act 1953, the Director of Military Prosecutions must act under the general supervision of the Solicitor-General in the same manner and to the same extent as a Crown Solicitor.

(2) However, subsection (1) does not apply if the Director of Military Prosecutions considers that compliance with that subsection is or would be inconsistent with any provisions of this Act, the Court Martial Act 2007, or the Court Martial Appeals Act 1953.

101L Delegation of functions, duties, or powers of Director of Military Prosecutions

- (1) The Director of Military Prosecutions may, in writing, either generally or particularly, delegate any of the functions, duties, and powers of the Director under this Act, except this power of delegation, to a person who—
- (a) is an officer; and
 - (b) has held a practising certificate as a barrister or solicitor of the High Court for at least 7 years.
- (2) Subject to any general or special directions given or conditions imposed by the Director of Military Prosecutions, the person to whom any functions, duties, or powers are delegated under this section may perform and exercise them in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by delegation.
- (3) The power of the Director of Military Prosecutions to delegate under this section does not limit any power of delegation conferred on the Director by any other Act or prevent the Director delegating to any other person, under that power, any of the functions, duties, and powers of the Director under this Act.
- (4) Every person who appears to be acting under a delegation under this section is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.
- (5) A delegation under this section does not—
- (a) affect or prevent the exercise of any power or the performance of any function or duty by the Director of Military Prosecutions; or
 - (b) affect the responsibility of the Director of Military Prosecutions for the actions of any person acting under the delegation.

PART 5**Investigation and summary trial of charges**

Subpart 1—General provisions

102 Investigation of charges

- (1) If it is alleged that a person subject to this Act has committed an offence against this Act, the commanding officer of that person must, unless he or she considers that the allegation is not well founded, either—
- (a) cause the allegation to be recorded in the form of a charge and to be investigated in the prescribed manner; or
 - (b) cause the allegation to be referred to the appropriate civil authority for investigation.
- (2) In this Part, a matter or thing is done in the prescribed manner if it is done in accordance with, and in the manner prescribed by, this Part and the rules of procedure.

103 Disposal of charges by commanding officers

- (1) Every commanding officer must investigate and dispose of a charge before him or her in the prescribed manner.
- (2) However, a commanding officer may stay proceedings on a charge before him or her, or before a detachment commander or a subordinate commander, for any time that he or she considers necessary if satisfied that proceedings for the matters to which the charge relates could be, and in the interests of the better administration of justice should be, taken against the accused otherwise than under this Act.

104 Disposal of charges by superior commanders

- (1) Every superior commander must investigate and dispose of a charge before him or her in the prescribed manner.
- (2) However, a superior commander may stay proceedings on a charge before him or her for any time that he or she considers necessary if satisfied that proceedings for the matters to which the charge relates could be, and in the interests of the better administration of justice should be, taken against the accused otherwise than under this Act.

105 Disposal of charges by detachment commanders

- (1) A detachment commander may exercise all or any of the powers conferred on commanding officers under this Part.
- (2) Subsection (1) is subject to any limitations or restrictions that may be imposed by, or in accordance with, orders of the Chief of Defence Force.

106 Disposal of charges by subordinate commanders

- (1) A commanding officer may, by written notice, delegate all or any of his or her powers to act as a disciplinary officer under this Part to an officer or class of officers under his or her command as may be specified in the notice.
- (2) A commanding officer may not delegate any powers under this section to a midshipman or an officer cadet.
- (3) A subordinate commander must not act as a disciplinary officer for an offence alleged to have been committed by a member of the Armed Forces holding a rank above that of petty officer in the Navy or sergeant in the Army or the Air Force.
- (4) The exercise of any powers by a subordinate commander under this section is subject to the limitations and restrictions (if any) as may be, specified—
 - (a) in orders issued by the Chief of Defence Force; and
 - (b) in the notice given by the delegating commanding officer (in so far as the notice is consistent with any Defence Force Orders); and
 - (c) in this Part.

107 Effect of delegation

- (1) A subordinate commander may exercise the powers delegated under section 106 in the same manner and to the same extent as if they had been conferred on him or her directly by this Act and not by delegation.

- (2) A subordinate commander who appears to be acting under a delegation under section 106 is, in the absence of proof to the contrary, presumed to be acting under its terms.
- (3) A delegation under section 106 does not prevent a commanding officer from exercising his or her powers to act as a disciplinary officer in relation to charges not otherwise disposed of.
- (4) A power delegated under section 106 may be revoked by the commanding officer of the subordinate commander.

When officer is empowered to act as disciplinary officer

108 Officer is empowered to act as disciplinary officer

- (1) For the purposes of this Part, an officer is empowered to act as a disciplinary officer in relation to a charge if—
 - (a) the officer is a superior commander, a commanding officer, a detachment commander, or a subordinate commander; and
 - (b) the officer holds a rank at least 2 rank grades above that of the accused; and
 - (c) the officer holds a certificate of competency as a disciplinary officer, as prescribed by the Chief of Defence Force; and
 - (d) in the case of a subordinate commander, the officer holds a delegation under section 106 that authorises him or her to so act.
- (2) However, for the purposes of this Part, an officer is not empowered to act as a disciplinary officer in relation to a charge if—
 - (a) the officer considers, at the relevant time, that it is necessary for the maintenance of discipline, or in the interests of justice, that the charge be referred to another person; or
 - (b) the officer is personally interested in the charge; or
 - (c) an order made under section 206(1)(ab) specifies that the offence alleged by the charge may not be tried summarily, or otherwise dealt with, under this Part by the officer.
- (3) For the purposes of this section, relevant time means,—
 - (a) in relation to sections 109 to 111, immediately before the officer begins to act as the disciplinary officer;
 - (b) in any other case, the time at which the officer is considering under this Part whether he or she is empowered to act as a disciplinary officer in relation to the charge.
- (4) For the purposes of this Part, an officer is personally interested in a charge if—
 - (a) the charge alleges an offence against the officer himself or herself; or
 - (b) the charge alleges an offence against any member of his or her family; or
 - (c) the charge alleges an offence by any member of his or her family; or

- (d) the charge is one in respect of which the officer or any member of his or her family is the sole witness to any material ingredient of the offence; or
- (e) the officer otherwise has a personal interest in the charge that is likely to influence his or her judgment.

Subpart 2—Preliminary procedures and investigation of charges

Initial referral of charges

109 Charge must be referred to subordinate commander in certain circumstances

- (1) This section applies if—
 - (a) an allegation has been recorded in the form of a charge; and
 - (b) the accused is below the rank of chief petty officer in the Navy, staff sergeant in the Army, or flight sergeant in the Air Force; and
 - (c) the accused has a subordinate commander who is empowered to act as a disciplinary officer in relation to the charge.
- (2) The charge against the accused must be referred to the subordinate commander.
- (3) The subordinate commander must act under this subpart as the disciplinary officer in relation to the charge.
- (4) Subsection (3) is subject to any other provision of this Part that provides for—
 - (a) the referral of the charge to another person; or
 - (b) another person to act as the disciplinary officer in relation to the charge.

110 Charge must be referred to commanding officer, superior commander, or detachment commander in certain circumstances

- (1) This section applies if—
 - (a) an allegation has been recorded in the form of a charge; and
 - (b) either or both of the following apply:
 - (i) the accused is of or above the rank of chief petty officer in the Navy, staff sergeant in the Army, or flight sergeant in the Air Force;
 - (ii) the accused does not have a subordinate commander who is empowered to act as a disciplinary officer in relation to the charge.
- (2) The charge against the accused must be referred to—
 - (a) his or her detachment commander or commanding officer if that officer is empowered to act as a disciplinary officer in relation to the charge; or
 - (b) a superior commander in the accused's chain of command who is empowered to act as a disciplinary officer in relation to the charge.
- (3) The detachment commander, commanding officer, or superior commander must act under this subpart as the disciplinary officer in relation to the charge.
- (4) Subsection (3) is subject to any other provision of this Part that provides for—

- (a) the referral of the charge to another person; or
- (b) another person to act as the disciplinary officer in relation to the charge.

111 Accused must be remanded for trial in Court Martial and charge must be referred to Director of Military Prosecutions in certain circumstances

If there is no person who is empowered to act as a disciplinary officer in relation to a charge,—

- (a) the accused must be remanded for trial in the Court Martial; and
- (b) the charge must be referred to the Director of Military Prosecutions.

Certification and amendment of charges

112 Charge must be certified if disciplinary officer may impose certain punishments or make certain compensation orders

- (1) A disciplinary officer must, after a charge is referred to him or her under section 109 or 110 but before the accused is brought before him or her, consider whether he or she may, if the accused were found guilty—
 - (a) impose a punishment consisting of or including 1 or more of the following:
 - (i) detention;
 - (ii) reduction in rank;
 - (iii) a fine of an amount that exceeds the accused's basic pay for a period of 7 days or;
 - (b) order the accused to pay an amount that exceeds the accused's basic pay for a period of 7 days.
- (2) In considering the matter under subsection (1), the disciplinary officer—
 - (a) must have regard to the charge referred to him or her (including the nature of the offence alleged by the charge); and
 - (b) is not required to have regard to any other information or document, or to make any further inquiries.
- (3) The disciplinary officer must stay the proceedings until a specified certificate is received if—
 - (a) he or she considers that, if the accused were found guilty—
 - (i) a punishment consisting of or including 1 or more of the punishments referred to in subsection (1)(a) may be imposed; or
 - (ii) an order for compensation referred to in subsection (1)(b) may be made; and
 - (b) he or she has not yet received a specified certificate.
- (4) The accused must be brought before the, disciplinary officer and the disciplinary officer must proceed in relation to the charge in accordance with this subpart if—
 - (a) the proceedings are not stayed under subsection (3); or

- (b) the disciplinary officer receives a specified certificate after the proceedings are stayed under subsection (3).
- (5) For the purposes of this Part, specified certificate, in relation to a charge, means a certificate issued by an officer who is a member of a specialist legal branch or corps in the Armed Forces that certifies that, in the opinion of the officer, the charge—
- (a) discloses an offence against this Act; and
 - (b) is drawn in accordance with the rules of procedure; and
 - (c) is otherwise correct in law.

113 Amendment of charge

- (1) A disciplinary officer may, after an accused is brought before him or her on a charge, amend that charge, substitute for it a different charge, or add a new charge, if the disciplinary officer considers that it is in the interests of justice to do so.
- (2) Section 112 applies, with all necessary modifications, in relation to the amended, substituted, or additional charge as if that charge had been referred to the disciplinary officer under section 109 or 110.
- (3) If the disciplinary officer exercises his or her powers under subsection (1) after investigating the original charge under this subpart, that investigation must be treated as an investigation under this subpart of the amended, substituted, or additional charge unless the accused requires a new investigation to be conducted.
- (4) If the amended, substituted, or additional charge differs substantially from the original charge, the disciplinary officer must—
- (a) explain the amended, substituted, or additional charge to the accused; and
 - (b) advise the accused of his or her right to seek an adjournment to consider the charge; and
 - (c) if requested by the accused to do so, adjourn the proceedings for that purpose.

Assignment of defending and presenting officers

114 Assistance to accused

- (1) If an accused is brought before a disciplinary officer under this Part, that officer must ensure that a defending officer is assigned—
- (a) to assist the accused in the preparation and presentation of his or her case; and
 - (b) to act on behalf of the accused.
- (2) Subsection (1) does not apply if the accused states in writing that he or she does not require the assistance referred to in that subsection.
- (3) The officer or non-commissioned officer assigned to act as defending officer—
- (a) must hold an appropriate certificate of competency, as prescribed by the Chief of Defence Force; and
 - (b) must not be a lawyer.

- (4) The officer or non-commissioned officer assigned to act as defending officer for the accused may be changed by the disciplinary officer at any time if—
- (a) the accused so requests; or
 - (b) the disciplinary officer considers that it is necessary to do so, having regard to the exigencies of the service.

115 Assignment of presenting officer

- (1) If an accused is brought before a disciplinary officer under this Part, that officer must ensure that a presenting officer is assigned to—
- (a) assemble the evidence in support of the charge; and
 - (b) present the case in support of the charge, to the extent required by the disciplinary officer.
- (2) The officer or non-commissioned officer assigned to act as presenting officer—
- (a) must hold an appropriate certificate of competency, as prescribed by the Chief of Defence Force; and
 - (b) must not be a lawyer.
- (3) The officer or non-commissioned officer assigned as presenting officer may be changed at any time by the disciplinary officer if the disciplinary officer considers that it is necessary or desirable to do so.

Arraignment

116 Arraignment by disciplinary officer

When the accused is brought before a disciplinary officer under this Part, the disciplinary officer must—

- (a) inform the accused that the disciplinary officer is going to hear the charge; and
- (b) ensure that the accused is correctly described in the record of proceedings; and
- (c) read the charge to the accused; and
- (d) ensure that the evidence in support of the charge has been adequately disclosed to the accused in the manner prescribed by the rules of procedure; and
- (e) ask the accused whether he or she pleads guilty or not guilty to the charge.

Plea of guilty

117 Plea of guilty

- (1) If the accused pleads guilty to the charge, the disciplinary officer must enter the plea on the record of proceedings if the disciplinary officer is satisfied that the accused—
- (a) understands the nature of the charge; and
 - (b) has made the plea voluntarily; and
 - (c) understands the consequences of the plea.

- (2) The disciplinary officer must proceed under this subpart as if the accused had pleaded not guilty if—
- (a) the accused refuses to plead; or
 - (b) the accused pleads unintelligibly; or
 - (c) the disciplinary officer is not satisfied of any of the matters referred to in subsection (1)(a) to (c).

117A Subordinate commander may punish accused or refer charge to commanding officer or detachment commander

- (1) If the disciplinary officer is a subordinate commander and he or she enters a guilty plea on the record of proceedings under section 117,—
- (a) the presenting officer must inform the subordinate commander of the facts that are relevant to the charge; and
 - (b) the subordinate commander may hear all or any of the evidence relating to the charge if he or she considers that it is in the interests of justice or discipline to do so; and
 - (c) the subordinate commander must consider whether, in his or her opinion, he or she—
 - (i) has sufficient powers of punishment in relation to the charge; and
 - (ii) is empowered to act as a disciplinary officer in relation to the charge.
- (2) If the subordinate commander considers under subsection (1) that he or she has sufficient powers of punishment and is empowered to act as a disciplinary officer in relation to the charge, he or she must—
- (a) record a finding of guilty on the charge; and
 - (b) inform the accused of that finding; and
 - (c) proceed under subpart 4.
- (3) If the subordinate commander considers under subsection (1) that he or she has insufficient powers of punishment or is not empowered to act as a disciplinary officer in relation to the charge, he or she must refer the charge to the accused's commanding officer or detachment commander without recording a finding of guilty on the charge.
- (4) After a charge is referred to a commanding officer or detachment commander under subsection (3), he or she becomes the disciplinary officer in relation to the charge. (5) This section is subject to sections 117G and 117H.

117B Commanding officer, detachment commander, or superior commander who receives guilty plea or receives referral must consider certain matters

- (1) This section applies if—
- (a) the disciplinary officer is a commanding officer, a detachment commander, or a superior commander, and he or she enters a guilty plea on the record of proceedings under section 117; or
 - (b) a charge has been referred to a commanding officer or a detachment commander under section 117A.

- (2) The presenting officer must inform the commanding officer, detachment commander, or superior commander of the facts that are relevant to the charge.
- (3) The commanding officer, detachment commander, or superior commander may hear all or any of the evidence relating to the charge if he or she considers that it is in the interests of justice or discipline to do so.
- (4) The commanding officer, detachment commander, or superior commander must consider whether, in his or her opinion,—
 - (a) he or she has sufficient powers of punishment in relation to the charge; and
 - (b) he or she is empowered to act as a disciplinary officer in relation to the charge.

117C Consideration of whether accused who pleads guilty should be given right to elect trial by Court Martial

- (1) If the commanding officer, detachment commander, or superior commander considers under section 117B that he or she has sufficient powers of punishment and is empowered to act as a disciplinary officer in relation to the charge, he or she must consider whether the accused should be given the right to elect trial by the Court Martial.
- (2) The commanding officer, detachment commander, or superior commander must, in making a decision under subsection (1),—
 - (a) consider the punishment, or combination of punishments, that he or she would be likely to impose if he or she were to act under subpart 4; and
 - (b) consider the orders for compensation or restitution (or both) that he or she would be likely to make if he or she were to act under subpart 4; and
 - (c) have regard to sections 117W and 117ZA.

117D Accused who pleads guilty must be informed if he or she has right to elect trial by Court Martial

- (1) If the commanding officer, detachment commander, or superior commander considers under section 117C that he or she should give the accused the right to elect trial by the Court Martial, he or she must—
 - (a) inform the accused that the accused has the right to elect either—
 - (i) trial by the Court Martial; or
 - (ii) for the commanding officer, detachment commander, or superior commander to proceed under subpart 4; and
 - (b) adjourn the hearing and give the accused a reasonable period to consider the accused's election; and
 - (c) give the accused the opportunity to consult a lawyer in respect of the accused's election if it is reasonably practicable to do so.
- (2) The period of adjournment under subsection (1)(b) must be at least 24 hours if the accused wishes it.

117E Accused who pleads guilty must be punished in certain circumstances

- (1) This section applies if—

- (a) a commanding officer, detachment commander, or superior commander considers, under section 117C, that an accused who has pleaded guilty should not be given the right to elect trial by the Court Martial; or
 - (b) an accused is given the right to an election under section 117D and elects—
 - (i) for the commanding officer, detachment commander, or superior commander to proceed under subpart 4; or
 - (ii) trial by the Court Martial, but withdraws his or her election in the prescribed manner.
- (2) The commanding officer, detachment commander, or superior commander must—
- (a) record a finding of guilty on the charge; and
 - (b) inform the accused of that finding; and
 - (c) proceed under subpart 4.
- (3) This section is subject to sections 117G and 117H.

117F Accused must be remanded for trial in Court Martial and charge must be referred to Director of Military Prosecutions in certain circumstances

- (1) A commanding officer, detachment commander, or superior commander must remand the accused for trial in the Court Martial and refer the charge to the Director of Military Prosecutions if—
- (a) he or she considers under section 117B that he or she has insufficient powers of punishment or is not empowered to act as a disciplinary officer in relation to the charge; or
 - (b) the accused is given the right to an election under section 117D and either—
 - (i) the accused elects trial by the Court Martial and does not withdraw his or her election in the prescribed manner; or
 - (ii) the accused does not make an election when asked to do so by the commanding officer, detachment commander, or superior commander.
- (2) However, if the accused is given the right to an election under section 117D and elects trial by the Court Martial, the disciplinary officer must not act under subsection (1) during the 24 hours following the accused's election.

Other matters relating to pleas

117G Procedure following mixed pleas

- (1) This section applies if—
- (a) there is more than 1 charge against the accused contained in the same charge report; and
 - (b) the accused pleads guilty to 1 or more but not all of the charges.
- (2) The disciplinary officer—

- (a) must proceed under sections 117 to 117F in respect of each charge to which the accused pleads guilty; but
 - (b) must not proceed to punish the accused under subpart 4 in respect of those charges until a finding under this Part is recorded for the other charges against the accused contained in the same charge report.
- (3) However, if the disciplinary officer is to refer a charge to the Director of Military Prosecutions under section 117ZF, the disciplinary officer must not record a finding of guilty on the charge under sections 117 to 117F.
- (4) Each charge to which the accused has pleaded not guilty must be proceeded with in accordance with this Act.
- (5) This section is subject to section 117ZF and the rules of procedure.

117H Change or amendment of plea

- (1) If the accused pleads not guilty to the charge, he or she may withdraw his or her plea of not guilty and substitute a plea of guilty at any time before the disciplinary officer records the finding on the charge.
- (2) If the accused substitutes a plea of guilty under subsection (1), the disciplinary officer must, so far as is necessary, proceed as if the accused had originally pleaded guilty.
- (3) If the accused pleads guilty to the charge, he or she may withdraw his or her plea of guilty and substitute a plea of not guilty at any time before the disciplinary officer records the finding on the charge.
- (4) If the accused substitutes a plea of not guilty under subsection (3), the disciplinary officer must, so far as is necessary, proceed as if the accused had originally pleaded not guilty.
- (5) If the accused pleads guilty to the charge and the disciplinary officer accepts the plea, the disciplinary officer may, if at any time during the proceedings it appears to him or her that he or she should not have accepted the plea, amend the record and substitute a plea of not guilty.
- (6) If the disciplinary officer acts under subsection (5), the disciplinary officer must, so far as is necessary, proceed as if the accused had originally pleaded not guilty.

Investigation following plea of not guilty

117I Procedure following plea of not guilty

- (1) If the accused pleads not guilty to the charge, the disciplinary officer must—
- (a) enter the plea on the record of proceedings; and
 - (b) ask the accused if he or she has had adequate time and facilities to prepare a defence.
- (2) If the disciplinary officer considers, after acting under subsection (1)(b), that the accused has not had adequate time or facilities (or both) to prepare a defence, the disciplinary officer must adjourn the proceedings to allow the accused—

- (a) adequate time to prepare a defence; and
- (b) a reasonable opportunity to obtain adequate facilities to prepare a defence.

117J Disciplinary officer must determine whether prima facie case is made out after hearing of evidence in support of charge

- (1) When the case is ready to proceed, the disciplinary officer—
 - (a) must ask the accused whether he or she requires oral evidence to be given on oath; and
 - (b) may ask the presenting officer to outline the case in support of the charge; and
 - (c) must ask the presenting officer—
 - (i) to call each witness in support of the charge who is to give evidence orally to give evidence in the presence of the accused; and
 - (ii) to produce, and to read aloud to the accused, any written statement that the disciplinary officer has decided to admit in evidence in support of the charge.
- (2) The disciplinary officer—
 - (a) must give the accused an opportunity to cross-examine each witness who gives evidence orally in support of the charge; and
 - (b) may allow the presenting officer an opportunity to re-examine each witness who has been cross-examined; and
 - (c) may put questions to each witness who gives evidence orally in support of the charge that the disciplinary officer considers are necessary to ensure that he or she fully understands the witness's evidence.
- (3) After the disciplinary officer has heard the evidence in support of the charge, he or she must determine whether a prima facie case has been made out.
- (4) If the disciplinary officer is not satisfied that a prima facie case has been made out, he or she must dismiss the charge, record the finding, and inform the accused.

Disciplinary officer must consider certain matters

117K Disciplinary officer must consider whether he or she has sufficient powers of punishment and whether he or she can act as disciplinary officer

- (1) If the disciplinary officer is satisfied that a prima facie case has been made out, the disciplinary officer must consider whether, in his or her opinion, he or she—
 - (a) has sufficient powers of punishment in relation to the charge; and
 - (b) is empowered to act as a disciplinary officer in relation to the charge.
- (2) If the disciplinary officer is a subordinate commander who considers under this section that he or she—
 - (a) has sufficient powers of punishment and is empowered to act as a disci-

disciplinary officer in relation to the charge, he or she must proceed to act as a disciplinary officer in relation to the charge under subpart 3:

- (b) has insufficient powers of punishment or is not empowered to act as a disciplinary officer in relation to the charge, he or she must refer the charge to the accused's commanding officer or detachment commander without recording, a finding.
- (3) After a charge is referred to a commanding officer or detachment commander under subsection (2)(b), he or she—
- (a) becomes the disciplinary officer in relation to the charge; and
 - (b) must investigate the charge under section 117J as if the subordinate commander had not begun to investigate the charge; and
 - (c) must, after acting under paragraph (b), act under subsection (1) if he or she is satisfied that a prima facie case has been made out.
- (4) If the disciplinary officer is a commanding officer, a detachment commander, or a superior commander who considers under this section that he or she has insufficient powers of punishment or is not empowered to act as a disciplinary officer in relation to the charge, he or she must remand the accused for trial in the Court Martial and refer the charge to the Director of Military Prosecutions.

Right to elect trial by Court Martial

117L Disciplinary officer must consider whether accused should be given right to elect trial by Court Martial

- (1) If the disciplinary officer is a commanding officer, a detachment commander, or a superior commander who considers under section 117K that he or she has sufficient powers of punishment and is empowered to act as a disciplinary officer in relation to the charge, he or she must consider whether the accused should be given the right to elect trial by the Court Martial.
- (2) The disciplinary officer must, in making a decision under subsection (1),—
- (a) consider the punishment, or combination of punishments, that he or she would be likely to impose if the accused were found guilty; and
 - (b) consider the orders for compensation or restitution (or both) that he or she would be likely to make if the accused were found guilty; and
 - (c) have regard to sections 117W and 117ZA.
- (3) If the disciplinary officer considers that he or she should not give the accused the right to elect trial by the Court Martial, he or she must try the accused summarily under subpart 3.

117M Disciplinary officer must inform accused if accused has right to elect trial by Court Martial

- (1) If the disciplinary officer considers under section 117L that he or she should give the accused the right to elect trial by the Court Martial, he or she must—
- (a) inform the accused that the accused has the right to elect either—

- (i) trial by the Court Martial; or
 - (ii) summary trial by the disciplinary officer; and
 - (b) adjourn the hearing and give the accused a reasonable period to consider the accused's election; and
 - (c) give the accused the opportunity to consult a lawyer in respect of the accused's election if it is reasonably practicable to do so.
- (2) The period of adjournment under subsection (1)(b) must be at least 24 hours if the accused wishes it.

117N Disciplinary officer must remand accused for trial in Court Martial or try charge summarily

- (1) The disciplinary officer must remand the accused for trial in the Court Martial and refer the charge to the Director of Military Prosecutions if, after having been given the right to an election under section 117M,—
- (a) the accused elects trial by the Court Martial and does not withdraw his or her election in the prescribed manner; or
 - (b) the accused does not make an election when asked to do so by the disciplinary officer.
- (2) However, if the accused is given the right to an election under section 117M and elects trial by the Court Martial, the disciplinary officer must not act under subsection (1) during the 24 hours following the accused's election.
- (3) The disciplinary officer must try the accused summarily under subpart 3 if, after having been given the right to an election under section 117M, the accused elects—
- (a) summary trial by the disciplinary officer; or
 - (b) trial by the Court Martial, but withdraws his or her election in the prescribed manner.

Subpart 3—Trying charges summarily

117O Disciplinary officer must advise accused and hear evidence on behalf of accused

- (1) If the disciplinary officer is to try the accused summarily, the disciplinary officer must, in accordance with the rules of procedure, briefly advise the accused of the procedure to be followed in the summary trial.
- (2) After advising the accused under subsection (1), the disciplinary officer must ask the accused—
- (a) to outline the case on behalf of the accused; and
 - (b) to tell the disciplinary officer whether or not the accused wishes to put forward evidence in reply and, if so, what form the evidence will take; and
 - (c) to give evidence orally if he or she wishes to give evidence orally; and

- (d) to call each witness on behalf of the accused who is to give evidence orally (following the accused if he or she wishes to give evidence) to give his or her evidence in the presence of the accused.
- (3) The disciplinary officer must, after complying with subsection (2), read aloud any written statement that the disciplinary officer has decided to admit in evidence on behalf of the accused.
- (4) If evidence is put forward on behalf of the accused, the disciplinary officer—
 - (a) may allow the presenting officer to cross-examine each witness who gives evidence orally; and
 - (b) if the presenting officer cross-examines a witness, must allow the accused an opportunity to re-examine the witness.
- (5) The disciplinary officer may put questions to each witness that the disciplinary officer considers necessary to ensure that he or she fully understands the witness's evidence.

117P Presenting officer and disciplinary officer may call or recall witnesses

- (1) If evidence is put forward on behalf of the accused, the presenting officer may, at the conclusion of the evidence on behalf of the accused, with the leave of the disciplinary officer, call or recall any witness to give evidence on any matter raised by, or on behalf of, the accused in his or her defence—
 - (a) that the presenting officer could not properly have put before the disciplinary officer before the accused's defence was disclosed; or
 - (b) that the presenting officer could not reasonably have foreseen.
- (2) The disciplinary officer may, at any time before he or she determines whether he or she finds the accused guilty or not guilty on the charge, call or recall any witness if he or she considers that it is in the interests of justice to do so.
- (3) If the disciplinary officer calls or recalls a witness under subsection (2), the disciplinary officer may allow the presenting officer, the accused, or both to put questions to the witness that the disciplinary officer may allow as proper.

117Q Disciplinary officer must determine whether accused is guilty or not guilty

After the disciplinary officer has received all the evidence under subpart 2 and this subpart, he or she must—

- (a) determine whether the accused is guilty or not guilty on the charge; and
- (b) record the finding; and
- (c) inform the accused.

Subpart 4—Punishment

117R Procedures to be followed before imposing punishment

- (1) If the disciplinary officer records a finding of guilty on the charge, he or she must, before imposing a punishment,—
 - (a) examine the offender's conduct sheets; and

- (b) if a victim of the offence so wishes, read aloud a written statement from the victim setting out—
 - (i) any physical injury or emotional harm suffered by the victim through, or by means of, the offence; and
 - (ii) any loss of, or damage to, property suffered by the victim through, or by means of, the offence; and
 - (iii) any other effects of the offence on the victim; and
 - (c) give the offender a reasonable opportunity to make an explanation or plea in mitigation of punishment; and
 - (d) if the offender so wishes, give any witness on behalf of the offender a reasonable opportunity to give evidence in support of the explanation or plea in mitigation of punishment.
- (2) If the disciplinary officer records a finding of guilty on the charge, he or she may, before imposing a punishment, obtain from the presenting officer—
- (a) a report on the offender’s record and general conduct in the service; and
 - (b) details of any period during which the offender was held in custody awaiting trial; and
 - (c) details of any information in the possession of the service authorities relating to the offender’s circumstances that may be relevant in considering punishment.
- (3) The disciplinary officer must ensure that he or she has received a specified certificate if he or she intends to impose a punishment consisting of or including 1 or more of the following:
- (a) detention:
 - (b) reduction in rank:
 - (c) a fine of an amount that exceeds the offender’s basic pay for a period of 7 days.
- (4) In this section, victim has the same meaning as in section 4 of the Victims’ Rights Act 2002.

117S Disciplinary officer may impose punishment, order offender to appear for punishment if called on, or discharge offender

- (1) The disciplinary officer may, after acting under section 117R,—
- (a) impose on the offender any 1 or more of the punishments that he or she is authorised under this Part to impose and considers just; or
 - (b) make an order under section 117T; or
 - (c) discharge the offender without acting under paragraph (a) or (b).
- (2) The disciplinary officer must give reasons for his or her action under subsection (1).
- (3) Subsection (1) does not limit section 117ZA (which relates to orders for compensation and restitution).

- (4) The disciplinary officer must, after acting under subsection (1),—
- (a) record the details of any forfeitures incurred by or under this Act, and any cancellation of the whole or any part of those forfeitures, and inform the offender; and
 - (b) notify the offender of the offender's right of appeal under Part 5A.

117T Order to come up for punishment if called on

- (1) The disciplinary officer may, instead of imposing a punishment on an offender, order the offender to appear for punishment if called on to do so within the period specified in subsection (2).
- (2) The period referred to in subsection (1) is a period not exceeding 1 year, commencing with the date on which the finding of guilty is recorded, that the disciplinary officer may specify in the order.
- (3) If the disciplinary officer makes an order under subsection (1), he or she must record and attach to the record of proceedings a statement of his or her findings of fact in relation to the charge.
- (4) The disciplinary officer may make orders under section 117ZA in combination with an order under subsection (1).

117U Offender to come up for punishment

- (1) This section applies if an offender in respect of whom an order is made under section 117T—
- (a) is convicted, or found guilty summarily, of a subsequent offence against this Act or any other Act; or
 - (b) fails to comply with any other order referred to in section 117T(4); or
 - (c) fails to comply with any agreement, or fails to take any measure or action, of a kind referred to in section 10(1)(b), (d), or (e) of the Sentencing Act 2002 that was brought to the attention of the disciplinary officer at the time the disciplinary officer made the order under section 117T.
- (2) An offender's commanding officer may, at any time within the period specified in the order made under section 117T, order the offender to appear before the commanding officer or another disciplinary officer to be dealt with for the original offence.
- (3) After an order is given under subsection (2), the offender must be placed in close arrest and brought before the commanding officer or other disciplinary officer at a time and place directed by the commanding officer or disciplinary officer.
- (4) If a person appears before a commanding officer or another disciplinary officer under this section and the commanding officer or disciplinary officer is satisfied of any of the matters specified in subsection (1), the commanding officer or disciplinary officer—
- (a) must inquire into the circumstances of the original offence and the conduct of the offender since the order under section 117T was made (including, if appropriate, the circumstances and seriousness of the subsequent offence (if any)); and

(b) may impose a punishment, or a combination of punishments, on the offender for the original offence.

(5) This section is subject to section 117X.

Summary punishments

117V Types and maximum amounts of summary punishments

- (1) The punishments that may be imposed on an offender tried summarily, or otherwise dealt with, under this Part are those specified in Schedule 3.
- (2) The maximum amount of any one punishment that may be imposed on an offender in relation to a charge tried summarily, or otherwise dealt with, under this Part by—
 - (a) a commanding officer or a detachment commander is that specified in Schedule 4 in relation to the rank of the offender as specified in that schedule:
 - (b) a subordinate commander is that specified in column 3 of Schedule 4 in relation to the rank of the offender as specified in that schedule:
 - (c) a superior commander is that specified in Schedule 5.
- (3) A disciplinary officer who finds a person guilty of 1 or more offences may, if he or she thinks it is just to do so, impose on that person more than 1 of the punishments authorised by this Part.
- (4) Subsection (3) does not limit the power of a disciplinary officer to discharge an offender without imposing a punishment on him or her or to order that person to appear for punishment if called on to do so.

117W Certain punishments must not be imposed unless offender was given right to elect trial by Court Martial

- (1) This section applies if the disciplinary officer is a commanding officer, a detachment commander, or a superior commander.
- (2) If the offender was given the right to elect trial by the Court Martial under section 117D or 117M, the disciplinary officer may,—
 - (a) in the case of a commanding officer or a detachment commander, impose on the offender, to the extent authorised by column 2 of Schedule 4, any punishment or punishments that the commanding officer or detachment commander considers just:
 - (b) in the case of a superior commander, impose on the offender, to the extent authorised by column 2 of Schedule 5, any punishment or punishments that the superior commander considers just.
- (3) If the offender was not given the right to elect trial by the Court Martial under section 117D or 117M, the disciplinary officer may,—
 - (a) in the case of a commanding officer or a detachment commander, impose on the offender, to the extent authorised by column 3 of Schedule 4, any punishment or punishments that the commanding officer or detachment commander considers just:

- (b) in the case of a superior commander, impose on the offender, to the extent authorised by column 3 of Schedule 5, any punishment or punishments that the superior commander considers just.

117X Punishment must be imposed for all offences of which person is found guilty

If a person tried summarily, or otherwise dealt with, under this Part in respect of 2 or more charges contained in the same charge report is found guilty of the offences charged, or at least 2 of them if there are more than 2, any punishment or punishments imposed on him or her must be in respect of all of the offences of which he or she has been found guilty.

117Y Provisions relating to punishment of detention

- (1) In determining the period of any detention to be imposed, a disciplinary officer must not take into account any period during which the offender has been held in custody but must specify any such period on the committal order.
- (2) Subsection (1) does not apply in respect of any time spent in custody that is unrelated to any charge before the disciplinary officer.
- (3) A disciplinary officer must not impose the punishment of detention on an officer (including a midshipman or an officer cadet).
- (4) A disciplinary officer must not, except with the prior approval of a superior commander, impose the punishment of detention on a member of the Armed Forces who had, at the time that the offence was committed, attained the age of 17 years but was, at that time, under the age of 18 years.
- (5) In this section, custody—
- (a) means detention in civil custody or under close arrest; but
- (b) does not include open arrest.

117Z Reduction of punishments

- (1) When a disciplinary officer has imposed a punishment, or a combination of punishments, for an offence against this Act, he or she—
- (a) may not subsequently increase the punishment for that offence; but
- (b) may reduce the punishment for the offence at any time before it has been completely carried out.
- (2) A commanding officer may reduce, but not increase, a punishment imposed by a detachment commander or by a subordinate commander.

*Compensation and restitution***117ZA Orders for compensation and restitution**

- (1) Every disciplinary officer who finds an offender guilty of an offence may, in addition to or in substitution for any punishment or punishments that he or she may impose on the offender, order the offender, in the same manner and to the same extent as the Court Martial,—
- (a) to pay compensation in accordance with section 86; or
 - (b) to make restitution in accordance with section 87 (with or without compensation under section 87(3)); or
 - (c) both to pay compensation and make restitution.
- (2) However,—
- (a) if the offender was given the right to elect trial by the Court Martial under section 117D or 117M, he or she may not be ordered under this section to pay an amount by way of compensation exceeding his or her basic pay for a period of 28 days:
 - (b) if the offender was not given the right to elect trial by the Court Martial under section 117D or 117M, he or she may not be ordered to pay an amount by way of compensation exceeding his or her basic pay for a period of 14 days.
- (3) The disciplinary officer must ensure that he or she has received a specified certificate if he or she intends to order the offender to pay an amount by way of compensation that exceeds the offender's basic pay for 7 days.

Subpart 5—Miscellaneous matters

*Rights under New Zealand Bill of Rights Act 1990***117ZB Accused deemed to have waived certain rights in certain circumstances**

- (1) An accused is deemed to have irrevocably waived, in relation to a charge, the rights referred to in subsection (2) if having been given the right to an election under—
- (a) section 117D, the accused elects—
 - (i) for the commanding officer, detachment commander, or superior commander to proceed under subpart 4; or
 - (ii) trial by the Court Martial, but withdraws his or her election in the prescribed manner:
 - (b) section 117M, the accused elects—
 - (i) summary trial by the disciplinary officer; or
 - (ii) trial by the Court Martial, but withdraws his or her election in the prescribed manner.
- (2) The rights are—
- (a) the right that the accused had or has under section 24(c) of the New Zealand Bill of Rights Act 1990 to the extent that it relates to the right to legal representation; and

- (b) the right that the accused had or has under section 25(a) of that Act to the extent that it relates to the right to a hearing by an independent court.

117ZC Implications of election must be explained to accused

- (1) When the accused appears before the disciplinary officer to indicate his or her election under section 117D or 117M, the disciplinary officer must, before the election is made, take reasonable steps to ensure that the implications of the election have been fully explained to the accused by—
 - (a) his or her defending officer; or
 - (b) an officer or a non-commissioned officer who holds a certificate of competency as a defending officer.
- (2) The implications referred to in subsection (1) must include any matters prescribed by the rules of procedure.
- (3) The accused's election under section 117D or 117M must be recorded in writing in the prescribed form.
- (4) The disciplinary officer must take reasonable steps to ensure that the accused has read the election before the accused signs it.

117ZD Accused does not have certain rights if accused is tried summarily or otherwise dealt with under this Part

If a disciplinary officer tries an accused summarily or an accused is otherwise dealt with under this Part,—

- (a) the accused does not have, in relation to the relevant charge, the right to legal representation; and
- (b) the accused does not have, in relation to the relevant charge, the right to a hearing by an independent court.

Recording of proceedings

117ZE Recording proceedings before disciplinary officer

A disciplinary officer must comply with any requirements of the rules of procedure to ensure that an audio recording, or a written summary, is made of the proceedings before the disciplinary officer.

Referral of charges

117ZF Referral of charge must include referral of related charges

If a disciplinary officer is required to refer a charge against an accused to another person, he or she must also refer to that person—

- (a) any charge against another person for an offence arising from the same incident or series of incidents; and
- (b) any other charge against the accused for an offence arising from the same incident or series of incidents.

117ZG Documents and information to be provided to accused and Director of Military Prosecutions

- (1) If a charge is to be referred to the Director of Military Prosecutions by a disciplinary officer, the disciplinary officer must, within 7 days of deciding that the charge is to be referred to the Director of Military Prosecutions,—
 - (a) ensure that the accused is provided with the information or documents that are prescribed by the rules of procedure for the purposes of this subsection; and
 - (b) inform the accused that he or she has 7 days from the date of being informed in which to provide to the disciplinary officer any signed written statements in his or her defence for referral to the Director of Military Prosecutions.
- (2) A disciplinary officer (other than a superior commander) must, within 14 days of deciding that a charge is to be referred to the Director of Military Prosecutions, send to his or her superior commander the documents that are prescribed by the rules of procedure for the purposes of this subsection.
- (3) A superior commander who receives documents under subsection (2) must, within 7 days of receiving those documents, send to the Director of Military Prosecutions—
 - (a) those documents; and
 - (b) a statement containing the superior commander's opinion as to whether prosecution of the charge is in the interests of the service.
- (4) If the disciplinary officer is a superior commander, he or she must, within 14 days of deciding that the charge is to be referred to the Director of Military Prosecutions, send to the Director of Military Prosecutions—
 - (a) the documents that are prescribed by the rules of procedure for the purposes of this subsection; and
 - (b) a statement containing the superior commander's opinion as to whether prosecution of the charge is in the interests of the service.

117ZH Reference back of charge by Director of Military Prosecutions

- (1) If a charge is referred by a disciplinary officer to the Director of Military Prosecutions under section 117F(1)(a) or 117K(4), the Director of Military Prosecutions may, after giving due consideration to the circumstances of the case, refer the charge (together with all or any other charges referred under section 117ZF) back to the disciplinary officer with a direction that the officer must—
 - (a) continue to act as a disciplinary officer in relation to the charge or charges; or
 - (b) dismiss the charge or charges.
- (2) If, after a charge is referred by a disciplinary officer to the Director of Military Prosecutions under section 117F(1)(b) or 117N(1), the accused withdraws, in the prescribed manner, his or her election for trial by the Court Martial, the Director of Military Prosecutions may, after giving due consideration to the circumstances of the case, refer the charge (together with all or any other charges referred un-

der section 117ZF) back to the disciplinary officer with a direction that the officer must—

- (a) continue to act as a disciplinary officer in relation to the charge or charges; or
 - (b) dismiss the charge or charges.
- (3) A direction under subsection (1) or (2) may include—
- (a) a direction to give the accused the right to elect trial by the Court Martial; and
 - (b) any other procedural directions that the Director of Military Prosecutions thinks fit.
- (4) If a charge is referred by a disciplinary officer to the Director of Military Prosecutions under section 117F(1)(b) or 117N(1), the Director of Military Prosecutions may, after giving due consideration to the circumstances of the case, refer the charge (together with all or any other charges referred under section 117ZF) back to the disciplinary officer with a direction that the officer must dismiss the charge or charges.
- (5) On reference back of a charge under this section, the disciplinary officer must dispose of the charge in accordance with the directions.
- (6) Reference back of a charge to a disciplinary officer under this section is without prejudice to the power of the disciplinary officer to prefer another charge if—
- (a) the Director of Military Prosecutions so directs; or
 - (b) the disciplinary officer thinks fit.
- (7) The Director of Military Prosecutions must inform the accused of any action that is taken in respect of the accused under this section.

117ZI Director of Military Prosecutions may lay charge before Court Martial

- (1) If a charge is referred to the Director of Military Prosecutions under this Part, he or she may lay the charge before the Registrar of the Court Martial.
- (2) If the accused pleaded guilty under section 116 in relation to a charge referred to the Director of Military Prosecutions under this Part, that plea must not be taken into account by the Court Martial when making a finding on the charge.

Procedures for certain persons

117ZJ Procedures for prisoners of war, spies, midshipmen, officer cadets, and chaplains

- (1) If the accused is subject to this Act by virtue of section 12 or 13, the following provisions apply:
 - (a) if the accused holds a rank in an armed force, the same procedure for dealing with the charge under this Part must be followed, with any necessary modifications, as if the accused held the corresponding rank in the Armed Forces of New Zealand:

- (b) in any other case, the same procedure for dealing with the charge under this Part must be followed, with any necessary modifications, as if the accused were a rating of able rank in the Navy or a private in the Army or a leading aircraftman in the Air Force, as the case may be.
- (2) If the accused is a midshipman or an officer cadet, the same procedure for dealing with the charge under this Part must be followed, with any necessary modifications, as if the accused were a rating of able rank in the Navy or a private in the Army or a leading aircraftman in the Air Force, as the case may be.
 - (3) If the accused is a chaplain, the same procedure for dealing with the charge under this Part must be followed, with any necessary modifications, as if the accused,—
 - (a) in the case of a chaplain Class I were a captain in the Navy, a colonel in the Army, or a group captain in the Air Force:
 - (b) in the case of a chaplain Class II, were a commander in the Navy, a lieutenant-colonel in the Army, or a wing commander in the Air Force:
 - (c) in the case of a chaplain Class III, were a lieutenant-commander in the Navy, a major in the Army, or a squadron leader in the Air Force:
 - (d) in the case of a chaplain Class IV, were a lieutenant in the Navy, a captain in the Army, or a flight lieutenant in the Air Force.

Evidence

117ZK Relevant evidence admissible unless excluded

- (1) All relevant evidence is admissible in proceedings under this Part and Part 5A except evidence that is excluded under subsection (4).
- (2) Evidence that is not relevant is not admissible in proceedings under this Part or Part 5A.
- (3) Evidence is relevant in proceedings if it has a tendency to prove or disprove anything that is of consequence to the determination of the proceedings.
- (4) The disciplinary officer or the Summary Appeal Court must exclude evidence if its probative value is outweighed by the risk that the evidence will—
 - (a) have an unfairly prejudicial effect on the outcome of the proceedings; or
 - (b) needlessly prolong the proceedings.
- (5) The disciplinary officer or the Summary Appeal Court may, subject to subsections (1) to (4) and section 150B, require a witness to answer a question that is put to them in proceedings under this Part or Part 5A (whether by the disciplinary officer, the Court, a presenting officer, a defending officer, or any other counsel appearing in the proceedings).

117ZL Taking of evidence on oath

- (1) In proceedings before—
 - (a) a disciplinary officer, oral evidence must not be given on oath unless the accused so requires:

- (b) the Summary Appeal Court, oral evidence must be given on oath.
- (2) For the purposes of subsection (1)(a), if the accused requires the oral evidence to be given on oath, all witnesses who are to give evidence orally in the proceedings (including the accused if he or she gives evidence orally) must be sworn.
- (3) However, if the disciplinary officer or Summary Appeal Court considers that a child who is called as a witness does not understand the nature of an oath, the child's evidence may be received even though it is not given on oath so long as the officer or Court is of the opinion that the child—
 - (a) has sufficient intelligence to justify the reception of the evidence; and
 - (b) understands the duty of speaking the truth.
- (4) If any person referred to in subsection (1) or (2) objects to being sworn or it is not reasonably practicable to administer an oath to that person in a manner appropriate to his or her religious belief, the person may be permitted to make a solemn affirmation instead of swearing an oath.
- (5) The making of an affirmation under subsection (4) has the same force and effect and has the same consequences as the taking of an oath.
- (6) Every oath or affirmation required to be administered under this Part or Part 5A must be administered in accordance with the rules of procedure.

117ZM Admission in evidence of written statements instead of oral evidence

- (1) A written statement of a person's evidence is, with the consent of the accused and the disciplinary officer or the appellant and the Director of Military Prosecutions (as the case may be), admissible in evidence instead of calling that person to give his or her evidence orally.
- (2) However, a written statement of a person's evidence is admissible only to the same extent and for the same purpose as that evidence would have been admissible in the proceedings if given orally by the maker of the statement.
- (3) Despite subsection (1), a disciplinary officer or the Summary Appeal Court may require the person to attend and give his or her evidence orally.
- (4) In proceedings before a disciplinary officer, the accused and the presenting officer must each be given—
 - (a) a copy of every written statement that the other party proposes to tender in evidence; and
 - (b) a copy of every exhibit (if any) referred to in that statement or information that is sufficient to enable the recipient to inspect the exhibit or a copy of it.
- (5) In proceedings before the Summary Appeal Court, the appellant and the Director of Military Prosecutions must each be given—
 - (a) a copy of every written statement that the other party proposes to tender in evidence; and
 - (b) a copy of every exhibit (if any) referred to in that statement or information that is sufficient to enable the recipient to inspect the exhibit or a copy of it.
- (6) A document or object accompanying a written statement tendered as evidence and referred to in the statement as an exhibit must be treated as if it had been produced as an exhibit and identified in evidence by the maker of the statement.

117ZN Disciplinary officers and Summary Appeal Court to take judicial notice of certain matters

- (1) Every disciplinary officer and the Summary Appeal Court must take judicial notice of—
 - (a) all matters of common knowledge; and
 - (b) all other matters of which judicial notice would be taken by the High Court.
- (2) The disciplinary officer may also take judicial notice of matters that may fairly be regarded as being within the general service knowledge of the disciplinary officer.

*Other miscellaneous matters***117ZO General power to make orders or give directions**

A disciplinary officer may, in respect of any proceedings under this Part, make or give any order or direction, not inconsistent with this Act or the rules of procedure, that seems to him or her best calculated to do justice.

117ZP Construction of charges

- (1) In the construction of a charge sheet or charge there must be presumed in favour of supporting it every proposition that may reasonably be presumed to be impliedly included, though not expressed in it.
- (2) In respect of a charge, the statement of the alleged offence and the statement of the particulars of every act or omission constituting the alleged offence must be read and construed together.

117ZQ Replacement of disciplinary officer

- (1) If at any time a disciplinary officer has begun to act under this Part in relation to a charge, and, because of death, illness, or any other reason, he or she is unable to continue to act as the disciplinary officer in relation to the charge, the officer who becomes the disciplinary officer in his or her place may act under this Part in relation to the charge as if the, officer whom he or she replaced had not commenced to do so.
- (2) Despite subsection (1), if the disciplinary officer who has become incapacitated had, before his or her incapacity, found the accused guilty, the disciplinary officer who becomes the disciplinary officer in his or her place must not try the charge summarily but may instead, after inquiring into the circumstances of the charge, act under subpart 4 as if he or she had found the accused guilty himself or herself.
- (3) The rules of procedure may contain further provisions concerning how—
 - (a) an officer becomes the disciplinary officer in place of an officer who is unable to continue to act in relation to a charge; and
 - (b) the officer who becomes the disciplinary officer must deal with the charge.
- (4) This section does not apply if—
 - (a) the disciplinary officer is unable to continue to act as the disciplinary officer in relation to the charge because, in accordance with this Part, the

disciplinary officer is required to refer the charge to another person; or

- (b) this Part otherwise provides for a different procedure to be followed in the event that the disciplinary officer is unable to continue to act as the disciplinary officer in relation to the charge.

117ZR Objection relating to personal interest

- (1) If an accused, during the proceedings before a disciplinary officer, raises an objection that the disciplinary officer is personally interested in the charge, the disciplinary officer must ensure that the objection is recorded in the record of proceedings.
- (2) If, after an objection is made under subsection (1), a disciplinary officer considers that he or she is personally interested in the charge,—
- (a) he or she must not continue to act as the disciplinary officer in relation to the charge; and
- (b) section 117ZQ applies.
- (3) However, subsection (2) does not apply if a provision of this Part provides for a different procedure to be followed in the event that a disciplinary officer considers that he or she is personally interested in a charge or is otherwise not empowered to act as a disciplinary officer in relation to a charge.

PART 5A

Summary Appeal Court of New Zealand

Establishment of Summary Appeal Court of New Zealand

118 Summary Appeal Court of New Zealand established

- (1) A court of record called the Summary Appeal Court of New Zealand is established.
- (2) In addition to the jurisdiction and powers specially conferred on the Summary Appeal Court by this or any other Act, the Court has all the powers inherent in a court of record.
- (3) The Summary Appeal Court is to have a seal, which is to be judicially noticed by all courts and for all purposes.

119 Constitution of Summary Appeal Court

- (1) The Summary Appeal Court comprises the Judges of the Court Martial.
- (2) The Summary Appeal Court's jurisdiction is not affected by a vacancy in the number of Judges of the Court Martial.

120 Summary Appeal Court must sit in divisions

- (1) For the purposes of any proceedings in the Summary Appeal Court, the Court must sit in divisions each comprising 1 Judge assigned by the Chief Judge.
- (2) Each division of the Summary Appeal Court may exercise all of the powers of the Court.

- (3) A division of the Summary Appeal Court may exercise any powers of the Court even though 1 or more divisions of the Court is exercising any powers of the Court at the same time.

121 Registrar, clerks, and other officers of Summary Appeal Court

- (1) The Judge Advocate General must appoint a person to act as the Registrar of the Summary Appeal Court.
- (2) The Registrar may appoint clerks and any other officers of the Summary Appeal Court as may be required.
- (3) An appointment under this section must be made by written notice to the person concerned.
- (4) A person appointed under this section must not undertake any other paid employment or hold any other office (whether paid or not) unless the Judge Advocate General or Registrar (as the case may be) is satisfied that the employment or other office is compatible with that person's appointment.

122 Chief Judge may delegate to Registrar duty to assign Judges

- (1) The Chief Judge may, either generally or particularly, delegate to the Registrar the Chief Judge's duty under section 120(1) to assign a Judge for any proceedings of the Summary Appeal Court.
- (2) A delegation—
- (a) must be in writing; and
 - (b) may be made subject to any restrictions that the Chief Judge thinks fit; and
 - (c) is revocable at any time, in writing; and
 - (d) does not prevent the performance or exercise of a function, duty, or power by the Chief Judge.
- (3) The Registrar may perform any duties delegated under subsection (1) in the same manner and with the same effect as if they had been conferred on him or her directly by this Act and not by delegation.
- (4) If the Registrar appears to act under subsection (1), he or she is presumed to be acting in accordance with the terms of delegation in the absence of evidence to the contrary.

123 Registrar may delegate functions, duties, or powers to clerk or officer of Summary Appeal Court

- (1) The Registrar may, either generally or particularly, delegate to a clerk or any other officer of the Summary Appeal Court appointed under section 121(2) any of the Registrar's functions duties, and powers, except—
- (a) any function, duty, or power delegated to the Registrar by the Chief Judge; and
 - (b) this power of delegation.
- (2) A delegation—
- (a) must be in writing; and

- (b) may be made subject to any restrictions and conditions that the Judge Advocate General or the Registrar thinks fit; and
 - (c) is revocable at any time, in writing; and
 - (d) does not prevent the performance or exercise of a function, duty, or power by the Registrar.
- (3) A clerk or any other officer of the Summary Appeal Court to whom any functions, duties, or powers are delegated may perform and exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.
- (4) A clerk or any other officer of the Summary Appeal Court who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.

Right of appeal

124 Right of appeal

Every person found guilty of an offence by a disciplinary officer may appeal to the Summary Appeal Court against 1 or more of the following:

- (a) the finding of guilty:
- (b) the punishment, or the combination of punishments, imposed in relation to that finding:
- (c) an order of compensation or restitution (or both) made in relation to that finding:
- (d) an order made under section 117T.

125 Notice of appeal

- (1) An appeal under section 124 must be made by lodging a notice of appeal, in the prescribed form, with the Registrar within—
- (a) the prescribed period; or
 - (b) any further time that the Summary Appeal Court may allow on application made before or after the expiration of that period.
- (2) An application under subsection (1)(b) must—
- (a) be in the prescribed form; and
 - (b) be lodged with the Registrar with the notice of appeal if made after the expiration of the prescribed period.
- (3) Every notice of appeal must specify—
- (a) the finding, punishment, combination of punishments, or order appealed from; and
 - (b) the grounds of appeal in sufficient detail to fully inform the Summary Appeal Court of the issues in the appeal; and

- (c) any other particulars that are prescribed by the rules of procedure for the purposes of this section.
- (4) If the time for lodging a notice of appeal with the Registrar expires on a day on which the office of the Registrar is closed, and by reason of that closure the notice cannot be lodged on that day, the notice is deemed to be lodged in time if it is lodged on the day on which the office is next open.
- (5) In this section, prescribed period means—
 - (a) a period of 35 days commencing with the day after the day on which the finding of guilty by the disciplinary officer is recorded if the charge is tried summarily, or otherwise dealt with, under Part 5 outside New Zealand:
 - (b) a period of 21 days commencing with the day after the day on which the finding of guilty by the disciplinary officer is recorded if the charge is tried summarily, or otherwise dealt with, under Part 5 in New Zealand.

126 Registrar and disciplinary officer must provide copies of documents

- (1) The Registrar must, as soon as practicable after receiving a notice of appeal, provide a copy of the notice of appeal to the disciplinary officer who made the finding of guilty and to the Director of Military Prosecutions.
- (2) The disciplinary officer must, within 14 days of receiving a copy of the notice of appeal under subsection (1), send to the Registrar the documents that are prescribed by the rules of procedure for the purposes of this section.
- (3) The Registrar must, within 7 days of receiving the documents under subsection (2), send a copy of those documents to the Director of Military Prosecutions and to the appellant.

127 Abandonment of appeal

- (1) An appellant may, at any time after he or she has lodged a notice of appeal, abandon the appeal by giving to the Registrar notice of abandonment in the prescribed form.
- (2) If it is contended on the appellant's behalf that the appellant is insane, a notice of abandonment may be given and signed by the appellant's representative.
- (3) The signature of the appellant or his or her representative to a notice of abandonment must be witnessed by a member of a specialist legal branch or corps in the Armed Forces, or the appellant's commanding officer, or an officer not below the rank of lieutenant commander in the Navy, major in the Army, or squadron leader in the Air Force.

128 Effect of appeal on punishments and orders

A punishment, a combination of punishments, or an order appealed against under this Part is not suspended by reason of the appeal unless—

- (a) the rules of the Summary Appeal Court specify that the punishment, the combination of punishments, or the order is suspended; or
- (b) the Summary Appeal Court directs that the punishment, the combination of punishments, or the order is suspended.

*Special reference by Judge Advocate General***129 Special references to Summary Appeal Court**

- (1) The Judge Advocate General may refer 1 or more of the following matters to the Summary Appeal Court if the Judge Advocate General considers that it is in the interests of justice or discipline to do so:
- (a) a finding of guilty by a disciplinary officer:
 - (b) the punishment, or the combination of punishments, imposed in relation to a finding of guilty by a disciplinary officer:
 - (c) an order of compensation or restitution (or both) made in relation to a finding of guilty by a disciplinary officer:
 - (d) an order made under section 117T.
- (2) For the purposes of this Part, a referral under this section must, with all necessary modifications, be treated as an appeal by the person found guilty of the offence.
- (3) A reference under this section must—
- (a) be lodged with the Registrar; and
 - (b) specify the finding, punishment, combination of punishments, or order concerned; and
 - (c) specify the reasons for the reference in sufficient detail to fully inform the Summary Appeal Court of the issues in the appeal; and
 - (d) specify any other particulars that are prescribed by the rules of procedure for the purposes of this section.
- (4) If a person has been found guilty of an offence by a disciplinary officer, any person (including the person found guilty) may, in the prescribed manner, petition the Judge Advocate General to refer to the Summary Appeal Court under this section 1 or more of the matters referred to in subsection (1)(a) to (d).

130 Person found guilty must be informed of reference and may comment

- (1) The Registrar must, as soon as practicable after receiving a reference from the Judge Advocate General, send to the person found guilty of the offence—
- (a) a copy of the reference; and
 - (b) a notice, in the prescribed form, that—
 - (i) asks for the person's written views on the finding of guilty, the punishment, the combination of punishments, or the order concerned to be sent to the Registrar within the prescribed period; and
 - (ii) asks for the person's written advice as to whether he or she wants to be legally represented at an oral hearing of the matter to be sent to the Registrar within the prescribed period; and
 - (iii) advises him or her of the effect of subsection (2).

- (2) The Summary Appeal Court may deal with a reference from the Judge Advocate General by way of a hearing on the papers if the person who is sent a notice under subsection (1)—
- (a) indicates that he or she does not want to be legally represented at an oral hearing of the matter; or
 - (b) otherwise indicates that he or she does not require an oral hearing of the matter; or
 - (c) does not provide written advice under subsection (1)(b)(ii) within the prescribed period.
- (3) In this section, prescribed period means a period of 21 days commencing on the day after the day that the notice under subsection (1)(b) is sent to the person found guilty of the offence.

Powers of Summary Appeal Court

131 Appeals to proceed by way of rehearing and general power of Summary Appeal Court

- (1) Appeals to the Summary Appeal Court proceed by way of rehearing.
- (2) The Summary Appeal Court has, for the purposes of this Act, full power to determine, under this Act, any question necessary to be determined for the purpose of doing justice in any case before the Court.

132 Power of Summary Appeal Court in respect of finding of guilty

- (1) The Summary Appeal Court must, on an appeal against a finding that a person is guilty of an offence,—
- (a) allow the appeal if it considers that—
 - (i) the finding of the disciplinary officer should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence; or
 - (ii) the finding of the disciplinary officer involves a wrong decision on a question of law; or
 - (iii) there was, on any ground, a miscarriage of justice; or
 - (iv) the summary trial was a nullity; and
 - (b) dismiss the appeal in any other case.
- (2) However, the Summary Appeal Court may dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred even though it considers that the point raised in the appeal might be decided in favour of the appellant.
- (3) If the Summary Appeal Court allows an appeal under subsection (1), the Court—
- (a) must quash the finding of guilty; and
 - (b) may do any of the following:

- (i) direct a finding of not guilty of having committed the offence to be entered; or
 - (ii) direct a new trial to be held by the disciplinary officer or by the Court Martial; or
 - (iii) make any other order that justice requires.
- (4) In making an order under subsection (3)(b)(ii), the Summary Appeal Court must—
- (a) advise the disciplinary officer or the Court Martial (as the case may be) of its reasons for so doing; and
 - (b) give to the disciplinary officer or the Court Martial (as the case may be) any directions that it thinks fit.
- (5) In conducting a new trial of the charge, the disciplinary officer or the Court Martial (as the case may be) must have regard to the Summary Appeal Court's reasons for making an order under subsection (3)(b)(ii), and to the Court's directions under subsection (4).

133 Power of Summary Appeal Court in respect of punishments

- (1) The Summary Appeal Court may, on an appeal against a punishment or a combination of punishments,—
- (a) quash the punishment, or the combination of punishments, if—
 - (i) all of the findings of guilty in relation to the punishment, or the combination of punishments, have been quashed; or
 - (ii) the Court considers that the disciplinary officer did not have the power to impose the punishment or the combination of punishments; or
 - (iii) the Court considers that the punishment, or the combination of punishments, is too severe; or
 - (b) vary the punishment, or the combination of punishments, if—
 - (i) the Court considers that the disciplinary officer did not have the power to impose the punishment or the combination of punishments; or
 - (ii) the Court considers that the punishment, or the combination of punishments, is too severe; or
 - (c) dismiss the appeal.
- (2) The Summary Appeal Court may vary the punishment, or the combination of punishments, under subsection (1)(b) by substituting a punishment, or combination of punishments, that—
- (a) the disciplinary officer would have had the power to impose; and
 - (b) in the opinion of the Summary Appeal Court, is no more severe than the punishment, or the combination of punishments, originally imposed.
- (3) If the punishment, or the combination of punishments, is varied, the varied punishment, or combination of punishments,—
- (a) is deemed to have been imposed by the disciplinary officer; and

- (b) has effect as if imposed on the day on which the original punishment, or combination of punishments, was imposed.

134 Power of Summary Appeal Court in respect of orders for compensation and restitution and orders to come up for punishment if called on

- (1) The Summary Appeal Court may, on an appeal against an order of compensation or restitution (or both) or an order under section 117T,—

- (a) quash the order if—
 - (i) all of the findings of guilty in relation to the order have been quashed; or
 - (ii) the Court considers that the disciplinary officer did not have the power to make the order; or
 - (iii) the Court considers that the order is too severe; or
 - (iv) in the case of an order under section 117T, the Court considers that quashing the order is necessary for the maintenance of discipline or in the interests of justice; or
- (b) vary the order if the Court—
 - (i) considers that the order is too severe; or
 - (ii) otherwise considers that a variation is necessary for the maintenance of discipline or in the interests of justice; or
- (c) dismiss the appeal.

- (2) If an order under section 117T is quashed under subsection (1)(a)(iv),—

- (a) the Summary Appeal Court may impose a punishment, or combination of punishments, that the disciplinary officer would have had the power to impose; and
- (b) that punishment, or combination of punishments,—
 - (i) is deemed to have been imposed by the disciplinary officer; and
 - (ii) has effect as if imposed on the day on which the order under section 117T was made.

- (3) The Summary Appeal Court may vary the order under subsection (1)(b) by substituting an order—

- (a) that the disciplinary officer would have had the power to make; and
- (b) that, in the case of an order requiring the payment of compensation,—
 - (i) reduces the amount of compensation to be paid; or
 - (ii) increases the amount of compensation to be paid; and
- (c) that, in the case of an order requiring restitution,—
 - (i) requires property additional to or different from that specified in the order to be restored to the person who appears to the Court to be entitled to it; or

- (ii) excludes part of the property that is specified in the order if the Court considers that the person to whom property is to be restored is not entitled to that part.
- (4) If an order is varied under this section, the varied order—
- (a) is deemed to have been made by the disciplinary officer; and
 - (b) has effect as if made on the day on which the original order was made.

135 Supplementary powers of Summary Appeal Court

For the purposes of any proceedings in the Summary Appeal Court, the Court may—

- (a) order that all necessary steps be taken to obtain from the disciplinary officer who tried, or otherwise dealt with, the charge against the appellant a report that—
 - (i) sets out the disciplinary officer's opinion on the case or on any point arising in the case; or
 - (ii) contains a statement of any facts that the Court considers to be in need of clarification because they appear to the Court to be material for the purpose of the determination of the case:
- (b) appoint any person with special expert knowledge to act as an assessor to the Court in any case if it appears to the Court that special knowledge is required for the proper determination of the case:
- (c) issue any warrants necessary for enforcing the orders of, or punishments imposed by, the Court.

Decisions of Summary Appeal Court

136 Decisions of Summary Appeal Court final

- (1) The decision of the Summary Appeal Court on any appeal under this Part is final and conclusive, and there is no right of appeal against the Court's decision.
- (2) The Summary Appeal Court must state its reasons in writing for a decision on any appeal under this Part.

Sittings of Summary Appeal Court

137 Sittings of Summary Appeal Court

- (1) The Summary Appeal Court—
 - (a) must sit in open court unless section 138 or 139 applies; and
 - (b) may sit in any place that the Judge Advocate General may direct, whether in New Zealand or elsewhere; and
 - (c) may conduct its proceedings by teleconference or by any means of communication that allows individuals a reasonable opportunity to participate in the proceedings.

- (2) Subsection (1)(c) is subject to the rules of procedure.
- (3) A sitting of the Summary Appeal Court may be adjourned from time to time and from place to place.

138 When Summary Appeal Court must hold proceedings in closed court

- (1) The Summary Appeal Court must hold its proceedings in closed court while deliberating on whether to allow an appeal.
- (2) The Summary Appeal Court may hold its proceedings in closed court on any other deliberation.
- (3) When the Summary Appeal Court holds its proceedings in closed court, only the following persons may be present:
 - (a) the Judge:
 - (b) any other persons authorised by the Judge.

139 Summary Appeal Court may limit scope of open court

- (1) In any proceedings in the Summary Appeal Court, the Court may make any of the orders specified in subsection (2) limiting the scope of open court if the Court considers that—
 - (a) a statement may be made or evidence given in the course of those proceedings that might lead to the disclosure of information that would or might—
 - (i) be directly or indirectly useful to the enemy or any foreign country; or
 - (ii) be otherwise harmful to New Zealand; or
 - (b) the making of the order—
 - (i) is necessary in the interests of justice; or
 - (ii) is desirable in the interests of public morality; or
 - (iii) is necessary for the protection of the reputation of a victim of an alleged sexual offence or offence of extortion.
- (2) The orders referred to in subsection (1) are as follows:
 - (a) an order forbidding publication of any report or account of the whole or any part of the proceedings, including any evidence adduced or submissions made:
 - (b) an order forbidding the publication of the name of any person connected, whether as a witness or otherwise, with the proceedings or of any name or particulars likely to lead to the identification of that person:
 - (c) an order excluding all or any persons, except the following:
 - (i) the Director of Military Prosecutions or any person acting on behalf of the Director:
 - (ii) the appellant's counsel:
 - (iii) the Registrar or any other officer of the Summary Appeal Court:
 - (iv) an interpreter required in the proceedings:

- (v) a person expressly permitted by the Summary Appeal Court to be present.
- (3) However, the Summary Appeal Court may make an order specified in subsection (2)(c) that has the effect of excluding any accredited news media reporter from the proceedings only on the grounds specified in subsection (1)(a), but not on any of the grounds specified in subsection (1)(b).
- (4) An order specified in subsection (2)—
 - (a) may be made for a limited period or permanently; and
 - (b) if it is made for a limited period, may be renewed for a further period or periods or made permanent by the Summary Appeal Court at any time; and
 - (c) if it is made permanently, may be reviewed by the Summary Appeal Court at any time.

Miscellaneous procedural provisions

140 Right of appellant to present his or her case in writing and restricted right of appellant to be present

- (1) An appellant under this Part may, instead of having his or her case presented orally, have it presented in writing.
- (2) If subsection (1) applies, the Summary Appeal Court may deal with the appellant's case by way of a hearing on the papers.
- (3) An appellant under this Part is not entitled to be present at the hearing of an appeal under this Part or at any proceedings preliminary or incidental to that appeal.
- (4) Subsection (3) does not apply if—
 - (a) the rules of procedure provide that the appellant has the right to be present; or
 - (b) the Summary Appeal Court gives the appellant leave to be present.
- (5) A power of the Summary Appeal Court under this Part may be exercised despite the absence of the appellant.

141 Defence of appeals and representation of appellant

- (1) The Director of Military Prosecutions must undertake the defence of an appeal to the Summary Appeal Court.
- (2) An appellant under this Part may be represented by a lawyer.

142 Costs of appeal

- (1) On the hearing and determination of an appeal or any proceedings preliminary or incidental to the appeal under this Part, no costs may be allowed on either side.
- (2) The following expenses must be defrayed in the same manner as the expenses of a trial of a criminal case in the High Court:

- (a) the expenses of any witnesses attending on the order of the Summary Appeal Court or examined in any proceedings preliminary or incidental to the appeal under this Part:
- (b) the expenses of, and incidental to, the appearance of the appellant on the hearing of his or her appeal under this Part or on any proceedings preliminary or incidental to that appeal:
- (c) all expenses of, and incidental to, any examination of witnesses conducted by any person appointed by the Summary Appeal Court for the purpose:
- (d) the expenses of any person appointed as assessor to the Summary Appeal Court.

143 Removal of prisoners for purposes of proceedings under this Part

Provision may be made by orders made by the Chief of Defence Force, or by regulations made under the Corrections Act 2004, as to the manner in which an appellant, when in custody, is to be—

- (a) taken to, kept in custody at, and brought back from any place at which he or she is entitled to be present for the purposes of this Part; or
- (b) taken to any place to which the Summary Appeal Court may order him or her to be taken for the purpose of any hearing or proceedings of the Court.

144 Duties of Registrar with respect to appeals

- (1) The Registrar must—
 - (a) take all necessary steps for obtaining the determination of an appeal under this Part; and
 - (b) obtain and lay before the Summary Appeal Court in proper form all documents, exhibits, and other things relating to the relevant summary trial that appear necessary for the proper determination of the appeal; and
 - (c) provide the necessary forms and instructions relating to notices of appeal under this Part to any person who asks for them, to persons in charge of places where persons punished by a disciplinary officer may lawfully be detained, and to any other persons that the Registrar thinks fit.
- (2) Every person in charge of a place referred to in subsection (1)(c) must cause the forms and instructions to be placed at the disposal of persons detained in that place who desire to lodge a notice of appeal under this Part.

PART 6

Repealed

PART 7

Other provisions relating to proceedings generally

145 Application of sections 139 to 141 of Criminal Justice Act 1985 to proceedings under this Act

Sections 139 to 141 of the Criminal Justice Act 1985 apply, to the extent that they are applicable and with all necessary modifications, to proceedings under this Act and to proceedings on appeal from any decision under this Act.

146 *Repealed*

147 *Repealed*

148 Evidence of civil conviction or acquittal

(1) If any person subject to this Act has been tried by any civil court, the registrar of that court or his deputy, or any other officer having the custody of the records of the court, shall, if required by the commanding officer of that person, or by any other officer, and without payment of any fee, transmit to him a certificate signed by the registrar or deputy or other officer and stating all or any of the following matters:

- (a) that the said person has been tried before the court for an offence specified in the certificate:
- (b) the result of the trial:
- (c) what judgment or order was given or made by the court.

(2) Any such certificate shall be evidence of the matters specified in it.

149 *Repealed*

Rules of procedure

150 Rules of procedure

The Governor-General may, by Order in Council, make rules of procedure for all or any of the following purposes:

- (a) providing for the drawing of charges:
- (b) providing for the procedures for bringing charges before disciplinary officers:
- (c) providing for the manner in which charges brought before disciplinary officers are to be investigated or otherwise dealt with under Part 5:
- (d) providing for the replacement of a disciplinary officer in the event of the officer being unable to continue to act:
- (e) providing for the advice that must be given under section 1170:
- (f) providing for the withdrawal of an election for trial by the Court Martial, including providing for when and how that withdrawal may be made and how that withdrawal must be dealt with:

- (g) prescribing information, documents, and forms for the purposes of any provision of this Act, the rules of procedure, or the Court Martial Act 2007:
- (h) authorising the Chief of Defence Force to prescribe the information, documents, and forms referred to in paragraph (g):
- (i) providing for the recording of proceedings before disciplinary officers (including providing for the authentication, storage, and control of, and access to, those records):
- (j) providing for adequate disclosure to be made to an accused or an appellant in connection with a proceeding before a military tribunal:
- (k) providing for the payment of fees, allowances, and expenses of witnesses and interpreters giving evidence before a military tribunal or a court of inquiry and prescribing the amount of fees, allowances, and expenses payable or the method by which they are to be calculated:
- (l) providing for the procedure to be observed in proceedings before the Summary Appeal Court:
- (m) providing for the procedure to be observed in trials by the Court Martial:
- (n) providing for the recording of pleas in relation to charges before the Court Martial (including the recording of a plea of guilty before a Judge sitting alone) and the circumstances in which a plea may be accepted:
- (o) providing for the procedure to be observed in new trials by disciplinary officers or the Court Martial directed to be held under any provision of this Act or of the Court Martial Appeals Act 1953:
- (p) empowering the Director of Military Prosecutions, with the leave of a Judge, in such cases and to such extent as the rules specify, to amend a charge before the Court Martial:
- (q) specifying any matter referred to in section 87A(1) in relation to the suspension of orders for compensation; and providing for the retention of deductions from pay made pursuant to any order for compensation while the order is suspended:
- (r) specifying any matter referred to in section 87A(1) in relation to the suspension of orders for restitution and the suspension in certain cases of the provisions of section 26(1) of the Sale of Goods Act 1908; and providing for the retention and safe custody of any property to which any order for restitution or those provisions apply while the order or the operation of those provisions is suspended:
- (s) *Repealed*
- (t) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect, in relation to the investigation, trial, and punishment of offences against this Act.

*Protection from civil liability, privileges, and immunities***150A Protection from civil liability**

No civil proceedings may be brought against a military tribunal or court of inquiry and, as the case may be, any of its members for anything done or omitted to be done, or for any words spoken or written, in good faith, at, or for the purposes of, any proceedings before that tribunal or court of inquiry under this Act.

150B Privileges and immunities of witnesses and of certain other persons appearing before military tribunals and courts of inquiry

The following persons have the same privileges and immunities as witnesses, counsel, and interpreters in the High Court:

- (a) every witness attending and giving evidence before a military tribunal or court of inquiry; and
- (b) every defending officer and every presenting officer appearing before a disciplinary officer; and
- (c) the Director of Military Prosecutions and every counsel appearing before the Court Martial or the Summary Appeal Court; and
- (d) every counsel appearing before a court of inquiry; and
- (e) every interpreter appearing before a military tribunal or court of inquiry.

*Power to summon witnesses***150C Power to summon witnesses**

- (1) The persons referred to in subsection (2) may issue a summons requiring any person to—
 - (a) attend at the time and place specified in the summons; and
 - (b) give evidence; and
 - (c) produce any papers, documents, records, or things in that person's possession or under that person's control that are relevant to the subject of the relevant proceedings.
- (2) The persons are—
 - (a) a disciplinary officer (for the purposes of any proceedings before the disciplinary officer);
 - (b) the Judge or the Registrar of the Summary Appeal Court (for the purposes of any proceedings in the Summary Appeal Court).
- (3) A summons—
 - (a) must be in the prescribed form; and
 - (b) may be issued—
 - (i) on the initiative of the disciplinary officer, Judge, or Registrar of the Summary Appeal Court; or

- (ii) on the application of the presenting officer, the Director of Military Prosecutions, the accused, or the appellant.

150D Service of summons

- (1) A summons to a witness may be served—
 - (a) by delivering it to the person summoned; or
 - (b) by posting it by registered letter addressed to the person summoned at that person's usual place of residence.
- (2) The summons must,—
 - (a) if it is served under subsection (1)(a), be served at least 24 hours before the attendance of the witness is required;
 - (b) if it is served under subsection (1)(b), be served at least 10 days before the date on which the attendance of the witness is required.
- (3) If the summons is posted by registered letter, it is deemed for the purposes of subsection (2)(b) to be served at the time when the letter would be delivered in the ordinary course of post.

Contempt

150E Contempt of military tribunal or court of inquiry

A person who is not subject to this Act commits a contempt of a military tribunal or court of inquiry if the person—

- (a) fails without reasonable excuse to comply with a summons or order to attend as a witness before the military tribunal or court of inquiry; or
- (b) refuses to swear an oath when required to do so by the military tribunal or court of inquiry; or
- (c) refuses to produce any papers, documents, records, or things in that person's possession or under that person's control that the military tribunal or court of inquiry has lawfully required the person to produce; or
- (d) being a witness, refuses to answer any question that the military tribunal or court of inquiry has lawfully required the person to answer; or
- (e) disobeys or evades any order or direction made or given by the military tribunal or court of inquiry in the course of the hearing of any proceedings before it; or
- (f) wilfully publishes any statement in respect of the proceedings of the military tribunal or court of inquiry that—
 - (i) without foundation states or implies that the military tribunal or court of inquiry has not acted or is not acting impartially; or
 - (ii) is likely to interfere with the proper administration of justice; or
- (g) insults, threatens, or interferes with a disciplinary officer or any member of the Summary Appeal Court, the Court Martial, or the court of inquiry while the disciplinary officer or member is attending, or is on the way to or from,

the proceedings before the disciplinary officer, the Summary Appeal Court, the Court Martial, or the court of inquiry; or

- (h) insults, threatens, or interferes with any witness or other person under a duty to attend the proceedings of the military tribunal or court of inquiry while the witness or other person is attending, or is on the way to or from, the proceedings of the military tribunal or court of inquiry; or
- (i) interrupts the proceedings of the military tribunal or court of inquiry or otherwise misbehaves during the proceedings.

150F District Court may deal with person who has committed contempt

- (1) This section applies if a military tribunal or court of inquiry considers that a person who is not subject to this Act has committed a contempt of the military tribunal or court of inquiry.
- (2) The military tribunal or court of inquiry may order any member of the police⁵ or provost officer, or any person subject to this Act directed by that tribunal or court, to take either of the actions specified in subsection (3) against the person who is considered to be in contempt of that tribunal or court.
- (3) The actions referred to in subsection (2) are—
 - (a) to remove the person from the place where the proceedings are being held and to prevent that person from re-entering that place until the military tribunal or court of inquiry has risen; or
 - (b) if the military tribunal or court of inquiry is held in New Zealand, to arrest the person and take him or her before the nearest District Court.
- (4) If a person alleged to have committed contempt of a military tribunal or court of inquiry is brought before a District Court under subsection (3)(b), the District Court Judge
 - (a) must inquire into the alleged contempt; and
 - (b) may find the person guilty of the contempt after hearing—
 - (i) any witnesses against or on behalf of the person; and
 - (ii) any statement that may be offered in defence.
- (5) The penalty for contempt of a military tribunal or court of inquiry is imprisonment for a term not exceeding 1 month or a fine not exceeding \$1,000, or both.

150G Contempt by counsel

- (1) If counsel appears at any hearing before a military tribunal or court of inquiry, the following provisions apply:
 - (a) any conduct of counsel that would be liable to censure or would constitute contempt of court if it took place before the High Court is similarly liable to censure by the military tribunal or court of inquiry or, as the case may be, similarly constitutes contempt of the military tribunal or court of inquiry;
 - (b) the rules of procedure and any rules prescribed for the guidance of counsel appearing before the military tribunal or court of inquiry are binding on counsel:

5 See footnote 1.

- (c) counsel—
 - (i) is guilty of professional misconduct if he or she disobeys any of those rules; and
 - (ii) commits a contempt of the military tribunal or court of inquiry if he or she perseveres in the disobedience:
 - (d) if counsel is alleged to have committed conduct liable to censure, or a contempt of the military tribunal or court of inquiry, he or she may be dealt with in the same manner as a person who is alleged to have committed a contempt of the military tribunal or court of inquiry under section 150E.
- (2) This section does not limit sections 150E and 150F.

PART 8

Reconsideration of sentences of imprisonment or detention

151 Reconsidering Authority established

- (1) The Reconsidering Authority is established.
- (2) The Authority consists of—
 - (a) a Judge appointed to the Authority by the Chief Judge; and
 - (b) 2 or more superior commanders appointed to the Authority by or on behalf of the Judge Advocate General.
- (3) An appointment under this section must be made by written notice to the person concerned.
- (4) The powers of the Authority are not affected by any vacancy in its membership.

152 Functions and powers of Authority

- (1) The Authority—
 - (a) must reconsider every sentence of imprisonment or detention imposed by the Court Martial that is for a term of 6 months or more; and
 - (b) may reconsider any other sentence of imprisonment or detention imposed by the Court Martial.
- (2) The Authority must reconsider each sentence of imprisonment or detention at least once every 6 months while the sentence is being served.
- (3) Delay in complying with subsection (1) does not affect or invalidate any sentence of imprisonment or detention imposed under this Act.
- (4) For the purpose of determining the date on which a sentence should be reconsidered, an offender must be taken to have been serving the sentence during the whole of any period that the offender was held in custody.
- (5) Subsection (4) does not limit or affect section 177 or 179.

153 Petition for reconsideration

- (1) A service prisoner or detainee may lodge a petition against his or her sentence with the Authority.
- (2) The petition—
 - (a) must be in the prescribed form; and
 - (b) must be handed to the officer in charge of the place where the service prisoner or detainee is confined.
- (3) The officer in charge of that place must forward the petition to the Authority as soon as practicable after receiving it.

154 Authority must consider petition for reconsideration

- (1) The Authority must consider every petition it receives under section 153 in accordance with this Part.
- (2) However, if the Authority remits a punishment or part of a punishment, it must not make a decision that has the effect of imposing a punishment more severe than the punishment that had effect before that remission.

155 Procedure for reconsideration

- (1) The Authority must give a service prisoner or detainee whose sentence is to be reconsidered at least 14 days' written notice of the reconsideration.
- (2) The service prisoner or detainee may—
 - (a) request a hearing before the Authority; and
 - (b) be legally represented at the hearing.
- (3) If the service prisoner or detainee requests a hearing under subsection (2)(a), the Director of Military Prosecutions—
 - (a) must be given reasonable prior written notice of the date and time of the hearing; and
 - (b) may attend and be heard at the hearing (whether personally or through an agent).
- (4) If the service prisoner or detainee does not request a hearing under subsection (2)(a), the Authority must conduct the reconsideration of the sentence by way of a hearing on the papers.

156 Authority may call for written reports and hear evidence

The Authority—

- (a) may call for any written reports that it thinks fit in respect of a service prisoner or detainee serving a sentence of imprisonment or detention that is before it for reconsideration;
- (b) may hear evidence if a hearing is held.

157 Authority may regulate its procedure

- (1) The Authority may regulate its own procedure as it sees fit.

- (2) If it is necessary for the Authority to vote on any matter in order to reach a decision, each member of the Authority has 1 vote and the matter must be decided by a majority of votes.

158 Power of Authority to remit whole or part of sentence

- (1) At the conclusion of a reconsideration of a sentence of imprisonment or detention, the Authority may remit the whole or any part of the sentence that remains to be served on any of the following grounds:
- (a) good conduct by the service prisoner or detainee during the term of the sentence;
 - (b) compassionate grounds;
 - (c) any other grounds that the Authority thinks proper.
- (2) Whether or not the Authority remits the whole or any part of the sentence that remains to be served, the Authority must arrange for particulars of its decision to be promulgated in the manner that may be prescribed in the rules of procedure.
- (3) A decision of the Authority takes effect from the date of its promulgation.

159 Chief Judge may delegate to Registrar of Court Martial duty to appoint Judge to Authority

- (1) The Chief Judge may, either generally or particularly, delegate to the Registrar of the Court Martial the Chief Judge's duty under section 151(2)(a) to appoint a Judge to the Authority.
- (2) A delegation—
- (a) must be in writing; and
 - (b) may be made subject to any restrictions that the Chief Judge thinks fit; and
 - (c) is revocable at any time, in writing; and
 - (d) does not prevent the performance or exercise of a function, duty, or power by the Chief Judge.
- (3) The Registrar of the Court Martial may perform any duties delegated under subsection (1) in the same manner and with the same effect as if they had been conferred on him or her directly by this Act and not by delegation.
- (4) If the Registrar of the Court Martial appears to act under subsection (1), he or she is presumed to be acting in accordance with the terms of delegation in the absence of evidence to the contrary.

PART 8A

Armed Forces Discipline Committee

Establishment of Armed Forces Discipline Committee

160 Armed Forces Discipline Committee established

- (1) The Armed Forces Discipline Committee is established.
- (2) The Discipline Committee consists of the following 9 members:

- (a) the Chief of Defence Force, who will be the chairperson of the Committee; and
 - (b) the Vice Chief of Defence Force; and
 - (c) the Chief of Navy; and
 - (d) the Chief of Army; and
 - (e) the Chief of Air Force; and
 - (f) the Commander Joint Forces New Zealand; and
 - (g) the Judge Advocate General; and
 - (h) the Director of Military Prosecutions; and
 - (i) a representative of the Armed Forces Defence Counsel Panel who is appointed by the Judge Advocate General.
- (3) The Judge Advocate General must—
- (a) make an appointment under subsection (2)(i) by written notice to the person concerned; and
 - (b) provide a copy of the notice to the Chief of Defence Force.
- (4) The notice must—
- (a) state the date on which the appointment takes effect, which must not be earlier than the date on which the notice is received; and
 - (b) state the term of the appointment.
- (5) The powers of the Discipline Committee are not affected by any vacancy in its membership.

161 Purpose of Discipline Committee

The purpose of the Discipline Committee is to produce sentencing guidelines for offences against this Act in order to ensure consistency in the sentencing practice of the Court Martial.

162 Functions of Discipline Committee

- (1) The functions of the Discipline Committee are—
- (a) to produce sentencing guidelines on the following in relation to offences against this Act:
 - (i) sentencing principles:
 - (ii) sentencing levels:
 - (iii) particular types of sentences:
 - (iv) other matters relating to sentencing practice:
 - (v) grounds for departure from the sentencing guidelines; and
 - (b) any functions that are incidental and related to, or consequential on, its functions set out in paragraph (a).

- (2) In performing its functions, the Discipline Committee must ensure that any sentencing guidelines it produces are, to the extent that they are applicable, consistent with the following:
- (a) the Sentencing Act 2002; and
 - (b) any guidelines published by the Sentencing Council established under the Sentencing Council Act 2007.
- (3) The Discipline Committee must carry out its functions independently of the Minister.

163 Chief of Defence Force must publish sentencing guidelines

The Chief of Defence Force must publish any sentencing guidelines produced by the Discipline Committee under this Part as Defence Force Orders.

Administrative provisions relating to Discipline Committee

164 Appointed member

- (1) A person who is appointed under section 160(2)(i) to be a member of the Discipline Committee (an appointed member) holds office for a term of up to 5 years as stated in the notice of appointment.
- (2) An appointed member may be reappointed for 1 further term, but the total of the further term together with the initial term must not exceed 7 years.
- (3) An appointed member continues in office despite the expiry of his or her term of office until—
- (a) the member is reappointed; or
 - (b) the member's successor is appointed.
- (4) An appointed member may resign from office by written notice to the Judge Advocate General.
- (5) An appointed member may at any time be removed from office by written notice from the Judge Advocate General for inability to perform the functions of office, neglect of duty, or misconduct.

165 Remuneration of members

- (1) A person who is a member of the Discipline Committee because of his or her office is not entitled to receive any fees, allowances, or expenses for services as a member in addition to his or her remuneration in respect of that office.
- (2) An appointed member is entitled to receive the fees, allowances, and expenses for services as a member that are fixed or determined by or in accordance with regulations made under section 205(1)(c).

166 Procedure of Discipline Committee generally

The Discipline Committee may regulate its own procedures.

166A Quorum for meetings

- (1) A quorum for a meeting of the Discipline Committee—
- (a) is the number that is half the number of members; and

(b) must include the Chief of Defence Force and the Judge Advocate General.

- (2) No business may be transacted at a meeting of the Discipline Committee if a quorum is not present.

166B Other procedure at meetings

Every written report submitted by the senior military member of the Court Martial under section 34 of the Court Martial Act 2007 must be presented to the Discipline Committee at its next meeting after the date of the report.

166C Voting at meetings

- (1) Each member of the Discipline Committee has 1 vote.
- (2) In addition to his or her general vote, the chairperson has, in the case of an equality of votes, a casting vote.
- (3) A decision whether or not to finalise any sentencing guidelines must be decided by a majority vote of the Chief of Defence Force, the Judge Advocate General, and any other members present.

166D Protection from liability

No member of the Discipline Committee is personally liable for any act done or omitted to be done by the Committee in good faith in the performance or intended performance of its functions.

PART 9

Provisions relating to the carrying out of punishments

167 *Repealed*

Imprisonment and detention

168 Manner in which sentences of imprisonment and detention are to be served

- (1) Every service prisoner sentenced to imprisonment under this Act shall serve the sentence in a prison, a service prison, detention quarter, or other service custody, or partly in one and partly in another.
- (2) The Parole Act 2002 does not apply to a service prisoner serving a sentence of imprisonment in a prison, except that section 55 of that Act, which relates to deportation, does apply to such a service prisoner.
- (2A) The sentence of a service prisoner who is serving a sentence of imprisonment in a prison must be reconsidered from time to time in accordance with Part 8.
- (3) Subject to the provisions of orders made by the Chief of Defence Force in accordance with section 175 of this Act, every service detainee shall serve the term of his detention—
- (a) in a detention quarter; or
- (b) in service custody; or
- (c) in the case of a detainee who is for the time being attached to any part of the Army or Air Force which is on active service or who is a soldier or airman

on active service, as field punishment if so ordered by the Court Martial or disciplinary officer that sentenced him—

or partly in one way and partly in another:

Provided that a service detainee who has once been transferred to a detention quarter after having served part of the term of his detention as field punishment shall not be subsequently required to serve as field punishment any further part of that term of detention or the term or part of the term of a concurrent or consecutive sentence of detention.

169 Committal, removal, release, etc, of members of the Armed Forces serving imprisonment or detention

- (1) An order of a competent service authority shall be sufficient authority for the committal—
 - (a) of a service prisoner to a service prison or to a detention quarter or, if the order so specifies, to a prison; or
 - (b) of a service detainee to a detention quarter.
- (2) An order of a disciplinary officer in respect of a sentence which he himself imposed shall be sufficient authority for the committal of a service detainee to a detention quarter.
- (3) An order of a competent service authority shall be sufficient authority—
 - (a) for the transfer of a service prisoner—
 - (i) from a service prison or prison to a detention quarter; or
 - (ii) from a detention quarter to a service prison or a prison; or
 - (iii) from a service prison to a prison; or
 - (iv) from a prison to a service prison; or
 - (v) from one service prison, prison, or detention quarter to another such prison, institution, or quarter; or
 - (b) for the transfer of a service detainee from one detention quarter to another; or
 - (c) for the delivery into service custody of a service prisoner or service detainee.
- (4) Without limiting the provisions of subsections (1) to (3) of this section, where any person has been convicted by the Court Martial under this Act and sentenced to imprisonment or detention or to be punished in any other manner, the Chief of Defence Force may, on the production to him of the original record of the proceedings of the Court Martial or of any copy certified in accordance with section 76 of the Court Martial Act 2007, by warrant under his hand, order the person so convicted to be imprisoned, detained, or otherwise punished in accordance with the sentence.
- (5) Where the sentence of any service prisoner or detainee is remitted, he shall be released as soon as practicable thereafter by order of a competent service authority.

- (6) A service prisoner or detainee may during his transfer from one place to another, whether on board a ship, aircraft, or other means of transport, be subjected only to such restraint as may be necessary to ensure his safe conduct and removal.

170 Duty of superintendents of prisons, etc, to receive service prisoners

- (1) It is the duty of the prison manager of every prison to receive any prisoner sent to that institution in accordance with this Act and to confine him until execution of the sentence is completed or the prisoner is discharged or delivered over in due course of law.
- (2) Where a prisoner is in service custody pursuant to a sentence of imprisonment or detention imposed on him under this Act, then on receipt of a written order in that behalf purporting to be signed by the prisoner's commanding officer, it shall be the duty of any such prison manager, or the police officer⁶ in charge of a police station, or of any other person in charge of any place in which prisoners may be lawfully confined to keep that prisoner in custody for a period not exceeding 7 days, unless the prisoner is earlier discharged or delivered in due course of law.

171 Places in which sentences of imprisonment or detention may be served

- (1) Subject to the provisions of this section and of section 172 of this Act, a service prisoner or detainee who has been sentenced, or is serving his sentence, in New Zealand shall not be removed to a prison or detention quarter outside New Zealand:

Provided that if—

- (a) he was enlisted in any territory administered by Her Majesty the Queen in right of New Zealand; and
- (b) he belongs to a class of persons enlisted from any such territory; and
- (c) the Governor-General has arranged for any person of that class sentenced to imprisonment or detention under this Act to be transferred to that territory to serve his sentence there—

he may be removed to a prison or detention quarter in that territory to serve his sentence.

- (2) A competent service authority may give directions for delivery into service custody of any service prisoner or detainee, and for the removal of any such prisoner or detainee, whether separately or with the part of the force to which he belongs, to any place outside New Zealand where the part of the force to which he belongs for the time being is serving or is under orders to serve.
- (3) A service prisoner or detainee shall, if he was sentenced outside New Zealand, serve his sentence either in the country in which he was sentenced or in accordance with the provisions of subsection (4) of this section:

Provided that, if the term of his sentence exceeds 12 months, he shall be transferred as soon as practicable after being sentenced to a prison, service prison, or detention quarter in New Zealand, unless the Court Martial, for stated special reasons, otherwise orders.

- (4) Subject to the provisions of this section—

6 **Police officer** must be read as a reference to a constable: section 116(a) of the Policing Act 2008.

- (a) a service prisoner who has been sentenced to imprisonment in any place outside New Zealand may be committed or, if he has been committed to prison, be removed, if the occasion arises, to a service prison or a detention quarter wherever situated:

Provided that this paragraph shall not authorise his removal from a prison or service prison in New Zealand to a prison or other place of detention outside New Zealand:

- (b) a service detainee sentenced to detention in any place outside New Zealand may be committed, or if he has been committed to a detention quarter, be removed, if the occasion arises, to a detention quarter wherever situated:

Provided that this paragraph shall not authorise his removal from a detention quarter in New Zealand to a detention quarter outside New Zealand.

172 Imprisonment and detention of members of other forces attached to Armed Forces

- (1) This section applies if—
- (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 the Court Martial under this Act to imprisonment or detention; and
- (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.
- (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.
- (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.
- (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.

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

- (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—
 - (i) in New Zealand; or
 - (ii) in a prison, 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).
- (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 the Court Martial under this Act.

174 Interim custody of member of the Armed Forces serving imprisonment or detention

A service prisoner or a service detainee may, until he is delivered to the prison or service penal establishment in which he is to serve his sentence, be kept (whether in New Zealand or elsewhere) in service custody or in civil custody, or partly in service custody and partly in civil custody, and 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 requires.

175 Establishment and regulation of service prisons and detention quarters

- (1) The Chief of Defence Force may from time to time—
- (a) set apart any building or part of a building as a service prison or as a detention quarter; or
 - (b) declare any place or ship, or any part of any such place or ship, to be a service prison or detention quarter.
- (2) Without limiting the powers of the Chief of Defence Force to issue orders under section 206 of this Act, orders may be issued under that section for all or any of the following purposes:
- (a) for the carrying into effect of sentences of the Court Martial:
 - (b) for the provision, classification, regulation, and management of service prisons and detention quarters:
 - (c) for the appointment, removal from office, and powers and duties of inspectors, visitors, superintendents, and commandants, and of officers and other members of the staff of service penal establishments:
 - (d) for the classification, treatment, employment, discipline, and control of any offenders serving sentences of imprisonment or detention in service penal establishments or otherwise in custody in service penal establishments and for the remission of part of any such sentence for good work and conduct:
 - (e) for any offender sentenced to undergo detention as field punishment, whether in his unit or at a field punishment centre—
 - (i) to perform such drills or duties (in addition to those which the offender might reasonably be expected to perform if he were not undergoing field punishment); and

- (ii) to suffer the loss of such privileges; and
 - (iii) to be confined in such manner; and
 - (iv) to be subjected to such personal restraint to prevent his escape—
as may be prescribed in the orders, in addition to suffering such forfeiture of pay as may be provided for in regulations made under this Act:
 - (f) for the procedure for the reception and confinement in a service penal establishment of any offender sentenced to imprisonment or detention under this Act:
 - (g) for the procedure for the removal of an offender from one country or place to another and from one prison or service penal establishment or form of custody to another:
 - (h) for the release of an offender, or for the temporary or conditional release of an offender:
 - (i) for the removal of a person serving a sentence of imprisonment or detention from the place where he is imprisoned or detained to a psychiatric hospital if he becomes mentally disordered while serving the sentence:
 - (j) for the retaking into custody of any such offender after temporary release or removal to a psychiatric hospital or on his breaking the conditions of his release:
 - (k) for such matters as are contemplated by or necessary for the administration of any service penal establishment.
- (3) All the provisions of the regulations made under the Corrections Act 2004 as to the duties of prison managers and medical officers, and all the provisions of that Act and of the Coroners Act 2006 and of any regulations made under those Acts as to the duties of coroners with respect to inquests in prisons, shall be contained in orders made under this section, so far as they can be made applicable.

176 Provisions as to service prisons and detention quarters outside New Zealand

When any part of the Armed Forces is serving outside New Zealand, the powers of the Chief of Defence Force in respect of service prisons and detention quarters specified in section 175 of this Act shall be exercisable by the officer appointed to command that part of the Armed Forces.

177 Commencement of sentences

- (1) A term of imprisonment or detention to which an offender is sentenced under this Act begins to run from the beginning of the day on which the sentence was passed, whether the sentence was passed by the Court Martial or by a disciplinary officer.
- (1A) Subsection (1) is subject to the provisions of this Part.
- (2) Where any person has been sentenced to imprisonment or detention under this Act and there is no appropriate prison or service penal establishment in which he may serve the sentence at or near the place where he was sentenced, a competent service authority may direct that the term or period of the sentence shall begin to run from the beginning of the day on which he is delivered to the prison manager or other person in charge of the institution or establishment at which

the authority has decided that he shall serve his sentence; and in that event he shall serve his sentence accordingly notwithstanding that he may previously have returned to duty or become entitled to be discharged:

Provided that any such term of imprisonment or detention shall be reduced by deducting any period for which he has been kept in confinement in respect of the sentence before being delivered as aforesaid.

- (3) Where—
- (a) a sentence of imprisonment or detention is passed by the Court Martial on the conviction of any person; and
 - (b) that conviction is subsequently quashed and a new trial ordered; and
 - (c) following the new trial the person is again convicted and sentenced to imprisonment or detention,—

the term of the new sentence shall be deemed to have commenced or shall commence on the date on which the term of the original sentence commenced or would have commenced; but the period commencing with the quashing of the conviction and ending with the imposition of the new sentence shall not count as part of the new sentence.

177A Effect of period spent in custody before being sentenced

- (1) For the purpose of determining the date on which an offender will become eligible for remission of sentence, the offender shall be deemed to have been serving the sentence during the whole of any period that the offender was held in custody, as is required to be specified on the committal order by the Court Martial under section 81A or by a disciplinary officer under section 117Y.
- (2) Nothing in this section shall limit or affect the provisions of section 177 or section 179 of this Act.

178 Consecutive sentences

- (1) Where a person who is already serving a term of imprisonment, whether imposed under this Act or otherwise, is sentenced to a further term of imprisonment by the Court Martial under this Act, the Court may order that the further term shall run from the expiration of the term already being served.
- (2) Where, in any case to which subsection (1) of this section applies,—
 - (a) the earlier sentence is quashed on appeal or is otherwise set aside; and
 - (b) no other sentence of imprisonment is substituted for that earlier sentence,—

the sentence imposed by the Court Martial shall be deemed to have commenced or shall commence on the date when the term of the earlier sentence commenced or would have commenced.

- (3) Where, in any case to which subsection (1) of this section applies,—
 - (a) the earlier sentence is quashed on appeal or is otherwise set aside; and
 - (b) another sentence of imprisonment is substituted for that earlier sentence,—

the sentence imposed by the Court Martial shall commence or shall be deemed to have commenced on the date on which the substituted sentence will expire or is deemed to have expired.

- (4) Where a person who is already serving a sentence of detention is sentenced to a further term of detention by the Court Martial or a disciplinary officer, the Court or that officer may order that the further term shall run from the expiration of the sentence already being served.
- (5) Where, in any case to which subsection (4) of this section applies,—
- (a) the earlier sentence is quashed on appeal or is otherwise set aside; and
- (b) no other sentence of detention is substituted for that earlier sentence,—
- the sentence imposed by the Court Martial or the disciplinary officer shall be deemed to have commenced or shall commence on the date when the term of the earlier sentence commenced or would have commenced.
- (6) Where, in any case to which subsection (4) of this section applies,—
- (a) the earlier sentence is quashed on appeal or is otherwise set aside; and
- (b) another sentence of detention is substituted for that earlier sentence,—
- the sentence imposed by the Court Martial or the disciplinary officer shall be deemed to have commenced or shall commence on the date on which the substituted sentence will expire or is deemed to have expired.

179 Limitation of term of detention under one or more sentences

- (1) Notwithstanding anything to the contrary in this Act—
- (a) a detainee shall not be kept continuously in detention for a period exceeding 2 years under 2 or more sentences of detention; and
- (b) a detainee shall not be made to undergo field punishment for a continuous period exceeding 90 days under one or more sentences of detention.
- (2) Subsection (1) of this section shall not affect the validity of an order under section 178 of this Act ordering a sentence of detention to run from the expiration of another sentence of detention:
- Provided that so much of any term of detention to which the order relates as would prolong the total of the terms of detention beyond 2 years shall be deemed to be remitted.
- (3) Where a person sentenced to detention is subsequently sentenced to imprisonment under this Act, any part of the term of detention that has not been served shall be deemed to be remitted, whether the sentence of imprisonment is suspended or not.

180 Periods of unlawful absence

Where a person sentenced under this Act to imprisonment or detention escapes or becomes unlawfully at large during the currency of the sentence, then, except in respect of any period during which he is in custody under some other enactment or rule of law, the period for which he is unlawfully at large shall not be reckoned as time spent in serving the sentence.

181 *Repealed*

182 *Repealed*

183 *Repealed*

Prison officers, etc

184 Indemnity for prison officers, etc

No action for damages shall lie in respect of any act done or omitted unlawfully but in good faith by any prison officer, member of the Police, provost officer, or any other person while exercising authority over any person sentenced to imprisonment or detention under this Act if the act done or omitted would have been lawful but for a defect in a warrant or other instrument made for the purposes of that sentence.

Fines

185 Recovery in District Court of fines imposed under this Act

- (1) If a fine has been imposed by the Court Martial, or by a disciplinary officer, on a person for an offence against this Act (whether in New Zealand or elsewhere), a certificate purporting to be signed by a competent service authority specifying particulars of the conviction and the fine imposed may be filed in any District Court in New Zealand (without payment of any fee).
- (1A) Subsection (1) does not limit section 85.
- (2) In every such case, the Registrar of the District Court shall make an appropriate entry in the criminal record book kept there; and on that entry being made, payment of the amount of the fine may be enforced as if the fine had been ordered to be paid by that court at the time of the filing of the certificate; and all enactments relating to fines imposed on summary conviction shall apply accordingly.

186 Fines to be paid into Crown Bank Account

Subject to section 186A of this Act all fines imposed under this Act shall, when recovered, be paid into the Crown Bank Account.

186A Compensation to victims of offences causing physical harm

- (1) If any accused is found guilty, whether summarily or by the Court Martial, of any offence arising out of any act or omission that caused physical harm to any other person (whether a member of the Armed Forces or a civilian and whether or not causing the physical harm constitutes a necessary element of the offence at law) and the accused is punished by a fine, then the disciplinary officer or the Court Martial, as the case may require, may, in his, her, or its discretion, award by way of compensation to the victim a portion of the fine, not exceeding one half, as he, she, or it thinks fit.
- (2) However, no award of compensation may be made under subsection (1) unless the disciplinary officer or the Court Martial, as the case may be, is of the opinion that the act or omission—
- (a) was unprovoked; and

- (b) caused bodily injury to the victim.
- (3) An order made under this section shall be sufficient authority for the paying officer of the unit deducting the fine from the accused's pay to pay the portion specified in the order to the person entitled to it under the order.
- (4) An award of compensation under this section shall not affect the right of the person entitled to it—
 - (a) to receive compensation under the Injury Prevention, Rehabilitation, and Compensation Act 2001; and
 - (b) subject to section 317 of that Act, to recover by civil proceedings damages in excess of the amount of the award.

PART 10

Special provisions for dealing with mentally impaired persons

187 Interpretation of terms used in this Part

- (1) In this Part of this Act, unless the context otherwise requires,—
 - compulsory treatment order** means a compulsory treatment order made under Part 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992
 - mentally disordered** has the same meaning as it has in the Mental Health (Compulsory Assessment and Treatment) Act 1992
 - patient** means a person who is, or is deemed to be, subject to a compulsory treatment order
 - qualified medical practitioner**—
 - (a) means a medical practitioner; and
 - (b) in the case of a trial in the Court Martial held overseas, includes a person approved by the Judge.
- (1A) For the purposes of this Part, **unfit to stand trial**—
 - (a) means an inability of the accused, due to mental impairment, to conduct a defence or to instruct counsel, or the member of the Armed Forces who is to defend the accused, to do so; and
 - (b) includes an inability of the accused, due to mental impairment, to do any 1 or more of the following:
 - (i) to plead:
 - (ii) to adequately understand the nature or purpose or possible consequences of the proceedings:
 - (iii) to communicate adequately, for the purposes of conducting a defence, with counsel or the member of the Armed Forces who is to defend the person.
- (2) Where any person is ordered or directed under the provisions of this Act to be detained as a special patient or as a patient, the provisions of the Mental Health (Compulsory Assessment and Treatment) Act 1992 shall, subject to section 192

of this Act, apply to that person as if that person were a special patient or a patient within the meaning of that Act.

188 When Court may find accused unfit to stand trial

- (1) The Court Martial may, at any time before or during a trial, determine in accordance with section 188A whether an accused is unfit to stand trial.
- (2) The Court may not make a finding on whether the accused is unfit to stand trial unless the Court is satisfied, on the balance of probabilities, that the evidence presented by the prosecution is sufficient to establish that the accused caused the act or omission that forms the basis of the offence with which the accused is charged.
- (3) If the question whether the accused is unfit to stand trial is to be determined before the trial, a special hearing must be held to ascertain whether the Court is satisfied of the matter specified in subsection (2).
- (4) If the Court is not satisfied of the matter specified in subsection (2), the Court must record a finding to that effect and discharge the accused.
- (5) A discharge under subsection (4) does not amount to an acquittal.
- (6) If the Court is satisfied of the matter specified in subsection (2), the Court must record a finding to that effect, and proceed to determine the matters specified in section 188A.

188A Determining if accused unfit to stand trial

- (1) If the Court Martial records a finding of the kind specified in section 188(6), the Court must receive the evidence of at least 1 qualified medical practitioner as to whether the accused is mentally impaired.
- (2) If the Court is satisfied on the evidence given under subsection (1) that the accused is mentally impaired, the Court must record a finding to that effect and—
 - (a) give the prosecutor and the accused an opportunity to be heard and to present evidence as to whether the accused is unfit to stand trial; and
 - (b) find whether the accused is unfit to stand trial; and
 - (c) record the finding made under paragraph (b).
- (3) *Repealed*
- (4) The standard of proof required for a finding under this section is the balance of probabilities.
- (5) The jurisdiction conferred on the Court Martial by this section and by section 188 may be exercised by the Court in the absence of the accused if the Court is satisfied by medical evidence that the accused is too mentally impaired to be brought before the Court Martial.

188B Court Martial may postpone finding as to unfitness to stand trial

- (1) The Court Martial may, if in its opinion it is in the interests of the accused to do so, postpone a finding as to whether the accused is unfit to stand trial until any time up to the stage at which all the evidence is concluded.

- (2) In any case where a finding is postponed under subsection (1), the Court may not make a finding on the matter if the accused is acquitted of every offence with which he or she is charged.

189 *Repealed*

190 Finding of insanity

- (1) If, on the trial by the Court Martial of any person charged with an offence, the accused person pleads insanity and the Court finds him not guilty on account of his insanity, the Court shall direct a finding to that effect to be recorded.
- (1A) The Court Martial must record a finding that the accused is not guilty on account of his or her insanity if—
- (a) the accused indicates that he or she intends to raise the defence of insanity; and
 - (b) the prosecution agrees that the only reasonable verdict is not guilty on account of insanity; and
 - (c) the Court Martial is satisfied on the basis of expert evidence that the accused was insane within the meaning of section 23 of the Crimes Act 1961 at the time of the commission of the offence.
- (2) If, on the trial by the Court Martial of any person charged with an offence, the accused person pleads insanity and the Court finds him not guilty, the Court shall be required to declare whether or not it has acquitted the accused person on account of his insanity.
- (3) Nothing in this section shall limit or affect the power of the Judge to leave to the military members the question of whether an accused person was insane (within the meaning of section 23 of the Crimes Act 1961) notwithstanding that the accused person has not pleaded insanity nor put the question of his sanity in issue, where it appears in evidence that he may have been insane at the time of the commission of the offence.

191 Order to be made if person unfit to stand trial or insane

- (1) Subject to subsections (2) and (4) of this section, if any person tried by the Court Martial (whether in New Zealand or elsewhere)—
- (a) is found unfit to stand trial; or
 - (b) is acquitted on account of his insanity,—
- the Court shall make an order that he be detained in a hospital as a special patient.
- (2) In any case to which subsection (1) of this section applies, the Court, having regard to all the circumstances of the case, and being satisfied, after hearing medical evidence, that it would be safe in the interests of the public, or of any person or class of person who may be affected by the Court's decision, to make an order under this subsection, may, instead of making an order under subsection (1) of this section,—
- (a) make an order that the person be detained in a hospital as a patient; or
 - (b) make an order for his immediate release; or

- (c) if the person is subject to a sentence of imprisonment or detention (whether imposed under this Act or otherwise) decide not to make an order under this section.
- (3) In the exercise of its powers under subsection (2) of this section, the Court may take into account any undertaking given by or on behalf of the person that the person will undergo or continue to undergo a particular course of treatment.
- (4) Where a person is found unfit to stand trial or is acquitted on account of his or her insanity, the Court may, instead of exercising immediately any of its powers under subsections (1) and (2) of this section, adjourn and refer the matter to the Director of Military Prosecutions for the purpose of having enquiries made to determine the most suitable method of dealing with the case pursuant to this section.
- (4A) An order made by the Court under subsection (2)(a) of this section shall be deemed for the purposes of the Mental Health (Compulsory Assessment and Treatment) Act 1992 to be a compulsory treatment order, and the provisions of that Act shall apply accordingly.
- (5) Where, in respect of any person found unfit to stand trial, the Court makes an order under paragraph (a) or paragraph (b) of subsection (2) of this section, or decides under paragraph (c) of that subsection not to make any order under this section, the proceedings against that person in the course of which the finding was made shall be stayed, and no further proceedings shall be taken against the person in respect of any offence charged in those proceedings.
- (6) Subject to the provisions of this Part of this Act, where a person is found unfit to stand trial, or is acquitted on account of his insanity, he shall be kept in strict custody in accordance with Defence Force Orders pending his removal to a hospital.
- (7) A person found unfit to stand trial shall be removed to a hospital as soon as practicable after the finding, or if he has been acquitted on account of his insanity, as soon as practicable after that acquittal.
- (8) If an order is made under subsection (1) of this section in respect of a person who is subject to a sentence of imprisonment or detention, whether imposed before or after the making of the order, the term of that sentence shall, except during any period while he is unlawfully at large, continue to run during the currency of the order and any period spent as a patient; and, on his discharge from the hospital in which he is detained pursuant to the order or as a patient, he may, unless the sentence has sooner expired, be removed to and received in a prison, service prison, or detention quarter in New Zealand, as the case may require, to undergo the remainder of the sentence.

192 Duration of order for detention as special patient where defendant unfit to stand trial

- (1) In this section the expression maximum period of detention as a special patient, in relation to any accused person who has been found by the Court Martial to be unfit to stand trial means—
- (a) 10 years from the date of the making of the order pursuant to section 191(1) of this Act, in a case where any offence charged was punishable by imprisonment for life; or

- (b) a period from the date of the making of the order pursuant to section 191(1) of this Act equal to half the maximum term of imprisonment to which the accused person was liable on conviction of the offence charged or (if the defendant was charged with more than one offence) of the offence punishable by the longer or longest term of imprisonment, in any other case.
- (2) If an order is made by the Court Martial pursuant to section 191(1) of this Act in respect of an accused person who has been found to be unfit to stand trial, the order shall, subject to sections 84 and 128 of the Mental Health (Compulsory Assessment and Treatment) Act 1992, continue in force until—
 - (a) he is brought before the Court Martial pursuant to a direction given under this section; or
 - (b) a direction is given under this section that he shall thereafter be held as a patient.
- (3) Notwithstanding anything in subsection (1) of this section, where, in any case to which that subsection applies, every charge against the person concerned is withdrawn, the order made by the Court under section 191(1)(a) of this Act shall be deemed to be cancelled.
- (4) If at any time before the expiry of the maximum period of detention as a special patient a certificate of clinical review is given by the responsible clinician under section 77 of the Mental Health (Compulsory Assessment and Treatment) Act 1992, or a certificate of Tribunal review is given by the Review Tribunal under section 80 of that Act, that the person is no longer unfit to stand trial, the Attorney-General shall either direct that the person be placed in service custody for trial by the Court Martial or direct that the person shall thereafter be held as a patient.
- (5) If at any time before the expiry of the maximum period of detention as a special patient a certificate of clinical review is given by the responsible clinician under section 77 of the Mental Health (Compulsory Assessment and Treatment) Act 1992, or a certificate of Tribunal review is given by the Review Tribunal under section 80 of that Act, that it is no longer necessary that the person, though still unfit to stand trial, should be subject to the order, the Minister of Health, acting with the concurrence of the Attorney-General, may direct that the person shall thereafter be held as a patient.
- (6) If no direction is given under subsection (4) or subsection (5) of this section before the expiry of the maximum period of detention as a special patient, the following provisions shall apply on the expiry of that period:
 - (a) if a certificate of clinical review is given by the responsible clinician under section 77 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or a certificate of Tribunal review is given under section 80 of that Act, that the defendant is no longer unfit to stand trial, the Attorney-General shall either direct that the person be placed in service custody for trial by the Court Martial or direct that the person shall thereafter be held as a patient; or
 - (b) if no such certificate is given, the Attorney-General shall direct that the person shall thereafter be held as a patient.
- (6A) A direction that the person shall be held as a patient shall be deemed for the purposes of the Mental Health (Compulsory Assessment and Treatment) Act

1992 to be a compulsory treatment order, and the provisions of that Act shall apply accordingly.

- (7) On the giving under this section of any direction that the person shall be held as a patient, the proceedings in which the order for detention was made shall be stayed, and no further proceedings shall be taken against the person in respect of any offence charged in those proceedings.
- (8) The powers and duties conferred and imposed on the Attorney-General by any of the provisions of this section shall not be capable of being exercised or performed by the Solicitor-General.

193 Duration of order for detention as special patient when person acquitted on account of his insanity

- (1) If an order is made by the Court Martial pursuant to section 191(1) of this Act in respect of an accused person who has been acquitted on account of his insanity, the order shall continue in force until—
 - (a) a direction is given under this section that that person shall thereafter be held as a patient; or
 - (b) that person is discharged pursuant to a direction given under this section.
- (2) If at any time while the order continues in force a certificate of clinical review is given by the responsible clinician under section 77 of the Mental Health (Compulsory Assessment and Treatment) Act 1992, or a certificate of Tribunal review is given under section 80 of that Act, that the person's mental condition no longer requires, either in the person's own interest or for the safety of any person or class of person or the public, that he or she should be subject to the order, the Minister of Health may direct that the person shall thereafter be held as a patient, or that the person be discharged.
- (3) A direction that the person shall be held as a patient shall be deemed for the purposes of the Mental Health (Compulsory Assessment and Treatment) Act 1992 to be a compulsory treatment order, and the provisions of that Act shall apply accordingly.

194 Power of Court Martial to commit to hospital on conviction

- (1) If the Court Martial (whether in New Zealand or elsewhere) convicts a person of an offence that is punishable by imprisonment, the Court may, if satisfied of the matters specified in subsection (1A),—
 - (a) sentence the person to a term of imprisonment and also order that the person be detained in a hospital as a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
 - (b) instead of passing sentence, order that the person be treated as a patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992.
- (1A) For the purposes of subsection (1), the Court must be satisfied, by a certificate of 1 qualified medical practitioner,—
 - (a) that the person is mentally disordered; and

- (b) that the person's mental impairment requires that the person should be detained either in the person's interest or for the safety of the public or for the safety of a person or class of person.
- (2) No order shall be made under this section in respect of a person who is, at the time of the conviction, subject to a sentence of imprisonment or detention.
- (2A) An order made under subsection (1)(b) shall be deemed for the purposes of the Mental Health (Compulsory Assessment and Treatment) Act 1992 to be a compulsory treatment order, and the provisions of that Act shall apply accordingly.
- (3) Every such person shall be removed to a hospital as soon as practicable thereafter.

195 *Repealed*

196 **Insanity of certain persons while serving sentences of imprisonment under this Act**

- (1) Notwithstanding anything to the contrary in the Mental Health (Compulsory Assessment and Treatment) Act 1992, every service penal establishment in New Zealand shall be deemed to be a prison for the purposes of section 45 of that Act.
- (2) If a person under sentence of imprisonment or detention under this Act who is serving his sentence outside New Zealand becomes mentally disordered, then, without prejudice to any other provision for dealing with him, the Attorney-General may, on a certificate to that effect by a qualified medical practitioner, order his removal to a hospital in New Zealand; and every such order shall have effect for the purposes of the Mental Health (Compulsory Assessment and Treatment) Act 1992 as if it were a compulsory treatment order under that Act.

197 *Repealed*

198 *Repealed*

PART 11

Miscellaneous provisions

Prerogative of mercy

199 **Royal prerogative of mercy**

Nothing in this Act shall affect the Royal prerogative of mercy.

Courts of inquiry

200 **Interpretation**

In sections 200A to 200T, unless the context otherwise requires,—

assembling authority means—

- (a) the Chief of Defence Force; or
- (b) the officer in command of any part of the Armed Forces

member—

- (a) means a member of a court of inquiry; and
- (b) includes the president

president means the president of a court of inquiry

record of proceedings, in relation to a court of inquiry, includes—

- (a) the record of the evidence collected; and
- (b) any report or comment made by the court and attached to the record of the evidence.

200A Courts of inquiry may be assembled

- (1) An assembling authority may assemble 1 or more courts of inquiry.
- (2) A court of inquiry—
 - (a) may be assembled for the purpose of collecting and recording evidence on any matters that the assembling authority has referred to the court; and
 - (b) must report and comment on those matters, if required to do so by the assembling authority.
- (3) A court of inquiry may be assembled to perform the functions and duties, and exercise the powers, of a competent tribunal under Article 5 of Schedule 3 of the Geneva Conventions Act 1958.

200B Composition of court of inquiry

- (1) A court of inquiry must consist of not less than 2 members, of whom at least 1 must be an officer and the other or others must be officers, warrant officers, or members of the Civil Staff (within the meaning of section 2(1) of the Defence Act 1990) of equivalent standing.
- (2) The assembling authority must appoint 1 of the members who is an officer to be president of the court of inquiry.
- (3) The assembling authority—
 - (a) may appoint an officer who is a barrister or solicitor of the High Court as counsel to assist the court; and
 - (b) must do so if the assembling authority considers that—
 - (i) the character or reputation of any person may be affected by the inquiry; or
 - (ii) the inquiry is likely to involve complex or serious issues of fact or law, or both.
- (4) A counsel appointed under subsection (3) is not a member of the court of inquiry, but may advise the court on questions of law and procedure and may ask questions of witnesses attending before the court for the purpose of assisting the court.

200C Order assembling court of inquiry

- (1) The order assembling a court of inquiry must—

- (a) be in the form prescribed by the Chief of Defence Force; and
 - (b) specify the composition of the court, the place and time at which the court is to assemble, and the terms of reference of the court.
- (2) The assembling authority may, at any time, revoke, vary, or suspend the order.

200D Rank and seniority of members

If a court of inquiry is appointed to inquire into the conduct of an officer or warrant officer,—

- (a) every member must be of at least equal rank and seniority to that officer or warrant officer; and
- (b) at least 1 member must be of superior rank.

200E Terms of reference

The assembling authority must—

- (a) provide the court of inquiry with appropriate terms of reference; and
- (b) state whether any report or comment is required upon the matter under investigation.

200F Court of inquiry to sit in private

- (1) A court of inquiry must sit in private, and no person may attend a sitting of the court except—
- (a) the members:
 - (b) a counsel appointed under section 200B(3):
 - (c) a witness giving evidence:
 - (d) if section 200N applies,—
 - (i) the person who is affected or is likely to be affected by the inquiry:
 - (ii) that person's legal representative if the president approves the person being legally represented at the inquiry:
 - (e) any other persons who may be authorised by the president to be present.
- (2) A person may not be represented at the inquiry and may not have an adviser present to assist him or her at the inquiry, unless—
- (a) section 200N applies; and
 - (b) the president approves the person who is affected or is likely to be affected by the inquiry being legally represented.

200G Assembly and procedure

- (1) A court of inquiry must assemble at the time and place specified in the order assembling the court.
- (2) However, if the court is unable for any reason to assemble at the time or place so specified, it must—

- (a) assemble as soon as possible after that time or, as the case may be, as near to that place as possible; and
 - (b) note in the record of proceedings its reasons for being unable to assemble at the time or place specified.
- (3) The president must lay the order and the terms of reference before the court and the court must then proceed to collect and record evidence in accordance with section 200K.

200H Sittings of court of inquiry

- (1) A court of inquiry must sit at the times and in the places that the president appoints.
- (2) The president may adjourn the court.
- (3) Despite subsections (1) and (2), the assembling authority may, at any time, direct the court to reassemble for any purpose that the assembling authority may specify.

200I Attendance of witnesses

- (1) The president may direct a witness to attend before the court—
 - (a) by an order given by the president, if the witness is subject to this Act; or
 - (b) by a summons signed by the president, if the witness is not subject to this Act.
- (2) Every summons to a witness issued under subsection (1)(b) must—
 - (a) be in the form prescribed by the Chief of Defence Force; and
 - (b) be served on the witness in one of the following ways:
 - (i) by being delivered to the witness personally, or by being brought to his or her notice if he or she refuses to accept it;
 - (ii) by being left for the witness with some other person at the witness's usual place of residence at least 24 hours before his or her attendance is required;
 - (iii) by being sent to the witness by registered letter addressed to the witness's last known or usual place of residence or place of business.
- (3) The president may order or summon any person whom the court thinks fit to attend to give evidence before the court.
- (4) Subsection (3) is subject to section 200N.

200J Witness to be sworn

- (1) Every witness must be sworn by a member in the form and manner prescribed by the Chief of Defence Force before giving evidence.
- (2) If a court of inquiry considers that a child who is called as a witness does not understand the nature of an oath, the child's evidence may be received even though it is not given on oath, so long as the court is of the opinion that the child—

- (a) has sufficient intelligence to justify the reception of the evidence; and
 - (b) understands the duty of speaking the truth.
- (3) If any person referred to in subsection (1) objects to being sworn, or it is not reasonably practicable to administer an oath to that person in a manner appropriate to his or her religious belief, the person may be permitted to make a solemn affirmation instead of swearing an oath.
- (4) The making of an affirmation under subsection (3) has the same force and effect, and has the same consequences, as the taking of an oath.

200K Collecting and recording of evidence

- (1) A court of inquiry is not bound by the ordinary rules relating to the admissibility of evidence and may admit in evidence any matter of hearsay or any other matter that would not be admissible in a court of law.
- (2) If a court of inquiry admits evidence of that kind, it is for the court to determine the weight to be attached to that evidence.
- (3) A court of inquiry must put any questions to a witness that it considers desirable—
- (a) to test the truth or accuracy of any evidence given by the witness; and
 - (b) to elicit any further information that may be necessary to determine the truth.
- (4) A court of inquiry must record, or arrange to be recorded in writing, the evidence of every witness—
- (a) in narrative form as nearly as possible in the words used; or
 - (b) if the court considers it expedient, in the form of questions and answers.
- (5) Each witness may read over the record of his or her evidence and may ask that any necessary corrections be made to it.
- (6) Each witness must initial all alterations and must then sign the record of his or her evidence at the end and initial each page of it.

200L Interpreters and recorders

- (1) A competent and impartial person or persons may be appointed at any time during the course of the inquiry by either the assembling authority or the president to act as interpreter, shorthand writer, typist, or operator of a recording machine to assist the court in collecting and recording the evidence.
- (2) Before an interpreter commences his or her duties, a member must administer an oath to the interpreter in the form and manner prescribed by the Chief of Defence Force.
- (3) If an interpreter objects to being sworn, or it is not reasonably practicable to administer an oath to that person in a manner appropriate to his or her religious belief, the person may be permitted to make a solemn affirmation instead of swearing an oath.
- (4) The making of an affirmation under subsection (3) has the same force and effect, and has the same consequences, as the taking of an oath.

200M Procedure if conduct of superior officer may be in question

- (1) The president must adjourn the court of inquiry and report to the assembling authority if at any time it appears to the court that the conduct of an officer or a warrant officer who is senior or superior in rank to a member is, or is likely to be, called into question in the course of the inquiry.
- (2) On receiving the president's report, the assembling authority must consider the matter and, if satisfied that the conduct of the person is or is likely to be called into question, may dissolve the court and assemble a new court, having regard to the requirements of section 200D.
- (3) If the assembling authority does not dissolve the court, the assembling authority must direct it to continue its inquiry even though the conduct of an officer or a warrant officer senior or superior in rank to a member is, or is likely to be, called into question.
- (4) Subsection (3) does not affect the power of the president to make a further report under subsection (1) if the evidence justifies that course of action.

200N Rights of person who may be affected by inquiry

- (1) If at any time it appears to an assembling authority or to a court of inquiry that an inquiry affects or is likely to affect the character or the reputation of any person (whether or not the person is subject to this Act), the president must—
 - (a) ensure that the person is given adequate notice of the time, place, date, and nature of the inquiry; and
 - (b) give the person a reasonable opportunity to exercise the rights set out in subsection (2).
- (2) The rights referred to in subsection (1) are as follows:
 - (a) the person may read or have read or played back to him or her any evidence that has already been given:
 - (b) the person may require any witness who has already given evidence to be recalled to enable him or her to question the witness:
 - (c) the person may be present during the proceedings or the remainder of the proceedings (as the case may be) while the court is hearing evidence, and may question any witness who gives evidence that he or she considers affects his or her character or reputation:
 - (d) the person may give evidence himself or herself, or call any witness to give evidence, to rebut or explain any evidence that has been given that he or she considers affects his or her character or reputation:
 - (e) the person may seek and, if the exigencies of the case permit, must be granted an adjournment to enable him or her to obtain advice:
 - (f) the person may be legally represented at the inquiry if the president approves.
- (3) If the person notifies the court that he or she does not wish to exercise the rights set out in subsection (2), the president must note the record of proceedings to that effect.

- (4) This section does not apply to an inquiry under section 201 into the absence of a member of the Armed Forces.

2000 Matters president must take into account in determining whether person affected by inquiry may be legally represented

For the purposes of section 200N(2)(f), the president must take into account the following matters in determining whether a person who is affected or is likely to be affected by an inquiry should be legally represented at the inquiry:

- (a) the seriousness of any allegations made against, or any potential penalty that may be imposed on, that person:
- (b) whether any questions of law are likely to arise:
- (c) the capacity of that person to present his or her own case:
- (d) any procedural difficulties that are likely to arise:
- (e) the need for reasonable speed in completing the inquiry:
- (f) the need for fairness as between that person and all persons who may appear before the court.

200P What happens if person affected by inquiry wishes to call witness

- (1) If the person who is affected or is likely to be affected by an inquiry wishes to call a witness to give evidence under section 200N(2)(d), the president must take the necessary steps under the rules of procedure to secure the attendance of the witness, unless it is impracticable to do so.
- (2) If it is impracticable to secure the attendance of a witness, the president must note that fact in the record of proceedings.
- (3) Despite subsection (1), if the attendance of a witness is requested by the person affected or likely to be affected and the court of inquiry is satisfied that the attendance of that witness is not properly required by that person, any cost incurred by the Crown in procuring the attendance of the witness may be charged to, and recovered as a debt due by, the person affected or likely to be affected.

200Q Exhibits

- (1) Every document or thing produced in evidence at an inquiry must be made an exhibit.
- (2) However, if an original document or book is produced in evidence, a court of inquiry may, instead of making it an exhibit, compare a copy of, or an extract from, the document or book with the original and, if the court is satisfied that the copy or extract is correct,—
 - (a) the president must endorse on the copy or extract a certificate to that effect in the form prescribed by the Chief of Defence Force; and
 - (b) the court may return the original document or book to the witness, and attach the certified copy or extract to the record of proceedings as an exhibit.
- (3) Every exhibit must—
 - (a) either be marked with a number or letter in sequence and signed by the president, or have attached to it a label so marked and signed; and

- (b) he attached to or kept with the record of proceedings unless, in the opinion of the president, it is not expedient to do so.
- (4) If an exhibit is not attached to or kept with the record of proceedings, the president must ensure its safe custody pending the directions of the assembling authority for the ultimate disposal of the exhibit.

200R Signing and dispatch of record of proceedings

- (1) The record of proceedings must, at the conclusion of the inquiry, be signed at the end by each member, who must add his or her rank and unit.
- (2) If there is a difference of opinion among the members on any material matter, the grounds of difference must be stated in the record.
- (3) After the record of proceedings has been signed, the president must forward it to the assembling authority, who must—
 - (a) record on the record his or her own opinion of the findings; and
 - (b) sign the record; and
 - (c) if necessary, forward the record to a superior commander.
- (4) The record of proceedings must be given an appropriate security classification according to the nature of the inquiry and the evidence collected and recorded.
- (5) However, if the content of the record of proceedings does not warrant a security classification, the record of proceedings must be given an appropriate In Confidence privacy marking.

200S Admissibility of record of proceedings, etc

- (1) The record of proceedings and any evidence in respect of the proceedings, including any confession, statement, or answer to a question made or given by a person during the proceedings, must not be admitted in evidence against any person in any other proceedings, judicial or otherwise.
- (2) If a member of the Armed Forces is charged under section 47 with desertion, or under section 48 with being absent without leave, the record of the declaration of the court under section 201 relating to the member of the Armed Forces is prima facie evidence of the matters stated in it.
- (3) The record of proceedings and any evidence in respect of the proceedings, including any confession, statement, or answer to a question made or given by a person during the proceedings, may be given in evidence against that person if he or she is charged—
 - (a) under section 71 with making a false statement; or
 - (b) under section 109 of the Crimes Act 1961 with perjury.
- (4) Subsection (1) is subject to subsections (2) and (3).

200T Record of proceedings not to be disclosed

The record of proceedings of a court of inquiry must not be disclosed to—

- (a) persons not subject to this Act without authority from a superior commander of the service concerned; and

- (b) persons subject to this Act, unless those persons—
 - (i) need to be aware of the contents to enable them to perform their service duties; or
 - (ii) are entitled to a copy under the rules of procedure.

201 Inquiry on absence of member of the Armed Forces

- (1) Where any member of the Armed Forces has been absent without leave for a period of 21 days, a court of inquiry shall be assembled to inquire in the prescribed manner into the fact of that absence, and the deficiency (if any) in the arms, ammunition, equipment, or clothing of that member, or in any other service property issued to him for his use or entrusted to his care for the purposes of the Armed Forces.
- (2) If the court of inquiry is satisfied that the member absented himself without leave or other sufficient reason, the court shall make a declaration that the member is an absentee. Every such declaration shall specify the period of absence and the extent to which the arms, ammunition, or clothing of that member, or the other service property issued or entrusted to him, are deficient; and a record of the declaration in the prescribed form shall be signed by the commanding officer of the absent member in duplicate and shall then be filed with and form part of the service records.
- (3) If the absent member does not within 6 months after the date on which he absented himself surrender or is not apprehended within that period, that record shall, for the purposes of section 202 of this Act, have the legal effect of a conviction by the Court Martial for desertion.

Pay, etc, of deserters and absentees

202 Pay, service, and effects of deserters and absentees

- (1) A person subject to this Act who is convicted by the Court Martial or as provided in section 201, or is found guilty by a disciplinary officer, of desertion or absence without leave forfeits 1 day's pay and allowances for each day during which he or she was in desertion or absent without leave.
- (1A) However, if the period of absence is less than 24 hours, the Court Martial or the disciplinary officer may cancel the forfeiture under subsection (1), in whole or in part, as the Court Martial or disciplinary officer thinks just.
- (2) Any period in respect of which pay and allowances are forfeited under subsection (1) of this section shall, to such extent as may be prescribed, not be counted as service towards promotion, increments in pay, leave, medals, badges, grants, completion of engagement, or any other benefit or condition of service.
- (2A) The pay and allowances that are to be forfeited under subsection (1) of this section may, without limiting any other mode of recovery, be recovered from such person by the Crown—
 - (a) by deduction from any pay and allowances that would otherwise have been payable to him in respect of the whole or any part of the period during which he was in desertion or absent without leave, but which have been withheld from him in accordance with regulations made under the Defence Act 1990;

and

- (b) to the extent that such pay and allowances (if any) are insufficient to meet the pay and allowances that are to be forfeited, by deduction from any other pay and allowances or other money due, owing, or payable to such person by the Crown in relation to his service in the Armed Forces, not being an amount due, owing, or payable to him or on his death under the Government Superannuation Fund Act 1956.
- (3) Subject to any regulations or Defence Force Orders made under this Act, where any person subject to this Act is absent without leave and any of that person's personal belongings are in the possession or custody, or come into the possession, of the Armed Forces, those belongings shall be disposed of as follows:
- (a) all money standing to that person's credit at the date of the commencement of that person's absence shall be held on that person's behalf by the Chief of Defence Force for a period of 6 months from and including that date; and, if the person remains absent at the expiration of that period, the Chief of Defence Force shall cause the money to be deposited with the Treasury, and subsections (2) to (6) of section 74 of the Public Finance Act 1989 shall apply to any money so deposited as if it were so deposited pursuant to subsection (1) of that section:
- (b) all returnable service property in the possession or custody of that person shall, unless sooner required for the purposes of the Armed Forces, be kept in safe custody on that person's behalf for a period of 6 months from and including the date of the commencement of that person's absence, and shall then, if that person remains absent at the expiration of that period, be returned to service stores and be disposed of in the same manner as if that person had been discharged from the service to which that person belongs:
- (c) all chattels belonging to or reputedly belonging to that person shall be kept in safe custody on that person's behalf for a period of 6 months from and including the date of the commencement of that person's absence; and, if that person remains absent at the expiration of that period, the Chief of Defence Force may cause the chattels to be sold by auction, and the proceeds of sale shall be deposited with the Treasury, and subsections (2) to (6) of section 74 of the Public Finance Act 1989 shall apply to any money so deposited as if it were so deposited pursuant to subsection (1) of that section:

Provided that, if the person ceases to be absent before the expiration of that period of 6 months, the Chief of Defence Force shall forthwith cause the chattels referred to in this paragraph to be returned to that person.

- (4) Notwithstanding the provisions of paragraph (c) of subsection (3) of this section, the Chief of Defence Force may, if he thinks fit, instead of causing the chattels referred to in that paragraph to be sold, deliver them to any person (other than the absentee) who appears to him to be entitled to or have a claim on them.
- (5) In calculating the number of days of desertion or absence without leave for the purposes of this section, if such period, being a continuous period of absence, calculated in hours,—
- (a) is less than 24 hours, it must be counted (except for the purposes of subsection (1A)) as 1 day; or

- (b) is more than 24 hours, each multiple of 24 hours shall be counted as one day and any remaining number of hours shall be counted as a further day.

Judge Advocate General

203 Appointment and functions of Judge Advocate General

- (1) The Governor-General may from time to time by Warrant appoint a barrister or solicitor of the High Court who has held a practising certificate as such for not less than 7 years, whether or not he holds or has held any judicial office, to be Judge Advocate General of the Armed Forces.
- (2) The Judge Advocate General may not be removed from office except in accordance with section 16 of the Court Martial Act 2007; and that section applies accordingly with any necessary modifications.
- (2A) The Judge Advocate General must retire from office on attaining the age of 75 years.
- (3) *Repealed*

203A Deputy Judge Advocate General

- (1) The Governor-General may from time to time by Warrant appoint a barrister or solicitor of the High Court who has held a practising certificate for not less than 7 years, whether or not the person holds or has held any judicial office, to be Deputy Judge Advocate General of the Armed Forces.
- (2) The Deputy Judge Advocate General may not be removed from office except in accordance with section 16 of the Court Martial Act 2007; and that section applies accordingly with any necessary modifications.
- (2A) The Deputy Judge Advocate General must retire from office on attaining the age of 70 years.
- (3) The Deputy Judge Advocate General shall have and may exercise such of the powers, duties, and functions of the Judge Advocate General as the Judge Advocate General may from time to time delegate to the Deputy Judge Advocate General, but no such delegation shall prevent the exercise of any power, duty, or function by the Judge Advocate General.
- (4) On the occurrence from any cause of a vacancy in the office of Judge Advocate General, and in the case of the absence from duty of the Judge Advocate General (from whatever cause arising), and for so long as any such vacancy or absence continues, the Deputy Judge Advocate General shall have and may exercise all the powers, duties, and functions of the Judge Advocate General.
- (5) The fact that the Deputy Judge Advocate General exercises any power, duty, or function of the Judge Advocate General shall be conclusive evidence of the Deputy Judge Advocate General's authority to do so.

Discipline in respect of convoys

204 Orders by convoy commanders and commanding officers of escorting ships

- (1) Where any vessel forms part of a convoy which is under the command of an officer of the Navy or which is under the command of any other person appointed

by the Chief of Defence Force for the purpose, the master or other person for the time being in command of the vessel shall obey—

- (a) if the convoy is escorted by any naval ship, any directions relating to the navigation or security of the convoy given by the commanding officer of the ship; or
- (b) in any other case, any directions relating to the navigation or security of the convoy given by the officer or other person in command of the convoy—

and shall take such precautions for avoiding the enemy (if any) as may be required by any such directions.

- (2) If the master or other person in command of a vessel fails to obey any such directions, the commanding officer of the escorting naval ship, or, as the case may be, the officer or other person in command of the convoy, may compel obedience to his directions by force of arms; and neither he nor any person acting under his orders shall be criminally or civilly responsible for any injury or loss of life, or for any damage to or loss of property, resulting from the use of that force.

Regulations and Defence Force Orders

205 Regulations

- (1) The Governor-General may from time to time, by Order in Council, make regulations, not inconsistent with this Act, for all or any of the following purposes:
 - (a) providing, in cases where a person subject to this Act (whether a member of the Armed Forces or any other person subject to this Act who is paid by the Crown in right of New Zealand) is convicted of any offence by a civil court or the Court Martial or is found guilty of an offence by a disciplinary officer, for all or any of the following:
 - (i) the forfeiture of the whole or part of 1 day's pay and allowances for each day or part of a day during which he or she is held in civil or service custody (including imprisonment or detention) after being convicted or found guilty:
 - (ii) the forfeiture of the whole or part of 1 day's pay and allowances for each day or part of a day during which he or she is held in civil custody before being convicted or found guilty:
 - (iii) the forfeiture of the whole or part of 1 day's allowances for each day or part of a day during which he or she is suspended from duty by reason of the offence:
 - (iv) the continuance or withholding of pay and allowances pending his or her conviction or acquittal:
 - (aa) if regulations are made for the purposes of paragraph (a), providing for the recovery of any pay and allowances that are to be forfeited under those regulations—
 - (i) in the case of any member of the Armed Forces, by deduction from, or withholding or delaying payment of, any money due, owing, or payable to him or her by the Crown in relation to his or her service in the Armed Forces; and

- (ii) in the case of any other person subject to this Act who is paid by the Crown in right of New Zealand, by deduction from the pay or allowances payable to him or her:
 - (b) providing, in cases where a person subject to this Act has been convicted by the Court Martial or found guilty by a disciplinary officer of an offence against this Act, for deductions from, or withholding or delaying payment of, any money, due, owing, or payable to him by the Crown in relation to his service in the Armed Forces for the purpose of paying any fine, or compensation, or other payment for which he may be liable under this Act:
 - (c) providing for the payment of such fees, allowances, and expenses as may be fixed or determined by or in accordance with the regulations to the following persons (other than members of the Armed Forces) in respect of matters arising out of or relating to service law:
 - (i) counsel appointed to advise a person who is being questioned by the service authorities or is being held under close arrest:
 - (ii) counsel appointed to appear for the Crown in the Summary Appeal Court, the Court Martial, the Court Martial Appeal Court, or any other court or tribunal that makes, or will make, a determination that may affect service discipline or the operations of the Armed Forces:
 - (iii) counsel appointed to appear for an accused or an appellant who is on legal aid in the Summary Appeal Court, the Court Martial, the Court Martial Appeal Court, the Court of Appeal, or the Supreme Court:
 - (iv) persons engaged by or under the authority of the Chief of Defence Force to lecture on any matter of service law:
 - (v) the person appointed as a member of the Discipline Committee under section 160(2)(i):
 - (vi) counsel appointed to assist a court of inquiry under section 200B(3):
 - (ca) determining the nature and content of the punishments of reduction of rank, forfeiture of seniority, and stay of seniority:
 - (d) providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.
- (1A) In subsection (1)(a) of this section the term civil court, in relation to any offence, means a court exercising ordinary criminal jurisdiction whether in New Zealand or elsewhere; and includes a court of summary jurisdiction.
- (1B) No regulations made under subsection (1) of this section shall make any provision contrary to or inconsistent with section 92 of the Government Superannuation Fund Act 1956.
- (2) All regulations made under this Act shall come into force on the date of their notification in the Gazette, or on such later date as may be specified in the regulations.
- (3) Any such regulations may make different provision for different services, commands, branches, corps, formations, units, and ranks in the Armed Forces.

206 Defence Force Orders

- (1) The Chief of Defence Force may from time to time make and issue orders, not inconsistent with this Act or the Defence Act 1990, for all or any of the following purposes:
- (a) determining the nature and content of the punishments of stay of seniority, confinement to ship or barracks, extra work and drill, stoppage of leave, and extra duty:
 - (ab) limiting the types of offences that a disciplinary officer may try summarily, or otherwise deal with, under Part 5:
 - (ac) limiting the amount that a disciplinary officer may, under section 117ZA, order an offender to pay:
 - (ad) restricting, by fixing the limitations as to rank as the Chief of Defence Force considers necessary, the exercise of powers under Part 5 by disciplinary officers:
 - (ae) providing for the designation of classes of certificates of competency that may be issued to members of the Armed Forces who are to be appointed disciplinary officers, presenting officers, or defending officers:
 - (af) providing for the issue, revocation, suspension, expiry, and renewal of those certificates of competency:
 - (ag) providing for the minimum standards for the issue of those certificates of competency (including standards relating to required competence, qualifications, and experience) that must be met for each class of certificate:
 - (ah) providing for the terms and conditions subject to which certificates of competency are issued:
 - (b) providing for the attendance at trials by the Court Martial of officers attending the proceedings of the Court for the purpose of being instructed in the Court's procedure:
 - (c) providing for the appointment of, and duties and functions that may be performed by, officers of the Court Martial:
 - (d) providing for the assembling and constitution of courts of inquiry:
 - (e) providing for legal aid to be granted at public expense in respect of—
 - (i) proceedings in the Court Martial (whether in New Zealand or elsewhere):
 - (ii) appeals to the Summary Appeal Court or the Court Martial Appeal Court (whether in New Zealand or elsewhere):
 - (ea) prescribing the conditions subject to which any legal aid referred to in paragraph (e) may be granted:
 - (eb) providing for legal aid to be granted at public expense to any unrepresented person who (whether in New Zealand or elsewhere)—
 - (i) is being questioned by the service authorities, or is wanted by the service authorities for questioning, in relation to the commission or possible commission of an offence by that person and is advised by

the service authorities, before or in the course of questioning, that he or she may consult a lawyer; or

- (ii) is under close arrest:
 - (ec) prescribing the conditions subject to which any legal aid referred to in paragraph (eb) may be granted:
 - (f) providing for legal aid to be granted at public expense, either generally or in prescribed cases, to persons subject to this Act tried by civil courts outside New Zealand, and prescribing the conditions subject to which any such legal aid may be granted:
 - (g) providing for the removal of a person unfit to stand trial within the meaning of Part 10 of this Act, or acquitted on account of his insanity, from an overseas country to New Zealand, or from one place of custody to another, or from a place of custody to a hospital:
 - (h) providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.
- (2) All Defence Force Orders issued under this Act shall come into force on the date of their issue or on such later date as may be specified in the orders.
- (3) Any such orders may make different provision for different services, commands, branches, corps, formations, units, and ranks of the Armed Forces.

207 *Repealed*

208 Repeals, amendments, and savings

- (1) The enactments specified in Schedule 7 to this Act are hereby consequentially amended in the manner indicated in that Schedule.
- (2) The enactments specified in Schedule 8 to this Act are hereby repealed.
- (3) All districts, offices, appointments, commissions, Proclamations, Orders in Council, regulations, orders, warrants, contracts, instruments, and all acts of authority that originated under or by virtue of any of the enactments repealed by this section, and are subsisting or in force at the commencement of this Act, shall continue for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated; but so that in the case of current appointments for specified terms each such term shall be computed from the date of its commencement.
- (4) Notwithstanding the repeal of any enactment by subsection(2) of this section, all matters and proceedings commenced under any such enactment, and pending or in progress at the commencement of this Act, may be continued and completed under this Act.
- (5) The Naval Discipline Act 1957 of the Parliament of the United Kingdom, and all Acts amending or continuing that Act, and all rules and regulations made under that Act, shall at the commencement of this Act cease to have effect as part of the law of New Zealand.

SCHEDULE 1

Section 16(3)

Civilians subject to this Act**Provisions relating to civilians outside New Zealand**

- 1** Persons serving outside New Zealand, or otherwise employed, in such capacities connected with the Navy, the Army, or the Air Force as are specified for the purposes of this Schedule by Defence Force Orders, being persons serving or employed under Her Majesty's Government in New Zealand.
- 2** Persons who are employed by, or in the service of, any naval, army, or air force organisation so specified to which Her Majesty's Government in New Zealand is a party and are employed by or in the service of that organisation by reason of that Government being a party thereto.
- 3** Persons belonging to or employed by any other organisation so specified which operates in connection with the Navy, the Army, or the Air Force.
- 4** Persons who, for the purposes of their profession or employment, are attached to or accompany any part of the Navy, the Army, or the Air Force, pursuant to an authorisation granted by or on behalf of the Chief of Defence Force.
- 5** Persons forming part of the family of members of any part of the Navy, the Army, or the Air Force and residing with those members or about to reside or departing after residing with them.
- 6** Persons forming part of the family of persons falling within clauses 1 to 4 of this Schedule and residing with them or about to reside or departing after residing with them.
- 7** Persons employed by members of any part of the Navy, the Army, or the Air Force.
- 8** Persons employed by persons falling within clauses 1 to 6 of this Schedule.
- 9** Persons forming part of the family of persons falling within either clause 7 or clause 8 of this Schedule and residing with them or about to reside or departing after residing with them.

SCHEDULE 2

Sections 79, 80

Scale of punishments which may be imposed by Court Martial

- 1** The punishments that may be imposed on an offender convicted by the Court Martial are as follows:
 - (a) *Repealed*
 - (b) Imprisonment:
 - (c) Dismissal from Her Majesty's Service:
 - (d) Detention:
 - (e) Reduction in rank:
 - (f) Forfeiture of seniority:

- (g) Stay of seniority:
 - (h) A fine:
 - (i) A severe reprimand:
 - (j) A reprimand.
- 2** Except as provided in clauses 3 and 4 of this Schedule, a punishment specified in any paragraph of the scale prescribed by clause 1 of this Schedule shall be regarded as less severe than any of the punishments that are specified in the preceding paragraphs of that scale.
- 3** Detention shall be deemed not to be a less severe punishment than imprisonment if the term of detention is longer than the term of imprisonment.
- 4** (1) One combination of punishments shall be regarded as being less severe than any other combination of punishments if the most or more severe punishment of the first-mentioned combination is less severe than the most or more severe punishment of the other combination.
- (2) In comparing any two combinations of punishments as provided in subclause (1) of this clause, there shall be excluded from each combination any punishment that is the same in kind and amount as a punishment included in the other combination.
- 5** A combination of punishments shall be regarded as being less severe than a single punishment if the most or more severe punishment of the combination is less severe than the single punishment.

SCHEDULE 3

s 117V

Scale of authorised summary punishments

- 1** The punishments that may be imposed on an offender by a disciplinary officer are as follows:
- (a) Detention:
 - (b) Reduction in rank:
 - (c) Stay of seniority:
 - (d) A fine:
 - (e) A reprimand:
 - (f) Confinement to ship or barracks (including extra work and drill for a period equal to the period of the confinement):
 - (g) Extra work and drill:
 - (h) Stoppage of leave:
 - (i) *Repealed*
 - (j) Extra duty not exceeding 2 hours a day:
 - (k) A caution.

- 2** Except as provided in clauses 3 and 4 of this Schedule, a punishment specified in any paragraph of the scale prescribed by clause 1 of this Schedule shall be regarded as less severe than any of the punishments that are specified in the preceding paragraphs of that scale.
- 3** (1) One combination of punishments shall be regarded as less severe than any other combination of punishments if the most or more severe punishment of the first-mentioned combination is less severe than the most or more severe of the other combination of punishments.
- (2) In comparing any 2 combinations of punishments as provided in subclause (1) of this clause, there shall be excluded from each combination any punishment that is the same in kind and amount as a punishment included in the other combination.
- 4** A combination of punishments shall be regarded as less severe than a single punishment if the most or more severe punishment of the combination is less severe than the single punishment.

SCHEDULE 4

ss 117V, 117W

Summary punishments that may be imposed by commanding officer, detachment commander, or subordinate commander acting as disciplinary officer under Part 5

| Rank of offender | Punishments and jurisdictional circumstances | |
|--------------------------------------|--|---|
| | If offender was given right to elect trial by Court Martial | If offender was not given right to elect trial by Court Martial |
| 1. An officer or a warrant officer | Stay of seniority for a period not exceeding 12 months | |
| | A fine, not exceeding 28 days' basic pay | A fine, not exceeding 7 days' basic pay |
| | A reprimand | A reprimand |
| 2. A senior non-commissioned officer | Reduction in rank (this punishment may be imposed only on a petty officer or a sergeant who, at the time of the disposal of the charge, is on active service or sea service) | |
| | Stay of seniority for a period not exceeding 12 months | |
| | A fine, not exceeding 28 days' basic pay | A fine, not exceeding 7 days' basic pay |
| | A reprimand | A reprimand |
| | Stoppage of leave, not exceeding 21 days | Stoppage of leave, not exceeding 21 days |
| | | |
| 3. A junior non-commissioned officer | Reduction in rank | |
| | A fine, not exceeding 28 days' basic pay | A fine, not exceeding 7 days' basic pay |
| | A reprimand | A reprimand |
| | Stoppage of leave, not exceeding 21 days | Stoppage of leave, not exceeding 21 days |
| | Extra duty for a period not exceeding 21 days | Extra duty for a period not exceeding 21 days |
| | A caution | A caution |

Contd.

| Rank of offender | Punishments and jurisdictional circumstances | |
|--|--|--|
| | If offender was given right to elect trial by Court Martial | If offender was not given right to elect trial by Court Martial |
| 4. A rating of able rank, a private, or a leading aircraftman, or a rating, soldier, or airman of lower rank | Detention for a period not exceeding 60 days (this punishment may be of an offence committed on active service or sea service) | |
| | Detention for a period not exceeding 28 days | |
| | A fine, not exceeding 28 days' basic pay | A fine, not exceeding 7 days' basic pay |
| | A reprimand | A reprimand |
| | Confinement to ship or barracks for a period not exceeding 21 days | Confinement to ship or barracks for a period not exceeding 21 days |
| | Extra duty for a period not exceeding 21 days | Extra duty for a period not exceeding 21 days |
| | Stoppage of leave, not exceeding 21 days | Stoppage of leave, not exceeding 21 days |
| | Extra duty for a period not exceeding 21 days | Extra duty for a period not exceeding 21 days |
| | A caution | A caution |

Notes For the purposes of clause 1, a disciplinary officer is not empowered to impose a punishment on an officer if the disciplinary officer holds a rank of less than 2 rank grades above that of the officer.

For the purposes of clause 2, a senior non-commissioned officer is one who holds the rank of—

- (a) chief petty officer or petty officer in the Navy; or
- (b) staff sergeant or sergeant in the Army; or
- (c) flight sergeant aircrew, flight sergeant, sergeant aircrew, or sergeant in the Air Force.

For the purposes of clause 3, a junior non-commissioned officer is one who is—

- (a) a rating of leading rank in the Navy; or
- (b) a bombardier, corporal, lance bombardier, or lance corporal in the Army; or
- (c) a corporal in the Air Force.

For the purposes of this schedule, a person is on sea service if that person is a member of the crew of a ship that is at sea or of a ship whose commanding officer has been ordered to keep the ship at less than 48 hours' notice for sea.

SCHEDULE 5

ss 117V, 117W

Summary punishments that may be imposed by superior commander acting as disciplinary officer under Part 5

| Rank of offender | Punishments and jurisdictional circumstances | |
|------------------|---|---|
| | If offender was given right to elect trial by Court Martial | If offender was not given right to elect trial by Court Martial |
| An officer | Stay of seniority for a period not exceeding 12 months | |
| | A fine, not exceeding 28 days' basic pay | A fine, not exceeding 7 days' basic pay |
| | A reprimand | A reprimand |

Note For the purposes of this schedule, a superior commander is not empowered to impose a punishment on the officer if the superior commander holds a rank of less than 2 rank grades above that of the officer.

SCHEDULE 6*Repealed***SCHEDULE 7***Omitted from this manual***SCHEDULE 8***Omitted from this manual*

2008/236



ARMED FORCES DISCIPLINE REGULATIONS 2008

Anand Satyanand, Governor-General

ORDER IN COUNCIL

At Wellington this 4th day of August 2008

Present:

His Excellency the Governor-General in Council

Pursuant to section 205 of the Armed Forces Discipline Act 1971, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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REGULATIONS

1 Title

These regulations are the Armed Forces Discipline Regulations 2008.

2 Commencement

These regulations come into force on 1 July 2009.

3 Interpretation

In these regulations, unless the context otherwise requires,—

able rank, in relation to the Navy, excludes ordinary rank Act means the Armed Forces Discipline Act 1971 allowances, in relation to a member of the Armed Forces,—

- (a) means all allowances payable to that member by the Crown in respect of his or her service in the Armed Forces; but
- (b) does not include any payment by way of expenses, refunds, or allowances to meet expenditure already incurred

base hourly rate of remuneration has the meaning given by regulation 16

basic pay, in relation to a member of the Armed Forces, means the daily amount payable to the member as determined by the Chief of Defence Force, but excluding allowances

certified scale of fees means the certified scale of fees prepared by the Chief of Defence Force in accordance with regulation 15

certifying officer means an officer designated by the Chief of Defence Force as a certifying officer for the purposes of these regulations

counsel—

- (a) means a lawyer who is appointed—
 - (i) to represent a party to proceedings before the Summary Appeal Court, the Court Martial, or the Court Martial Appeal Court; or
 - (ii) to appear for the Crown in any Court or tribunal that makes, or will make, a determination that may affect service discipline or the operations of the Armed Forces; or
 - (iii) to advise a person who is being questioned by the service authorities or is being held under close arrest; or
 - (iv) as a member of the Discipline Committee under section 160(2)(i) of the Act; but
- (b) does not include a person who is a member of the Armed Forces

leading aircraftman, in relation to the Air Force, excludes aircraftman and Air Force cadet

year means a period of 12 months starting on 1 July.

PART 1**Punishments and forfeitures****4 Reduction in rank**

- (1) If the Court Martial sentences an officer of any service to reduction in rank, it may reduce the officer's rank to any lower commissioned rank in that service.
- (2) If the Court Martial sentences a rating to reduction in rank or a disciplinary officer imposes a punishment of reduction in rank on a rating, the Court Martial or disciplinary officer may reduce the rating's rank—
 - (a) to any lower rank, not below able rank, in the rating's present branch; or
 - (b) in the case of the Naval Police Branch or the Physical Training Branch, to any lower rank, not below able rank, in the rating's former branch for which the rating is qualified.
- (3) If the Court Martial sentences a soldier to reduction in rank, or a disciplinary officer imposes a punishment of reduction in rank on a soldier, the Court Martial or disciplinary officer may reduce the soldier's rank to any lower rank, not below private, in the Army.
- (4) If the Court Martial sentences an airman to reduction in rank, or a disciplinary officer imposes a punishment of reduction in rank on an airman, the Court Martial or disciplinary officer may reduce the airman's rank to any lower rank, not below leading aircraftman, in the Air Force.

5 Forfeiture of seniority

If the Court Martial sentences a member of the Armed Forces to forfeiture of seniority, it may forfeit all or part of the member's seniority in the rank that the member holds on the day on which the sentence is passed and the member must take rank and precedence in his or her service accordingly.

6 Stay of seniority

- (1) If the Court Martial sentences a member of the Armed Forces to a stay of seniority, the member must remain in the rank and retain the amount of seniority that the member has on the day on which the sentence is passed for the period, not exceeding 2 years, as the Court Martial specifies.
- (2) If a disciplinary officer imposes a punishment of a stay of seniority on a member of the Armed Forces, the member must remain in the rank and retain the amount of seniority that the member has on the day on which the punishment is imposed for the period, not exceeding 1 year, as the disciplinary officer specifies.

7 Forfeiture of pay and allowances on civil conviction

If a member of the Armed Forces is convicted of an offence by a civil court, the member forfeits—

- (a) 1 day's basic pay and allowances for—

- (i) each day after the conviction during which the member is in civil custody in respect of the offence; and
 - (ii) each day after the conviction during which the member is in close arrest in respect of the offence; and
- (b) 1 day's allowances for each day during which the member is suspended from duty in respect of the offence, whether before or after the conviction, or both.

8 Forfeiture of allowances on service conviction for period before conviction

- (1) If a member of the Armed Forces is convicted of an offence by the Court Martial or is found guilty of an offence by a disciplinary officer, the member forfeits 1 day's allowances for each day during which the member is suspended from duty in respect of the offence before the conviction or the finding of guilty.
- (2) In any case to which subclause (1) applies, the Court Martial or the disciplinary officer who found the member guilty may cancel the forfeiture in whole or in part.

9 Forfeiture of pay on service conviction for period after conviction

- (1) If a member of the Armed Forces is convicted of an offence by the Court Martial and is sentenced to imprisonment, or to dismissal from Her Majesty's Service, the member forfeits—
- (a) 1 day's basic pay and allowances for each day during which the member is in civil custody or service custody in respect of the offence after the conviction; and
 - (b) 1 day's allowances for each day during which the member is suspended from duty in respect of the offence after the conviction.
- (2) If a member of the Armed Forces is convicted of an offence by the Court Martial or is found guilty by a disciplinary officer and is sentenced to detention, the member must forfeit 1 half day's basic pay for each day during which the member is in civil or service custody in respect of the offence after the conviction.

10 Calculation of period of forfeiture

- (1) In calculating the number of days a member of the Armed Forces is in custody, in close arrest, or is suspended from duty for the purposes of regulations 7 to 9 and 11, if that period (whether a continuous period or a number of separate periods of custody, close arrest, or suspension), calculated in hours,—
- (a) is less than 24 hours, it must be counted as a day; or
 - (b) is more than 24 hours, each multiple of 24 hours must be counted as a day and any remaining number of hours must be counted as a further day.
- (2) However, no period in respect of which a member of the Armed Forces would not otherwise have been entitled to pay and allowances may be counted in calculating the number of days the member is in custody, in close arrest, or is suspended from duty.

11 Recovery of forfeitures

- (1) If a member of the Armed Forces is to forfeit pay and allowances under regulations 7 to 9, the pay and allowances that are to be forfeited may be recovered from the member by the Crown by deduction from, or withholding or delaying payment of, any pay and allowances or other money due, owing, or payable to the member by the Crown in relation to his or her service in the Armed Forces.
- (2) Subclause (1) does not limit any other mode of recovery.

12 Recovery of fines, compensation, etc

- (1) This regulation applies if a person subject to the Act—
- (a) has been convicted by the Court Martial or found guilty by a disciplinary officer of an offence against the Act; and
 - (b) has been fined or ordered to pay compensation or make some other payment for which the person may be liable under the Act.
- (2) If this regulation applies, the fine, compensation, or other payment may be recovered by deduction from, or withholding or delaying payment of, any money due, owing, or payable to the person by the Crown in relation to his or her service in the Armed Forces.
- (3) However, no deduction from, or withholding or delaying payment of, any money under subclause (2) may exceed the sum that would allow the person to draw a minimum of 20% of his or her basic pay per day.

13 Limitation on recovery

Despite regulations 11 and 12, no deductions from, or withholding or delaying payment of, any retiring allowance or other money granted or payable under the Government Superannuation Fund Act 1956 to a person subject to the Act or on the death of a person subject to the Act may be made under either of those regulations.

PART 2**Legal service fees and allowances****14 Application of this Part**

This Part applies to the following work, done on or after 1 July 2009:

- (a) all work done by counsel in relation to advising a person who is being questioned by the service authorities or who is being held under close arrest; and
- (b) all work done by counsel in relation to preparing for, or appearing in, proceedings before the Summary Appeal Court, the Court Martial, or the Court Martial Appeal Court; and
- (c) all work done by counsel for the Crown in relation to preparing for, or appearing in, proceedings before a court or tribunal where the determination in the proceedings may affect service discipline or the operation of the Armed Forces; and

- (d) all work done by counsel appointed to assist a court of inquiry; and
- (e) all work done by counsel appointed as a member of the Discipline Committee; and
- (f) all work done by a person (other than a member of the Armed Forces) engaged from time to time to lecture about any matter arising out of or relating to service law.

15 Certified scale of fees

- (1) The Chief of Defence Force must, before the start of each year, prepare and certify a scale of the fees, travelling expenses, and allowances payable in accordance with regulations 16, 18 to 20, 21(1)(b) and (c), and 22 in respect of work to which this Part applies.
- (2) A copy of the scale must be given to each certifying officer.

16 Base hourly rate of remuneration

For the purposes of these regulations, the base hourly rate of remuneration for work done in any year is the same as the senior hourly rate of remuneration determined by the Solicitor-General under regulation 4 of the Crown Solicitors Regulations 1994 for work done in that year.

17 Classification of counsel

- (1) A certifying officer may classify counsel as senior counsel if—
 - (a) they have practised at the bar for a continuous period of more than 7 years; and
 - (b) their experience includes appearances—
 - (i) in criminal trials and litigation involving complex legal issues; or
 - (ii) as lead counsel in more than 10 trials in the Court Martial; or
 - (iii) as lead counsel in proceedings before courts of inquiry, the Summary Appeal Court, or the Court Martial Appeal Court.
- (2) A certifying officer may classify counsel as intermediate counsel if—
 - (a) they have practised at the bar for a continuous period of more than 4 years; and
 - (b) their experience includes appearances—
 - (i) in criminal trials; or
 - (ii) as lead counsel in more than 5 trials in the Court Martial; or
 - (iii) as lead counsel in proceedings before courts of inquiry, the Summary Appeal Court, or the Court Martial Appeal Court.
- (3) A certifying officer must classify as junior counsel all counsel who are not classified under subclause (1) or (2).

- (4) In subclauses (1) and (2), references to appearances in trials before the Court Martial and appearances in proceedings before the Court Martial Appeal Court include appearances in trials by court-martial before the commencement of the Court Martial Act 2007 and appearances before the Courts Martial Appeal Court before the commencement of the Court Martial Appeals Amendment Act 2007.

18 Power to prescribe maximum number of hours

- (1) The Chief of Defence Force may prescribe the maximum number of hours for which fees may be claimed under these regulations for any particular work or class of work.
- (2) Subclause (1) is subject to regulation 28.

19 Remuneration of counsel

- (1) The remuneration payable to counsel for work to which this Part applies is at the following rate per hour:
- (a) senior counsel, the base hourly rate of remuneration:
 - (b) intermediate counsel, 80% of the base hourly rate of remuneration:
 - (c) junior counsel, 65% of the base hourly rate of remuneration.
- (2) However, remuneration payable to counsel in respect of appearances before the Court Martial is at the rate prescribed for that counsel in subclause (1) multiplied by 4 for each halfday or part of a halfday.

20 Remuneration of lecturers

The remuneration payable to a lecturer for work to which this Part applies is at the base hourly rate of remuneration for each day or part of a day.

21 Travelling expenses

- (1) A person who is required to travel more than 5 kilometres from his or her usual place of business in connection with work to which this Part applies is allowed the following travelling expenses:
- (a) fares paid for public transport:
 - (b) if a private motor vehicle is used, a mileage allowance payable at the rate of the mileage allowance approved under section 4(4) of the Fees and Travelling Allowances Act 1951 as payable to a member of a statutory Board who uses a private vehicle when travelling in the service of the Board:
 - (c) a subsistence allowance for each day or part of a day the person is away from his or her usual place of residence, payable at the rate of the subsistence allowance approved under section 4(2) of the Fees and Travelling Allowances Act 1951 as payable to a member of a statutory Board who is travelling in the service of the Board:
 - (d) the cost paid for hiring a rental car, if that cost, together with the subsistence allowance under paragraph

- (e) and the special allowance provided for in regulation 22, is not more than the total of the fares, subsistence allowance, and special allowance that would have been payable if public transport had been used.
- (2) However, in relation to subclause (1)(a), receipts must be produced for fares that exceed 10% of the base hourly rate of remuneration if these are not fixed by law or readily ascertainable.

22 Special allowance for travelling time

- (1) A special allowance at the following rates is payable to counsel for each hour spent travelling in a day for the purpose of work to which this Part applies, in addition to the travelling expenses provided for in regulation 21:
 - (a) in the case of senior counsel, 66% of the base hourly rate of remuneration:
 - (b) in the case of intermediate counsel, 53% of the base hourly rate of remuneration:
 - (c) in the case of junior counsel, 43% of the base hourly rate of remuneration.
- (2) The special allowance is not payable in addition to any other payment, for preparation or otherwise, in respect of the same time.

23 Other expenses

- (1) The fees prescribed in these regulations include all charges for receiving instructions, preparation, correspondence, research, reports, and attendances.
- (2) However, other necessary expenses (for example, toll charges) are payable to the extent that the certifying officer is satisfied that the expenses are fair and reasonable both as to nature and cost.

24 Claims for fees

A person who claims fees, expenses, and allowances under these regulations must, on completion of the work to which the claim relates,—

- (a) prepare and sign a voucher setting out full particulars of the claim; and
- (b) forward the voucher to the certifying officer.

25 Certification of claim

- (1) The certifying officer must certify that the fees, expenses, and allowances claimed are payable under these regulations if—
 - (a) he or she is satisfied that they are in accordance with the certified scale of fees; or
 - (b) these regulations require them to be fixed by reference to a maximum and—
 - (i) the claim does not exceed the maximum; and
 - (ii) in the opinion of the certifying officer, they are fair and reasonable; or

- (c) in respect of a claim for fees, there are no appropriate fees provided for in these regulations and the fees claimed are, in the opinion of the certifying officer, fair and reasonable and for each hour involved do not exceed,—
 - (i) in the case of senior counsel, the base hourly rate of remuneration:
 - (ii) in the case of intermediate counsel, 80% of the base hourly rate of remuneration:
 - (iii) in the case of junior counsel, 65% of the base hourly rate of remuneration.

(2) Subclause (1) is subject to regulations 26 and 28.

(3) Nothing in subclause (1)(c) applies to fees claimed by a lecturer.

26 Power to approve lesser fee or expenses

(1) This regulation applies if the certifying officer is of the opinion—

- (a) that the time involved or the nature of the service actually performed does not justify the payment of the full fees set out in the certified scale of fees; or
- (b) that the work involved in a transaction or proceeding is reduced by the fact that the transaction or proceeding is one of a series of transactions or proceedings that are similar or arise out of the same set of circumstances.

(2) The certifying officer must approve whatever lesser fees he or she thinks are fair and reasonable and certify this on the voucher.

27 Payment of claim

(1) The certifying officer must forward the certified voucher to the Chief of Defence Force or other officer authorised by the Chief of Defence Force for the purpose of this regulation.

(2) If the Chief of Defence Force or other authorised officer is satisfied that the services charged have been duly performed, he or she must certify this and arrange payment.

28 Power to refer claim to Solicitor-General

(1) Subclause (2) applies if—

- (a) the fees, expenses, and allowances claimed are more than the amount that, in the opinion of the certifying officer, could properly be claimed under regulation 24 because of exceptional circumstances; or
- (b) the certifying officer doubts whether the fees are proper fees for him or her to certify.

(2) If this subclause applies,—

- (a) the certifying officer must refer the voucher and a memorandum setting out his or her reasons to the Solicitor-General; and
- (b) the Solicitor-General may authorise the fees, expenses, and allowances that he or she considers fair and reasonable.

- (3) If the Chief of Defence Force considers that a fee, expense, or allowance payable under these regulations is inadequate or excessive having regard to exceptional circumstances,—
- (a) the Chief of Defence Force may refer the matter to the Solicitor-General for review; and
 - (b) the Solicitor-General may authorise the fee, expense, or allowance that he or she considers fair and reasonable.

PART 3

Miscellaneous

29 Transitional provision

- (1) If a member of the Armed Forces is convicted of an offence before the commencement of these regulations and is in civil custody, service custody, close arrest, or is suspended from duty after the commencement of these regulations, regulations 7 to 9 apply to the period of civil custody, service custody, close arrest, or suspension from duty after that commencement.
- (2) Nothing in these regulations affects the validity of any forfeiture in respect of a period of civil custody, service custody, close arrest, or suspension from duty before the commencement of these regulations.

30 Revocations and saving

- (1) The following regulations are revoked:
- (a) the Armed Forces Discipline Regulations 1990 (SR 1990/79):
 - (b) the Armed Forces Discipline (Legal Services Fees and Allowances) Regulations 1991 (SR 1991/80).
- (2) The Armed Forces Discipline (Legal Services Fees and Allowances) Regulations 1991, despite their revocation by subclause (1), continue to apply to work done on or after their commencement but before 1 July 2009.

Michael Webster,
for Clerk of the Executive Council.

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2008/237



ARMED FORCES DISCIPLINE RULES OF PROCEDURE 2008

Anand Satyanand, Governor-General

ORDER IN COUNCIL

At Wellington this 4th day of August 2008

Present:

His Excellency the Governor-General in Council

Pursuant to section 150 of the Armed Forces Discipline Act 1971, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following rules.

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RULES

1 Title

These rules are the Armed Forces Discipline Rules of Procedure 2008.

2 Commencement

These rules come into force on 1 July 2009.

PART 1

Preliminary provisions

3 Interpretation

(1) In these rules, unless the context otherwise requires,—

1971 Act means the Armed Forces Discipline Act 1971

2007 Act means the Court Martial Act 2007

allegation means an allegation that a person who is subject to the 1971 Act has committed an offence against that Act

appeal on the papers means an appeal to be disposed of by way of a hearing on the papers under section 140 of the 1971 Act

charge means an allegation that is recorded in writing in the form of a charge in accordance with these rules

civil offence has the same meaning as in section 74 of the 1971 Act

court of inquiry means a court of inquiry assembled under section 200A of the 1971 Act

Court Martial means the Court Martial of New Zealand established under section 8 of the 2007 Act

defender means a member of the Armed Forces who undertakes the defence of an accused at a trial in the Court Martial

oral appeal means an appeal to be disposed of by way of a hearing involving oral submissions

special reference means the referral of a matter to the Summary Appeal Court by the Judge Advocate General under section 129 of the 1971 Act

Summary Appeal Court means the Summary Appeal Court of New Zealand established under section 118 of the 1971 Act.

(2) In these rules, a reference to counsel for an accused includes, unless the context otherwise requires, a reference to a defender.

4 Calculating periods of time

(1) A period of time stipulated in these rules in relation to a matter must be calculated—

(a) in New Zealand, exclusive of any Sunday, Good Friday, Christmas Day, Waitangi Day, and Anzac Day; and

- (b) outside New Zealand, exclusive of any Sunday, Good Friday, Christmas Day, and, in Australia, Anzac Day.
- (2) Subclause (3) does not apply for the purpose of a sentence that must be or is imposed under the Act.
- (3) For the purpose of a sentence, every period of time must be calculated including the days referred to in subclause (1)(a) and (b).

5 Application of rules

- (1) These rules apply, so far as they relate to charges,—
 - (a) when it is alleged that a person subject to the 1971 Act has committed an offence against that Act:
 - (b) whether the alleged offence is said to have been committed in New Zealand or overseas:
 - (c) whether the charge is to be investigated and disposed of in New Zealand or overseas.
- (2) These rules apply, so far as they relate to courts of inquiry,—
 - (a) whether the subject matter of the inquiry is in New Zealand or overseas:
 - (b) whether the court is to conduct its inquiry in New Zealand or overseas.
- (3) These rules apply, so far as they relate to the Summary Appeal Court, to all appeals to the Summary Appeal Court, including all steps that are incidental to those appeals.
- (4) These rules apply, so far as they relate to the Court Martial, to all proceedings before the Court Martial.

6 Forms

- (1) The Chief of Defence Force may prescribe forms for the purposes of these rules.
- (2) However, subclause (1) only applies if no form for a purpose is prescribed by these rules.
- (3) If a form is prescribed for a purpose (whether by these rules or by the Chief of Defence Force), that form must be used in every case to which it is applicable.
- (4) Despite subclause (3), use of a form is not invalid just because it contains minor differences from a prescribed form as long as the form has the same effect and is not misleading.

7 Drawing of charge

- (1) A commanding officer who is required by section 102 of the 1971 Act to cause an allegation to be recorded in the form of a charge must ensure that the charge is drawn in accordance with the following provisions:
 - (a) each charge must state 1 offence only:
 - (b) offences may be charged in the alternative:

- (c) if offences are charged in the alternative, each offence must be stated in a separate charge, and the charges must be set out in descending order of seriousness:
 - (d) each charge must be set out in 2 parts, namely,—
 - (i) a statement of the offence; and
 - (ii) a statement of the particulars of every act or omission constituting the offence:
 - (e) if the offence is a civil one, the statement of the offence must be in words sufficient to give the accused notice of the offence:
 - (f) if the offence is not a civil one, the statement of the offence must be in a form prescribed by the Chief of Defence Force:
 - (g) the statement of the particulars must set out—
 - (i) sufficient details of the alleged offence to give the accused reasonable information concerning every act or omission to be proved against the accused as constituting the offence:
 - (ii) if the alleged offence is one that renders the accused, if convicted, liable to a greater or lesser penalty according to the particular circumstances in which the offence was committed, the particular circumstances (if any) that it is alleged render the accused liable to the higher penalty:
 - (iii) if it is intended to seek an order for compensation or restitution (or both) if the accused is found guilty or is convicted, sufficient matters that, if proved, would justify the making of the order.
- (2) Subclause (1)(b) and (c) are subject to section 73(3) of the 1971 Act.

PART 2

Matters incidental to proceedings before disciplinary officer

Certification of charges

8 Form of specified certificate

A specified certificate (as defined in section 112(5) of the 1971 Act) must be given in the form prescribed by the Chief of Defence Force.

Disclosure of information to accused

9 Information to be disclosed to accused

- (1) When an accused is brought before a disciplinary officer under Part 5 of the 1971 Act, the disciplinary officer must ensure that the accused is provided with a copy of the charge report and given access to any information that—
- (a) may be relied on as evidence against the accused; or
 - (b) tends to show that the accused did not commit the offence charged.

- (2) The information referred to in subclause (1) includes—
- (a) a statement by the accused; and
 - (b) documentary evidence; and
 - (c) a written statement made by a witness; and
 - (d) a unit or service police file that relates to the charge or, if applicable, the relevant portions of the file.

10 Form of disclosure

- (1) The accused must be given a copy of the information required to be disclosed under rule 9 unless—
- (a) the information is in the form of physical evidence (such as clothing or other property); or
 - (b) disclosure of the information would be likely to—
 - (i) seriously prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or
 - (ii) seriously prejudice the security or defence relationship between New Zealand and another State or international organisation; or
 - (iii) seriously prejudice the maintenance of law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or
 - (iv) endanger the safety of any person.
- (2) If subclause (1)(a) applies, the accused must be given—
- (a) access to the evidence; and
 - (b) a copy of any image of the evidence that may be made.
- (3) If clause (1)(b) applies, the accused must be provided with access to the information to the extent reasonable in all the circumstances.

11 Timing of disclosure

The information required to be disclosed under rule 9 must be made available to the accused in reasonably sufficient time to permit the accused to consider it in properly preparing his or her case before arraignment under section 116 of the 1971 Act.

12 Additional disclosure

- (1) If proceedings follow the investigation of a charge, the disciplinary officer must ensure that the accused is given access to any additional information that comes within rule 9 and that has not been disclosed.
- (2) Rules 10, 11, and 13 apply to any additional disclosure.

13 Record of disclosure

- (1) The disciplinary officer must ensure that a written record is made, in the form prescribed by the Chief of Defence Force, identifying all information disclosed to the accused under rule 9.
- (2) The record must be attached to the original charge report.

*Pleas and findings on alternative charges***14 Pleas and findings on alternative charges**

- (1) If the accused pleads guilty to the first of 2 or more alternative charges and the disciplinary officer is satisfied of the matters referred to in section 117(1)(a) to (c) of the 1971 Act, the disciplinary officer must—
 - (a) enter the plea on the record of proceedings; and
 - (b) record no plea in respect of each subsequent alternative charge.
- (2) If the accused pleads guilty to the second or any subsequent alternative charge of 2 or more alternative charges, the disciplinary officer may—
 - (a) if he or she is satisfied of the matters referred to in section 117(1)(a) to (c) of the 1971 Act, accept the plea; or
 - (b) not accept the plea (whether because he or she is not satisfied of the matters referred to in section 117(1)(a) to (c) of the 1971 Act or otherwise).
- (3) If the disciplinary officer accepts the plea,—
 - (a) the disciplinary officer must—
 - (i) enter the plea on the record of proceedings; and
 - (ii) dismiss any charge that precedes that charge in the charge report; and
 - (b) that charge must be proceeded with in accordance with sections 117A to 117E of the 1971 Act; and
 - (c) the disciplinary officer must record no plea in respect of all subsequent charges, unless section 117A(2) or 117E(2) of the 1971 Act applies, in which case the disciplinary officer must record no finding on any subsequent alternative charges.
- (4) If the disciplinary officer does not accept the plea, he or she must proceed as if the accused had pleaded not guilty to that charge and all subsequent alternative charges.

*Election of trial by Court Martial or summary trial by disciplinary officer***15 Explanation of implications of election and recording of election**

- (1) For the purposes of section 117ZC(2) of the 1971 Act, a defending officer or a person described in section 117ZC(1)(b) of the 1971 Act must, in explaining to the accused the implications of an election under section 117D or 117M of the 1971 Act, explain that—
 - (a) a summary trial by a disciplinary officer is not a trial by an independent court:

- (b) if the accused elects summary trial, he or she irrevocably waives his or her right under section 25(a) of the New Zealand Bill of Rights Act 1990 to be tried by an independent court:
 - (c) a person tried by a disciplinary officer is not represented by a lawyer at that trial:
 - (d) if the accused elects summary trial, he or she irrevocably waives his or her right under section 24(c) of the New Zealand Bill of Rights Act 1990 to legal representation:
 - (e) if the accused elects trial by the Court Martial, he or she will be entitled to legal aid under the Armed Forces Legal Aid Scheme:
 - (f) if the accused is found guilty by a disciplinary officer, the punishments that may be imposed are limited to those provided for in Schedule 4 of the 1971 Act or, as the case may be, Schedule 5 of that Act:
 - (g) if the accused is found guilty by the Court Martial, the Court Martial may impose any lawful sentence up to the maximum sentence for the offence:
 - (h) the Court Martial is presided over by a Judge and applies the ordinary rules of evidence that are used in criminal courts:
 - (i) summary trials are conducted by disciplinary officers who are not Judges or lawyers and who do not apply the ordinary rules of evidence:
 - (j) a summary trial can be commenced and completed more expeditiously than a trial by the Court Martial.
- (2) An accused's election under section 117D or 117M of the 1971 Act must be recorded in the form prescribed by the Chief of Defence Force.

16 Withdrawal of election of trial by Court Martial

- (1) This rule applies if an accused is given a right of election under section 117D or 117M of the 1971 Act and he or she elects trial by the Court Martial.
- (2) The accused may withdraw his or her election, as of right, at any time within 24 hours of making it.
- (3) If the accused does not withdraw his or her election within 24 hours of making it, he or she may withdraw it, with the consent of the disciplinary officer, at any time until the disciplinary officer has referred the charge to the Director of Military Prosecutions.
- (4) If the charge has been referred by the disciplinary officer to the Director of Military Prosecutions, the election may only be withdrawn with the consent of the Director of Military Prosecutions.

Summary trial: Advice to be given to accused

17 Advice to be given by disciplinary officer about procedure to be followed in summary trial

If the disciplinary officer is to try the accused summarily, the disciplinary officer must advise the accused of the procedure to be followed in the summary trial by reading the following statement:

I have now heard the evidence in support of the charge. I have determined that there is a case to answer and that you should be tried summarily on the charge. You are not required to put forward any evidence but if you wish to do so now is the time. If you give evidence yourself, you may be questioned by the presenting officer and by me. Whether or not you give evidence, you may call witnesses and ask that evidence be admitted in the form of a written statement. You may question any witness you call, and that witness may also be questioned by the presenting officer and by me. Once I have received all the evidence I will decide whether you are guilty of the charge or not guilty of the charge.

Recording of proceedings before disciplinary officer

18 Audio recording must be made of proceedings

- (1) This rule and rule 19 apply to all proceedings before a disciplinary officer.
- (2) The disciplinary officer must ensure that an audio recording is made of the proceedings wherever it is reasonably practicable to do so.

19 Record to be kept if audio recording cannot be made

If it is not reasonably practicable to make an audio recording of the proceedings, or the audio recording fails, the disciplinary officer must make a detailed written summary of the proceedings.

Referral of charges to Director of Military Prosecutions

20 Procedure to be followed by disciplinary officer after decision to refer charge

- (1) A disciplinary officer must, within 7 days of making a decision to refer a charge to the Director of Military Prosecutions,—
 - (a) ensure that the audio recording of any proceedings before the disciplinary officer is transcribed:
 - (b) certify the transcript as being true and correct:
 - (c) provide the accused with—
 - (i) a certified copy of the transcript or, if there was no audio recording, a certified copy of the written summary of the proceedings:
 - (ii) a copy of a guide to accused persons in the form prescribed by the Chief of Defence Force:
 - (iii) a copy of an application for legal aid in the form prescribed by the Chief of Defence Force:
 - (d) inform the accused that if he or she elects to present a defence, then he or she has 7 days from the date of being informed in which to provide to the disciplinary officer any signed written statements in his or her defence for referral to the Director of Military Prosecutions.
- (2) If the disciplinary officer is not a superior commander, he or she must, after following the procedure in subclause (1) and not later than 14 days after making the decision to refer a charge to the Director of Military Prosecutions, send the following documents to his or her superior commander:

- (a) the charge report:
 - (b) the certified transcript of any proceedings before the disciplinary officer or, if there was no audio recording, a certified copy of the written summary of the proceedings:
 - (c) any signed written statements provided by the accused under section 117ZG(1)(b) of the 1971 Act:
 - (d) any service police or other investigation report, including the report of any court of inquiry, that is relevant to the charge:
 - (e) any relevant exhibits:
 - (f) a statement of particulars of the accused's service in the form prescribed by the Chief of Defence Force:
 - (g) a medical certificate in the prescribed form.
- (3) If the disciplinary officer is a superior commander, he or she must, after following the procedure in subclause (1) and not later than 14 days after making the decision to refer the charge to the Director of Military Prosecutions, send the following documents to the Director of Military Prosecutions:
- (a) the documents referred to in subclause (2)(a) to (g); and
 - (b) a statement containing his or her opinion as to whether the prosecution or charge is in the interests of the service.

PART 3

Appeals to Summary Appeal Court

Subpart 1—Preliminary provisions

21 Application of this Part

This Part applies to appeals to the Summary Appeal Court.

22 Powers to authorise departure from rules, etc

- (1) The Summary Appeal Court may direct, authorise, or accept a departure from these rules for reasons of urgency or for any other reason.
- (2) If, in any proceedings before the Summary Appeal Court, a question arises about the application of these rules, the court may determine the question and give any directions that the court thinks fit.
- (3) Subclauses (1) and (2) apply on the application of any party or on the court's own initiative.

23 Forms

The forms to be used in proceedings in the Summary Appeal Court are set out in the Schedule of these rules.

Subpart 2—Procedure

Institution of appeal or lodging of special reference

24 Form of notice of appeal

An appeal under section 124 of the 1971 Act must be made by notice of appeal in form 1 of the Schedule of these rules.

25 Persons required or authorised to sign notices and other documents

- (1) The appellant must sign a notice of appeal unless—
 - (a) the notice is marked and signed in accordance with subclause (2); or
 - (b) another person signs the notice under subclause (3).
- (2) An appellant who is unable to write must affix his or her mark on the notice in the presence of a witness who must also sign the notice.
- (3) A notice, required to be signed by an appellant who contends that the appellant was not responsible for his or her actions on the ground that he or she was insane at the relevant time, may be signed by the appellant's solicitor or counsel or by any other person authorised to act on the appellant's behalf.

26 Application for extension of time

An appellant who seeks an extension of time within which to appeal may include an application for an extension of time within his or her notice of appeal by completing the relevant part of the form.

27 Form must be treated as application for extension of time if notice given out of time

A notice in form 1 that is given out of time must be treated as if it contains an application for extension of time.

28 Disparity of sentences

If a ground of appeal is that the punishment imposed on the appellant was too severe because of disparity with a punishment imposed on a cooffender, that ground of appeal must be stated in the notice of appeal.

29 Form of special reference by Judge Advocate General

- (1) A special reference by the Judge Advocate General must be lodged with the Registrar in form 2 of the Schedule of these rules.
- (2) For the purposes of section 129 of the 1971 Act, in addition to the matters referred to in section 129(3)(b) and (c), the reference must specify whether the Judge Advocate General intends to appoint counsel as *amicus curiae*.
- (3) The notice required under section 130(1)(b) of the 1971 Act to be given by the Registrar, after receiving a special reference from the Judge Advocate General, to the person found guilty of the offence must be in form 3 of the Schedule of these rules.

30 Form of petition to Judge Advocate General for special reference

- (1) A petition to the Judge Advocate General under section 129(4) of the 1971 Act to make a special reference must be in form 4 of the Schedule of these rules.
- (2) The form must be sent to the Judge Advocate General at the Office of the Judge Advocate General, c/o Headquarters, New Zealand Defence Force, Wellington.
- (3) The petition is brought when the Judge Advocate General receives the form duly completed.

*Procedure following receipt of notice of appeal***31 Steps to be taken by disciplinary officer on receiving copy of notice of appeal**

The disciplinary officer must, on receiving a copy of a notice of appeal from the Registrar under section 126(1) of the 1971 Act,—

- (a) ensure that the audio recording of any proceedings before the disciplinary officer (if any) is transcribed; and
- (b) certify the transcript as being true and correct.

32 Documents required to be sent to Registrar

For the purposes of section 126(2) of the 1971 Act, the documents that the disciplinary officer must send to the Registrar within 14 days of receiving a copy of the notice of appeal are—

- (a) the charge report; and
- (b) the certified transcript of any proceedings before the disciplinary officer or, if there was no audio recording, a certified copy of the written summary of the proceedings; and
- (c) a statement of particulars of the accused's evidence in the form prescribed by the Chief of Defence Force.

*Preparation for hearing***33 Disclosure of report from disciplinary officer**

If the Summary Appeal Court obtains a report from a disciplinary officer under section 135(a) of the 1971 Act, the Registrar must disclose the report—

- (a) to any party who requests a copy of it, unless the court otherwise directs; and
- (b) to any other person the court directs.

34 Authorities bundles

- (1) In this rule, authorities bundle means a bundle of authorities and legislation on which a party relies.
- (2) This rule applies whenever written submissions are filed, whether for the purpose of an appeal on the papers or of an oral appeal.
- (3) At the time a party provides his or her submissions to the Summary Appeal Court (see rules 36 and 38), he or she must also provide to the court 2 copies of an authorities bundle for court use.

- (4) An authorities bundle must contain—
- (a) only cases that counsel intends to refer to in the Summary Appeal Court and to rely on for more than a general principle; and
 - (b) as its first page, a list of the authorities, including their citations.

Oral appeals

35 Registrar to give parties notice of fixture for oral appeals

- (1) This rule applies to oral appeals.
- (2) The Registrar must allocate a fixture for every oral appeal.
- (3) Notice of the time and place fixed for the hearing must be given by the Registrar to—
- (a) the Director of Military Prosecutions; and
 - (b) the appellant; and
 - (c) if the appellant is in custody and the Summary Appeal Court has granted the appellant leave to be present at the hearing, the person in charge of the place where the appellant is being held in custody.

36 Timing of submissions on merits

- (1) This rule applies to oral appeals.
- (2) The appellant must provide full written submissions on the appeal.
- (3) The appellant must provide his or her written submissions to the Summary Appeal Court and to the Director of Military Prosecutions no less than 15 working days before the hearing date.
- (4) The Director of Military Prosecutions must provide his or her written submissions to the Summary Appeal Court and to the appellant no less than 10 working days before the hearing date.
- (5) Two copies of the submissions must be provided for Court use.

37 Right of reply at oral hearing

A party who wishes to exercise the right of reply in an appeal under section 124 of the 1971 Act that is to be heard as an oral appeal must exercise that right orally at the hearing.

Appeals on papers

38 Period allowed for making written submissions on merits: submissions by appellant

- (1) This rule and rule 39 apply to appeals on the papers.
- (2) For the purposes of this rule and rule 39,—
- (a) the time allowed for making submissions begins to run on the date on which the appellant or the Director of Military Prosecutions receives the relevant notice or material:

- (b) if sent by post or fax, the notice or material must be treated as having been received 3 days after the date on which it is sent to the relevant party's last known postal address or fax number.
- (3) The Registrar must appoint a period of no less than 20 working days within which submissions may be made by the appellant in support of the appeal.
- (4) Notice of the period appointed by the Registrar under subclause (3) must be given by the Registrar to—
 - (a) the appellant; and
 - (b) the Director of Military Prosecutions.

39 Period allowed for making submissions on merits: respondent's submissions and submissions in reply

- (1) The Registrar must send to the Director of Military Prosecutions a copy of all written submissions received by the Summary Appeal Court, within the appointed period, from the appellant.
- (2) The Director of Military Prosecutions may make written submissions within 10 working days.
- (3) A copy of all written submissions received by the Summary Appeal Court from the Director of Military Prosecutions, within the 10-working-day period referred to in subclause (2), must be sent by the Registrar to the appellant.
- (4) The appellant may make written submissions in reply within a period of no less than 10 working days appointed by the Registrar.
- (5) The Registrar must send the Director of Military Prosecutions a copy of the appellant's submissions in reply.
- (6) Each party must file in the Summary Appeal Court—
 - (a) 2 copies of that party's submissions for court use; and
 - (b) sufficient additional copies so that the Registrar can provide 1 copy for each other party.

40 Timing of appeal on papers

The Summary Appeal Court must not begin hearing an appeal on the papers until all the periods prescribed or appointed under rules 38 and 39 have expired.

Decisions

41 Delivery of judgments

- (1) The Summary Appeal Court may—
 - (a) deliver its judgment orally; or
 - (b) reserve its judgment.
- (2) A judgment that is delivered orally is given when the Judge delivers it in open court.
- (3) A judgment that is reserved may be delivered—

- (a) in open court; or
 - (b) through the Registrar.
- (4) If subclause (3)(a) applies,—
 - (a) the Judge who heard the appeal must nominate and record on the judgment a date and time when the judgment will be delivered (delivery time):
 - (b) as soon as the Registrar is informed of the delivery time, the Registrar must attempt to notify the parties, by telephone or otherwise, of the fact that the Summary Appeal Court intends to deliver the judgment in open court and of the delivery time:
 - (c) the parties do not need to appear or be represented when the judgment is delivered:
 - (d) the judgment is given when it is delivered in open court.
- (5) If subclause (3)(b) applies,—
 - (a) the Judge who heard the appeal must nominate and record on the judgment a date and time when the judgment will be delivered (delivery time):
 - (b) as soon as the Registrar is informed of the delivery time, the Registrar must attempt to notify the parties, by telephone or otherwise, of the fact that the Summary Appeal Court intends to deliver the judgment through the Registrar and of the delivery time:
 - (c) the judgment must for all purposes be treated as having been given at the delivery time.
- (6) The Registrar must, if requested to do so by a party,—
 - (a) send to the party immediately after the delivery time or, in the case of a judgment delivered orally, as soon as practicable after the judgment is transcribed, a copy of the judgment by email or fax or post; or
 - (b) make a copy of the judgment available for collecting from the registry of the Summary Appeal Court immediately after the delivery time or, in the case of a judgment delivered orally, as soon as practicable after the judgment is transcribed.
- (7) The Registrar must immediately after the delivery time, or in the case of a judgment delivered orally as soon as practicable after the judgment is transcribed, post a copy of the judgment to—
 - (a) any party who has given an address for service but who has not made a request under subclause (6); and
 - (b) the disciplinary officer; and
 - (c) if appropriate and if the party is in custody, the person in charge of the place where the party is being held in custody.
- (8) A failure by the Registrar to comply with subclause 4(b), 5(b), (6), or (7) does not affect the validity of the judgment or its delivery time.
- (9) A copy of the judgment signed by the Judge who heard the appeal must be retained by the registry.

- (10) This rule does not apply to minutes or procedural orders.

42 Judges to be identified

Every judgment, minute, or direction must identify on the face of it the Judge who made the decision or minute or gave the direction.

Subpart 3—Miscellaneous provisions

43 Abandonment of appeal

- (1) An appellant may, at any time, abandon an appeal by filing with the Registrar a notice advising that he or she—
- (a) does not further intend to prosecute the appeal; and
 - (b) abandons all further proceedings concerning that appeal.
- (2) The notice must be signed by—
- (a) the appellant personally; or
 - (b) the appellant's solicitor or counsel.
- (3) If the notice is signed by the appellant personally, the appellant's signature must be witnessed and the witness must add the witness's address and description after the witness's signature.
- (4) A notice under this rule must be in form 5 of the Schedule.

44 Persons to be heard by Summary Appeal Court before restitution order annulled or varied

- (1) This rule applies if, on the trial of a person entitled to appeal under the 1971 Act, an order has been made by the disciplinary officer under section 117ZA of the 1971 Act.
- (2) Before an order is made by the Summary Appeal Court under section 134(1) of the 1971 Act, the following persons are entitled to be heard before the court:
- (a) the person in whose favour or against whom the order for compensation or restitution has been made;
 - (b) with the leave of the court, any other person.

45 Successful appellant entitled to return of amount paid towards fine

An appellant who has paid a fine in accordance with a punishment and is successful on appeal is entitled, subject to the order of the Summary Appeal Court, to the return of the amount paid or a part of the amount paid, as the case may be.

46 Register must be kept

- (1) The Registrar must keep a register, in any form he or she thinks fit, of all—
- (a) notices of appeal received by the Registrar; and
 - (b) decisions of the Summary Appeal Court given in the appeals referred to in those notices.

- (2) The register must be open for public inspection during the Summary Appeal Court's ordinary office hours.

47 Mode of giving notice to Summary Appeal Court

Notices may be given to the Summary Appeal Court by serving them by hand or by sending them to the Registrar, at his or her office, by post, fax, or any other written or printed means.

48 Mode of giving notice to parties

A notice may be given to a party—

- (a) at his or her postal address by post or by any other written or printed means; or
- (b) by faxing it to a fax number supplied by the party; or
- (c) by using any other means of communication that is customary in the Armed Forces.

49 Summary Appeal Court order may enforce rules

The performance of any duty imposed on any person under Part 5A of the 1971 Act or these rules may be enforced by order of the Summary Appeal Court.

50 Effect of non-compliance with rules

- (1) Non-compliance by a party with these rules does not prevent that party from continuing to take part in an appeal if the Summary Appeal Court considers that the non-compliance was of a trifling character or not wilful and that it may be waived or remedied by amendment or otherwise.
- (2) The Summary Appeal Court may, in any manner that it thinks fit,—
 - (a) direct the party to remedy the non-compliance; and
 - (b) if the party was not present in court when the direction was given, direct the Registrar to transmit its direction to the party.

51 Cases not provided for in rules

In any matter not expressly provided for by these rules, the Summary Appeal Court may give any direction that it thinks best calculated to carry out the purposes of Part 5A of the 1971 Act.

52 Power to extend or shorten time appointed by rules or fixed by order

- (1) The Summary Appeal Court may extend or shorten the time appointed by these rules, or fixed by any order, for doing any act or taking any proceeding or any step in a proceeding on any terms that the court thinks just.
- (2) The Summary Appeal Court may exercise a power conferred by subclause (1)—
 - (a) whether on application by a party or on the court's own initiative; and
 - (b) whether for reasons of urgency or for any other reason; and

- (c) in the case of an extension of the time referred to in that subclause, whether before or after that time has expired.

53 Correction of accidental slip or omission

- (1) This rule applies if—
 - (a) any judgment or order or the reasons for any judgment or order contain a clerical mistake or an error arising from any accidental slip or omission (whether the mistake, error, slip, or omission was made by an officer of the Summary Appeal Court or not); or
 - (b) any judgment or order is so drawn up as not to express what was actually decided and intended.
- (2) The Summary Appeal Court may correct the judgment or order or the reasons for the judgment or order on—
 - (a) the court's own initiative; or
 - (b) an interlocutory application made for that purpose.

54 Security of documents, etc

- (1) Subclause (2) applies if the Minister of Defence, or any person authorised to act on the Minister's behalf, certifies that, for reasons of security, the whole or part of the proceedings or other document, exhibit, or other thing—
 - (a) should not to be disclosed except to the Summary Appeal Court; or
 - (b) should only be disclosed subject to certain conditions specified by the person certifying.
- (2) If this subclause applies, despite any other provision in these rules to the contrary, the Registrar must not permit inspection or supply a copy of the material to which the certificate relates without seeking a direction from the Summary Appeal Court.
- (3) Nothing in these rules affects any rule of law that authorises or requires the withholding of any document or the refusal to answer any question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.

PART 4

Court Martial

Subpart 1—Preliminary provisions

55 Application of this Part

This Part applies to proceedings in the Court Martial.

56 Interpretation

Any term or expression that is defined in the 2007 Act and used, but not defined, in this Part has the same meaning as in the 2007 Act.

Subpart 2—Matters preliminary or incidental to trial in Court Martial

Charge sheet and charge

57 Form of charge sheet

- (1) The layout of every charge sheet must follow the appropriate form prescribed by the Chief of Defence Force.
- (2) The heading to every charge sheet must be in the appropriate form prescribed by the Chief of Defence Force and must—
 - (a) state the full name of the accused, and his or her number, rank, and unit or other description; and
 - (b) show that the accused is subject to the 1971 Act or is otherwise liable to be tried by the Court Martial.

58 Error in heading to charge sheet

- (1) A charge sheet is not invalid only because of an error in the heading, whether or not that error is corrected.
- (2) If the Court Martial discovers an error in the heading, it may correct it.

59 Charge sheet may contain more than 1 charge

- (1) A charge sheet must contain the whole of the issue or issues to be tried at one time.
- (2) A charge sheet may contain 1 charge or several charges.

60 Drawing of charge

- (1) The Director of Military Prosecutions must ensure that every charge is drawn in accordance with the following provisions:
 - (a) each charge must state 1 offence only:
 - (b) offences may be charged in the alternative:
 - (c) if offences are charged in the alternative, each offence must be stated in a separate charge, and the charges must be set out in descending order of seriousness:
 - (d) each charge must be set out in 2 parts, namely,—
 - (i) a statement of the offence; and
 - (ii) a statement of the particulars of every act or omission constituting the offence:
 - (e) if the offence is a civil one, the statement of the offence must be in words sufficient to give the accused notice of the offence:
 - (f) if the offence is not a civil one, the statement of the offence must be in a form prescribed by the Chief of Defence Force:

- (g) the statement of the particulars must set out—
 - (i) sufficient details of the alleged offence to give the accused reasonable information concerning every act or omission to be proved against the accused as constituting the offence:
 - (ii) if the alleged offence is one that renders the accused, if convicted, liable to a greater or lesser penalty according to the particular circumstances in which the offence was committed, the particular circumstances (if any) that it is alleged render the accused liable to the higher penalty:
 - (iii) if it is intended to seek an order for compensation or restitution (or both) if the accused is found guilty or is convicted, sufficient matters that, if proved, would justify the making of the order.

(2) Subclause (1)(b) and (c) are subject to section 73(3) of the 1971 Act.

61 Charges against more than 1 person

- (1) Any number of accused may be charged in the same charge sheet with offences alleged to have been committed by them separately if the facts on which the charges are founded are so connected that it is in the interests of justice that the accused be tried together.
- (2) Any number of accused may be charged in the same charge sheet with an offence alleged to have been committed by them jointly.
- (3) If subclause (2) applies, any 1 or more of the accused may be charged in the same charge sheet with any other offence alleged to have been committed by the accused, either jointly or separately, if the facts on which the charges are founded are so connected that it is in the interests of justice that the charges be included in the same charge sheet.

Disclosure

62 Additional disclosure

- (1) The Director of Military Prosecutions must, at the time a charge is drawn,—
 - (a) determine whether or not all information that comes within rule 9 has been disclosed to the accused; and
 - (b) ensure that the accused is given access, as soon as practicable, to any information that comes within rule 9 and that has not already been disclosed.
- (2) Rule 10 applies to any additional disclosure.
- (3) Nothing in this rule limits the duties of the prosecutor under rule 70(3).

Objection to assignment of military members

63 Notice of objection against assignment of person as military member

- (1) The notice to be given by the Registrar to the accused under section 26(1)(b) of the 2007 Act, relating to the assignment of military members to the Court Martial, must be given by personal service effected in the following way:

- (a) the Registrar must send the notice to the commanding officer of the accused, by email, fax, post, or any other means of communication customary in the Armed Forces; and
 - (b) the commanding officer must cause the notice to be personally delivered to the accused.
- (2) If the accused wishes to object under section 27 of the 2007 Act about the assignment of a person as a military member, the accused must, within 14 days after the notice of assignment is delivered to him or her,—
- (a) make the objection in writing; and
 - (b) specify in the objection the ground of the objection; and
 - (c) serve the objection on the Registrar by—
 - (i) personally delivering it to the Registrar; or
 - (ii) emailing, faxing, or posting it by registered letter to the Registrar.
- (3) For the purposes of subclause (2), an objection is deemed to be served on the Registrar,—
- (a) if it is sent by email or fax, at the time when it is received; and
 - (b) if it is sent by registered letter, at the time when the letter would be delivered in the ordinary course of post.

Rights and obligations of accused

64 Accused to be allowed sufficient opportunity to prepare defence

- (1) After the accused is remanded for trial by the Court Martial, the accused must be given adequate time and facilities to prepare his or her defence.
- (2) So far as practicable, the accused must be allowed free communication with his or her defending officer (if one has been assigned), defender or counsel, and witnesses.

65 Appointment of defender or counsel

- (1) The Court Martial must ensure that a defender or counsel is appointed to—
 - (a) assist the accused in the preparation or presentation of his or her case; and
 - (b) to act on behalf of the accused.
- (2) Subclause (1) does not apply if the accused states in writing that he or she does not wish such an appointment to be made.
- (3) If a defender is appointed, the defender has the same rights and is subject to the same obligations under these rules as counsel.

66 Information to be given to accused following remand

- (1) As soon as practicable after the accused has been remanded for trial by the Court Martial, and in no case less than 72 hours before the trial, the Registrar must give the accused—

- (a) the name of the Judge who has been assigned under section 21(3) of the 2007 Act; and
 - (b) a copy of all charge sheets against the accused laid before the Registrar by the Director of Military Prosecutions.
- (2) At the same time, the Registrar must inform the accused—
- (a) that the accused has the right to submit to the Registrar, not later than 48 hours before the commencement of the trial, a list of persons the accused wishes to call in his or her defence (not being prosecution witnesses); and
 - (b) that all reasonable steps will be taken to secure the attendance of those persons at the trial.

67 Conditions under which evidence of alibi may be given

- (1) In this rule, evidence in support of an alibi means evidence tending to show that by reason of the presence of the accused at a particular place or in a particular area at a particular time, the accused was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission.
- (2) The accused must not adduce evidence in support of an alibi unless,—
- (a) not later than 14 days before the commencement of the trial, the accused has given written notice of the particulars of the alibi to the Director of Military Prosecutions; or
 - (b) the Court Martial grants leave.
- (3) A written notice of the particulars of an alibi given to the Director of Military Prosecutions must include—
- (a) the name and address of each witness the accused intends to call in support of the alibi; or
 - (b) if the accused does not know the name or address of a witness when the accused gives the notice, all the information in his or her possession that might be of material assistance in finding the witness.
- (4) The Court Martial must not grant leave under subclause (2)(b) unless it is satisfied that the accused has complied with the following requirements:
- (a) if the name and address of a witness is not included in the written notice of the particulars of an alibi,—
 - (i) before giving the notice, the accused must take all reasonable steps to ascertain the name and address; and
 - (ii) after giving the notice, the accused must continue to take all reasonable steps to ascertain the name and address; and
 - (iii) if the accused subsequently discovers the name or the address or receives other information that might be of material assistance in finding the witness, he or she must give notice of the name, address, or other information to the Director of Military Prosecutions; and

- (b) if the accused is notified by or on behalf of the Director of Military Prosecutions that the witness has not been traced by the name or at the address given,—
 - (i) the accused must immediately give notice to the Director of Military Prosecutions of all the information in his or her possession that might be of material assistance in finding the witness; and
 - (ii) on subsequently receiving any information of the nature referred to in subparagraph (i), the accused must immediately give notice of it to the Director of Military Prosecutions.
- (5) A notice of alibi purporting to be given under this rule on behalf of the accused by the accused's counsel is deemed to be given with the authority of the accused, unless the contrary is proved.

68 Time when evidence as to alibi to be given

- (1) Evidence tendered to disprove an alibi may be given before or after evidence is given in support of the alibi.
- (2) Subclause (1) is subject to any direction of the Court Martial as to the time at which evidence tendered to disprove an alibi may be given.

Rights and duties of counsel

69 Rights of counsel

- (1) Every counsel appearing before the Court Martial has the same rights before the Court Martial as the Director of Military Prosecutions or the accused the counsel represents.
- (2) Nothing in subclause (1) confers on counsel for the accused any rights or powers that are conferred on the Director of Military Prosecutions by the 1971 Act, the 2007 Act, or these rules and exercisable by the Director of Military Prosecutions, or counsel on his or her behalf, exclusively in that capacity.
- (3) Counsel may—
 - (a) call and orally examine, cross-examine, and re-examine witnesses; and
 - (b) raise objections, make statements, and address the Court Martial on any matter relating to the proceeding; and
 - (c) offer any plea; and
 - (d) inspect the record of proceedings; and
 - (e) generally act on behalf of the Director of Military Prosecutions or the accused he or she represents.
- (4) Subclause (3) is subject to these rules and any directions by the Court Martial.
- (5) If the accused is represented by counsel, he or she is not entitled to exercise personally any powers referred to in subclause (3) (other than to plead to the charge), except with the consent of the Court Martial.

70 Duties of prosecutor and counsel

- (1) Every prosecutor and counsel appearing before the Court Martial must—
- (a) do his or her best to assist the Court Martial in the administration of justice; and
 - (b) present his or her case fairly; and
 - (c) treat the Judge and the military members with due respect; and
 - (d) comply in all respects with these rules, so far as they are applicable to the case; and
 - (e) conform with the practice of the High Court of New Zealand relating to the examination, cross-examination, and re-examination of witnesses, so far as it is applicable to the case.
- (2) A prosecutor or counsel must not—
- (a) refer to any matter that is not relevant to the charge before the Court Martial; or
 - (b) assert as fact any matter that he or she does not intend to adduce evidence to prove or that has not been given in evidence; or
 - (c) state his or her own opinion on the evidence or on what the evidence tends to prove.
- (3) Without limiting subclause (2), the prosecutor—
- (a) must ensure that he or she brings the whole case before the Court Martial; and
 - (b) must not take any unfair advantage of the accused; and
 - (c) must not withhold evidence from the accused.

*Opening of Court Martial and administration of oaths***71 Judge to declare Court Martial in session**

- (1) If the Judge is satisfied that the Court Martial is constituted in accordance with law and has jurisdiction over the accused, the Judge must—
- (a) call upon the military members to take their places; and
 - (b) declare that the Court Martial is in session.
- (2) After the Judge has declared that the court is in session, the Judge must—
- (a) order that counsel take their places; and
 - (b) order that the accused be brought before the Court Martial.

72 Administration of oaths

After rule 71 has been complied with, the Judge must, in the presence of the accused, administer an oath or affirmation in the form prescribed in rules 159, 161, and 162 to—

- (a) the military members; and
- (b) every person responsible for recording or transcribing the proceedings of the Court Martial; and
- (c) every interpreter attending the Court Martial.

Miscellaneous provisions

73 Officers under instruction

- (1) An officer or a warrant officer who is subject to the 1971 Act may, with the leave of the Judge, attend a trial by the Court Martial as an officer or a warrant officer under instruction.
- (2) The Judge must, in the presence of the accused, administer an oath in the form prescribed in rule 160 to an officer or a warrant officer permitted to attend a trial under subclause (1).
- (3) An officer or a warrant officer under instruction must not take any part in the proceedings of the Court Martial.

74 Rulings by Judge on question of law or procedure

- (1) This rule applies when a Judge is required to rule on a question of law or procedure in accordance with section 44 of the 2007 Act.
- (2) The Judge must hear the arguments and evidence relevant to the question of law or procedure and must give his or her ruling on the question, together with the reasons for the ruling.
- (3) If the Judge sits in the absence of the military members, the Judge must ensure that the military members do not see the record of proceedings relating to the question of law or procedure until the trial has been completed.

75 Order of trial when 2 or more accused

- (1) If 2 or more accused are to be tried separately, the Judge must direct the order in which they are to be tried.
- (2) Subclauses (3) to (5) apply if 2 or more accused are to be tried jointly.
- (3) The accused must, in the order directed by the Judge,—
 - (a) be arraigned; and
 - (b) be required to elect whether to give evidence or call witnesses.
- (4) If more than 1 of the accused wish to do any of the following, the accused must be called on to do so in the order directed by the Judge:
 - (a) exercise the right of cross-examination:
 - (b) make a submission of no case to answer:
 - (c) make a closing address:
 - (d) make a plea in mitigation of punishment.

- (5) If the same counsel represents 2 or more accused, he or she may do the following, once only, on behalf of all the accused he or she represents:
 - (a) exercise the right of cross-examination of a witness:
 - (b) make a closing address.

Subpart 3—Conduct of trial by Court Martial

Arraignment of accused and pleading

76 Accused to be arraigned

- (1) When the persons referred to in rules 72 and 73 have been sworn, the Judge must arraign the accused.
- (2) If there is more than 1 charge against the accused before the Court Martial, the accused must be arraigned on each charge separately.
- (3) If an accused is liable to be tried on charges in more than 1 charge sheet, the following provisions apply:
 - (a) the accused must be arraigned and tried on the charge or charges in the first charge sheet to be dealt with:
 - (b) the Court Martial must announce its findings in respect of the charge or charges in that charge sheet:
 - (c) the Judge must then arraign the accused and cause the accused to be tried on the charge or charges in the second charge sheet and announce its findings in respect of the charge or charges in that charge sheet:
 - (d) the Court Martial must follow the same procedure as described in paragraphs (a) and (b) in respect of the third and any subsequent charge sheets.

77 Accused may plead to jurisdiction of Court Martial

- (1) Before pleading to a charge, the accused may plead that the Court Martial does not have jurisdiction in respect of the charge.
- (2) The accused may adduce evidence in support of the plea and the prosecutor may adduce evidence in rebuttal.
- (3) The prosecutor may also address the Court Martial in opposition to the plea and the accused may reply to the prosecutor's address.
- (4) If the Judge rules against the plea, the Judge must order the trial to proceed.
- (5) If the Judge rules in favour of the plea, the Judge may discharge the military members under section 48(1)(b) of the 2007 Act and adjourn the proceedings of the Court Martial.
- (6) However, if any other charge against the accused is before the Court Martial, the Court Martial may proceed with the trial of that other charge before the Judge discharges the military members and adjourns the proceedings.
- (7) The Director of Military Prosecutions may lay any other charge against the accused for an offence arising from the same incident or series of incidents.

78 Accused may plead in bar of trial

- (1) Before pleading to a charge, the accused may plead that a trial of the charge is barred—
 - (a) under 1 or more of the provisions of sections 20 to 22 of the 1971 Act; or
 - (b) because of a pardon granted to the accused in respect of the offence with which the accused is charged.
- (2) The provisions of rule 77(2) to (6) apply in respect of a plea under this rule.

79 Application for separation of trials

- (1) This rule applies if 2 or more persons are—
 - (a) charged jointly; or
 - (b) charged in the same charge sheet with offences alleged to have been committed by them separately.
- (2) Any of the accused may, before pleading to the charge, apply to the Court Martial to be tried separately on the ground that he or she would be unduly prejudiced in his or her defence if that course were not followed.
- (3) The Judge must hear and determine the application in the absence of the military members.
- (4) The prosecutor may address the Judge in opposition to the application and the accused may reply to the prosecutor's address.
- (5) If the Judge rules against the application, the Judge must order the trial to proceed.
- (6) If the Judge rules in favour of the application, the Judge may make any orders and give any directions that he or she thinks necessary in the interests of justice.

80 Application for severance of charge sheets

- (1) This rule applies if the charge sheet before the Court Martial is the second or a subsequent charge sheet.
- (2) The accused may, before pleading to the charges, apply to the Judge to have the charge sheet dealt with before a different panel of military members on the ground that he or she would be unduly prejudiced in his or her defence if the charge sheet was dealt with before the same panel.
- (3) The provisions of rule 79(3) to (6) apply in respect of an application under this rule.

81 Application for severance of charges

- (1) This rule applies if 2 or more charges are contained in the same charge sheet.
- (2) The accused may, before pleading to a charge, apply to the Judge to have the charge tried before a different panel of military members on the ground that the accused would be unduly prejudiced in his or her defence if the charge were tried before the same panel.
- (3) The provisions of rule 79(3) to (6) apply in respect of an application under this rule.

82 Accused may object to charges

- (1) Before pleading to a charge, the accused may object to it on 1 or more of the following grounds:
 - (a) that it does not disclose an offence against the 1971 Act;
 - (b) that it is not drawn in accordance with these rules;
 - (c) that it is not correct in law for any other reason.
- (2) The prosecutor may address the Court Martial in opposition to the objection, and the accused may reply to the prosecutor's address.
- (3) If the Judge rules against the objection, the Judge must order the trial to proceed.
- (4) If the Judge rules in favour of the objection, the Judge may—
 - (a) order that the charge be amended or divided, if that can be done in accordance with rule 123; and
 - (b) make any other orders and give any other directions the Judge thinks necessary in the interests of justice.

83 Plea to charge

- (1) The accused must be required to plead either guilty or not guilty to each charge on which he or she is arraigned.
- (2) Subclause (1) is subject to rules 77 to 82.
- (3) If the accused wishes to plead guilty to a charge,—
 - (a) the accused may plead guilty to the offence charged; or
 - (b) if the accused is charged with an offence to which section 56 of the 2007 Act applies, the accused may plead guilty to committing the offence charged without the specified intent or in circumstances otherwise than those involving the more severe punishment; or
 - (c) the accused may plead guilty to attempting to commit the offence charged; or
 - (d) if the accused is charged with an offence to which section 58 of the 2007 Act applies (**offence A**, specified in the first column of Schedule 1 of that Act), the accused may plead guilty to the corresponding offence (**offence B**) specified in the second column of Schedule 1 of the 2007 Act in relation to offence A.

84 Acceptance of plea of guilty

- (1) The Court Martial must not accept a plea of guilty unless —
 - (a) the Judge has explained to the accused—
 - (i) the nature of the offence to which the plea relates; and
 - (ii) the consequence of the accused's plea; and
 - (iii) the difference in procedure that must be followed according to whether the accused pleads guilty or not guilty; and
 - (b) the Judge is satisfied that the accused understands the nature of the offence and the consequences of the plea; and

(c) if rule 83(3)(b), (c), or (d) applies, the Director of Military Prosecutions agrees to the Court Martial accepting the plea.

(2) Subclause (1)(a) does not apply if the accused is represented by a lawyer.

85 Recording of plea

(1) The Court Martial must record the accused's plea if—

(a) the accused pleads guilty and the Court Martial accepts the plea; or

(b) the accused pleads not guilty.

(2) The Court Martial must record a plea of not guilty on behalf of the accused if the accused—

(a) refuses to plead; or

(b) pleads unintelligibly; or

(c) pleads guilty and the Court Martial does not accept the plea.

(3) Subclause (2)(c) is subject to subclause (4).

(4) If rule 83(3)(b), (c), or (d) applies and the Director of Military Prosecutions does not agree to the Court Martial accepting the plea,—

(a) the Judge must ask the accused whether the accused wishes to plead guilty to the offence charged; and

(b) if the accused pleads guilty to the offence charged and the Court Martial accepts the plea, the Court Martial must record the accused's plea; and

(c) if the accused does not plead guilty to the offence charged, the Court Martial must record a plea of not guilty.

86 Procedure after recording plea of guilty

(1) If the Court Martial records a plea of guilty, it must record and announce a finding of guilty in accordance with rules 109 and 110, then proceed in accordance with rule 111.

(2) Subclause (1) is subject to rules 87, 88, 92(3), and 120.

87 Pleas on alternative charges

If charges in a charge sheet are laid in the alternative and the accused pleads guilty to a charge, the Court Martial must, if it accepts the plea, record the plea and defer making a finding in respect of the charge until the accused has been arraigned and tried on the other charges in the charge sheet.

88 Mixed pleas of guilty and not guilty

(1) This rule applies if the Court Martial records and announces a finding of guilty to a charge after recording a plea of guilty and—

(a) there is another charge (not being an alternative charge to that charge) in the same charge sheet to which—

(i) the accused pleads not guilty; or

- (ii) any other accused who is being tried jointly with the accused pleads not guilty; or
- (b) 2 or more persons face that charge and 1 or more of them pleads not guilty.
- (2) Before proceeding under rule 111, the Court Martial must—
 - (a) in the case of subclause (1)(a), try the accused, or the other accused, on the other charge and record and announce its finding on the other charge:
 - (b) in the case of subclause (1)(b), try the other person or persons on that charge, and record and announce its finding on that charge.

89 Accused may enter guilty plea before trial at hearing before Judge sitting alone

- (1) An accused remanded for trial by the Court Martial who wishes to plead guilty to a charge before trial may do so at a hearing before a Judge sitting alone.
- (2) The accused must sign a request in form 6 of the Schedule to be brought before the Court Martial.
- (3) Subclause (2) does not apply if a hearing has been convened before a Judge for another purpose relating to any charge against the accused and at that hearing the accused makes his or her request to enter a plea of guilty to a charge.
- (4) The Registrar must, on receipt of the request, arrange for the accused to be brought before a Judge sitting alone as soon as practicable.

90 Guilty plea before trial: procedure at hearing before Judge sitting alone

- (1) At a hearing before a Judge sitting alone under rule 89, the accused must be called on to plead either guilty or not guilty to the charge for which he or she has been remanded for trial.
- (2) Before the accused is called on to plead, the charge to which the accused is required to plead must be read over to the accused.
- (3) If the accused pleads guilty and the Judge is satisfied that the plea may be accepted under rule 84, the Judge must—
 - (a) record the accused's plea; and
 - (b) adjourn the proceedings until the Court Martial is constituted in accordance with section 21(1) of the 2007 Act.
- (4) If the accused does not plead guilty, or if it is not practicable for the accused to be dealt with by a Judge before the commencement of trial,—
 - (a) the accused must be treated in all respects as if the accused had not made a request to plead guilty under rule 89; and
 - (b) no comment may be made at the accused's trial on the fact that a request was made under that rule; and
 - (c) the request is not admissible in evidence against the accused.

91 Guilty plea before trial: procedure following hearing before Judge sitting alone

- (1) This rule applies if a Judge has recorded a plea of guilty in respect of a charge at a hearing before trial under rule 89.
- (2) When the Court Martial is assembled the Judge must, after complying with rules 71 and 72,—
 - (a) announce the plea recorded at the hearing before trial; and
 - (b) ask the accused whether he or she wishes to change the plea.
- (3) If the accused does not wish to change the plea,—
 - (a) the Judge must direct the Court Martial to find the accused guilty on the charge; and
 - (b) the Court Martial must adjourn the proceedings for sufficient time to enable the prosecutor and the accused to comply with rule 111(1)(b) and (2), if they have not already done so; and
 - (c) the Court Martial must then proceed in accordance with rules 113 and 114.
- (4) If the accused wishes to change the plea, the Court Martial must—
 - (a) record a plea of not guilty in substitution of the plea of guilty; and
 - (b) proceed on the basis of a not guilty plea.

92 Change of plea

- (1) An accused who pleads not guilty to a charge may, at any time before the military members retire to deliberate on their finding, withdraw his or her plea of not guilty and substitute a plea of guilty to the charge.
- (2) If the Judge is satisfied, in accordance with rule 84, that the Court Martial should accept the substituted plea of guilty, the Court Martial must—
 - (a) record the plea; and
 - (b) record and announce a finding of guilty; and
 - (c) so far as is necessary, proceed in accordance with rule 111.
- (3) If, at any time during the proceeding, it appears to the Court Martial that an accused who has entered a plea of guilty to a charge did not understand the nature of the offence to which the plea related or the consequences of the plea, the Court Martial must—
 - (a) record a plea of not guilty in substitution for the plea of guilty; and
 - (b) proceed on the basis of the not guilty plea.
- (4) If, in a case to which subclause (3) applies, there was originally a charge before the court in the alternative to that to which the change of plea relates and that alternative charge was withdrawn by the prosecutor, the Court Martial must, if requested to do so by the Director of Military Prosecutions, reinstate that alternative charge, have the accused arraigned on it, and proceed as if the charge had never been withdrawn.

*Application for adjournment***93 Application for adjournment following plea of not guilty**

- (1) If the accused pleads not guilty to a charge, the Judge must ask the accused whether the accused wishes to apply for an adjournment of the proceeding on either or both of the following grounds:
 - (a) that any of these rules relating to the procedure to be followed before a trial by the Court Martial has not been complied with and that the accused has been unduly prejudiced in his or her defence by that non-compliance:
 - (b) that the accused has not had adequate time or facilities to prepare his or her defence.
- (2) If the accused applies for an adjournment of the proceeding, the accused may adduce evidence in support of the application, and the prosecutor may adduce evidence in rebuttal.
- (3) The prosecutor may also address the Court Martial in opposition to the application, and the accused may reply to the prosecutor's address.
- (4) On an application under this rule, the Court Martial may grant an adjournment if it thinks it is in the interests of justice to do so.

*Case for prosecution***94 Admission by agreement**

Any evidence or fact admitted under section 9 of the Evidence Act 2006 must be recorded in the record of proceedings.

95 Opening and presentation of case

- (1) The prosecutor may, and must if required by the Court Martial, make an opening address stating the substance of the prosecution's case and the nature and effect of the evidence to be adduced.
- (2) The accused may make a brief opening statement following the prosecutor's opening address, with the leave of the Judge.
- (3) The prosecutor may then call the witnesses for the prosecution to give their evidence.

96 Obligation to give notice of evidence not contained in documents or information disclosed

- (1) The prosecutor must, within a reasonable time before the commencement of the trial, give the accused—
 - (a) notice of his or her intention to adduce any evidence that is not contained in the documents or other information disclosed to the accused under rules 9 and 12; and
 - (b) a statement of the evidence.
- (2) If the accused did not, in the opinion of the Judge, receive the prior notice and statement required under subclause (1),—

- (a) the Judge must, when the evidence has been heard, advise the accused that he or she may apply for an adjournment of the proceeding, or a postponement of any cross-examination arising out of the evidence, to enable the accused to consider the evidence properly; and
- (b) the Judge may, on an application by the accused, grant the accused an adjournment or postponement if the Judge thinks it is in the interests of justice to do so.

97 Notice to accused that prosecution witness not to be called

- (1) The prosecutor is not bound to call every witness for the prosecution whose evidence has been disclosed or of whom notice has been given to the accused under rule 96.
- (2) If the prosecutor does not intend to call a witness whose evidence has been disclosed or of whom notice has been given to the accused, the prosecutor must—
 - (a) give reasonable notice of that fact to the accused; or
 - (b) tender the witness for cross-examination at the trial.
- (3) If subclause (2)(a) applies, the prosecutor must inform the accused that the accused may do either or both of the following:
 - (a) communicate with the witness:
 - (b) call the witness to give evidence if he or she is available.
- (4) Subclause (2) does not apply if the attendance of the witness is dispensed with—
 - (a) under the provisions of any Act; or
 - (b) under rule 130 or;
 - (c) with the consent of the accused.

Calling and examination of witnesses

98 Witness to be sworn

- (1) Every witness must be sworn in the presence of the accused and in the form and manner prescribed in Part 7 of these rules before the witness gives evidence.
- (2) Subclause (1) is subject to section 47 of the 2007 Act.

99 Exclusion of witness from courtroom

- (1) The prosecutor or the accused may apply to the Judge, at any time during the trial, for an order that all or any of the witnesses, other than the accused, be excluded from the courtroom until they are called to give their evidence.
- (2) Every person to whom an order for exclusion applies must leave the courtroom but remain within call.
- (3) If a question arises about the admissibility of any evidence during the course of a witness giving evidence, the Judge may direct the witness to leave the courtroom while the question is dealt with.

100 Questions by members of Court Martial

If a member of the Court Martial puts a question to a witness,—

- (a) every party, other than the party who called the witness, may cross-examine the witness on any matter raised by the member's question; and
- (b) the party who called the witness may re-examine the witness.

101 Accused may submit no case to answer

- (1) At the conclusion of the prosecution's case in respect of any charge, the accused may submit that there is no case to answer and therefore that the accused should not be called on to make his or her defence to the charge.
- (2) The Judge must hear and determine the accused's submission that there is no case to answer in the absence of the military members of the Court Martial.
- (3) The prosecutor may address the Judge in opposition to the submission, and the accused may reply to the prosecutor's address.

102 Rulings on submission of no case to answer

- (1) The Judge must rule in favour of the submission if the Judge is satisfied, in respect of the charge,—
 - (a) that there is no case for the accused to answer; and
 - (b) that it is not open to the Court Martial to amend the charge in order to meet the submission; and
 - (c) that it is not open to the Court Martial, on the evidence before it, to make a special finding under section 74(3) of the 1971 Act, any of sections 56 to 59 of the 2007 Act, or under rule 109(2).
- (2) If the Judge rules in favour of the submission, the Judge must direct the military members of the Court Martial to—
 - (a) find the accused not guilty; and
 - (b) announce that finding in open court.
- (3) If the Judge rules against the submission,—
 - (a) the ruling and the reasons for it must be recorded and announced in open court; and
 - (b) the Judge must order the trial to proceed.
- (4) Nothing in this rule prevents the military members, after hearing the prosecutor and the Judge, from finding the accused not guilty of the charge at any time after the conclusion of the prosecution's case.

Case for defence

103 Judge must advise accused of accused's rights

- (1) Following the conclusion of the prosecution's case, the Judge must advise the accused as follows:

- (a) that if the accused wishes, he or she may give evidence as a witness, but is not bound to do so:
 - (b) that if the accused does give evidence, he or she will be liable to cross-examination by the prosecutor, and liable to questioning by the military members and the Judge:
 - (c) that whether or not the accused gives evidence, the accused may call witnesses on his or her behalf.
- (2) After advising the accused of the accused's rights as provided in subclause (1), the Judge must ask the accused whether or not he or she wishes to give evidence or call any witnesses.
- (3) If the accused elects to give evidence or call witnesses, the accused may make an opening address setting out the substance of the accused's defence, and the nature and effect of the evidence to be adduced, and must then proceed in accordance with his or her election.

104 Evidence in rebuttal

On the conclusion of the case for the defence, the prosecutor may, with the leave of the Judge, call or recall any witness to give evidence on any matter raised by or on behalf of the accused in his or her defence that the prosecutor—

- (a) could not properly have put before the Court Martial before the accused disclosed his or her defence; or
- (b) could not reasonably have foreseen.

Closing addresses and summing up

105 Closing addresses by prosecution and defence

- (1) After all the evidence has been given, the prosecutor and the accused may make a closing address to the Court Martial.
- (2) The accused is entitled to make his or her closing address after the prosecutor's closing address.

106 Calling and recalling of witnesses before summing up

- (1) The Court Martial may, at any time before the Judge sums up, call or recall a witness if it thinks that it is in the interests of justice to do so.
- (2) If the Court Martial calls or recalls a witness, the prosecutor and the accused may put those questions to the witness that the Judge allows as proper.
- (3) The prosecutor or the accused may, with leave of the Judge, recall a witness at any time before the Judge sums up, and either party may put those questions to the witness that the Court Martial allows as proper.

107 Judge to sum up

- (1) After the closing addresses by the prosecutor and the accused, the Judge must sum up the evidence and advise the military members on the law as it applies to the case.
- (2) The Judge's summing up and advice must be given in open court.

Finding of Court Martial

108 Deliberation on finding

- (1) After the Judge has summed up, the Judge must withdraw and the military members must assemble in closed court to deliberate on their finding.
- (2) Every military member must give his or her opinion on the finding orally, in closed court, and in order of seniority commencing with the most junior in rank.
- (3) If there is more than 1 charge, every military member must give his or her opinion on the finding on each charge separately.
- (4) If, during the course of their deliberations, the military members require further advice from the Judge, they must suspend their deliberations and ask for and receive the advice in open court.

109 Form of finding

- (1) The Court Martial must record one of the following findings in respect of each charge before it:
 - (a) a finding of guilty—
 - (i) of the offence charged; or
 - (ii) in accordance with section 74(3) of the 1971 Act, or any of sections 56 to 58 of the 2007 Act; or
 - (b) a finding of not guilty; or
 - (c) a finding in accordance with section 190 of the 1971 Act.
- (2) If section 59 of the 2007 Act applies, the Court Martial may record a finding of guilty subject to the differences between the facts proved and the facts alleged, as specified in the finding.
- (3) This rule is subject to section 60 of the 2007 Act.

110 Recording and announcement of finding

- (1) When the military members have completed their deliberations, they must reassemble in open court and inform the Judge of their finding.
- (2) The Judge must record the finding in the prescribed form and then announce the finding in open court.
- (3) However, if the finding is one of guilty (including any finding authorised by sections 56 to 59 of the 2007 Act) and the Judge is of the opinion that the finding is contrary to law, the Judge must once (but only once) more advise the military members of the findings that are open to them in law.
- (4) When the Judge has complied with subclause (3), the military members must retire to reconsider their finding in closed court.

*Procedure subsequent to finding***111 Finding of guilty after plea of guilty**

- (1) If the Court Martial records a finding of guilty after recording a plea of guilty,—
 - (a) the Court Martial must adjourn the proceedings for sufficient time to enable the prosecutor to comply with paragraph (b); and
 - (b) the prosecutor must prepare a summary of facts for the charge and give a copy of the summary to the accused in reasonable time for the accused to consider it before the hearing is resumed.
- (2) If the accused takes any issue with the summary of facts that may affect the sentence likely to be imposed,—
 - (a) the accused must advise the prosecutor at the earliest practicable opportunity; and
 - (b) the prosecutor and the accused must confer to try to resolve the dispute by amendment to, or deletion from, the summary.
- (3) After complying with subclauses (1) and (2), the Court Martial must proceed in accordance with rules 113 and 114.
- (4) This rule is subject to rules 87, 88, 91, and 120.

112 Proof of facts

- (1) In determining a sentence or other disposition of the case, the Court Martial—
 - (a) may accept as proved any facts agreed on by the prosecutor and the accused; and
 - (b) must accept as proved all facts, express or implied, that are essential to a plea of guilty or a finding of guilt.
- (2) If a fact that is relevant to the determination of a sentence or other disposition of the case is asserted by the prosecutor and disputed by the accused,—
 - (a) the Judge must indicate to the parties the weight that the Court Martial would be likely to attach to the disputed fact if it were found to exist, and its significance to the sentence or other disposition of the case; and
 - (b) if a party wishes the Court Martial to rely on that fact, the parties may adduce evidence as to its existence; and
 - (c) the prosecutor must prove beyond a reasonable doubt the existence of any disputed aggravating fact, and must negate beyond a reasonable doubt any disputed mitigating fact raised by the accused (other than a mitigating fact referred to in paragraph (d)) that is not wholly implausible or manifestly false; and
 - (d) the accused must prove on the balance of probabilities the existence of any disputed mitigating fact that is not related to the nature of the offence or to the accused's part in the offence; and
 - (e) either party may cross-examine any witness called by the other party.

(3) For the purposes of this rule,—

aggravating fact means any fact that—

- (a) the prosecutor asserts as a fact that justifies a greater penalty or other outcome than might otherwise be appropriate for the offence; and
- (b) the Judge accepts is a fact that may, if established, have that effect on the sentence or other disposition of the case

mitigating fact means any fact that—

- (a) the accused asserts as a fact that justifies a lesser penalty or other outcome than might otherwise be appropriate for the offence; and
- (b) the Judge accepts is a fact that may, if established, have that effect on the sentence or other disposition of the case.

113 Evidence on accused's record, etc, to be considered: prosecution evidence relevant to sentence

- (1) If the Court Martial finds the accused guilty on any charge, it must take and consider evidence of the accused's age, rank, and service record before deliberating on the sentence to be imposed.
- (2) The prosecutor must adduce evidence in relation to the matters referred to in subclause (1) and must, in particular, draw to the attention of the Court Martial—
 - (a) any recognised acts of gallantry or distinguished conduct on the part of the accused, and any decoration he or she is entitled to; and
 - (b) any offence the accused has been found guilty of during his or her service, as recorded in the service records; and
 - (c) the length of time during which the accused has been under arrest awaiting trial (including the time, if any, during which the accused was held in custody) or in confinement under a current sentence.
- (3) Evidence of the matters referred to in subclauses (1) and (2) may be given by a witness producing to the Court Martial a written statement containing a summary of the relevant entries in the accused's service record in the form prescribed by the Chief of Defence Force.
- (4) However, before producing a written statement under subclause (3) the witness must, in open court,—
 - (a) verify the statement; and
 - (b) identify the accused as the person to whom the entries relate.
- (5) In addition to the matters referred to in subclauses (1) to (4), the prosecution may call evidence on any other matters that are relevant to the question of sentence.
- (6) This rule is subject to rule 121.

114 Evidence on accused's record, etc: accused's rights and evidence relevant to sentence

- (1) The accused may cross-examine any witness called to give evidence under rule 113.

- (2) The accused may insist on the production of the accused's actual service record.
- (3) If any discrepancies are found between the actual service record and the written statement before the Court Martial, the Court Martial must ensure that the written statement is amended to accord with the record.
- (4) When the provisions of rule 113 and subclauses (1) to (3) have been complied with, the accused may call evidence on any other matters that are relevant to sentence, and the accused may—
 - (a) give evidence; or
 - (b) call witnesses in mitigation of punishment and as to character.

115 Judge may call evidence relevant to sentence

- (1) If the Judge considers that there is a matter relevant to sentence or other disposition of the case that requires clarification (whether arising out of evidence adduced by either party at trial, a summary of facts, or evidence adduced under rules 113 and 114), the Judge may call or recall any witness the Judge considers should be questioned on the matter.
- (2) A witness called by the Judge may be—
 - (a) cross-examined by the prosecution and the accused;
 - (b) re-examined on any matter arising out of the cross-examination.

116 Addresses on sentence

- (1) The prosecutor and the accused may address the Court Martial on the question of sentence.
- (2) The Judge—
 - (a) must direct the order of submissions;
 - (b) may require the prosecution to address the Court Martial first.
- (3) Neither party has a right of reply, except with special leave of the Court Martial.

117 Request by accused for other offences to be taken into account

- (1) This rule applies if an accused makes a request under section 64 of the 2007 Act that the Court Martial take into account any other offence in sentencing him or her.
- (2) Before the Court Martial withdraws to deliberate on sentence, the Judge must—
 - (a) inform the accused of which offences the Court Martial will agree to take into consideration; and
 - (b) ask the accused whether or not he or she admits having committed those offences.
- (3) The accused must inform the Court Martial of which offences he or she admits having committed.
- (4) The Court Martial must cause a list of those offences to be drawn up, signed by the accused and the Judge, and to be attached to the record of proceedings as an exhibit.

118 Sentence and recommendation of mercy

- (1) Each member of the Court Martial must give his or her vote on sentence orally in closed court.
- (2) The military members must vote in order of seniority commencing with the most junior in rank.
- (3) Every sentence must be recorded in the form prescribed by the Chief of Defence Force.
- (4) This rule also applies to recommendations of mercy.

119 Announcement at conclusion of trial

The Judge must announce in open court that the trial is concluded after—

- (a) the sentence has been announced; or
- (b) the accused has been found unfit to stand trial; or
- (c) the accused has been acquitted, whether on account of insanity or otherwise.

Procedure subsequent to finding: Particular cases

120 Trial of charge in other charge sheet

If the Court Martial finds the accused guilty on a charge and there is another charge sheet before the Court Martial, the Court Martial must not proceed in accordance with rules 111 to 116 until it has arraigned and tried the accused on the charge or charges in the other charge sheet.

121 Finding of guilty where mixed pleas of guilty and not guilty

- (1) This rule applies if—
 - (a) the Court Martial finds the accused guilty in respect of a charge (charge A) to which the accused pleaded not guilty; and
 - (b) before the Court Martial there is—
 - (i) in the same charge sheet, another charge against the accused, or against any other accused who is being tried jointly with him or her, to which the Court Martial has accepted a plea of guilty; or
 - (ii) another accused whose plea of guilty to charge A has been accepted by the Court Martial.
- (2) The Court Martial must, so far as necessary, comply with rule 111 on the charge to which a plea of guilty has been accepted, or (as the case may be) has been accepted in respect of the other accused, before proceeding in accordance with rules 113 and 114.

Subpart 4—Further rules relating to trial by Court Martial

Withdrawal, amendment, division of charges

122 Withdrawal of charge

- (1) The Court Martial may, with the consent of the Director of Military Prosecutions, allow the prosecutor to—
 - (a) withdraw a charge at any time before the accused has been arraigned on it; or
 - (b) withdraw a charge sheet at any time before the accused has been arraigned on any charge in it.
- (2) The consent of the Director of Military Prosecutions for the purposes of subclause (1) may be notified to the Court Martial by the prosecutor.

123 Amendment or division of charges

- (1) The prosecutor or the accused may apply to the Court Martial for—
 - (a) the amendment of any charge; or
 - (b) the division of any charge into 2 or more charges.
- (2) The Judge may order that a charge be amended or divided into 2 or more charges if the Judge is satisfied that it is necessary in the interests of justice to do so.
- (3) An order may be made—
 - (a) on an application under subclause (1); or
 - (b) on the Judge's own initiative.
- (4) If, in making an order, the Judge thinks it necessary in the interests of justice, the Judge may—
 - (a) adjourn the proceedings of the Court Martial for the period that the Judge considers necessary; or
 - (b) discharge the military members under section 48 of the 2007 Act and then adjourn the proceedings of the Court Martial for the period that the Judge considers necessary.
- (5) If the Judge discharges the military members before adjourning the proceedings, the Registrar must appoint new military members under section 21(4) of the 2007 Act before the trial may recommence.

Fitness of accused to stand trial

124 Determination before trial of fitness of accused to stand trial

- (1) This rule and rules 125 and 126 apply if the question of whether the accused is unfit to stand trial is to be determined before trial.
- (2) In this rule and rules 125 and 126, special hearing means a hearing fixed by the Registrar in accordance with subclause (3) for the purpose of ascertaining whether the Court Martial is satisfied of the matter specified in section 188(2) of the 1971 Act.

- (3) The Registrar must—
- (a) fix a time and place for a special hearing; and
 - (b) give written notice of the time and place fixed to—
 - (i) the accused; and
 - (ii) the Director of Military Prosecutions; and
 - (iii) the Judge.
- (4) The notice under subclause (3)(b) must,—
- (a) in the case of a notice to the accused, be accompanied by a copy of all documents submitted to the Judge by the Director of Military Prosecutions in relation to the charge; and
 - (b) at the beginning of the special hearing, be accompanied by a copy of the charge sheet certified by the Director of Military Prosecutions and laid before the Registrar.

125 Procedure at special hearing before trial

- (1) At the beginning of the special hearing, the charge must be read to the accused before the prosecution calls any witnesses.
- (2) After the charge has been read to the accused, the prosecution must call its witnesses, who must be examined by the prosecution, and may be cross-examined by the accused and re-examined by the prosecution.
- (3) The Judge must, if required by the accused to do so, allow the accused to—
- (a) call witnesses; and
 - (b) give evidence.
- (4) If subclause (3)(a) applies, the witnesses must be examined by the accused and may be cross-examined by the prosecution and re-examined by the accused.
- (5) If subclause (3)(b) applies, the accused may be cross-examined by the prosecution and, if the accused is represented, re-examined.
- (6) The following rules apply to a special hearing:
- (a) rule 72 (which relates to the administration of oaths);
 - (b) rule 98 (which relates to the swearing of witnesses);
 - (c) rule 99 (which relates to the exclusion of witnesses from the courtroom).
- (7) The Judge may make orders and give directions, concerning the conduct of a special hearing, that he or she thinks necessary in the interests of justice.

126 Determining if accused unfit to stand trial

If, following a special hearing, the Judge records a finding under section 188(6) of the 1971 Act, the Judge may make orders and give directions that he or she thinks necessary in the interests of justice concerning the receiving of evidence in accordance with section 188A of the 1971 Act.

127 Determination during trial of fitness of accused to stand trial

- (1) This rule applies if the question of whether the accused is unfit to stand trial is to be determined during the trial.
- (2) For the purpose of ascertaining whether the Court Martial is satisfied of the matter specified in section 188(2) of the 1971 Act, the Court Martial may consider any evidence presented at the hearing, including evidence heard as a result of the Judge calling or recalling any witness to be questioned on any matter the Judge considers requires clarification.

*Exhibits***128 Exhibits**

- (1) Every document or thing produced in evidence at a trial in the Court Martial must be made an exhibit.
- (2) Subclause (1) is subject to subclause (3).
- (3) When an original document or book is produced in evidence, instead of making it an exhibit, the Judge may compare a copy of or extract from the document or book with the original and, if the Judge is satisfied that the copy or extract is correct,—
 - (a) the Judge must endorse on the copy or extract a certificate to that effect in the form prescribed by the Chief of Defence Force; and
 - (b) the Judge may return the original document or book to the witness and attach the certified copy to the record of proceedings as an exhibit.
- (4) Every exhibit must—
 - (a) either be marked with a number or letter in sequence and signed by the Judge, or have a label attached to it so marked and signed; and
 - (b) be attached to or kept with the record of proceedings, unless in the opinion of the Judge it is not expedient to do so.

Subpart 5—New trials in Court Martial**129 Referral of order for new trial to Director of Military Prosecutions**

- (1) This rule applies to a new trial in the Court Martial ordered by—
 - (a) the Summary Appeal Court under section 132(3)(b)(ii) of the 1971 Act; or
 - (b) the Court Martial Appeal Court under section 9A(3)(b)(ii) of the Court Martial Appeals Act 1953.
- (2) The Registrar of the Court Martial must refer the order for a new trial to the Director of Military Prosecutions, together with the reasons for the order and any associated directions given under section 132(4) of the 1971 Act.
- (3) The Director of Military Prosecutions must perform the functions and the duties set out in section 101F of the 1971 Act in relation to the charge as if the charge had been referred to the Director of Military Prosecutions by a disciplinary officer under Part 5 of the 1971 Act.
- (4) Subclause (3) is subject to any directions given in making the order for a new trial.

130 Record of evidence may be read as evidence at new trial

- (1) This rule applies to a new trial in the Court Martial ordered by the Court Martial Appeal Court under section 9A(3)(b)(ii) of the Court Martial Appeals Act 1953.
- (2) The record of evidence given by a witness at the original trial may, with the leave of the Court Martial in the new trial, be read as evidence—
 - (a) if the prosecutor and the accused agree; or
 - (b) if the Court Martial is satisfied that the witness cannot or should not be required to attend because—
 - (i) the witness is dead; or
 - (ii) the witness is outside the country in which the new trial is to be held and it is not reasonably practicable to secure his or her attendance; or
 - (iii) the witness is unfit by reason of old age or his or her bodily or mental condition to attend; or
 - (iv) the witness cannot with reasonable diligence be found; or
 - (v) requiring the witness to attend would cause undue delay or expense.
- (3) If subclause (2) applies, the record of evidence may be taken as read without further proof if it is admissible as evidence in proceedings under section 76 of the 2007 Act.
- (4) If the Director of Military Prosecutions intends to seek admission of any record of evidence under this rule, he or she must, as soon as possible and in any case not later than 24 hours before the commencement of the new trial, give a copy of the evidence to the accused and to the Judge.

Subpart 6—General provisions

131 Preparation of record of proceedings

- (1) All proceedings of the Court Martial must be recorded verbatim, in the form prescribed by the Chief of Defence Force.
- (2) As soon as practicable after the conclusion of the proceedings, the Judge must date and sign the record of proceedings.

132 Custody and inspection of record of proceedings

- (1) The record of proceedings of the Court Martial, together with all exhibits, is deemed to be in the custody of the Judge during those proceedings.
- (2) However, when the military members of the court are sitting in closed court to deliberate on or to reconsider their finding—
 - (a) subclause (1) does not apply; and
 - (b) the record of proceedings is deemed to be in the custody of the senior military member.
- (3) The prosecutor or the accused may, with the leave of the Judge, at any stage of the proceedings—

- (a) have any tape of the proceedings played back to him or her:
- (b) have any part of any shorthand notes or of the record of proceedings read to him or her:
- (c) subject to the proper security of exhibits, inspect any exhibit.

133 Transmission of record of proceedings to Registrar

The Judge must forward the signed record of proceedings to the Registrar as soon as practicable after the conclusion of any proceedings in the Court Martial.

134 Sitting of Court Martial

- (1) A trial before the Court Martial must be continued from day to day, and the Court Martial must sit for the time each day that may be reasonable in all the circumstances.
- (2) However, subclause (1) does not apply where the 2007 Act or these rules provide otherwise.
- (3) The Court Martial must not sit on Sunday, Christmas Day, Good Friday, or (in New Zealand or Australia) Anzac Day, unless in the opinion of the Court Martial the interests of justice make it necessary to do so.

135 Powers to authorise departure from rules, etc

- (1) The Court Martial may direct, authorise, or accept a departure from these rules for reasons of urgency or for any other reason.
- (2) If, in any proceedings before the Court Martial, a question arises about the application of these rules, the court may determine the question and give any directions that the court thinks fit.
- (3) Subclauses (1) and (2) apply on the application of any party or on the initiative of the Court Martial.

136 Mode of giving notice to Court Martial

Notices may be given to the Court Martial by serving them by hand or by sending them to the Registrar, at his or her office, by post, fax, or any other written or printed means.

137 Mode of giving notice to parties

A notice may be given to a party—

- (a) at his or her postal address by post or by any other written or printed means; or
- (b) by faxing it to a fax number supplied by the party; or
- (c) by using any other means of communication that is customary in the Armed Forces.

138 Cases not provided for in rules

In any matter not expressly provided for in these rules, the Court Martial may give any direction that it thinks best calculated to carry out the purposes of the 1971 Act or the 2007 Act.

139 Power to extend or shorten time appointed by rules or fixed by order

- (1) The Court Martial may extend or shorten the time appointed by these rules, or fixed by any order, for doing any act or taking any proceeding or any step in a proceeding on any terms that the court thinks just.
- (2) The Court Martial may exercise a power conferred by subclause (1)—
 - (a) whether on application by a party or on the court's own initiative; and
 - (b) whether for reasons of urgency or for any other reason; and
 - (c) in the case of an extension of the time referred to in that subclause, whether before or after that time has expired.

140 Correction of accidental slip or omission

- (1) This rule applies if—
 - (a) any judgment or order or the reasons for any judgment or order contain a clerical mistake or an error arising from any accidental slip or omission (whether the mistake, error, slip, or omission was made by an officer of the Court Martial or not); or
 - (b) any judgment or order is so drawn up as not to express what was actually decided and intended.
- (2) The Court Martial may correct the judgment or order or the reasons for the judgment or order on—
 - (a) the court's own initiative; or
 - (b) an interlocutory application made for that purpose.

PART 5**Reconsidering Authority****141 Petition for reconsideration**

A petition for reconsideration under section 153 of the 1971 Act must be in form 7 of the Schedule of these rules.

142 Promulgation of decision

- (1) For the purposes of section 158(2) of the 1971 Act, the Reconsidering Authority must record the particulars of its decision in the form prescribed by the Chief of Defence Force.
- (2) The Reconsidering Authority must send the form to—
 - (a) the accused's commanding officer; or
 - (b) if the accused is in custody, the person in charge of the place in which the

accused is confined.

- (3) The commanding officer or the person in charge of the place in which the accused is confined must—
- (a) inform the accused of the decision; and
 - (b) note the details of that promulgation on the form; and
 - (c) return the form to the Reconsidering Authority.
- (4) The form, with the details of promulgation duly noted on it, must be attached to and form part of the record of proceedings of the relevant trial.

PART 6

Courts of inquiry

143 Procedure where person affected by inquiry wishes to call witness

If a person who is affected or likely to be affected by an inquiry by a court of inquiry tells the president that he or she wishes to call a witness under section 200N(2)(d) of the 1971 Act, the president must—

- (a) direct that witness to attend under section 200I of the 1971 Act, unless it is impracticable to do so; and
- (b) make any necessary arrangements for that witness to attend the proceedings of the court of inquiry, unless it is impracticable to secure the witness's attendance.

144 Person adversely affected entitled to copy of record of proceedings

- (1) This rule applies to a person who—
- (a) is subject to the 1971 Act; and
 - (b) has been charged with an offence in respect of any matter or thing that has been investigated by a court of inquiry.
- (2) A person to whom this rule applies is, on request to the relevant assembling authority, entitled to a copy of the record of proceedings in relation to that court of inquiry.

PART 7

Miscellaneous provisions

Bail

145 Applications for bail

- (1) An application by an accused person under section 49 of the 2007 Act for bail pending trial may be made by notice of application in form 8 of the Schedule of these rules.

- (2) An application by a convicted person under section 50 of the 2007 Act for bail pending determination of his or her appeal may be made by notice of application in form 9 of the Schedule of these rules.
- (3) The Registrar must, at the earliest opportunity, —
 - (a) fix a date and time for hearing the application; and
 - (b) forward a copy of the application to the Director of Military Prosecutions.
- (4) If the Director of Military Prosecutions intends to make recommendations under section 52(2) of the 2007 Act in respect of the application, he or she must, as soon as practicable, file and serve on the accused or convicted person (as the case may be) a notice of recommendations in form 10 of the Schedule of these rules.

146 Warrant to arrest person absconding or breaching bail condition

- (1) A warrant issued pursuant to section 53 of the 2007 Act for the arrest of a person who has been released on bail must be in form 11 of the Schedule of these rules.
- (2) A warrant issued pursuant to section 101B of the 1971 Act for the arrest of a person who has been released on bail must be in form 12 of the Schedule of these rules.

Witness summons

147 Witness summons

- (1) A summons issued to a witness under section 150C of the 1971 Act for the purposes of proceedings before a disciplinary officer must be in form 13 of the Schedule of these rules.
- (2) A summons issued to a witness under section 150C of the 1971 Act for the purposes of proceedings in the Summary Appeal Court must be in form 14 of the Schedule of these rules.
- (3) A summons issued to a witness under section 45 of the 2007 Act must be in form 15 of the Schedule of these rules. Orders for compensation, restitution, and revesting of stolen property.

Orders for compensation, restitution, and revesting of stolen property

148 Order for compensation

- (1) This rule applies to an order for compensation under section 86 or 117ZA of the 1971 Act.
- (2) The order must be made in the form prescribed by the Chief of Defence Force.
- (3) The operation of the order is suspended under rule 149 unless the offender consents in writing to the operation of the order not being suspended.
- (4) If the order is made under section 86(2) of the 1971 Act, the money that is the subject of the order must, while the operation of the order for compensation is suspended, be held in safe custody as directed by the Court Martial.
- (5) If the order is made under section 117ZA of the 1971 Act and is to pay compensation in accordance with section 86(2) of that Act, the money that is the subject of the order must, while the operation of the order for compensation is suspended, be held in safe custody as directed by the disciplinary officer.

- (6) If the order is varied on an appeal, payment must be made in accordance with the order as finally varied.

149 Suspension of order for compensation

- (1) If an order for compensation is made under section 117ZA of the 1971 Act and the offender does not give the consent referred to in rule 148(3), the operation of the order is suspended until the later of—
- (a) the expiry of the period within which an appeal against the order to the Summary Appeal Court must be brought; or
 - (b) if an appeal against the order is brought within that period, the close of the day on which the appeal is determined or abandoned.
- (2) If an order for compensation is made under section 86 of the 1971 Act and the offender does not give the consent referred to in rule 148(3), the operation of the order is suspended until the latest of—
- (a) the expiry of the period within which an appeal against the order to the Court Martial Appeal Court must be brought; or
 - (b) if an appeal against the order is brought within that period, the close of the day on which the appeal is determined or abandoned; or
 - (c) if an appeal against the order is determined by the Court Martial Appeal Court, the expiry of the period within which an application for leave to appeal to the Court of Appeal or the Supreme Court must be made; or
 - (d) if an application for leave to appeal to the Court of Appeal or the Supreme Court is made within that period,—
 - (i) the close of the day on which the application for leave to appeal is refused; or
 - (ii) if leave to appeal is granted, the close of the day on which the appeal is determined or abandoned; or
 - (e) if an appeal against the order is determined by the Court of Appeal, the expiry of the period within which an application to the Supreme Court for leave to appeal under section 10A of the Court Martial Appeals Act 1953 against the decision of the Court of Appeal must be made; or
 - (f) if an application to the Supreme Court for leave to appeal under section 10A of the Court Martial Appeals Act 1953 against the decision of the Court of Appeal is made within that period,—
 - (i) the close of the day on which the application for leave to appeal is refused; or
 - (ii) if leave to appeal is granted, the close of the day on which the appeal is determined or abandoned.

150 Order for restitution

- (1) This rule and rule 151 apply if an order for restitution is made by the Court Martial under section 87 of the 1971 Act or by a disciplinary officer under section 117ZA of that Act.

- (2) The order must be in the form prescribed by the Chief of Defence Force.
- (3) The operation of the order is suspended in accordance with rule 151 unless the Court Martial or the disciplinary officer (as the case may be) states in writing that, in the opinion of the Court Martial or the disciplinary officer, the right to the possession of the property is not in dispute.
- (4) The property that is the subject of the order must, while the order is suspended, be held in safe custody as directed by the Court Martial or the disciplinary officer.
- (5) If the order is varied on an appeal, delivery of the property must be made in accordance with the order as finally varied.

151 Suspension of order for restitution

- (1) Subclause (2) applies if the Court Martial or the disciplinary officer (as the case may be) does not make a statement of the kind referred to in rule 150(3).
- (2) The operation of the order is suspended in accordance with subclauses (3) and (4) unless the following persons consent in writing to the operation of the order not being suspended:
 - (a) the offender; and
 - (b) in the case of an order by the Court Martial under section 87(4) of the 1971 Act, the pawnbroker.
- (3) If the order is made by a disciplinary officer and consent as referred to in subclause (2)(a) is not given, the operation of the order is suspended until the later of—
 - (a) the expiry of the period within which an appeal against the order to the Summary Appeal Court must be brought; or
 - (b) if an appeal against the order is brought within that period, the close of the day on which the appeal is determined or abandoned.
- (4) If the order is made by the Court Martial and consent as referred to in subclause (2) is not given, the operation of the order is suspended until the latest of—
 - (a) the expiry of the period within which an appeal against the order to the Court Martial Appeal Court must be brought; or
 - (b) if an appeal against the order is brought within that period, the close of the day on which the appeal is determined or abandoned; or
 - (c) if an appeal against the order is determined by the Court Martial Appeal Court, the expiry of the period within which an application for leave to appeal to the Court of Appeal or the Supreme Court must be made; or
 - (d) if an application for leave to appeal to the Court of Appeal or the Supreme Court is made within that period,—
 - (i) the close of the day on which the application for leave to appeal is refused; or
 - (ii) if leave to appeal is granted, the close of the day on which the appeal is determined or abandoned; or
 - (e) if an appeal against the order is determined by the Court of Appeal, the expiry of the period within which an application to the Supreme Court for leave to

appeal under section 10A of the Court Martial Appeals Act 1953 against the decision of the Court of Appeal must be made; or

- (f) if an application to the Supreme Court for leave to appeal under section 10A of the Court Martial Appeals Act 1953 against the decision of the Court of Appeal is made within that period,—
 - (i) the close of the day on which the application for leave to appeal is refused; or
 - (ii) if leave to appeal is granted, the close of the day on which the appeal is determined or abandoned.

152 Revesting of stolen property

- (1) The operation of section 26(1) of the Sale of Goods Act 1908 is suspended in accordance with rule 153 unless the disciplinary officer who records the finding of guilty or the Court Martial (as the case may be) states in writing that, in the opinion of the disciplinary officer or the Court Martial, the title to the property is not in dispute.
- (2) Property to which section 26(1) of the Sale of Goods Act 1908 applies must, while the operation of that provision is suspended, be held in safe custody as directed by the disciplinary officer or the Court Martial.

153 Suspension of revesting of stolen property

If a conviction to which section 26(1) of the Sale of Goods Act 1908 applies is recorded and no statement of the kind referred to in rule 152(1) is made, the operation of section 26(1) of the Sale of Goods Act 1908 is suspended—

- (a) in a case where the finding of guilty is recorded by a disciplinary officer, until the later of—
 - (i) the expiry of the period within which an appeal against the order to the Summary Appeal Court must be brought; or
 - (ii) if an appeal against the order is brought within that period, the close of the day on which the appeal is determined or abandoned; and
- (b) in a case where the finding of guilty is recorded by the Court Martial, until the latest of—
 - (i) the expiry of the period within which an appeal against the order to the Court Martial Appeal Court must be brought; or
 - (ii) if an appeal against the order is brought within that period, the close of the day on which the appeal is determined or abandoned; or
 - (iii) if an appeal against the order is determined by the Court Martial Appeal Court, the expiry of the period within which an application for leave to appeal to the Court of Appeal or the Supreme Court must be made; or
 - (iv) if an application for leave to appeal to the Court of Appeal or the Supreme Court is made within that period,—
 - (A) the close of the day on which the application for leave to appeal is refused; or

- (B) if leave to appeal is granted, the close of the day on which the appeal is determined or abandoned; or
- (v) if an appeal against the order is determined by the Court of Appeal, the expiry of the period within which an application to the Supreme Court for leave to appeal under section 10A of the Court Martial Appeals Act 1953 against the decision of the Court of Appeal must be made; or
- (vi) if an application to the Supreme Court for leave to appeal under section 10A of the Court Martial Appeals Act 1953 against the decision of the Court of Appeal is made within that period,—
 - (A) the close of the day on which the application for leave to appeal is refused; or
 - (B) if leave to appeal is granted, the close of the day on which the appeal is determined or abandoned.

Witnesses' expenses

154 Witnesses' expenses

- (1) This rule applies to a person who is a witness in the Court Martial, Summary Appeal Court, or a court of inquiry and who is—
 - (a) not subject to the 1971 Act; or
 - (b) subject to the 1971 Act but is not a member of the Armed Forces.
- (2) A person to whom this rule applies is entitled as against the party calling him or her, or as the Court Martial, Summary Appeal Court, or court of inquiry (as the case may be) may direct, to be paid the expenses payable to a witness according to the Witnesses and Interpreters Fees Regulations 1974.
- (3) However, the amounts payable are subject to directions relating to the disallowance of the whole or part of any amount that the Judge of the Court Martial, the Summary Appeal Court, or the assembling authority may think fit.

Administration of oaths

155 Application of rules

Rules 156 to 163 apply to proceedings before military tribunals and courts of inquiry.

156 Who may administer oaths and affirmations

Oaths and affirmations may be administered, as the case may require, by the following persons:

- (a) the Judge:
- (b) the clerk of the Summary Appeal Court or the Court Martial:
- (c) the disciplinary officer:
- (d) the president of a court of inquiry.

157 Manner of taking oath: Christian and Jewish forms

- (1) A person taking the Christian oath must hold the Bible, or the Old Testament, or the New Testament in his or her right hand and must reply "I do" to the appropriate question by the person administering the oath.
- (2) A person taking the Jewish oath must hold the Old Testament in his or her right hand and must reply "I do" to the appropriate question by the person administering the oath.
- (3) A person taking an oath must remove any headdress, unless his or her religious belief requires that the headdress be worn.

158 Manner of making solemn affirmation

A person making a solemn affirmation must—

- (a) reply "I do" to the appropriate question asked by the person administering the solemn affirmation; and
- (b) have his or her right hand raised at the same time as making the reply.

159 Manner of swearing member of Court Martial

Every military member of the Court Martial must be sworn by answering "I do" to the following question:

Do you swear by Almighty God (or, as the case may require, Do you solemnly and sincerely affirm) that you will well and truly try the accused according to the evidence, and that you will duly administer justice according to the Armed Forces Discipline Act 1971 and the Court Martial Act 2007, without partiality, favour, or affection, and do you further swear that you will not disclose the vote or opinion of any member of the Court Martial unless required to do so in due course of law?

160 Manner of swearing officer under instruction in Court Martial

Every officer under instruction in the Court Martial must be sworn by answering "I do" to the following question:

Do you swear by Almighty God (or, as the case may require, Do you solemnly and sincerely affirm) that you will not disclose the vote or opinion of any member of the Court Martial unless required to do so in due course of law?

161 Manner of swearing persons responsible for recording and transcribing proceedings of Court Martial

Every person responsible for recording or transcribing the proceedings of the Court Martial must be sworn by answering "I do" to the following question:

Do you swear by Almighty God (or, as the case may require, Do you solemnly and sincerely affirm) that you will to the best of your ability make a true record of the proceedings before this court?

162 Manner of swearing interpreter

Every interpreter before a military tribunal or court of inquiry must be sworn by answering "I do" to the following question:

Do you swear by Almighty God (or, as the case may require, Do you solemnly and sincerely affirm) that you will to the best of your ability truly interpret and translate the proceedings before [me/this court/this court of inquiry]?

163 Manner of swearing witness

Every witness before a military tribunal or court of inquiry that is to be sworn must be sworn by answering “I do” to the following question:

Do you swear by Almighty God (or, as the case may require, Do you solemnly and sincerely affirm) that the evidence you will give before [me/this court/this court of inquiry] will be the truth, the whole truth, and nothing but the truth?

Revocation

164 Revocation

The Armed Forces Discipline Rules of Procedure 1983 are revoked.

SCHEDULE

Forms

r 23

Form 1

rr 24, 27

Notice of appeal by person found guilty by disciplinary officer

Sections 124 and 125, Armed Forces Discipline Act 1971

In the Summary Appeal Court

To the Registrar of the Summary Appeal Court of New Zealand
C/Headquarters, New Zealand Defence Force, Wellington

Name of appellant:

Offence(s) of which found guilty:

Date of finding by disciplinary officer:

Date when punishment imposed:

Disciplinary officer:

Punishment(s)/order(s):

I, the abovenamed appellant, give you notice that I wish to appeal to the Summary Appeal Court against—

- * the following finding(s) of guilty against me: [*specify*]
- * the following punishment(s): [*specify the punishment or combination of punishments you are appealing against*]
- * the following order(s): [*specify the order(s) (for compensation, restitution, or to come up if called upon) that you are appealing against*].

* Select whichever apply.

The grounds on which I am appealing are set out in paragraph 6 below, and I give answers as follows to the following questions:

- 1 (a) Is any lawyer now acting for you?
(b) If so, give his or her name and address and fax number:
(c) Have you applied, or do you intend to apply, for a grant of legal aid?
- 2 (a) Are you are currently in a penal institution?
(b) If so, specify the name of the penal institution:
- 3 If you do not currently have a lawyer, what is your current postal address and fax number (if any)?
- 4 (a) If you are in custody and are granted an oral hearing, do you wish to apply for leave to be present?
(b) If so, what are your reasons for seeking leave to be present? [*If you wish to have bail, you must apply separately in form 9 of the Schedule of the Armed Forces Discipline Rules of Procedure 2008.*]
- 5 You have 21 days from the date on which you were found guilty by the disciplinary officer (or 35 days if you were found guilty outside New Zealand) in which to file your notice of appeal with the Summary Appeal Court. The Summary Appeal Court may extend this time. If your appeal is out of time what are your reasons for saying that the Summary Appeal Court should nevertheless extend the time and consider your appeal?
- 6 What are the grounds of your appeal? [*You must specify the grounds of your appeal in sufficient detail to inform the court of the issues in the appeal.*]
- 7 Do you wish your appeal to be considered at an oral hearing or to be dealt with on the papers?

Date: [day/month/year]

Signature of appellant:

Form 2

r 29(1)

Reference by Judge Advocate General

Section 129, Armed Forces Discipline 1971

In the Summary Appeal Court

To the Registrar of the Summary Appeal Court of New Zealand
C/Headquarters, New Zealand Defence Force, Wellington

Name of appellant:

Offence(s) of which found guilty:

Date of finding by disciplinary officer:

Date when punishment imposed:

Disciplinary officer:

Punishment(s)/order(s):

I refer to the Summary Appeal Court under section 129 of the Armed Forces Discipline Act 1971 the following finding(s) of guilty/punishment(s)/order(s)* made by the disciplinary officer in respect of the person named above:

- * finding(s) of guilty made: *[specify]*
- * punishment or combination of punishments imposed: *[specify]*
- * order for compensation: *[specify]*
- * order for restitution: *[specify]*
- * order to come up if called upon.

I refer those finding(s)/punishment(s)/order(s)* for the following reasons: *[specify in sufficient detail to fully inform the court of issues in the appeal]*.

* Select whichever apply.

I intend/do not intend* to appoint counsel as amicus curiae.

* Select one.

Date: *[day/month/year]*

Signature:

(Judge Advocate General)

Form 3

r 29(3)

Notice of reference by Judge Advocate General to Summary Appeal Court

Section 130(1), Armed Forces Discipline Act 1971

In the Summary Appeal Court

To *[name of person found guilty of offence]*

Name of person found guilty of offence:

Offence(s) of which found guilty:

Date of finding by disciplinary officer:

Date when punishment imposed:

Disciplinary officer:

Punishment(s)/order(s):

1 Under section 129 of the Armed Forces Discipline Act 1971 (the **Act**), the Judge Advocate General has referred to the Summary Appeal Court the following finding(s) of guilty/punishment(s)/order(s)* made by the disciplinary officer in respect of you:

* finding(s) of guilty made: *[specify]*

* punishment or combination of punishments imposed: *[specify]*

* order for compensation: *[specify]*

* order for restitution: *[specify]*

* order to come up if called upon.

* Select whichever apply.

2 A copy of the referral is attached to this notice.

3 You are asked to send the following information to the Registrar of the Summary Appeal Court within 21 days of the date of this notice (shown below):

(a) your written views on the finding(s) of guilty/punishment(s)/order(s)* referred to above; and

(b) your written advice as to whether or not you wish to be legally represented at an oral hearing of the matter.

* Select whichever apply.

Advice about how Summary Appeal Court may deal with reference

For the purposes of Part 5A of the Act (which relates to appeals to the Summary Appeal Court), the reference by the Judge Advocate General must, with all necessary modifications, be treated as an appeal by you to that court.

The Summary Appeal Court may deal with the reference by way of a hearing on the papers if—

- (a) you indicate in writing that you do not want to be legally represented at an oral hearing of the matter; or
- (b) you otherwise indicate that you do not require an oral hearing of the matter; or
- (c) you do not provide the written advice requested in paragraph 3(b) above within 21 days of the date of this notice.

If you wish to apply for legal aid, you may do so in the form prescribed for that purpose, which may be obtained from the Registrar at the address given below.

Date: [day/month/year]

Signature:

(Registrar, Summary Appeal Court)

The address to respond to this notice is:

The Registrar

Summary Appeal Court of New Zealand

C/Headquarters, New Zealand Defence Force, Wellington

Form 4

r 30

Petition to Judge Advocate General for special reference

Section 129(4), Armed Forces Discipline Act 1971

To the Judge Advocate General
C/Headquarters, New Zealand Defence Force, Wellington

Name of person found guilty of offence:

Offence(s) of which convicted:

Date of finding by disciplinary officer:

Date when punishment imposed:

Disciplinary officer:

Punishment(s)/order(s):

I, [*full name*], petition you to refer to the Summary Appeal Court under section 129 of the Armed Forces Discipline Act 1971 the following finding(s) of guilty/punishment(s)/order(s)* made by the disciplinary officer in respect of the person named above:

- * finding(s) of guilty made: [*specify*]
- * punishment or combination of punishments imposed: [*specify*]
- * order for compensation: [*specify*]
- * order for restitution: [*specify*]
- * order to come up if called upon.

I refer those finding(s)/punishment(s)/order(s)* for the following reasons: [*specify in sufficient detail to fully inform the Judge Advocate General of issues relevant to appeal*].

* Select whichever apply.

Date: [*day/month/year*]

Signature of petitioner:

Address:

Form 5

r 43

Notice of abandonment of appeal

In the Summary Appeal Court

To the Registrar of the Summary Appeal Court
C/Headquarters, New Zealand Defence Force, Wellington

I, [full name], having sent to the Summary Appeal Court a notice of appeal or application for leave to appeal against [set out the determination of the disciplinary officer against which you are appealing], now give you notice that—

- (a) I do not intend further to prosecute my appeal; and
- (b) as from the date of this notice, I abandon all further proceedings concerning that appeal.

Date: [day/month/year]

Signature:

* Witness to signature of [full name]:

Signature of witness:

Address:

Description:

* Signature of the appellant must be witnessed only if the appellant signs the notice in person.

Form 6

r 89(2)

Request to be brought before the Court Martial to enter plea of guilty

In the Court Martial

R v [*name*]

To the Registrar of the Court Martial
C/Headquarters, New Zealand Defence Force, Wellington

I, [*full name*], having been remanded for trial in the Court Martial on a charge of [*specify*], now wish, of my own free will, to plead guilty to that charge. I therefore request that I be brought before the Court Martial as soon as practicable so that I may plead guilty to that charge and be sentenced accordingly.

My full address (if not in custody) is: [*specify*]
Signature:

The above written request was signed before me, after having been read over to me by the accused person on [*day/month/year*].

Signature:
(counsel/defender* for accused)

* Select one.

Form 7

r 141

Petition to Reconsidering Authority

Section 153, Armed Forces Discipline Act 1971

To the Reconsidering Authority
C/Registrar of the Court Martial
Headquarters, New Zealand Defence Force, Wellington

Name of petitioner: [full name]
Offence(s) of which convicted:
Date of conviction by Court Martial:
Date when sentence passed:
Sentence:

I, the petitioner named above, petition you against the sentence imposed on me by the Court Martial on the grounds set out below: *[set out the grounds for your petition, which should be supported by relevant details]*.

Date: [day/month/year]
Signature of petitioner:

Form 8

r 145(1)

Notice of application for bail pending trial

Section 49, Court Martial Act 2007

To the Registrar of the Court Martial
C/Headquarters, New Zealand Defence Force, Wellington

Name of applicant: *[full name]*
Respondent: Director of Military Prosecutions

I, the applicant named above, apply for bail under section 49 of the Court Martial Act 2007 on the grounds and for the reasons set out below.

- 1 I am accused of committing the following offence(s) against the Armed Forces Discipline Act 1971: *[specify]*.
- 2 I am currently being held in the following prison/service penal establishment*: *[specify name of prison/establishment]*.
- 3 In making this application, I rely on the following: *[set out the grounds for your application, which should address the issues in section 49(4) of the Court Martial Act 2007, including the considerations in section 8(1) and (3) of the Bail Act 2000 and any considerations in section 8(2) of that Act that you wish the Judge to take into account, and be supported by relevant details]*.

* Select one.

I give answers as follows to the following questions:

- 1 Is any lawyer now acting for you?
- 2 If so, give his or her name and address and telephone number/fax number: *[specify]*
- 3 Have you applied, or do you intend to apply, to the Registrar of the Court Martial for a grant of legal aid?

Date: *[day/month/year]*
Signature of applicant:

Form 9

r 145(2)

Notice of application for bail pending determination of appeal

Section 50, Court Martial Act 2007

To the Registrar of the Court Martial
C/Headquarters, New Zealand Defence Force, Wellington

Name of applicant: *[full name]*

Respondent: Director of Military Prosecutions

I, the applicant named above, apply for bail under section 50 of the Court Martial Act 2007 on the grounds and for the reasons set out below.

1 I have been convicted of the following offence(s) against the Armed Forces Discipline Act 1971: *[specify—*

* *offence(s) of which convicted:*

* *date of conviction:*

* *sentence]*

and I am currently being held in the following prison/service penal establishment*: *[specify name of prison/establishment].*

2 I have appealed against my conviction/sentence/conviction and sentence* to the Summary Appeal Court/the Court Martial Appeal Court.*

3 In making this application for bail pending the determination of my appeal, I rely on the following: *[set out the grounds for your application, which should address the issues in section 50(4) of the Court Martial Act 2007, including any considerations in section 14(3) of the Bail Act 2000 that you wish the Judge to take into account, and be supported by relevant details].*

* Select whichever apply.

I give answers as follows to the following questions:

1 Is any lawyer now acting for you?

2 If so, give his or her name and address and telephone number/fax number:
[specify]

Date: *[day/month/year]*

Signature of applicant:

Form 10

r 145(4)

Notice by Director of Military Prosecutions of recommendations
in respect of application for bail

Section 52(2), Court Martial Act 2007

To the Registrar of the Court Martial
C/Headquarters, New Zealand Defence Force, Wellington

Name of applicant: *[full name]*
Respondent: Director of Military Prosecutions

Take notice that under section 52(2) of the Court Martial Act 2007 the Director of Military Prosecutions wishes to make the following recommendations to the Judge who considers the application for bail pending trial/bail pending determination of appeal* dated *[specify]* filed by the applicant named above:

* Select one.

[Specify the recommendations you wish to make and the reasons, which should address the issues in section 49(3) of the Court Martial Act 2007 (in the case of an application for bail pending trial), or the issues in section 50(3) of that Act (in the case of an application for bail pending determination of appeal) and be supported by relevant details.]

Date: *[day/month/year]*
Signature of Director of Military Prosecutions:

Form 11

r 146(1)

Warrant to arrest for absconding, breaching bail condition, or failing to appear

Sections 53 and 54, Court Martial Act 2007

To every constable
and

To every provost officer

On [date] a sworn complaint was made that—

* on [date] [full name], of [address] (the **person released on bail**), at [place] on [date], has engaged in behaviour of a kind described in section 53(1)(a) of the Court Martial Act 2007, namely that the person released on bail—

- (a) has absconded or is about to abscond for the purpose of evading justice; or
- (b) has contravened or failed to comply with a condition of bail.

or

* on [date] [full name], of [address] (the **person released on bail**), engaged in behaviour of a kind described in section 53(1)(b) of the Court Martial Act 2007, namely that the person released on bail—

- (a) did not attend personally at the time and place specified in the grant of bail; or
- (b) did not attend personally at the time and place to which, during the course of the proceedings, the hearing was adjourned.

* Select the paragraph that applies.

I am satisfied that there are grounds for the issue of a warrant to arrest the person released on bail.

I direct you to arrest the person released on bail and bring him or her before a Judge of the Court Martial as soon as possible under section 54 of the Court Martial Act 2007.

For the purpose of executing this warrant, the member of the police, the provost officer, or a person lawfully exercising the authority under or on behalf of a provost officer, may at any time enter on to any premises, by force if necessary, if the member of the police, the provost officer, or the person lawfully exercising authority under or on behalf of a provost officer has reasonable grounds to believe that the person released on bail is on those premises.

Date: [day/month/year]

Signature:

(Judge of the Court Martial)

Form 12

r 146(2)

Warrant to arrest for absconding, breaching bail condition, or failing to appear

Sections 101B and 101C, Armed Forces Discipline Act 1971

To every constable
and

To every provost officer

On [date] a sworn complaint was made that—

* on [date] [full name], of [address] (the **person released on bail**), at [place] on [date], has engaged in behaviour of a kind described in section 101B(1)(a) of the Armed Forces Discipline Act 1971, namely that the person released on bail—

- (a) has absconded or is about to abscond for the purpose of evading justice; or
- (b) has contravened or failed to comply with a condition of bail.

or

* on [date] [full name], of [address] (the **person released on bail**), engaged in behaviour of a kind described in section 101B(1)(b) of the Armed Forces Discipline Act 1971, namely that the person released on bail—

- (a) did not attend personally at the time and place specified in the grant of bail; or
- (b) did not attend personally at the time and place to which, during the course of the proceedings, the hearing was adjourned.

* Select the paragraph that applies.

I am satisfied that there are grounds for the issue of a warrant to arrest the person released on bail.

I direct you to arrest the person released on bail and bring him or her before the Judge Advocate General as soon as possible under section 101C of the Armed Forces Discipline Act 1971.

For the purpose of executing this warrant, the member of the police, the provost officer, or a person lawfully exercising the authority under or on behalf of a provost officer, may at any time enter on to any premises, by force if necessary, if the member of the police, the provost officer, or the person lawfully exercising authority under or on behalf of a provost officer has reasonable grounds to believe that the person released on bail is on those premises.

Date: [day/month/year]

Signature:

(Judge of the Court Martial)

Form 13

r 147(1)

Witness summons

Section 150C, Armed Forces Discipline Act 1971

In the matter of proceedings before a disciplinary officer under the Armed Forces Discipline Act 1971

Name of accused:

To [name], of [address]

You are ordered to attend [place] on [day/month/year] at [specify] am/pm* and to give evidence for the purposes of proceedings before a disciplinary officer concerning the accused named above.

And you are ordered to bring with you and produce at the same time and place the following: [specify the papers, documents, records, or things in the person's possession or under the person's control to be produced].

* Select one.

Failure to attend

If you fail without reasonable excuse to comply with this summons, the disciplinary officer may order that you be arrested and taken before the nearest District Court, which may find you guilty of contempt of a military tribunal under the Armed Forces Discipline Act 1971. The penalty for contempt of a military tribunal under that Act is imprisonment for a term not exceeding 1 month or a fine not exceeding \$1,000, or both.

Date: [day/month/year]

Signature:

(Disciplinary officer)

Form 14

r 147(2)

Witness summons

Section 150C, Armed Forces Discipline Act 1971

In the Summary Appeal Court
Name of appellant:

To [name], of [address]

You are ordered to attend at the Summary Appeal Court at [place] on [day/month/year] at [specify] am/pm* to give evidence for the purposes of proceedings concerning the appellant named above.

And you are ordered to bring with you and produce at the same time and place the following: [specify the papers, documents, records, or things in the person's possession or under the person's control to be produced].

* Select one.

Failure to attend

If you fail without reasonable excuse to comply with this summons, the Summary Appeal Court may order that you be arrested and taken before the nearest District Court, which may find you guilty of contempt of a military tribunal under the Armed Forces Discipline Act 1971. The penalty for contempt of a military tribunal under that Act is imprisonment for a term not exceeding 1 month or a fine not exceeding \$1,000, or both.

Date: [day/month/year]

Signature:

(Judge of the Summary Appeal Court/Registrar of the Summary Appeal Court*)

* Select one.

Form 15

r 147(3)

Witness summons

Section 45, Court Martial Act 2007

In the Court Martial
R v [name]

To [Name, place of residence, occupation]

You are ordered to attend before the Court Martial at [place] on [day/month/year] at [specify] am/pm* and from day to day after that until you are discharged, to give evidence in the proceedings named above.

And you are ordered to bring with you and produce at the same time and place the following: [specify the papers, documents, records, or things in the person's possession or under the person's control to be produced].

* Select one.

Failure to attend

If you fail without reasonable excuse to comply with this summons, the Court Martial may order that you be arrested and brought before the nearest District Court, which may find you guilty of contempt of a military tribunal under the Armed Forces Discipline Act 1971. The penalty for contempt of a military tribunal under that Act is imprisonment for a term not exceeding 1 month or a fine not exceeding \$1,000, or both.

Date: [day/month/year]

Signature:

(Judge of the Court Martial/Registrar of the Court Martial*)

* Select one.

Michael Webster,
for Clerk of the Executive Council.



COURT MARTIAL ACT 2007

Public Act 2007 No 101
 Date of assent 13 November 2007
 Commencement see section 2

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The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Court Martial Act 2007.

2 Commencement

This Act comes into force on a date to be appointed by the Governor-General by Order in Council, and 1 or more orders may be made appointing different dates for different provisions.

PART 1**Preliminary provisions relating to Court Martial**

Subpart 1—Preliminary

3 Purpose of this Act

The purpose of this Act is—

- (a) to establish a permanent Court of record, called the Court Martial of New Zealand, as a replacement for the ad hoc Courts-martial provided for under Part 6 of the Armed Forces Discipline Act 1971; and
- (b) to provide for the Court Martial's jurisdiction and related matters; and
- (c) to repeal Part 6 of the Armed Forces Discipline Act 1971.

4 Overview of this Act

- (1) Part 1 deals with preliminary matters, establishes the Court Martial, provides for the appointment of Judges of the Court Martial, sets out the composition of the Court Martial for proceedings (including the procedure for the assignment of military members), and states the duties of members of the Court.
- (2) Part 2 relates to the jurisdiction of the Court Martial, the procedural requirements for the Court, and the Court's powers in relation to proceedings (for example, the power to grant bail).
- (3) Part 3 sets out various miscellaneous and administrative provisions (including provisions for transitional matters, the repeal of Part 6 of the Armed Forces Discipline Act 1971, and consequential amendments to other enactments).
- (4) This section is only a guide to the general scheme and effect of this Act.

5 Interpretation

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

1971 Act means the Armed Forces Discipline Act 1971

Chief Judge means the Chief Judge of the Court Martial appointed under section 12

Court Martial means the Court Martial of New Zealand established under section 8

defender means a member of the Armed Forces who undertakes the defence of the accused at the Court Martial

Deputy Chief Judge means a Deputy Chief Judge of the Court Martial appointed under section 13

Director of Military Prosecutions means the person appointed under section 101E of the 1971 Act

Discipline Committee means the Armed Forces Discipline Committee established under section 160 of the 1971 Act

Judge —

- (a) means a Judge of the Court Martial; and
- (b) includes the Chief Judge and a Deputy Chief Judge

member of the Court Martial means a Judge or a military member

military member, in relation to the Court Martial, means an officer or a warrant officer who is assigned by the Registrar to be a member of that Court

Registrar means the Registrar of the Court Martial

rules of procedure means rules of procedure made under section 150 of the 1971 Act

sentencing guidelines means sentencing guidelines produced by the Discipline Committee and published by the Chief of Defence Force as Defence Force Orders

serious offence has the meaning given by section 21(1)(b)(i)

substitute military member has the meaning given by section 27.

- (2) Any term or expression that is defined in the 1971 Act and used, but not defined, in this Act has the same meaning as in the 1971 Act.

6 This Act to be read with 1971 Act

- (1) This Act is to be read in conjunction with the 1971 Act.
- (2) Unless the context otherwise requires, the provisions of the 1971 Act and any regulations made under that Act apply to the extent that they are applicable and with any necessary modifications.
- (3) However, if there is any inconsistency between the provisions of this Act and any provisions of the 1971 Act or any regulations made under that Act, this Act prevails.
- (4) This section applies in addition to, and does not limit, section 5(2).

7 This Act binds the Crown

This Act binds the Crown.

Subpart 2—Establishment of Court Martial

Court Martial established

8 Court Martial of New Zealand established

- (1) A Court of record called the Court Martial of New Zealand is established.
- (2) In addition to the jurisdiction and powers specially conferred on the Court Martial by this or any other Act, the Court has all the powers inherent in a Court of record.

9 Court Martial must sit in divisions

- (1) For the purposes of any proceedings in the Court Martial, the Court must sit in divisions each comprising 1 Judge.
- (2) Each division of the Court Martial may exercise all the powers of the Court.
- (3) A division of the Court Martial may exercise any powers of the Court even though 1 or more divisions of the Court are exercising any powers of the Court at the same time.

Judges of Court Martial

10 Judges of Court Martial

- (1) The Court Martial comprises—
 - (a) 1 Judge who is to be the Chief Judge of the Court Martial; and
 - (b) at least 6 other Judges.
- (2) The Court Martial's jurisdiction is not affected by a vacancy in the number of its Judges.

11 Eligibility for appointment as Judge

- (1) A person must not be appointed as a Judge unless he or she—
 - (a) has held a practising certificate as a barrister or solicitor of the High Court for at least 7 years; or
 - (b) is a District Court Judge.
- (2) A District Court Judge who is appointed as a Judge of the Court Martial may sit as, or exercise any of the powers of, a District Court Judge.

12 Appointment of Chief Judge

- (1) The Governor-General may, by warrant, appoint a person as the Chief Judge.
- (2) A person must not be appointed as the Chief Judge unless he or she—
 - (a) is appointed to, or holds, the office of Judge Advocate General; or
 - (b) if the office of Judge Advocate General is vacant, is eligible for appointment as a Judge under section 11.

13 Appointment of Deputy Chief Judges

- (1) The Governor-General may, by warrant, appoint 1 or more Deputy Chief Judges.
- (2) A person must not be appointed as a Deputy Chief Judge unless he or she—
 - (a) is appointed to, or holds, the office of Deputy Judge Advocate General; or
 - (b) if the office of Deputy Judge Advocate General is vacant, is eligible for appointment as a Judge under section 11.
- (3) A Deputy Chief Judge may act in place of the Chief Judge if,—
 - (a) because of illness or absence from New Zealand, or for any other reason, the Chief Judge is unable to exercise the duties of that office; or
 - (b) the office of Chief Judge is vacant.
- (4) While acting in place of the Chief Judge, a Deputy Chief Judge—
 - (a) may perform the functions and duties of the Chief Judge; and
 - (b) may for that purpose exercise all the powers of the Chief Judge.

14 Appointment of other Judges

- (1) The Governor-General may, by warrant, appoint a person as a Judge.
- (2) Judges who are appointed under this section have seniority among themselves according to the dates of their appointment.

15 Notice requirement for appointment of Chief Judge, Deputy Chief Judges, or other Judges

The Chief of Defence Force must arrange for notice of an appointment under any of sections 12 to 14 to be published in the Gazette as soon as practicable after the appointment.

16 Protection of Judges against removal from office

- (1) A Judge may not be removed from office except by the Sovereign or the Governor-General, acting upon the address of the House of Representatives.
- (2) An address under subsection (1) may be moved only on the ground of—
 - (a) the Judge's misbehaviour; or
 - (b) the Judge's incapacity to discharge the functions of the Judge's office.

17 Judges must not hold other offices

- (1) A Judge must not undertake any other paid employment or hold any other office (whether paid or not) unless the Governor-General is satisfied that the employment or other office is compatible with judicial office.
- (2) Subsection (1) is subject to section 11(2).

18 Judges to have immunities of High Court Judges

A Judge has all the immunities of a Judge of the High Court.

19 Age of retirement

- (1) Each Judge, except the Chief Judge, must retire from office on attaining the age of 70 years.
- (2) The Chief Judge must retire from office on attaining the age of 75 years.

20 Salaries and allowances of Judges

- (1) Each Judge is to be paid, out of public money, without further authority than this section,—
 - (a) a salary at the rate that the Remuneration Authority determines; and
 - (b) any allowances that are determined by the Remuneration Authority; and
 - (c) any additional allowances (being travelling allowances or other incidental or minor allowances) that may be determined by the Governor-General.
- (2) In the case of the Chief Judge or a Deputy Chief Judge, the rate of salary and the allowances determined may be higher than those for the other Judges.
- (3) The salary of a Judge is not to be reduced while the Judge holds office.
- (4) The salary and allowances payable for a period during which a Judge acts on a parttime basis must be calculated and paid on a pro rata basis as a proportion of the salary and allowances for a fulltime equivalent position.
- (5) For the purpose of subsection (3), the payment of salary and allowances on a pro rata basis under subsection (4) is not a reduction of salary.
- (6) Any determination made under subsection (1), and any provision of the determination, may be made so as to come into force on a date specified in the determination, being the date of the making of the determination or any other date, whether before or after the date of the making of the determination or the date of the commencement of this section.
- (7) Every determination made under subsection (1), and every provision of the determination, for which no date is specified under subsection (6) comes into force on the date of the making of the determination.

Subpart 3—Constitution of Court Martial for proceedings

Composition of Court Martial

21 Composition of Court Martial

- (1) For the purpose of any trial in the Court Martial and of any proceedings under section 63, the Court must consist of—
 - (a) 1 Judge; and
 - (b) either of the following:

- (i) 5 military members if the proceedings relate to an offence for which the maximum penalty is life imprisonment or a term of imprisonment of 20 years or more (a serious offence); or
 - (ii) 3 military members in any other case.
- (2) For the purpose of any other proceedings in the Court Martial, the Court may consist of 1 Judge.
- (3) The Chief Judge must assign the Judge for the proceedings.
- (4) The Registrar must assign the military members in accordance with sections 22 to 26 and, as the case may be, section 28.

Assignment of military members of Court Martial

22 Qualifications for membership

A person is qualified to sit as a military member only if he or she—

- (a) is a member of the Armed Forces; and
- (b) has served in the Armed Forces for a period of more than 3 years (whether continuously or in aggregate); and
- (c) is not disqualified under section 23.

23 Disqualifications for membership

A person is disqualified to sit as a military member if he or she—

- (a) has been the commanding officer of the accused at any time between the date on which the accused was charged and the date of the trial; or
- (b) is the prosecutor or a witness for the prosecution; or
- (c) has investigated the charge against the accused or was the officer who made the preliminary inquiry into the case; or
- (d) was the disciplinary officer who acted under Part 5 of the 1971 Act in respect of the charge against the accused; or
- (e) was a member or judge advocate of a previous Court that tried the accused in respect of the same offence; or
- (f) has held, or was one of the persons holding, an inquiry under the 1971 Act into matters relating to the subject matter of the charge against the accused; or
- (g) has a personal interest in the case.

24 Registrar must consider other factors in assigning military members

- (1) In any proceedings in the Court Martial where the accused is an officer, the Registrar must assign—
- (a) 5 officers to be military members if the proceedings relate to a serious offence; or

- (b) 3 officers to be military members in any other case.
- (2) In any proceedings in the Court Martial where the accused is a rating, soldier, or airman, the Registrar may assign—
- (a) any of the following to be military members if the proceedings relate to a serious offence:
 - (i) 5 officers; or
 - (ii) 4 officers and 1 warrant officer; or
 - (iii) 3 officers and 2 warrant officers; or
 - (b) either of the following to be military members in any other case:
 - (i) 3 officers; or
 - (ii) 2 officers and 1 warrant officer.
- (3) Unless the Registrar is of the opinion that it is not reasonably practicable to do so, the Registrar—
- (a) must assign military members whose ranks reflect—
 - (i) the seniority of the accused; and
 - (ii) the seriousness of the charge against the accused; and
 - (b) must assign at least 1 military member who belongs to the same component of the Navy, Army, or Air Force, as the case may be, as the accused; and must not assign officers or warrant officers who are all—
 - (i) from the same ship or unit as the accused; or
 - (ii) from 1 ship or unit.

25 Officers of other forces may be assigned as military members in certain circumstances

- (1) This section applies if—
- (a) it is necessary to try an accused at a particular place or under particular circumstances; and
 - (b) because of that place or those circumstances, the Registrar considers that the minimum number of officers required by section 24(1) or (2) cannot, having regard to the operational requirements of the Armed Forces, be assigned as military members.
- (2) The Registrar may assign an officer of a force of another State to be a military member if that State has been declared to be serving together with a New Zealand force under section
- (3) However, only 1 officer may be assigned as a military member under subsection (2), and that person may not be assigned unless he or she has served as an officer for a period of more than 3 years (whether continuously or in aggregate).

26 Procedure for assigning military members

- (1) The Registrar must give written notice to—
 - (a) each person who is assigned as a military member; and
 - (b) the accused in the proceedings.
- (2) The notice under subsection (1)(a) must state that—
 - (a) the person has been assigned as a military member; but
 - (b) the assignment is to be confirmed pending any objections made by the accused in accordance with section 27.
- (3) The notice under subsection (1)(b) must—
 - (a) set out the names and particulars of the persons who have been assigned as military members; and
 - (b) state that the accused has the right to object to the Registrar in accordance with section 27.

27 Accused may object against assignment of person as military member

- (1) The accused may object to the Registrar about the assignment of any person as a military member on the ground that the person—
 - (a) might not act, or is not in a position to act, impartially; or
 - (b) is not qualified to sit as a military member under section 22.
- (2) An objection under subsection (1) must—
 - (a) be in writing; and
 - (b) specify the ground of the objection; and
 - (c) be made within the time prescribed in the rules of procedure; and
 - (d) be served on the Registrar.
- (3) On receiving an objection made in accordance with subsection (2), the Registrar must—
 - (a) consider the objection; and
 - (b) decide whether to accept or reject the objection.
- (4) If the Registrar accepts the objection, the Registrar must—
 - (a) with sections 22 to 26 and 28; and
 - (b) give written notice of that assignment to—
 - (i) the substitute military member; and
 - (ii) the person whose assignment was objected to by the accused (the impugned person); and
 - (iii) the accused.

- (5) To avoid doubt, the impugned person must be treated as if that person had retired from the Court Martial on the date on which the notice under subsection (4)(b)(ii) is given.
- (6) If the Registrar rejects the objection,—
 - (a) the impugned person is confirmed as a military member; and
 - (b) the Registrar must give written notice of that fact to the impugned person and the accused.

28 Substitute military members

- (1) The Registrar may assign—
 - (a) an officer to act as a substitute military member for another officer; or
 - (b) a warrant officer to act as a substitute military member for another warrant officer.
- (2) A substitute military member may be assigned to fill a vacancy in the military membership of the Court Martial if a military member—
 - (a) dies or becomes seriously ill before the beginning, or in the course, of the trial; or
 - (b) is absent or is found to be disqualified to sit as a military member; or
 - (c) retires from the Court as a result of an objection under section 27; or
 - (d) is found guilty of contempt of the Court Martial under section 32.
- (3) The accused may object to the Registrar about the assignment of any person as a substitute military member and the provisions of section 27 apply, with all necessary modifications, to that substitute military member.

Subpart 4—Duties of members of Court Martial

Duties of Judge

29 Duties of Judge: general

- (1) A Judge must act impartially at all times.
- (2) A Judge must be present whenever the Court Martial is sitting, whether in open or closed Court, except when the Court is deliberating on its findings at a trial or on a reconsideration of its findings.
- (3) A Judge must (without prejudice to the Judge's duty under the rules of procedure) take all necessary steps to ensure that the defence of the accused is not prejudiced by the ignorance of the accused, or by any incapacity of the accused to state his or her case intelligibly or to question witnesses, or in any other way.
- (4) A Judge may call or recall any witness that he or she considers should be questioned on any matter that the Judge considers requires clarification.
- (5) A Judge must ensure that a proper record of any proceeding is made and is kept in safe custody in accordance with the rules of procedure.

30 Duties of Judge at trial

- (1) A Judge must ensure that a trial is conducted—
- (a) in accordance with this Act, the 1971 Act, and the rules of procedure; and
 - (b) in a manner that is appropriate for a Court of justice.
- (2) In particular, a Judge must act as follows:
- (a) rule on any informality or defect in—
 - (i) the charge sheet; or
 - (ii) the constitution of the Court Martial; or
 - (iii) any other matter relating to the proceeding:
 - (b) ensure that the prosecutor and the defender or counsel conduct themselves in accordance with the rules of procedure:
 - (c) ensure that justice is administered and that the accused has a fair trial:
 - (d) afford the accused every reasonable opportunity to make his or her:
 - (e) ensure that the accused refrains from making remarks contemptuous of, or disrespectful towards, the Court Martial and from using insulting language:
 - (f) ensure that no officer under instruction who is present expresses an opinion to a member of the Court Martial on any matter relating to the trial before the Court has announced its findings, nor on sentence before the Court has passed sentence:
 - (g) after the final addresses on behalf of the prosecution and the accused, sum up the evidence and advise the military members on the application of the law to the case before they retire to deliberate on their findings:
 - (h) if the military members declare a finding of guilty (including any finding authorised by sections 56 to 59) and the Judge is of the opinion that the finding is contrary to law, advise the military members once (but only once) more of the findings that are, in the Judge's opinion, open to them in law.
- (3) For the purposes of subsection (2)(d), a Judge—
- (a) must not unnecessarily restrict the accused in the manner in which the accused makes the defence; and
 - (b) must not stop the presentation of the defence on the ground of irrelevance except in extreme cases (although the Judge may caution the accused to avoid the defence becoming irrelevant).
- (4) Despite subsection (2)(e), a Judge must not prevent the accused from impeaching the evidence or motive of any witness, or charging any other person with any blame or criminality, if to do so is a part of the case for the defence (although the Judge may caution the accused of his or her liability to cross-examination if he or she follows that course).

*Duties of military members***31 Duties of military members**

- (1) A military member must at all times—
- (a) act in a manner that is consistent with achieving a fair trial for the accused; and
 - (b) behave in a manner that is appropriate for a member of a Court of justice.
- (2) In particular, a military member—
- (a) must consider all the evidence admitted by the Judge at the trial; and
 - (b) must vote impartially on the finding and, if necessary, on the sentence; and
 - (c) must not disclose any opinion of a member of the Court Martial or how that member voted on the finding or sentence, or both.
- (3) A military member may ask questions to clarify any matters at the trial.

32 Failure to attend Court Martial is contempt of Court

- (1) A military member commits a contempt of the Court Martial if that person fails, without reasonable excuse, to—
- (a) attend all the sittings of the Court in respect of the proceedings for which the military member was assigned; and
 - (b) perform the functions or duties of a military member of the Court during the period of that person's membership of the Court.
- (2) For the purposes of subsection (1), the period of a person's membership of the Court Martial—
- (a) begins on the date on which the person receives the written notice referred to in section 26(1)(a) or 27(4)(b)(i), as the case may be; and
 - (b) ends on the date on which the person—
 - (i) retires from the Court as a result of an objection under section 27; or
 - (ii) is released from the Court on the discharge of the military members under section 48; or
 - (iii) is discharged by the Judge from his or her functions and duties as a military member on the completion of the proceedings concerned.
- (3) If a military member is alleged to have committed a contempt of the Court Martial under subsection (1), the Judge—
- (a) must inquire into the alleged contempt; and
 - (b) may find the military member guilty of the contempt after hearing—
 - (i) any witness against or on behalf of the military member; and
 - (ii) any statement that may be offered in defence.
- (4) The penalty for contempt of the Court Martial under this section is imprisonment for a term not exceeding 21 days or a fine not exceeding \$1,000.

- (5) To avoid doubt, a military member found guilty of contempt of the Court Martial under this section must be treated as if that person had retired from his or her membership of the Court on the date of that finding.

Other provisions relating to role of military members

33 Seniority of military members

- (1) The most senior officer assigned by the Registrar as a military member is to be the senior military member of the Court Martial.
- (2) The other persons assigned by the Registrar as military members have seniority among themselves according to their rank and according to their seniority within that rank.

34 Senior military member must submit report on command issues

- (1) The senior military member must submit a written report on any command issues that arise in the course of any proceedings before the Court Martial to the superior commander who referred the charges that are the subject of those proceedings to the Director of Military Prosecutions.
- (2) The superior commander must forward a copy of a report under subsection (1) to —
- (a) the Chief of the relevant service; and
 - (b) in the case of units under joint command, the commander of any joint force; and
 - (c) the Discipline Committee.
- (3) This section is subject to section 35.

35 Prohibition on taking into account information about conduct of military members

- (1) This section applies to information about the way in which a military member, in the course of any proceedings before the Court Martial,—
- (a) conducted himself or herself as a member of the Court; or
 - (b) performed his or her functions or duties in that capacity.
- (2) Any information to which this section applies must not be taken into account in any decision that affects, or is likely to affect, the conditions of service within the Armed Forces of the military member to whom that information relates.
- (3) **Conditions of service** includes prospects of promotion, postings, or career enhancements.

PART 2

Jurisdiction, procedures, and powers

Subpart 1—Jurisdiction and sittings of Court Martial

General jurisdiction

36 Jurisdiction of Court Martial

- (1) The Court Martial has the jurisdiction conferred by section 78 of the 1971 Act.
- (2) In addition, the Court Martial must sit to hear and determine—
 - (a) every charge laid before the Registrar by the Director of Military Prosecutions:
 - (b) every application made by the Director of Military Prosecutions under section 63(2):
 - (c) every other application made to the Court under this Act (for example, an application for bail) or the 1971 Act.

Sittings of Court Martial

37 Requirements for sittings of Court Martial

- (1) The Court Martial—
 - (a) must sit in open Court unless section 38 or 39 applies; and
 - (b) must sit in the presence of the accused; and
 - (c) may sit in any place, whether in New Zealand or elsewhere; and
 - (d) may conduct its proceedings by teleconference or by any means of communication that allows individuals a reasonable opportunity to participate in the proceedings.
- (2) Despite subsection (1)(b), the Court Martial may sit in the absence of the accused if the accused misconducts himself or herself by so interrupting the proceedings as to render the continuation of those proceedings in his or her presence impracticable.
- (3) Subsection (1)(b) and (d) are subject to the rules of procedure.
- (4) A sitting of the Court Martial may be adjourned from time to time and from place to place.

38 When Court Martial must hold proceedings in closed Court

- (1) The Court Martial must hold its proceedings in closed Court while—
 - (a) the Judge sits alone to rule on any question of law or procedure in accordance with section 44:
 - (b) the military members deliberate on the finding in accordance with section 55:
 - (c) the Judge and the military members deliberate on the sentence in accordance with section 61.

- (2) The Court Martial may hold its proceedings in closed Court on any other deliberation.
- (3) When the Court Martial holds its proceedings in closed Court, only the following persons may be present:
 - (a) the members of the Court referred to in subsection (1)(a), (b), or (c) (as the case requires):
 - (b) in the case of proceedings referred to in subsection (1)(a), the persons referred to in section 39(2)(c)(iii) to (vii):
 - (c) any other persons authorised by the Judge.

39 Judge may limit scope of open Court

- (1) In any proceedings in the Court Martial, the Judge may make any of the orders specified in subsection (2) limiting the scope of open Court if the Judge considers that—
 - (a) a statement may be made or evidence given in the course of those proceedings that might lead to the disclosure of information that would or might—
 - (i) be directly or indirectly useful to the enemy or any foreign country; or
 - (ii) be otherwise harmful to New Zealand; or
 - (b) the making of the order—
 - (i) is necessary in the interests of justice; or
 - (ii) is desirable in the interests of public morality; or
 - (iii) is necessary for the protection of the reputation of a victim of an alleged sexual offence or offence of extortion.
- (2) The orders referred to in subsection (1) are as follows:
 - (a) an order forbidding publication of any report or account of the whole or any part of the proceedings, including any evidence adduced or submissions made:
 - (b) an order forbidding the publication of the name of any person connected, whether as a witness or otherwise, with the proceedings or of any name or particulars likely to lead to the identification of that person:
 - (c) an order excluding all or any persons, except the following:
 - (i) a military member:
 - (ii) an officer under instruction:
 - (iii) the Director of Military Prosecutions or any person acting on behalf of the Director:
 - (iv) the accused and any escort of the accused:
 - (v) the accused's counsel or defender:
 - (vi) the Registrar or any other officer of the Court Martial:
 - (vii) an interpreter required in the proceedings:

(viii) a person expressly permitted by the Judge to be present.

- (3) However, the Judge may make an order specified in subsection (2)(c) that has the effect of excluding any accredited news media reporter from the proceedings only on the grounds specified in subsection (1)(a), but not on any of the grounds specified in subsection (1)(b).

40 Duration of order limiting scope of open Court

An order specified in section 39(2) limiting the scope of open Court—

- (a) may be made for a limited period or permanently; and
- (b) if made for a limited period, may be renewed for a further period or periods or made permanent by the Court Martial at any time; and
- (c) if made permanently, may be reviewed by the Court Martial at any time.

41 Application of section 42

Section 42 applies to any proceedings under the 1971 Act (**a case involving sexual violation**) in which a person is charged with, or is to be sentenced for, an offence against—

- (a) section 74 of that Act, where the corresponding civil offence is—
 - (i) sexual violation:
 - (ii) attempted sexual violation:
 - (iii) assault with intent to commit sexual violation:
 - (iv) an offence against section 129A of the Crimes Act 1961 (sexual conduct with consent induced by certain threats):
 - (v) an offence against section 142A of the Crimes Act 1961 (compelling indecent act with an animal):
 - (vi) section 75 of that Act, where the offence is one of aiding, abetting, inciting, counselling, procuring, or conspiring with any person to commit any offence referred to in paragraph (a)(i) to (v).

42 Special provisions in cases involving sexual violation

- (1) While the complainant in a case involving sexual violation is giving oral evidence (whether in chief or under cross-examination or on re-examination), no person may be present except the following:
- (a) the Judge for the proceeding;
 - (b) a military member;
 - (c) an officer under instruction;
 - (d) the Director of Military Prosecutions or any person acting on behalf of the Director;
 - (e) the accused and any escort of the accused;
 - (f) the accused's counsel or defender;
 - (g) the Registrar or any other officer of the Court Martial;

- (h) an interpreter required in the proceedings:
 - (i) an accredited news media reporter:
 - (j) a person whose presence is requested by the complainant:
 - (k) a person expressly permitted by the Judge to be present.
- (2) Before the complainant in a case involving sexual violation commences to give evidence, the Judge must—
- (a) ensure that no person other than one referred to in subsection (1) is present; and
 - (b) advise the complainant of the complainant's right to request the presence of any person under subsection (1)(j).
- (3) If, in a case involving sexual violation, the Judge is of the opinion that the interests of the complainant so require, he or she may make an order forbidding publication of any report or account giving details of the criminal acts alleged to have been performed on the complainant or of any acts that the complainant is alleged to have been compelled or induced to perform or consent to or acquiesce in.
- (4) This section does not limit or affect the powers of the Judge to make an order specified in section 39(2) that excludes any person from, or forbids the publication of any report or account of, the proceedings.

Subpart 2—Procedures

43 Preliminary procedure

- (1) The Registrar must—
- (a) fix the time and place for each sitting of the Court Martial; and
 - (b) give written notice of the time and place fixed to—
 - (i) the accused; and
 - (ii) the Director of Military Prosecutions; and
 - (iii) the Judge for the proceedings; and
 - (iv) the military members for the proceedings.
- (2) At the beginning of the trial, the notice under subsection (1)(b) must—
- (a) be accompanied by a copy of the charge sheet certified by the Director of Military Prosecutions in accordance with section 101F(c) of the 1971 Act and laid before the Registrar in accordance with section 101F(e) of that Act; and
 - (b) in the case of a notice to the accused, be accompanied by a copy of all documents submitted to the Judge by the Director of Military Prosecutions in relation to the charge; and
 - (c) in the case of a notice to the military members, be accompanied by an information sheet that—
 - (i) describes the functions and duties of military members; and
 - (ii) is in the prescribed form.

44 Judge may sit alone to rule on question of law or procedure

- (1) The Judge for the proceedings must—
- (a) rule on every question of law or procedure that arises during any trial in the Court Martial; and
 - (b) sit in the absence of the military members to determine the question of law or procedure if the Judge considers it would be desirable in the interests of justice to do so.
- (2) To avoid doubt, the Judge may sit alone under subsection (1)(b) before or after the appointment of the military members.
- (3) A ruling under subsection (1) must be followed by the military members.
- (4) In this section, question of law includes any question arising in respect of—
- (a) a plea to the general jurisdiction of the Court Martial;
 - (b) a plea in bar of trial;
 - (c) an application for the separation of trials;
 - (d) an application for the severance of charge sheets;
 - (e) an application for the severance of charges;
 - (f) a submission that there is no case to answer;
 - (g) the admissibility of evidence;
 - (h) an application for a ruling referred to in section 30(2)(a);
 - (i) an application for an order specified in section 39(2);
 - (j) an order under any of sections 139 to 141 of the Criminal Justice Act 1985 (as applied to proceedings under the 1971 Act by section 145 of the 1971 Act);
 - (k) an application for discovery;
 - (l) the fitness of the accused to stand trial.

45 Power to summon witnesses

- (1) The Judge for the proceedings or the Registrar may issue a summons requiring any person to—
- (a) attend at the time and place specified in the summons; and
 - (b) give evidence; and
 - (c) produce any papers, documents, records, or things in that person's possession or under that person's control that are relevant to the subject of the relevant proceedings.
- (2) A summons—
- (a) must be in the prescribed form; and
 - (b) may be issued—

- (i) on the initiative of the Judge or Registrar; or
- (ii) on the application of the Director of Military Prosecutions or the accused.

46 Service of summons

- (1) A summons to a witness may be served—
 - (a) by delivering it to the person summoned; or
 - (b) by posting it by registered letter addressed to the person summoned at that person's usual place of residence.
- (2) The summons must,—
 - (a) if it is served under subsection (1)(a), be served at least 24 hours before the attendance of the witness is required;
 - (b) if it is served under subsection (1)(b), be served at least 10 days before the date on which the attendance of the witness is required.
- (3) If the summons is posted by registered letter, it is deemed for the purposes of subsection (2)(b) to be served at the time when the letter would be delivered in the ordinary course of post.

47 Administration of oaths

- (1) An oath in the prescribed form must be administered to—
 - (a) every military member;
 - (b) every officer under instruction in the Court Martial;
 - (c) every person responsible for recording or transcribing the proceedings in the Court;
 - (d) every interpreter attending the Court.
- (2) Every witness before the Court must be examined on oath administered in the prescribed form.
- (3) If the Court considers that a child who is called as a witness does not understand the nature of an oath, the child's evidence may be received even though it is not given on oath, so long as the Court is of the opinion that the child—
 - (a) has sufficient intelligence to justify the reception of the evidence; and
 - (b) understands the duty of speaking the truth.
- (4) If any person referred to in subsection (1) or (2) objects to being sworn, or it is not reasonably practicable to administer an oath to that person in a manner appropriate to his or her religious belief, the person may be permitted to make a solemn affirmation instead of swearing an oath.
- (5) The making of an affirmation under subsection (4) has the same force and effect and has the same consequences as the taking of an oath.
- (6) Every oath or affirmation required to be administered under this Act must be administered in accordance with the rules of procedure.

*Discharge of military members***48 Discharge of military members**

- (1) The Judge—
- (a) must discharge the military members if they are unable to reach a unanimous decision on the charge; or
 - (b) may discharge the military members if, before or after the beginning of a trial, the Judge considers it to be necessary or expedient in the interests of the administration of justice.
- (2) Section 55(2) applies if subsection (1)(a) applies.
- (3) If, after the beginning of a trial, the Judge dies or is otherwise unable to attend,—
- (a) the Chief Judge must assign another Judge to be the Judge of the Court Martial; and
 - (b) that Judge must discharge the military members.
- (4) If the military members are discharged under this section, they are released from their functions and duties to the Court.

Subpart 3—Bail*General***49 Judge may grant bail pending trial**

- (1) This section applies to a person who—
- (a) is accused of committing an offence against the 1971 Act; and
 - (b) is being held in custody under that Act.
- (2) The accused is not entitled to bail as of right.
- (3) A Judge may, on application by the accused,—
- (a) grant bail to the accused:
 - (b) impose any conditions of bail that the Judge thinks fit.
- (4) In determining whether to grant bail under this section, the Judge—
- (a) must take into account the considerations set out in section 8(1) and (3) of the Bail Act 2000 and all of the following considerations:
 - (i) the seriousness of the offence:
 - (ii) whether there are urgent and exceptional circumstances that favour the granting of bail:
 - (iii) the effect on service discipline of releasing the person on bail; and
 - (b) may take into account the considerations set out in section 8(2) of the Bail Act 2000; and

(c) must not grant bail unless satisfied on the balance of probabilities that it would be in the interests of justice in the particular case to do so.

(5) The onus is on the accused to show cause why bail should be granted.

50 Judge may grant bail pending appeal

(1) This section applies to a person (the appellant) who—

- (a) has been convicted of an offence against the 1971 Act; and
- (b) is serving a sentence of imprisonment or detention under that Act in respect of the conviction pending the determination of his or her appeal against conviction or sentence, or both, to—
 - (i) the Summary Appeal Court; or
 - (ii) the Court Martial Appeal Court.

(2) The appellant—

- (a) is not entitled to bail as of right; and
- (b) may not go at large without bail.

(3) A Judge may, on application by the appellant,—

- (a) grant bail to the appellant;
- (b) impose any conditions of bail that the Judge thinks fit.

(4) In determining whether to grant bail under this section, the Judge—

- (a) must take into account all of the following considerations:
 - (i) the seriousness of the offence;
 - (ii) whether there are urgent and exceptional circumstances that favour the granting of bail;
 - (iii) the effect on service discipline of releasing the person on bail; and
- (b) may take into account the considerations set out in section 14(3) of the Bail Act 2000; and
- (c) must not grant bail unless satisfied on the balance of probabilities that it would be in the interests of justice in the particular case to do so.

(5) The onus is on the appellant to show cause why bail should be granted.

51 Time on bail pending appeal does not count as time served

Any time during which an appellant is released from imprisonment or detention on bail pending an appeal against conviction or sentence, or both, does not count as time served under any sentence.

Other provisions relating to bail

52 Procedure for bail generally

(1) If an application for bail is made under section 49(3) or 50(3), the Registrar must forward a copy of the application to the Director of Military Prosecutions.

- (2) The Director of Military Prosecutions—
 - (a) must be the respondent to the application; and
 - (b) may make recommendations to the Judge who is considering the application.
- (3) Before making a decision, the Judge must consider any recommendations that the Director of Military Prosecutions has made, including any recommendations on measures to prevent the escape of the person concerned should bail be granted.

53 Issue of warrant to arrest person absconding or breaching bail condition

- (1) A Judge may issue a warrant in the prescribed form for the arrest of a person who has been released on bail under section 49 or 50 if—
 - (a) the Judge is satisfied by evidence on oath that—
 - (i) the person has absconded or is about to abscond for the purpose of evading justice; or
 - (ii) the person has contravened or failed to comply with any condition of bail; or
 - (b) the person—
 - (i) does not attend personally at the time and place specified in the grant of bail; or
 - (ii) does not attend personally at any time and place to which during the course of the proceedings the hearing has been adjourned.
- (2) The warrant—
 - (a) must be directed to every provost officer and every member of the police;¹ and
 - (b) may be executed by—
 - (i) a provost officer:
 - (ii) a person lawfully exercising authority under or on behalf of a provost officer:
 - (iii) a member of the police.
- (3) For the purpose of executing the warrant, a person referred to in subsection (2) (b) may, at any time, enter on to any premises, by force if necessary, if he or she has reasonable grounds to believe that the person against whom the warrant is issued is on those premises.
- (4) The person executing the warrant—
 - (a) must have the warrant with him or her; and
 - (b) must produce it on initial entry and, if requested, at any subsequent time; and
 - (c) if he or she is not in uniform, produce evidence that he or she is one of the persons referred to in subsection (2)(b).

¹ **Member of the police** must be read as a reference to a constable: section 116(a) of the Policing Act 2008.

54 Person arrested under warrant for absconding or breaching bail condition must be brought before Judge

- (1) A person who is arrested under a warrant issued under section 53 must be brought before a Judge as soon as possible.
- (2) The Judge must reconsider the question of bail if satisfied that the person—
 - (a) had absconded or was about to abscond; or
 - (b) had contravened or failed to comply with any condition of bail.

Subpart 4—Findings of Court Martial

Finding on charge

55 Finding of Court Martial

- (1) The finding of the Court Martial on a charge must be determined by the unanimous vote of the military members.
- (2) If the military members are unable to reach a unanimous decision on the charge, the Judge must refer the charge back to the Director of Military Prosecutions after discharging the military members in accordance with section 48(1)(a).
- (3) The Director of Military Prosecutions may then—
 - (a) decide not to proceed with the charge; or
 - (b) lay the charge sheet again, or an amended version of the charge sheet, before the Registrar.
- (4) If subsection (3)(b) applies, the Registrar must assign new military members in accordance with sections 22 to 26 and, as the case may be, section 28.

56 Power to convict of offence other than that charged

- (1) This section applies if a provision of the 1971 Act provides that—
 - (a) an act or omission, if done or made with a certain specified intent or in certain specified circumstances, is an offence punishable by a specified punishment; and
 - (b) the same act or omission, if done or made otherwise than with that intent or in those circumstances, is an offence punishable by a less severe punishment.
- (2) An accused charged with having committed an offence with the intent or in the circumstances involving the more severe punishment may be convicted of the offence that relates to the less severe punishment.

57 Accused may be convicted of attempting to commit offence

- (1) An accused charged with an offence may, if the circumstances warrant it, be convicted of attempting to commit that offence.
- (2) An accused charged with attempting to commit an offence may be convicted of the attempt even though it is proved that he or she actually committed the offence.

58 Accused may be convicted of corresponding offence

An accused charged with an offence (**offence A**) specified in the first column of Schedule 1 may be convicted of the corresponding offence (**offence B**) specified in the second column of that schedule in relation to offence A.

59 Accused may be convicted of offence even though facts proved in evidence differ from those alleged in particulars of charge

An accused may be convicted of an offence even though the facts proved in evidence differ from the facts alleged in the particulars of the charge, if the Court Martial considers that—

- (a) the facts proved in evidence are sufficient to prove the commission of the offence to which the charge relates; and
- (b) the difference is not so material as to have prejudiced the accused in his or her defence.

60 Recording of finding on alternative charges

If the Court Martial records a conviction on a charge laid in the alternative, the Court must—

- (a) find the accused not guilty of any charge laid in the alternative to it that is placed before it on the charge sheet; and
- (b) record no finding on any alternative to it that is placed after it on the charge sheet.

*Sentence of Court Martial***61 Sentence of Court Martial**

- (1) The sentence of the Court Martial (if any) must be passed by the majority of the votes of the Judge and the military members.
- (2) However, if there is an equality of votes on the sentence, the Judge has a casting vote.

62 Order to come up for sentence if called on

- (1) If the accused is convicted of an offence, the Court Martial may, instead of passing sentence, order the accused to appear for sentence, if called on to do so within the period specified in subsection (2).
- (2) The period referred to in subsection (1) is a period not exceeding 1 year, commencing with the date of conviction, that the Court Martial may specify in the order.
- (3) If the Court Martial makes an order under subsection (1), the Court must record and attach to the record of proceedings a statement of its findings of fact in relation to the charge.
- (4) The Court Martial may make orders under section 86 or 87 of the 1971 Act in combination with an order under subsection (1).

63 Offender to come up for sentence

- (1) This section applies if an offender for whom an order is made under section 62—
- (a) is convicted or found guilty summarily of a subsequent offence against the 1971 Act or any other Act; or
 - (b) fails to comply with any other order referred to in section 62(4); or
 - (c) fails to comply with any agreement, or fails to take any measure or action, of a kind referred to in section 10(1)(b), (d), or (e) of the Sentencing Act 2002 that was brought to the attention of the Court Martial at the time the Court Martial made the order under section 62.
- (2) The Director of Military Prosecutions may, at any time within the period specified in the order, apply to the Court Martial to have the offender brought before the Court Martial to be dealt with for the original offence.
- (3) On an application under subsection (2), the offender is to be placed in close arrest and brought before the Court Martial at the time and place directed by the Registrar.
- (4) If a person appears before the Court Martial under this and the Court Martial is satisfied of any of the matters specified in subsection (1), the Court Martial—
- (a) must inquire into the circumstances of the original offence and the conduct of the offender since the order was made (including, if appropriate, the circumstances and seriousness of the subsequent offence (if any)); and
 - (b) may sentence the offender for the original offence.

64 Other offences may be taken into account in passing sentence

- (1) A person who is found guilty by the Court Martial of an offence may request the Court to take into account any other offence that the person admits to having committed, if the other offence—
- (a) is similar to that of which the person has been found guilty; and
 - (b) is not an offence that is punishable by imprisonment for life.
- (2) If a request is made under subsection (1), the Court may take the other offence into account in sentencing the accused.
- (3) If the Court takes the other offence into account, it must not, in passing sentence, impose a punishment of greater severity than the maximum punishment that it may impose for the offence of which the accused was found guilty.
- (4) The Court may exercise, in respect of any other offence taken into account under this section, any of the powers to order payment of compensation under section 86 of the 1971 Act or the restitution of property under section 87 of that Act.

65 Court Martial must adhere to sentencing guidelines

When sentencing an offender, the Court Martial must pass a sentence that is consistent with any sentencing guidelines that are relevant in the offender's case, unless the Court is satisfied that it would be contrary to the interests of justice to do so.

*Announcement of finding and sentence***66 Announcement of finding and sentence**

- (1) The Judge must announce in open Court—
 - (a) the finding of the Court Martial on each charge tried by the Court; and
 - (b) any sentence passed by the Court.
- (2) The Judge must give reasons for the sentence (if any) passed by the Court.
- (3) Subsection (4) applies if the Court Martial sentences a person—
 - (a) to be dismissed from Her Majesty's service; or 36
 - (b) to a term of imprisonment involving dismissal from Her Majesty's service.
- (4) In delivering a sentence, the Judge must state that the dismissal does not take effect—
 - (a) until the expiration of the period for lodging an appeal to the Court Martial Appeal Court against the conviction or sentence; or
 - (b) if an appeal to that Court, the Court of Appeal, or the Supreme Court is pending, until the appeal is determined.

PART 3**Miscellaneous and administrative provisions**

Subpart 1—Miscellaneous provisions

*Miscellaneous***67 Court must take judicial notice of certain matters**

- (1) The Court Martial must take judicial notice of—
 - (a) all matters of common knowledge; and
 - (b) all other matters of which judicial notice would be taken by the High Court.
- (2) The Court Martial may also take judicial notice of matters that may fairly be regarded as being within the general service knowledge of members of the Court.

68 Defence of accused

Any accused to be tried by the Court Martial may be defended—

- (a) by a lawyer; or
- (b) by a defender.

69 Proceedings not invalid for want of form, etc

No proceedings before the Court Martial may—

- (a) be held invalid by reason only of want of form; or

- (b) be liable to removal into any Court by means of any prerogative writ or order; or
- (c) be liable to review by any Court under the Judicature Amendment Act 1972 or otherwise.

70 Application of provisions of Evidence Act 2006 relating to jury trials to proceedings under this Act or 1971 Act

- (1) The provisions of the Evidence Act 2006 that relate to a trial before a jury apply, to the extent that they are applicable and subject to all necessary modifications, to proceedings of the Court Martial under this Act or the 1971 Act that involve military members as if those proceedings were proceedings that involve a jury.
- (2) The provisions of the Evidence Act 2006 referred to in subsection (1)—
 - (a) include sections 32(2)(b), 45(3)(e) and (f), 76, 82, 83(1), 98(5)(a), 105(1)(b), 109(2) and (3), 121(2), and 122 to 127; but
 - (b) do not include sections 101 and 128.

71 Evidence in proceedings under this Act or 1971 Act

- (1) The rules of evidence that apply in the High Court for criminal proceedings (including the rules of evidence contained in the Evidence Act 2006 and in any other enactment containing any rule of evidence) are the rules of evidence to be followed in proceedings of the Court Martial.
- (2) Accordingly, a person is not required to answer any question or to produce any document in proceedings of the Court Martial that he or she could not be required to answer or produce in criminal proceedings before the High Court.
- (3) This section is subject to sections 72 to 74.

72 Limits on application of section 71: evidence of general matters

- (1) Despite section 71, subsections (2) to (12) apply with respect to evidence in all proceedings under this Act or the 1971 Act.
- (2) The attestation paper purporting to be signed by a person on his or her being attested as a rating, soldier, or airman in the Armed Forces of New Zealand or in any Commonwealth force, and the declaration purporting to be made by any person upon his or her reengagement in any of the Armed Forces of New Zealand or in any Commonwealth force, is evidence of that person having given the answers to questions that he or she is represented as having given in the paper or declaration.
- (3) The enlistment of a person in any of the Armed Forces of New Zealand or in a Commonwealth force may be proved by the production of a copy of his or her attestation paper purporting to be certified to be a true copy by the officer or record officer having the custody of the attestation paper without proof of the handwriting of that officer, or of his or her having the custody of the paper.
- (4) A letter, return, or other document with respect to a person, if purporting to be issued by or on behalf of the Chief of Defence Force, or by a person authorised by the Chief of Defence Force, or by the commanding officer or the officer or record officer having the custody of the records of any portion of a Commonwealth force, or of any ship of a Commonwealth naval force to which that person appears to have belonged, or alleges that he or she belongs or had belonged, is evidence of the facts stated in that letter, return, or other document of the person—

- (a) having or not having at any time or times served in, or been discharged from, any Commonwealth force; or
 - (b) having or not having held any rank or appointment in, or been posted or transferred to, any Commonwealth force, or having or not having served in any particular country or place; or
 - (c) being or not being authorised to use or wear any service decoration, ribbon, badge, wound stripe, or emblem, the use or wearing of which by an unauthorised person is under any other Act an offence.
- (5) Copies purporting to be printed under the authority of the New Zealand Government of regulations, rules, or orders made under this Act, the 1971 Act, the Defence Act 1990, or any other Act are evidence of those regulations, rules, or orders.
- (6) Any list of members of the Armed Forces published by or under the authority of the Chief of Defence Force, or published in the Gazette, is evidence of the status and rank of the members mentioned in the list or Gazette, and of any appointment held by any of those members, and of the ship, corps, or battalion or arm or branch of the service to which any of those members belongs.
- (7) Any warrants or orders made under this Act, the 1971 Act, or the Defence Act 1990 by any service authority are deemed to be evidence of the matters and things that are directed to be stated in those warrants or orders by or under this Act, the 1971 Act, or the Defence Act 1990, and any copies of any of those warrants or orders purporting to be certified to be true copies by the officer alleged to be authorised by the Chief of Defence Force to certify them, are admissible in evidence.
- (8) If an entry is made in, or a document is filed with, any service record pursuant to this Act, the 1971 Act, or the Defence Act 1990 or pursuant to a service duty, and that entry or document purports to be signed by the commanding officer or by the officer or record officer whose duty it is to make the entry or file the document, as the case may be, that entry or document is evidence of the facts stated in them.
- (9) A copy of any entry or document (including the signature of any person who has signed it) forming part of a service record and purporting to be certified to be a true copy by the officer or record officer stated in the certificate to have the custody of the record is evidence of that entry or document.
- (10) A certificate purporting to be signed by the commanding officer of any accused, or signed by any other officer authorised by that commanding officer to give the certificate, and stating the contents of any Defence Force Order, or any general, standing, daily, or routine order, or any part of the order, made in respect of any service, force, command, or formation, or any defence area or ship, or any unit, detachment, or other part of the Armed Forces, is, in the proceedings against the accused, evidence of the matters stated in the certificate.
- (11) A certificate purporting to be signed by the commanding officer of any accused, or signed by any other officer authorised by that commanding officer to give the certificate, and stating the contents of any part of any Defence Manual, is, in the proceedings against the accused, evidence of the matters stated in the certificate.
- (12) If the issue or one of the issues in the proceedings relates to the navigation of one of Her Majesty's New Zealand ships, a navigation report prepared by a competent officer or officers appointed in accordance with the rules of procedure is evidence of the matters stated in the report.

73 Limits on application of section 71: evidence of custody at police station

- (1) Despite section 71, subsections (2) and (3) apply with respect to evidence in all proceedings under this Act or the 1971 Act against a member of the Armed by, or who has surrendered to, the New Zealand Police.
- (2) If the member has been taken to a police station in any place in New Zealand or elsewhere or has on surrender been taken into custody at any police station, then, for the purposes of any proceedings against that member, a certificate purporting to be signed by the member of the police² in charge of that police station, and stating the fact, date, and place of the arrest or surrender, is evidence of the matters so stated.
- (3) Any certificate given under subsection (2) may include a statement as to whether, at the time of the arrest, or surrender, the member was wearing the uniform of the service to which he or she belongs or civilian clothes; and that certificate is evidence of the matters so stated.

74 Limits on application of section 71: evidence of surrender, arrest, or delivery to service custody in relation to charge of desertion or absence without leave

- (1) Despite section 71, subsections (2) to (5) apply with respect to evidence in all proceedings under this Act or the 1971 Act against a member of the Armed Forces on a charge of being a deserter or an absentee without leave.
- (2) If the member has surrendered himself or herself into the custody of a provost officer or a person lawfully exercising authority under or on behalf of a provost officer, or of any other officer of any New Zealand or allied force, a certificate purporting to have been signed by that provost officer, or person, or other officer, and stating the fact, date, and place of the surrender, is evidence of the matters so stated.
- (3) If the member has been arrested and taken into the custody of a provost officer or a person lawfully exercising authority under or on behalf of a provost officer, or of any other officer of any New Zealand or allied force, a certificate purporting to have been signed by that provost officer, or person, or other officer, and stating the fact, date, and place of the arrest, is evidence of the matters so stated.
- (4) If the member has been delivered into service custody by a member of the police, a certificate purporting to be signed by that member of the police, and stating the fact, date, and place of the surrender of the member, is evidence of the matters so stated.
- (5) Any certificate given under subsections (2) to (4), or any 1 or more of those subsections, may include a statement as to whether, at the time of the surrender, arrest, or delivery into service custody, as the case may be, the member was wearing the uniform of the service to which he or she belongs or civilian clothes; and that certificate is evidence of the matters so stated.

75 Records of Court Martial proceedings

- (1) A person who has custody of any record of the proceedings of the Court Martial held under this Act or the 1971 Act must deliver it as soon as practicable after the trial to the Judge Advocate General.
- (2) The Judge Advocate General may give directions as to how the record must be kept (including directions as to how long it must be kept, which must be for a years from the conclusion of the trial).

2 See footnote 1.

- (3) A person who has been tried by the Court Martial (**person A**), or if person A is dead, his or her personal representative (**person B**), is entitled to be supplied with a copy of the record of the proceedings of the Court if person A or B—
- (a) applies to the Judge Advocate General within,—
 - (i) in the case of person A, 5 years after the conclusion of the trial; or
 - (ii) in the case of person B, 12 months after the death of person A; and
 - (b) pays the prescribed fee (if any).
- (4) Despite subsection (3), if the Minister certifies that it is necessary for reasons of security that the record of the proceedings of the Court Martial, or any part of them, should not be disclosed, the Judge Advocate General may direct that an applicant for a copy of the record is not to be supplied with the record, or that part of the record, to which the certificate relates.
- (5) In this section,—
- personal representative**, in relation to deceased person A, means—
- (a) person A's legal personal representative; or
 - (b) any other person whom the Judge Advocate General considers should, for the purposes of this section, be regarded as the personal representative of person A

record of the proceedings of the Court Martial includes the record of any reconsideration of the sentence of the Court.

76 Evidence of proceedings of Court Martial

- (1) Subsection (2) applies to every original record of any proceedings of the Court Martial that—
- (a) appears to have been signed by the Judge of the Court for those proceedings; and
 - (b) is in the custody of—
 - (i) the Judge Advocate General; or
 - (ii) any person lawfully having custody of any original record.
- (2) On its being produced from the custody of a person referred to in subsection (1)(b), the original record to which this subsection applies is admissible in evidence in all proceedings under this Act or the 1971 Act and in all Courts in New Zealand.
- (3) Subsection (4) applies to a document that appears—
- (a) to be a copy of the original record (including a transcript of an audio recording of the proceedings) of any proceedings of the Court Martial or of part of that record; and
 - (b) to be certified by the Judge Advocate General, or by any person lawfully having custody of the original record, as being a true copy of that record or part of that record.

- (4) A document to which this subsection applies is admissible as evidence of the original record or part of the original record, as the case may be, in all proceedings under this Act or the 1971 Act and in all proceedings in civil Courts in New Zealand on its being produced in those proceedings, without proof of the signature of the Judge Advocate General or other person lawfully having custody of the original record.

Subpart 2—Administrative provisions

Seal

77 Seal of Court Martial

The Court Martial is to have a seal, which is to be judicially noticed by all Courts and for all purposes.

Delegation by Chief Judge

78 Chief Judge may delegate functions, duties, or powers to Deputy Chief Judge or Registrar

- (1) The Chief Judge may, either generally or particularly, delegate—
- (a) to a Deputy Chief Judge any of the Chief Judge's functions, duties, and powers (except the power of delegation); or
 - (b) to the Registrar the Chief Judge's duty under section 21(3) to assign a Judge for any proceedings of the Court.
- (2) A delegation—
- (a) must be in writing; and
 - (b) may be made subject to any restrictions that the Chief Judge thinks fit; and
 - (c) is revocable at any time, in writing; and
 - (d) does not prevent the performance or exercise of a function, duty, or power by the Chief Judge.
- (3) A Deputy Chief Judge or the Registrar may perform any functions, duties, or powers delegated under subsection (1) in the same manner and with the same effect as if they had been conferred on him or her directly by this Act and not by delegation.
- (4) If a Deputy Chief Judge or the Registrar appears to act under subsection (1), that person is presumed to be acting in accordance with the terms of delegation in the absence of evidence to the contrary.

Appointment of Registrar, clerks, and other officers of Court Martial

79 Appointment of Registrar, clerks, and other officers of Court Martial

- (1) The Chief Judge must appoint a person to act as the Registrar.
- (2) The Registrar may appoint clerks or any other officers of the Court Martial as may be required.

- (3) An appointment under this section must be made by giving written notice to the person concerned.
- (4) A person appointed under this section must not undertake any other paid employment or hold any other office (whether paid or not) unless the Chief Judge or the Registrar (as the case may be) is satisfied that the employment or other office is compatible with that person's appointment.

80 Registrar to be Inspector of Service Penal Establishments

- (1) The Registrar, because of his or her office, is to be the Inspector of Service Penal Establishments.
- (2) The Inspector of Service Penal Establishments performs the functions of National Preventive Mechanism under the Crimes of Torture Act 1989 in respect of service penal establishments (within the meaning of section 2(1) of the 1971 Act).

Attendance of clerk, etc, at sittings of Court Martial

81 Attendance of clerk, etc, at sitting of Court Martial

- (1) The Registrar must arrange for the attendance at every sitting of the Court Martial of—
 - (a) a clerk of the Court Martial; and
 - (b) a person responsible for recording or transcribing the proceedings; and
 - (c) if necessary, a competent interpreter.
- (2) The clerk of the Court Martial must—
 - (a) liaise with the officer in command or the person in control of the place where the Court is to sit on matters regarding the provision of administrative support to the Court; and
 - (b) perform any other functions or duties that are conferred or imposed on him or her by or under this Act or any other enactment.

Delegation by Registrar

82 Registrar may delegate functions, duties, or powers to clerk or other officer of Court Martial

- (1) The Registrar may, in writing, either generally or particularly, delegate to a clerk or any other officer of the Court Martial appointed under section 79(2) any of the Registrar's functions, duties, and powers, except—
 - (a) any function, power, or duty delegated to the Registrar by the Chief Judge; and
 - (b) this power of delegation.
- (2) A delegation—
 - (a) must be in writing; and

- (b) may be made subject to any restrictions and conditions that the Chief Judge or the Registrar thinks fit; and
 - (c) is revocable at any time, in writing; and
 - (d) does not prevent the performance or exercise of a function, duty, or power by the Registrar.
- (3) A clerk or any other officer of the Court Martial to whom any functions, duties, or powers are delegated may perform and exercise them in the same manner and with the same effect as if they had been conferred on him or her directly by this Act and not by delegation.
- (4) A clerk or any other officer of the Court Martial who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.

Subpart 3—Transitional provisions, repeal, and consequential amendments

Transitional provisions

83 Transitional provision relating to Chief Judge

Despite anything to the contrary in section 12, the person holding office as the Judge Advocate General immediately before the commencement of this section must be treated as if that person had been appointed as the Chief Judge in accordance with section 12.

84 What happens if court-martial has not yet been convened on commencement of this Act

- (1) This section applies if—
- (a) proceedings under the 1971 Act have been commenced before the commencement of this Act and have not been completed before that commencement; and
 - (b) before that commencement, the accused elects to be tried by court-martial and does not withdraw that election in the prescribed manner or is otherwise remanded for trial by court-martial; but
 - (c) the court-martial has not been convened before that commencement.
- (2) If this section applies,—
- (a) the charge must be referred to the Director of Military Prosecutions; and
 - (b) the accused may be remanded for trial in the Court Martial (as established by this Act); and
 - (c) the charge must then be dealt with in accordance with the 1971 Act (as amended by the Armed Forces Discipline Amendment Act (No 2) 2007) and this Act; and
 - (d) sections 117ZF to 117ZI of the 1971 Act (as substituted by the Armed Forces Discipline Amendment Act (No 2) 2007) apply with all necessary modifications for the purpose of giving effect to paragraphs (a) to (c).

85 What happens if court-martial has been convened on commencement of this Act

- (1) This section applies to courts-martial under the 1971 Act—
- (a) that were convened before the commencement of this Act; and
 - (b) that have not been dissolved before that commencement.
- (2) Proceedings before courts-martial to which this section applies are to be continued and completed under the 1971 Act as if this Act had not been enacted.

*Repeal***86 Part 6 of 1971 Act repealed**

Part 6 of the 1971 Act is repealed.

*Consequential amendments***87 Consequential amendments to other enactments**

The enactments specified in Schedule 2 are amended in the manner indicated in that schedule.

SCHEDULE 1

Alternative offences under 1971 Act of which accused may be convicted by Court Martial

| Offence charged under 1971 Act | Alternative offence under 1971 Act |
|--|---|
| 1. Section 23(1) (aiding the enemy with intent to assist the enemy). | Section 23(2) (aiding the enemy knowingly and without lawful excuse). |
| 2. Section 24(1) (communicating with, giving intelligence to, or failing to report information about the enemy, with intent to assist the enemy). | (a) Section 24(2) with or giving intelligence to the enemy without authority, or failing to report information about the enemy without lawful excuse); or (b) Section 25 (disclosing information without authority). |
| 3. Section 24(2) (communicating with or giving intelligence to the enemy without authority, or failing to report information about the enemy without lawful excuse). | Section 25 (disclosing information without authority). |
| 4. Section 29(1)(b) (when before the enemy, using words which to his or her knowledge are likely to create despondency or unnecessary alarm). | Section 29(2) (the corresponding offence without knowledge). |
| 5. Section 34(5)(a) (striking a person on guard duty or on watch). | Section 34(5)(b) (using force against a person on guard duty or on watch otherwise than by striking him or her). |
| 6. Section 35(1)(a) (striking his or her superior officer). | a. Section 35(1)(b) (using violence to his or her superior officer otherwise than by striking); or b. Section 35(1)(c) (offering violence to his or her superior officer). |
| 7. Section 35(1)(b) (using violence to his or her superior officer, other than by striking). | Section 35(1)(c) (offering violence to his or her superior officer). |
| 8. Section 35(1)(c) (offering violence to his or her superior officer). | Section 36(1)(a) (using threatening language to his or her superior officer). |
| 9. Section 36(1)(a) (using threatening language to his or her superior officer). | a. Section 36(1)(b) (using insubordinate language to his or her superior officer); or b. Section 36(1)(c) (using insulting language to his or her superior officer). |
| 10. Section 36(1)(b) (using insubordinate language to his or her superior officer). | Section 36(1)(c) (using insulting language to his or her superior officer). |
| 11. Section 41(a) (striking another person subject to this Act who is of inferior rank). | Section 41(b) (illtreating such a person otherwise than by striking him or her). |
| 12. Section 44(2)(a) (striking a member of the Armed Forces ordering offender into arrest). | a. Section 44(2)(b) (using violence to a member of the Armed Forces ordering offender into arrest otherwise than by striking); or b. Section 44(2)(c) (offering violence to any such member of the Armed Forces). |

SCHEDULE 1**Alternative offences under 1971 Act of which accused may be convicted by Court Martial (Cont.)**

| Offence charged under 1971 Act | Alternative offence under 1971 Act |
|--|---|
| 13. Section 44(2)(b) (using violence to a member of the Armed Forces who has ordered offender into arrest). | Section 44(2)(c) (offering violence to any such member of the Armed Forces). |
| 14. Section 44(3)(a) (striking person who is apprehending an offender or who is holding him or her in custody). | a. Section 22(3)(b) (using violence to any such person otherwise than by striking); or b. Section 44(3)(c) (offering violence to any such person). |
| 15. Section 44(3)(b) (using violence to any person who is apprehending an offender or who is holding him or her in custody). | Section 44(3)(c) (offering to any such person). |
| 16. Section 46(1) (permitting the escape of prisoners and other persons in custody wilfully and without authority). | Section 46(2) (doing certain specified acts with intent to facilitate escape). |
| 17. Section 47 (desertion). | Section 48 (absence without leave). |
| 18. Sections 47 and 76 (attempting desert). | Section 48 (absence without leave). |
| 19. Section 57(1)(a) (stealing service property or property belonging, etc, to a person subject to service law). | Section 57(1)(b) (fraudulently misapplying any such property). |
| 20. Section 58 (receiving service property or property belonging, etc, to a person subject to service law). | Section 59 (being in possession of any such property without lawful excuse). |
| 21. Section 61(1) (wilful destruction of or damage to property). | Section 61(2) (negligent destruction of or damage to property). |
| 22. Section 64(1) (losing or hazarding a ship, aircraft, or armoured fighting vehicle wilfully and without authority). | Section 64(2) (losing or hazarding a ship, aircraft, or armoured fighting vehicle negligently). |
| 23. Section 67(1)(a) (reckless or dangerous driving). | Section 67(2) (careless or inconsiderate driving). |

SCHEDULE 2

Consequential Amendments to Other Enactments

Omitted from this manual

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DEFENCE ACT 1990

Public Act 1990 No 28

Date of assent 1 April 1990

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An Act—

- (a) to continue to authorise the raising and maintaining of armed forces for certain purposes; and
- (b) to constitute the New Zealand Defence Force, comprising—
 - (i) the Armed Forces under the command of the Chief of Defence Force; and
 - (ii) the Civil Staff under the control of the Chief of Defence Force; and
- (c) to reaffirm that the Armed Forces are under Ministerial authority; and
- (d) to define the respective roles and relationships of the Minister of Defence, the Secretary of Defence, and the Chief of Defence Force; and
- (e) to redefine the relationship of the Chief of Defence Force to the Chiefs of Service; and
- (f) to make provision generally in respect of the establishment, control, and activities of the New Zealand Defence Force, and related matters

BE IT ENACTED by the Parliament of New Zealand as follows:**1 Short Title and commencement**

- (1) This Act may be cited as the Defence Act 1990.
- (2) This Act shall come into force on the 1st day of April 1990.

2 Interpretation

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

Active service order means an order of the Chief of Defence Force, or of an officer authorised by the Chief of Defence Force, for the purpose of—

- (a) posting a part of the Armed Forces or any member of the Armed Forces on active service; or
- (b) declaring that a part of the Armed Forces or any member of the Armed Forces has ceased to be on active service

Air cadet means any person, other than a cadet officer, who is a member of the Air Training Corps; and includes an underofficer or any other non-commissioned officer of the Air Training Corps; but does not include a member of the Armed Forces

Aircraft means any machine that can derive support in the atmosphere from the reactions of the air; and includes any aeroplane, balloon, kite balloon, airship, or glider

Air Force means the Royal New Zealand Air Force constituted under section 11(5) of this Act

Air Force base means any area of land or water (either in New Zealand or elsewhere) used or set aside for the purposes of the Air Force; and includes any building or other premises, tents, structures, or works on any such land, and any structures or works in any such water

Airman means any person duly attested for service in the Air Force, or declared by or under this or any other enactment to belong to the Air Force; and includes—

- (a) a non-commissioned officer of the Air Force; and
- (b) a rating of the Navy and a soldier of the Army attached to the Air Force;—

but does not include an officer

Allied force means a force or part of a force of another country acting in cooperation with a part of the Armed Forces

Armed Forces means the Navy, the Army, and the Air Force collectively; and includes any branch, corps, command, formation, unit, or other part of the Armed Forces; but does not include any part of the cadet forces

Army means the New Zealand Army constituted under section 11(4) of this Act

Army camp means any area of land or water (either in New Zealand or elsewhere) used or set aside for the purposes of the Army; and includes any building or other premises, tents, structures, or works on any such land, and any structures or works in any such water

Cadet forces means the Sea Cadet Corps, the New Zealand Cadet Corps, and the Air Training Corps collectively; and includes any part of those forces

Cadet officer means a person who holds a cadet commission from the Minister in any corps of the cadet forces; but does not include an officer of the regular forces, the territorial forces, or the reserve forces

Civil Staff means the persons employed as members of the Defence Force under section 61A of this Act

Component, in relation to the Navy or the Army or the Air Force, means the regular force or a territorial force or a reserve force of that Service

Defence area means any land, water, or part of the seabed, or any building, or part of a building, either in New Zealand or elsewhere, that is set apart, used, or occupied for the purposes of the Defence Force, whether the property is owned by the Crown or is used or occupied by or on behalf of the Defence Force with the consent of the owner or is requisitioned under section 10(2)(b); and more particularly includes—

- (a) every naval establishment, army camp, and air force base:
- (b) any arsenal and any other place used for the purpose of building, repairing, making, or storing munitions or equipment for or belonging to the Defence Force:
- (c) any land, or any building or part of a building, declared by Order in Council or Defence Force Order to be a defence area for the purposes of this Act:

Defence Force means the New Zealand Defence Force constituted by section 11(1) of this Act

Enemy means any country, or any armed force, or any authority or government controlling any such force, with which New Zealand, or any force acting in

cooperation with any part of the Armed Forces of New Zealand, is at war¹ or is engaged in armed combat operations; and includes—

- (a) any member of any such armed force or any member of that authority or government, as the case may be:
- (b) any person materially assisting that country, force, authority, or government in its war effort or armed combat operations:
- (c) any ally of that country, force, authority, or government:
- (d) all pirates:²
- (e) all armed persons who are engaged in any mutiny,³ rebellion, or riot⁴ against New Zealand or against any Service authority of the Armed Forces of New Zealand or against any ally of New Zealand

Intellectual property includes patents, trademarks, designs, copyright, and other intellectual property rights whether enforceable by Act or rule of law

Joint force means a joint force established under section 12 of this Act

Joint force commander, in relation to a joint force, means the officer appointed under section 12 of this Act to command that force

Land includes any estate or interest in land

Leading aircraftman includes an aircraftman, a general service hand, and an air force cadet

Member of the Defence Force means—

- (a) An officer, a rating, a soldier, or an airman; and
- (b) A member of the Civil Staff

Military means of or pertaining to the Armed Forces

Minister means the Minister of Defence; and includes any other Minister for the time being lawfully exercising the powers of the Minister of Defence

1 The differentiation of the concepts of **war** and **armed combat operations** reflects the fact that they are not synonymous. It has in modern times become so difficult to concisely define war that the Defence Act does not use the expression on its own but always adds some alternative condition which will more readily represent the position in the context intended, eg war or other like emergency as used in sections 11 and 38-40 or actual or imminent emergency as used in sections 10 and 38-40. For further reading on war as a legal concept, see *The Laws of New Zealand*, Defence: Warfare Reissue 1, para 12, which is available to all legal officers.

2 **Pirates** are the crew or passengers of a private ship or aircraft, or the mutinous crew in control of a warship or government ship or aircraft, who participate for private ends in any illegal acts of violence or detention, or any act of depredation, directed against another ship or aircraft, or against persons or property on board such ship or aircraft either (a) on the high seas, (b) in a place outside the jurisdiction of any State, or (c) within New Zealand: articles 101 to 103 of the United Nations Convention on the Law of the Sea (UNCLOS) and section 92 of the Crimes Act 1961. Acts of terrorism will not generally fit within this definition nor may “piratical acts” under section 93 of the Crimes Act 1961. On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board: UNCLOS article 105. All States are under a duty to cooperate in the repression of piracy: UNCLOS article 100.

3 **Mutiny** is defined in AFDA s 2(1).

4 A **riot** is a group of six or more persons who, acting together, are using violence against persons or property to the alarm of persons in the neighbourhood of that group: section 87(1) of the Crimes Act 1961.

Naval establishment means any area of land or water (either in New Zealand or elsewhere) used or set aside for the purposes of the Navy; and includes any building or other premises, tents, structures, or works on any such land, and any structures or works in any such water

Naval ship means any of Her Majesty's New Zealand ships; and includes any ship used or set aside for the purposes of the Navy

Navy means the New Zealand Naval Forces constituted under section 11(3) of this Act

New Zealand cadet means any person, other than a cadet officer, who is a member of the New Zealand Cadet Corps; and includes an underofficer or any other non-commissioned officer of the New Zealand Cadet Corps; but does not include a member of the Armed Forces

New Zealand force means a force comprising a part or parts of the Armed Forces or any Service

Non-commissioned officer means,—

- (a) in relation to the Navy, a rating of warrant officer, chief petty officer, petty officer, or leading rank; and includes—
 - (i) a non-commissioned officer of the Army or the Air Force attached to the Navy; and
 - (ii) a person duly attached or lent as a non-commissioned officer to or seconded for service or appointed for duty as a non-commissioned officer with the Navy:
- (b) in relation to the Army, a soldier above the rank of private but below the rank of officer cadet; and includes a warrant officer; and also includes—
 - (i) a non-commissioned officer of the Navy or the Air Force attached to the Army; and
 - (ii) a person duly attached or lent as a non-commissioned officer to or seconded for service or appointed for duty as a non-commissioned officer with the Army:
- (c) in relation to the Air Force, an airman above the rank of leading aircraftman but below the rank of officer cadet; and includes a warrant officer; and also includes—
 - (i) a non-commissioned officer of the Navy or the Army attached to the Air Force; and
 - (ii) a person duly attached or lent as a non-commissioned officer to or seconded for service or appointed for duty as a non-commissioned officer with the Air Force:

Officer means,—

- (a) in relation to the Navy, a person who is of or above the rank of midshipman or is a chaplain in the Navy; and includes—
 - (i) an officer of the Army or the Air Force attached to the Navy or any part of it; and

- (ii) any person duly attached or lent as an officer to or seconded for service or appointed for duty as an officer with the Navy:
- (b) in relation to the Army, a person who is of or above the rank of officer cadet or is a chaplain in the Army; and includes—
 - (i) an officer of the Navy or the Air Force attached to the Army or any part of it; and
 - (ii) any person duly attached or lent as an officer to or seconded for service or appointed for duty as an officer with the Army:
- (c) in relation to the Air Force, a person who is of or above the rank of officer cadet or is a chaplain in the Air Force; and includes—
 - (i) an officer of the Navy or the Army attached to the Air Force or any part of it; and
 - (ii) any person duly attached or lent as an officer to or seconded for service or appointed for duty as an officer with the Air Force:

Prescribed means prescribed by regulations made under this Act or by Defence Force Orders issued under this Act or under the Armed Forces Discipline Act 1971

Private includes a gunner, trooper, sapper, signaller, driver, or craftsman

Public property means any property belonging to the Crown in right of New Zealand; and also includes any other property (whether belonging to the Crown or not) used by or in the possession or under the control of the Defence Force or an allied force

Rank, in relation to any member of the Armed Forces, means the rank held by that member for the time being, whether substantive, temporary, acting, or honorary

Rating means any person duly attested for service in the Navy or declared by or under this or any other enactment to belong to the Navy; and includes—

- (a) a non-commissioned officer of the Navy; and
- (b) a soldier of the Army and an airman of the Air Force attached to the Navy;—

but does not include an officer

Regular forces means the Royal New Zealand Navy, the Regular Force of the New Zealand Army, and the Regular Air Force collectively

Relative rank means the appropriate rank prescribed under section 17

Reserve forces means the Naval Reserves (other than the Royal New Zealand Naval Reserve and the Royal New Zealand Naval Volunteer Reserve), the Army Reserve, and the Air Force Reserve collectively

Sea cadet means any person, other than a cadet officer, who is a member of the Sea Cadet Corps; and includes any non-commissioned officer of the Sea Cadet Corps; but does not include a member of the Armed Forces

Service means the Navy, the Army, or the Air Force or any part of the Navy, Army, or Air Force; and, when used adjectivally, means belonging or pertaining to, or connected with, one or more of those Services or any part of one or more of those Services

Ship means every description of vessel, boat, barge, or watercraft, however propelled; and includes a machine designed to be supported in the atmosphere, wholly or partly by air expelled from the machine to form a cushion extending beneath the machine to the surface of any ground, water, or other portion of the earth's surface

Soldier means any person duly attested for service in the Army or declared by or under this or any other enactment to belong to the Army; and includes—

- (a) a non-commissioned officer of the Army; and
- (b) a rating of the Navy and an airman of the Air Force attached to the Army;—

but does not include an officer

Territorial forces means the Royal New Zealand Naval Reserve, the Royal New Zealand Naval Volunteer Reserve, the Territorial Force of the New Zealand Army, and the Territorial Air Force collectively

Unit means any part of the Armed Forces determined by the Chief of Defence Force to be a unit

Warrant officer means—

- (a) a warrant officer in the Navy; and
- (b) in relation to the Army, a warrant officer class one and warrant officer class two; and
- (c) in relation to the Air Force, a warrant officer and master aircrew.

(2) In this Act and in any instrument made under this Act, unless the context otherwise requires, mention of a person by reference to the designation of that person's office or appointment includes a reference to any person who for the time being is lawfully performing the functions or duties of, or acting in, the office or appointment—

- (a) by virtue of a permanent, temporary, or acting appointment; or
- (b) by assumption of the functions or duties of the office or appointment pursuant to this Act or any other Act; or
- (c) pursuant to an order, or to a custom of the Service that pertains to the office or appointment.⁵

(3) For the purposes of this Act, unless the context otherwise requires, a member of the Armed Forces is released from the component of the Service in which that member is serving when—

- (a) that member, or that component or the part of that component in which that member is serving, is transferred to another component of that Service; or
- (b) in the case of an officer only, that member is placed on the Retired List of that Service.

(4) For the purposes of this Act, unless the context otherwise requires, a member of any component of a Service is discharged from the Service when, otherwise than

⁵ This paragraph recognises the well settled customs of the Services under which officers are expected in certain specific circumstances to act on behalf of their superiors although no order or delegation may exist on the matter. A classic example, common to all three Services, is the practice whereby a second in command will act for the CO when he or she is absent on duty, leave, or sickness.

by release, that member leaves that component in accordance with Defence Force Orders.

3 Act to bind the Crown

This Act shall bind the Crown.

4 Application of Act

- (1) Except as otherwise provided in this Act, either specifically or by necessary implication, this Act shall, in addition to applying to New Zealand, apply to all naval ships and defence areas outside New Zealand.
- (2) Except as otherwise provided in this Act, either specifically or by necessary implication, this Act shall, in addition to applying to all persons for the time being within New Zealand, apply to all New Zealand citizens and persons ordinarily resident in New Zealand who are for the time being outside New Zealand, and to all members of the Armed Forces for the time being outside New Zealand notwithstanding that they may not be New Zealand citizens or ordinarily resident in New Zealand.

PART 1

Constitutional position of Armed Forces

5 Power to raise armed forces

The Governor-General may from time to time, in the name and on behalf of the Sovereign, continue to raise and maintain armed forces, either in New Zealand or elsewhere, for the following purposes:

- (a) the defence of New Zealand,⁶ and of any area for the defence of which New Zealand is responsible under any Act;⁷
- (b) the protection of the interests of New Zealand, whether in New Zealand or elsewhere:
- (c) the contribution of forces under collective security treaties, agreements, or arrangements:
- (d) the contribution of forces to, or for any of the purposes of, the United Nations, or in association with other organisations or States and in accordance with the principles of the Charter of the United Nations:
- (e) the provision of assistance to the civil power either in New Zealand or elsewhere in time of emergency:
- (f) the provision of any public service.

6 Further powers of Governor-General

- (1) The Governor-General, by virtue of being Commander-in-Chief of New Zealand,⁸

⁶ This includes Tokelau: section 3 of the Tokelau Act 1948.

⁷ The areas referred to in this paragraph are Niue (section 6 of the Niue Constitution Act 1974) and the Cook Islands (section 5 of the Cook Islands Constitution Act 1964).

⁸ For the significance of the role of Commander-in-Chief, see *The Laws of New Zealand*, Defence: Warfare Reissue 1, para 17, which is available to all legal officers. New Zealand, in this context, means the Realm of New Zealand, which includes New Zealand, Tokelau and the Ross Dependency, as well as the self-governing territories of the Cook Islands and Niue.

shall have such powers and may exercise and discharge such duties and obligations relating to any armed forces raised and maintained under section 5 of this Act as pertain to the office of Commander-in-Chief.

- (2) Nothing in this section or in section 5 of this Act shall affect any power vested in the Governor-General apart from this Act.

7 Power of Minister of Defence

For the purposes of the general responsibility of the Minister in relation to the defence of New Zealand, the Minister shall have the power of control of the New Zealand Defence Force, which shall be exercised through the Chief of Defence Force.

8 Chief of Defence Force

- (1) The Governor-General in Council may from time to time appoint an officer of the Armed Forces to be the Chief of Defence Force.
- (2) The Chief of Defence Force shall hold such rank as the Governor-General in Council may determine.
- (3) The Chief of Defence Force shall—
- (a) command the Navy through the Chief of Navy, the Army through the Chief of Army, and the Air Force through the Chief of Air Force:⁹ and
 - (b) command any joint force either directly through the joint force commander or through the Chief of any Service.

9 Use of Armed Forces to provide public service or assist civil power¹⁰

- (1) Subject to the succeeding provisions of this section, the Armed Forces may be used in New Zealand or elsewhere—
- (a) to perform any public service; or
 - (b) to provide assistance to the civil power in time of emergency.
- (2) No part of the Armed Forces shall be used to provide any public service in connection with an industrial dispute except in accordance with the written authority of the Minister, and that authority shall specify the part or parts of the Armed Forces that may be used and the public service or public services that may be provided.
- (3) No part of the Armed Forces shall be used to provide assistance to the civil power in the circumstances described in paragraphs (a) and (b) of subsection (4) of this section except in accordance with an authority given by the Prime Minister or another Minister under that subsection.
- (4) Where the Prime Minister or, if the Prime Minister is unavailable, the next most senior Minister available is satisfied, on information supplied by the Commissioner

9 The intention of this provision is that Service Chiefs may not be by-passed in the chain of command in respect of their own Service. Thus CDF cannot legally order a CO to carry out any unit action unless he or she passes the order through the CO's Service Chief, unless the unit is part of a joint force. This does not affect CDF's power as a senior officer to give lawful orders to particular personnel falling under the general authority inherent in his or her rank, but he or she cannot intervene directly in the activities of a single Service. To achieve this he or she must act through the appropriate Service Chief.

10 This section reflects the recommendations of the Law Commission in its *First Report on Emergencies: Use of the Armed Forces* (NZLC R12, February 1990).

of Police or a Deputy Commissioner of Police,—

- (a) either—
 - (i) that there is in New Zealand an emergency in which one or more persons are threatening to kill or seriously injure, or are causing or attempting to cause the death of or serious injury to, any other person, or are causing or attempting to cause the destruction of or serious damage to any property; or
 - (ii) that such an emergency is imminent; and
- (b) that the emergency cannot be dealt with by the Police without the assistance of members of the Armed Forces exercising powers that are available to members of the Police,¹¹—

the Prime Minister or the other Minister may authorise any part of the Armed Forces so to assist the Police in dealing with the emergency.

- (5) Every part of the Armed Forces that is assisting the Police in accordance with an authority given under subsection (4) of this section shall act at the request of the member of the Police who is in charge of the operations in respect of the emergency.
- (6) Every member of any such part of the Armed Forces¹²—
 - (a) may, for any purpose necessary to assist the Police in dealing with the emergency, exercise any power of a member of the Police; and
 - (b) shall, for the purposes of civil and criminal liability, have the protections of a member of the Police, in addition to all other protections that the member of the Armed Forces may have.
- (7) The Minister of Defence or the Prime Minister or other Minister granting any authority under subsection (2) or subsection (4) of this section shall inform the House of Representatives, forthwith if the House is then sitting or at the earliest practicable time if it is not, that the authority has been given and of the reasons for giving it, and, if the authority was given in writing, shall lay a copy of it before the House.
- (8) Any authority given under subsection (2) or subsection (4) of this section shall lapse on the expiration of 14 days after the day on which it was given unless—
 - (a) the House of Representatives passes a resolution extending the authority for such period as is specified in the resolution; or
 - (b) if Parliament was dissolved or had expired before or after the authority was given and has not been summoned to meet before the authority would lapse, the Governor-General, being satisfied that it is necessary to extend the

11 **Member of the Police** is to be read as a reference to a constable: section 116(a) of the Policing Act 2008. This subsection does not address the provision of logistic support, which may be provided to the Police as a public service under s 9(1)(a).

12 The practical effect of this subsection is that any member of the Armed Forces assisting the Police has the same protection as a constable and may use such force (including force intended or likely to cause death or grievous bodily harm) as may be necessary to, for example; overcome resistance to an arrest (section 39 of the Crimes Act), prevent an arrested person from escaping (section 40 of the Crimes Act), or prevent a breach of peace (section 42 of the Crimes Act). For “other protections that the member of the Armed Forces may have”, see Volume 1 Chapter 5 Section 4.

authority, extends it by Proclamation approved in Executive Council for such period as is specified in the Proclamation.

10 Powers of requisition¹³

(1) Where the Minister is satisfied—

- (a) that there is an actual or imminent emergency involving the deployment outside New Zealand of any part of the Armed Forces; and
- (b) that it is necessary to requisition—
 - (i) any ship, vehicle, aircraft, supplies, or equipment for the use of the Armed Forces in connection with the emergency; or
 - (ii) any land, building, or installation required to enable the use of any ship, vehicle, aircraft, supplies, or equipment by the Armed Forces in connection with that emergency,—

the Minister may authorise the Chief of Defence Force to exercise the powers conferred by subsection (2) of this section in respect of any specified property or type of property referred to in that subsection.

(2) The Chief of Defence Force may, where so authorised by the Minister under subsection (1) of this section, requisition—

- (a) any ship, vehicle, aircraft, supplies, or equipment necessary for the use of the Armed Forces; or
- (b) any land, building, or installation necessary to enable the use of any ship, vehicle, aircraft, supplies, or equipment by the Armed Forces—

in connection with an actual or imminent emergency involving the deployment outside New Zealand of any part of the Armed Forces.

(3) Subject to subsection (4) of this section, in exercising the powers conferred by subsection (2) of this section, the Chief of Defence Force shall give to the owner or person in control of the requisitioned property a written statement specifying the property and requiring it to be placed forthwith under the control of a member of the Defence Force.

(4) Where the owner or other person in control of the requisitioned property cannot be found immediately, the Chief of Defence Force—

- (a) may direct that a member of the Defence Force shall assume forthwith the control of the property; and
- (b) shall, on giving any such direction, ensure that as soon as is reasonably practicable, a written statement specifying the requisitioned property is given to the owner or person formerly in control of the property.

(5) Where any requisitioned property has come under the control of any part of the Defence Force under this section, there shall be payable, out of money appropriated by Parliament, to any person having an interest in the property, just compensation for its use, including any loss, injury, or damage suffered by that person and arising

¹³ This section reflects the recommendations of the Law Commission in its *First Report on Emergencies: Use of the Armed Forces* (NZLC R12, February 1990). It supplements powers of requisition provided under other Acts, eg section 90 of the Civil Defence Emergency Management Act 2002 and section 10(2)(f) of the International Terrorism (Emergency Powers) Act 1987.

out of that control.

- (6) Any court of competent jurisdiction may determine any dispute about the liability of the Crown to pay any compensation under this section, or the amount of any such compensation, or the entitlement of any person to all or part of any compensation payable.

PART 2

The New Zealand Defence Force

11 Constitution of Defence Force

- (1) There is hereby constituted the New Zealand Defence Force, which shall comprise—
- (a) the Armed Forces of New Zealand, being the armed forces raised and maintained under section 5 of this Act; and
 - (b) the Civil Staff, being the persons appointed under section 61A of this Act.
- (2) The armed forces raised and maintained under section 5 of this Act shall continue to comprise—
- (a) the New Zealand Naval Forces; and
 - (b) the New Zealand Army; and
 - (c) the Royal New Zealand Air Force.
- (3) The New Zealand Naval Forces shall consist of the following:
- (a) the Royal New Zealand Navy;
 - (b) the Royal New Zealand Naval Reserve;
 - (c) the Royal New Zealand Naval Volunteer Reserve;
 - (d) the Naval Reserves;
 - (e) such additional naval forces as may be raised by the Governor-General in time of war or other like emergency.
- (4) The New Zealand Army shall consist of the following:
- (a) the Regular Force of the New Zealand Army;
 - (b) the Territorial Force of the New Zealand Army;
 - (c) the Army Reserve;
 - (d) such additional army forces as may be raised by the Governor-General in time of war or other like emergency.
- (5) The Royal New Zealand Air Force shall consist of the following:
- (a) the Regular Air Force;
 - (b) the Territorial Air Force;
 - (c) the Air Force Reserve;
 - (d) such additional air forces as may be raised by the Governor-General in time of

war or other like emergency.

- (6) The New Zealand Naval Forces, the New Zealand Army, and the Royal New Zealand Air Force may each be divided into such branches or corps, formations, commands, units, and other parts as the Chief of Defence Force determines from time to time.

12 Joint forces

- (1) The Chief of Defence Force may from time to time establish a joint force comprising members of 2 or more Services, and—
- (a) appoint an officer of one of the Services to command that force; or
 - (b) place that force under the command of the Chief of any Service.
- (2) Where a joint force is established under this section, this Act and the Armed Forces Discipline Act 1971 shall apply to any member of the Armed Forces serving in the joint force, subject to the following modifications:
- (a) anything required or authorised by or under this Act or the Armed Forces Discipline Act 1971 to be done by, to, or before the Chief of the Service to which the member belongs or is attached, may be done by, to, or before the Chief of Defence Force or, where the Chief of Defence Force has placed the joint force under the command of a Chief of Service, that Chief of Service:
 - (b) such other necessary modifications as may be prescribed.

13 Members of regular forces

- (1) The regular forces of the Armed Forces shall, subject to Part 4 of this Act, consist of such officers and of such ratings, soldiers, and airmen as are for the time being and from time to time appointed, engaged, enlisted, or transferred for continuing fulltime service in the Royal New Zealand Navy, the Regular Forces of the Army, or the Regular Air Force.
- (2) The maximum numbers of officers, ratings, soldiers, and airmen in the regular forces shall be such as the Minister authorises from time to time.¹⁴

14 Repealed

15 Members of territorial forces

- (1) The territorial forces of the Armed Forces shall, subject to Part 4 of this Act, consist of such officers and of such ratings, soldiers, and airmen as are for the time being and from time to time appointed, engaged, enlisted, or transferred for service in the Royal New Zealand Naval Reserve, the Royal New Zealand Naval Volunteer Reserve, the Territorial Force of the New Zealand Army, or the Territorial Air Force.
- (2) The maximum number of officers, ratings, soldiers, and airmen in the territorial forces shall be such as the Minister authorises from time to time.¹⁵

¹⁴ This function has been delegated to CDF by the Minister pursuant to section 30(1) of the Defence Act.
¹⁵ This function has been delegated to CDF by the Minister pursuant to section 30(1) of the Defence Act.

16 Members of reserve forces

The reserve forces of the Armed Forces shall, subject to Part 4 of this Act, consist of such officers and of such ratings, soldiers, and airmen as are for the time being and from time to time appointed, engaged, enlisted, or transferred for service in the Naval Reserves, the Army Reserve, or the Air Force Reserve.

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.¹⁶
- (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.

18 Attachment of members of one Service to another Service

A member of the Armed Forces belonging to one Service may be attached to either of the other 2 Services, subject to such conditions as may be prescribed.

19 Circumstances in which members of one Service are deemed attached to another Service

- (1) Except when provided in orders issued by or under the authority of the Chief of Defence Force, an officer or soldier of the Army or an officer or airman of the Air Force shall, for the purposes of this Act and of the Armed Forces Discipline Act 1971, be deemed to be attached to the Navy—
 - (a) when he or she is serving in any naval ship or naval establishment; or
 - (b) when he or she is lawfully ordered to serve in any naval ship or naval establishment; or
 - (c) when he or she is serving in a joint service organisation that is primarily a naval responsibility; or
 - (d) when he or she is lawfully ordered to serve in a joint service organisation that is primarily a naval responsibility, or when he or she is a patient in any hospital, hospital ship, or medical establishment that is such a joint service organisation; or
 - (e) when he or she is a patient in a naval hospital ship or other naval medical establishment; or
 - (f) when he or she is in transit in any naval establishment or other establishment administered by the Navy; or
 - (g) when he or she is serving a sentence of imprisonment or detention in a naval detention quarter.
- (2) When any order is given under paragraph (b) or paragraph (d) of subsection (1) of this section, the officer, soldier, or airman to whom the order relates shall be deemed to be attached to the Service specified in the order from such time and for such period (if any) as may be specified in the order.

¹⁶ See Volume 1 Chapter 1 Section 3.

- (3) Except as provided in orders issued by or under the authority of the Chief of Defence Force, an officer or rating of the Navy or an officer or airman of the Air Force shall, for the purposes of this Act and of the Armed Forces Discipline Act 1971, be deemed to be attached to the Army—
- (a) when he or she is serving in a unit or formation of the Army; or
 - (b) when he or she is lawfully ordered to serve in a unit or formation of the Army; or
 - (c) when he or she is serving in a joint service organisation that is primarily an army responsibility; or
 - (d) when he or she is lawfully ordered to serve in a joint service organisation that is primarily an army responsibility, or when he or she is a patient in a hospital, hospital ship, or medical establishment that is such a joint service organisation; or
 - (e) when he or she is a patient in an army hospital, hospital ship, or other army medical establishment; or
 - (f) when he or she is in transit at a transit camp or other establishment administered by the Army; or
 - (g) when he or she is serving a sentence of imprisonment or detention in an army detention quarter.
- (4) When any order is given under paragraph (b) or paragraph (d) of subsection (3) of this section, the officer, rating, or airman to whom the order relates shall be deemed to be attached to the Service specified in the order from such time and for such period (if any) as may be specified in the order.
- (5) Except as provided in orders issued by or under the authority of the Chief of Defence Force, an officer or rating of the Navy or an officer or soldier of the Army shall, for the purposes of this Act and of the Armed Forces Discipline Act 1971, be deemed to be attached to the Air Force—
- (a) when he or she is serving in a unit or formation of the Air Force; or
 - (b) when he or she is lawfully ordered to serve in a unit or formation of the Air Force; or
 - (c) when he or she is serving in a joint service organisation that is primarily an air force responsibility; or
 - (d) when he or she is lawfully ordered to serve in a joint service organisation that is primarily an air force responsibility, or when he or she is a patient in a hospital, hospital ship, or medical establishment that is such a joint service organisation; or
 - (e) when he or she is a patient in an air force hospital, hospital ship, or other air force medical establishment; or
 - (f) when he or she is in transit at a transit camp, staging post, or other establishment administered by the Air Force; or
 - (g) when he or she is serving a sentence of imprisonment or detention in an air force detention quarter.

- (6) When any order is given under paragraph (b) or paragraph (d) of subsection (5) of this section, the officer, rating, or soldier to whom the order relates shall be deemed to be attached to the Service specified in the order from such time and for such period (if any) as may be specified in the order.

20 Modification of Acts for members of one Service attached or deemed attached to another Service

Where a member of one Service is attached by virtue of section 18, or is deemed to be attached by virtue of section 19, of this Act to another Service, this Act and the Armed Forces Discipline Act 1971 shall apply to that member subject to the following modifications:

- (a) anything required or authorised by this Act or the Armed Forces Discipline Act 1971 to be done by, to, or before the Chief of the Service to which that member belongs may, in respect of any such member, be done by, to, or before the Chief of the Service to which that member is attached:
- (b) any member shall, in the Service to which that member is attached, have the same powers and be treated as if he or she were a member of that Service holding an equivalent rank:
- (c) such other necessary modifications as may be prescribed.

21 Transfer of members of one Service to another Service

A member of one Service may, with that member's written consent, be transferred¹⁷ from that Service to either of the other 2 Services, subject to such conditions as may be prescribed.¹⁸

22 Transfer for employment with other forces

- (1) Without prejudice to the provisions of section 23, any member of the Armed Forces may, by order of the Chief of Defence Force, or, in the case of a member serving with any New Zealand force outside New Zealand, by order of the officer commanding that force, be transferred for employment with the armed forces of a Commonwealth country,¹⁹ or of any other allied country, or of the United Nations, or of any other organisation or association of States in which New Zealand is participating.
- (2) A transfer ordered under subsection (1) of this section may be for such period and subject to such conditions as may be arranged between the New Zealand authority and the appropriate authority of the armed forces of the other country or the United Nations or the other organisation or association of States, as the case may be.
- (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.
- (4) The power conferred by subsection (1) of this section shall be exercised only in respect of—
 - (a) members of the regular forces; and

¹⁷ On being transferred the transferring member must take a new oath of allegiance . See sections 34 and 35 of the Defence Act and the notes to those sections .

¹⁸ See DFO 4 Chapter 2 Section 8.

¹⁹ **Commonwealth country.** See the Commonwealth Countries Act 1977.

- (b) members of the territorial or reserve forces who are for the time being—
 - (i) liable for continuous service pursuant to a Proclamation issued under section 39 or section 40 of this Act; or
 - (ii) liable to serve outside New Zealand pursuant to an offer under section 50 of this Act.
- (5) 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 shall not be dealt with under subsection (4)(b)(ii) of this section without that member's consent.

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.
- (2) The power conferred on the Chief of Defence Force by subsection (1) may be exercised only in respect of—
 - (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
 - (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.
- (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.

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.
- (2) If a member of the armed forces of another State is attached to a Service under subsection (1), the member—
 - (a) has, in the Service to which he or she has been attached, the same powers under this Act and the Armed Forces Discipline Act 1971 as if he or she were a member of that Service holding a relative rank;²⁰ 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.

²⁰ See Volume 1 Chapter 1 Section 3.

- (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—
- (a) must be treated as if they were members of the Armed Forces of a relative rank;²¹ 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.
- (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.

PART 3

Secretary of Defence, Chief of Defence Force, and Chiefs of Service

24 Secretary of Defence

- (1) The chief executive of the Ministry of Defence shall be known as the Secretary of Defence.
- (2) In addition to the functions imposed on the Secretary of Defence by or under this Act or the State Sector Act 1988 or any other enactment, the Secretary shall have the following functions:
- (a) to be the principal civilian adviser to the Minister and other Ministers:
 - (b) to formulate advice, in consultation with the Chief of Defence Force, on defence policy:
 - (c) to prepare, in consultation with the Chief of Defence Force, and submit to the Minister from time to time a defence assessment, including a review of different options capable of achieving the Government's policy goals:
 - (d) to procure, replace, or repair ships, vehicles, aircraft, and equipment used or intended for use by the Defence Force, where that procurement, replacement, or repair has major significance to military capability; and to deliver or return such ships, vehicles, aircraft, and equipment to the Defence Force:
 - (e) to arrange for the assessment and audit of the Defence Force in relation to any function, duty, or project, and of the Ministry of Defence in relation to any function described in paragraph (d) of this subsection, as and when required by the Minister, or in accordance with a programme of audit and assessment approved by the Minister, and in accordance with the following provisions:
 - (i) the findings of the audit and assessment shall be set out in a report in the name of the person in charge of the audit and assessment, and that person shall give the report to the Secretary of Defence for submission to the Minister:

21 See Volume 1 Chapter 1 Section 3.

- (ii) on giving the report to the Secretary of Defence, the person in charge of the audit and assessment shall give a copy of the report to the Chief of Defence Force:
 - (iii) if the Secretary of Defence disagrees with any of the contents of the report, the Secretary shall advise the Minister of the particulars with which the Secretary disagrees:
 - (iv) the Chief of Defence Force may report to the Minister on any of the contents of the report.
- (3) The Secretary shall have all such other powers as may be reasonably necessary to enable the Secretary to perform the functions and duties imposed on the Secretary by or under this Act or any other enactment.
- (4) Without limiting the generality of subsection (3) of this section, in the performance of any such function or duty the Secretary may, in the name and on behalf of the Crown,—
- (a) enter into any contract, agreement, or arrangement with any other person; and
 - (b) purchase, take on lease, dispose of, or trade in any goods, services, or assets (whether tangible or intangible), including land, buildings, equipment, facilities, stores, operating supplies, investments, and ownership of any part of a body corporate; and
 - (c) sell or otherwise dispose of, or grant any lease or licence of, or easement over, any land or interest in land under the control of the Ministry of Defence.

25 Chief of Defence Force

- (1) In addition to the functions imposed on the Chief of Defence Force by or under this Act or any other enactment, the Chief of Defence Force shall—
- (a) be the principal military adviser to the Minister and other Ministers; and
 - (b) be responsible to the Minister for—
 - (i) the carrying out of the functions and duties of the Defence Force (including those imposed by any enactment or by the policies of the Government); and
 - (ii) the general conduct of the Defence Force; and
 - (iii) the efficient, effective, and economical management of the activities and resources of the Defence Force; and
 - (c) be responsible to the appropriate Minister for—
 - (i) the carrying out of those functions and duties of the Defence Force (including those imposed by any enactment or by the policies of the Government) that relate to that Minister's portfolio; and
 - (ii) the tendering of advice to that Minister on any matter relating to that Minister's portfolio.
- (2) The Minister shall give to the Chief of Defence Force written terms of reference (not being inconsistent with any of the provisions of this Act) setting out the terms and

conditions of appointment as Chief of Defence Force, the duties and obligations of that appointment, and the manner in which the Government expects those duties and obligations to be carried out; and it shall be the duty of the Chief of Defence Force to perform the functions and to exercise the powers of the Chief of Defence Force in accordance with those terms of reference.

- (3) In the exercise of command, or in the exercise of the functions imposed on the Chief of Defence Force, the Chief of Defence Force may from time to time make such representations as the Chief of Defence Force considers necessary to the Minister or, if the Chief of Defence Force considers the circumstances to be exceptional, to the Prime Minister.
- (4) The Chief of Defence Force shall have all such other powers as may be reasonably necessary to enable the Chief of Defence Force to perform the functions and duties imposed on the Chief of Defence Force by or under this Act or any other enactment.
- (5) Without limiting the generality of subsection (4) of this section, in the performance of any such function or duty the Chief of Defence Force may, in the name and on behalf of the Crown,—
 - (a) enter into any contract, agreement, or arrangement with any other person; and
 - (b) purchase, take on lease, dispose of, or trade in any goods, services, or assets (whether tangible or intangible), including land, buildings, equipment, facilities, stores, operating supplies, investments, and ownership of any part of any body corporate; and
 - (c) sell or otherwise dispose of, or grant any lease, licence, or easement over, any land or interest in land under the control of the Defence Force.

26 Chief of Defence Force may be relieved of particular responsibilities in time of war or other like emergency

- (1) In time of war or other like emergency or in the event of any actual or imminent emergency involving the deployment of members of the Armed Forces outside New Zealand, the Minister of Defence may, at the request of the Chief of Defence Force, relieve the Chief of Defence Force of responsibility for any particular function imposed on the Chief of Defence Force by or under this Act or any other enactment, if the Minister is satisfied that it is necessary or desirable to do so to enable the Chief of Defence Force to perform the principal functions of the Chief of Defence Force in relation to the war or other like emergency or to the actual or imminent emergency, as the case may require.
- (2) Where under subsection (1) of this section the Minister relieves the Chief of Defence Force of responsibility for any function, the Minister shall impose that responsibility on some other member of the Defence Force; and that officer shall be and remain responsible to the Minister for the performance of that function until relieved of that responsibility by the Minister.

27 Defence Force Orders

- (1) In performing the functions and duties and exercising the powers of the Chief of Defence Force, the Chief of Defence Force may from time to time, for the purposes

of this Act, issue and promulgate²² Defence Force Orders, not inconsistent with this Act, the Armed Forces Discipline Act 1971, or any other enactment.²³

- (2) Any officer or person duly authorised by the Chief of Defence Force, either by name or appointment, may issue and promulgate Defence Force Orders.²⁴
- (3) The production of a document that purports to be a copy of a Defence Force Order and that includes a copy of the signature of the Chief of Defence Force, or of any officer or other person duly authorised by the Chief of Defence Force to sign such copies, shall, in the absence of proof to the contrary, be sufficient evidence of the order in all courts and proceedings and for all other purposes.
- (4) Subject to subsection (5) of this section, every order issued under this section shall come into force on such date as may be specified in the order, being the date of the order or any other date after the date on which it was issued.
- (5) Any order issued under this section relating to terms and conditions of service of members of the Armed Forces and conferring benefits on any such members may have effect from a date before the date of the issue of the order.²⁵

28 Chiefs of Service

- (1) The Governor-General in Council may from time to time appoint any officer of the Royal New Zealand Navy to be Chief of Navy, who shall hold such rank as the Governor-General in Council may determine, and who shall—
 - (a) under the Chief of Defence Force, command the Navy; and
 - (b) be responsible for advising the Minister, through the Chief of Defence Force, on any matter relating to the Navy; and
 - (c) be responsible to the Chief of Defence Force for the implementation of policies, plans, and programmes prescribed or approved in accordance with this Act in relation to the Navy.
- (2) The Governor-General in Council may from time to time appoint an officer of the Army to be Chief of Army, who shall hold such rank as the Governor-General in Council may determine, and who shall—
 - (a) under the Chief of Defence Force, command the Army; and
 - (b) be responsible for advising the Minister, through the Chief of Defence Force, on any matter relating to the Army; and
 - (c) be responsible to the Chief of Defence Force for the implementation of policies, plans, and programmes prescribed or approved in accordance with this Act in relation to the Army.

22 For the promulgation and processing of DFOs, see DFO 1 Chapter 5.

23 Subject to the Defence Act, the AFDA, and any other Act that affects the NZDF (and any regulations made under any of those Acts) the orders made under this section are the supreme orders governing the NZDF. The powers and functions of CDF under this Act are wide-ranging (see sections 8 and 25) and not all are clearly specified, although some are, for example, in sections 19 and 45. DFOs cannot be amended or rescinded except by DFO. Any statement in any orders subordinate to DFOs or in any administration manual which of itself purports to amend or vary a DFO is null and void.

24 DFO 1 Chapter 5 Section 2 authorises the Service Chiefs to issue Defence Force Orders for the Navy, the Army, and the Air Force respectively.

25 This recognises the principle against the retrospective application of a penalty.

- (3) The Governor-General in Council may from time to time appoint an officer of the Air Force to be Chief of Air Force, who shall hold such rank as the Governor-General in Council may determine, and who shall—
- (a) under the Chief of Defence Force, command the Air Force; and
 - (b) be responsible for advising the Minister, through the Chief of Defence Force, on any matter relating to the Air Force; and
 - (c) be responsible to the Chief of Defence Force for the implementation of policies, plans, and programmes prescribed or approved in accordance with this Act in relation to the Air Force.
- (4) Where the Chief of Defence Force places a joint force under the command of a Chief of Service pursuant to section 12(1)(b) of this Act, that Chief of Service shall, under the Chief of the Defence Force, command that force through the joint force commander; and nothing in subsections (1) to (3) of this section shall authorise a Chief of Service to exercise command over a joint force, or any part of a joint force, unless the Chief of the Defence Force has placed that joint force under the command of that Chief of Service.
- (5) The Chief of Defence Force shall give to each Chief of Service written terms of reference (not being inconsistent with any of the provisions of this Act) setting out the terms and conditions of appointment as Chief of Navy or Chief of Army or Chief of Air Force, as the case may be; and it shall be the duty of each Chief of Service to perform the functions and to exercise the powers of that appointment in accordance with those terms of reference.
- (6) In the exercise of command, and in the exercise of the functions imposed by or under this Act or any other enactment, each Chief of Service may, after notifying the Chief of Defence Force in that behalf, make such representations as the Chief of Service considers necessary or desirable to the Minister.

29 Chiefs of Service Committee

- (1) There shall continue to be a committee known as the Chiefs of Service Committee, which shall consist of the following permanent members:
- (a) the Chief of Defence Force:
 - (b) the Chief of Navy:
 - (c) the Chief of Army:
 - (d) the Chief of Air Force.
- (2) The Committee shall have such functions, duties, and powers, not inconsistent with this Act, as the Chief of Defence Force may determine.
- (3) The Chief of Defence Force shall be the convener of the committee, and shall preside at its meetings. In the absence of the Chief of Defence Force from any meeting of the committee, the Chief of Defence Force shall appoint one of the permanent members to preside at the meeting.
- (4) The committee may from time to time appoint any officer of the Armed Forces or any other person employed in the service of the Crown to be an associate member of the committee. Any such appointment may at any time be revoked by resolution of the permanent members of the committee.

- (5) An associate member of the committee shall, subject to subsection (4) of this section, be entitled to participate in the proceedings of the committee in like manner as if he or she were a permanent member.
- (6) Where a meeting of the Chiefs of Service Committee has been held, and the members of the Committee have held differing opinions on any matter, a Chief of Service may request that the various opinions be conveyed to the Minister; in which case the Chief of Defence Force shall convey the opinions to the Minister with such advice as the Chief of Defence Force considers appropriate.
- (7) Subject to the provisions of this Act, the committee may regulate its procedure in such manner as it thinks fit.

30 Delegation of functions, duties, and powers²⁶

- (1) The Minister may, from time to time, by writing under the Minister's hand, either generally or particularly, delegate to the Chief of Defence Force any of the Minister's functions, duties, or powers, including functions, duties, or powers delegated to the Minister under this Act or any other enactment.
- (2) The Chief of Defence Force may, from time to time, by writing under his or her hand, either generally or particularly, delegate to any member of the Defence Force, any of the functions, duties, and powers of the Chief of Defence Force, including any functions, duties, and powers delegated to the Chief of Defence Force by the Minister.
- (3) Any Chief of Service may, from time to time, by writing under his or her hand, either generally or particularly, delegate to any member of the Defence Force any of the functions, duties, or powers of the Chief of Service, including functions, duties, and powers delegated to the Chief of Service by the Chief of Defence Force.
- (4) Notwithstanding any of the preceding provisions of this section, no function, duty, or power delegated to any person under this section shall be subdelegated by that person if such subdelegation was prohibited by the delegating authority.
- (5) A delegation under this section may be made to a person referred to by name, or to the holder of a specified appointment, or to members of a specified class.
- (6) Subject to any general or special directions given or conditions attached by the delegating authority, the person to whom any functions, duties, or powers have been delegated may exercise those functions, duties, or powers in the same manner and to the same extent as if they had been directly conferred on that person by this Act and not by delegation.
- (7) Any such delegation may at any time be revoked in whole or in part by the delegating authority, but no such revocation shall affect anything done under the delegation.
- (8) No delegation under this section shall prevent the exercise by the delegating authority of the delegating authority's functions, duties, or powers.

²⁶ It is a fundamental rule of administrative law that a person to whom an office or duty is delegated cannot delegate the duty to another unless he or she is specially authorised so to do. This section establishes a code for the delegation of powers among the principal authorities in the NZDF. Subs (4) prohibits subdelegation only where subdelegation is prohibited by the delegating authority. The process of delegation provided for in this section should not be confused with the process of the assumption of authority referred to in section 2(2) of the Defence Act. The delegation of authority to issue DFOs is provided for specifically in section 27 of the Defence Act and does not fall under this section. As to the survival of delegations when either the delegate or the delegator cease to hold office, see section 97 of the Defence Act.

- (9) The fact that a person purports to exercise any function, duty, or power pursuant to a delegation made under this section shall, in the absence of proof to the contrary, be sufficient evidence that the person is acting within the scope of the authority conferred by the delegation.
- (10) Nothing in this section applies to functions, duties, or powers of command.

31 Consultation between Secretary of Defence and Chief of Defence Force

- (1) The Secretary of Defence and the Chief of Defence Force shall consult with each other on any advice on any major matters of defence policy that is to be given by the Secretary or the Chief of Defence Force to the Minister or other Ministers.
- (2) The Minister may from time to time require the Secretary of Defence and the Chief of Defence Force to consult formally with each other on any advice that is to be, or could be, or has been given by the Secretary or the Chief of Defence Force to the Minister.
- (3) The Secretary or the Chief of Defence Force may recommend to the Minister that the Minister should issue a requirement to consult under subsection (2) of this section, and the Minister shall inform the Secretary and Chief of Defence Force in writing of the Minister's decision on the recommendation.
- (4) No requirement to consult under this section shall affect any duty, obligation, or power of the Secretary or the Chief of Defence Force, or the responsibility of the Secretary or the Chief of Defence Force for the performance of any duty or obligation or the exercise of any power.

PART 4

Terms and conditions of service in the Armed Forces

*Appointments and enlistments***32 Appointment, promotion, and discharge of officers²⁷**

- (1) Subject to the provisions of this Act, the Governor-General may from time to time—
- (a) appoint officers to a service of the Armed Forces:
 - (b) in the name and on behalf of the Sovereign, issue commissions under the Seal of New Zealand to officers of the Armed Forces:²⁸
 - (c) promote officers to a higher rank:
 - (d) release²⁹ an officer or discharge³⁰ an officer or cancel or vary an officer's commission³¹ or vary an officer's appointment.

27 The Governor-General acts under this section on behalf of the Sovereign pursuant to his or her Letters Patent. The Sovereign may choose to act herself and when in New Zealand and Her Majesty has done so on occasions (see section 3 of the Constitution Act 1986). By constitutional convention, the powers are exercised on the advice of the Minister.

Officers are appointed to one of the three Services; they do not enter into an employment agreement. In common with all members of the Armed Forces, the employment relationship between officers and the Crown is based on the concept of service. All members of the Armed Forces swear an oath of allegiance and are bound to serve according to the tenor of that oath until they are discharged: see sections 34, 35 and 45(5) of the Defence Act. At common law, a member of the Armed Forces holds his or her position at the pleasure of the Sovereign and his or her services can be terminated at will, without reason stated and without redress: *Deynzer v Campbell* [1950] NZLR 790, 811 (CA); *Bradley v Attorney-General* [1986] 1 NZLR 176, 185. The same applies to promotion, cancellation, or variation of commission, and to appointments. However, the addition of the phrase "Subject to the provisions of this Act" at the beginning of this section means that the Sovereign's power, and the manner in which it may be exercised, are prescribed. To the extent that provision has been made in the Act, it can no longer be regarded as completely unfettered. One such provision is section 52 which gives the statutory right to leave the Service. Another, more far-reaching, is section 45 which empowers CDF to prescribe the conditions of service of members of the Armed Forces, including conditions relating to the exercise of powers under this section. These conditions of service are prescribed in DFO 4. In carrying out the functions listed in section 32, the Crown must comply with any DFOs which have been made on the subject.

One area in which the Crown's power to dismiss members of the Armed Forces at will remains unaffected by contrary provisions is that relating to reductions in the overall strength of the Armed Forces for political or other reasons.

The Judicature Amendment Act 1972, which binds the Crown, provides a right of review in the High Court where an unauthorised or invalid decision has been made in matters covered by this section: *Bradley v Attorney-General* [1986] 1 NZLR 176. The remedy available here is a declaration or the setting aside of the decision.

An officer has no right to trial by the Court Martial before his or her services may be dispensed with under this section by the Governor-General. Conversely, the fact that an officer has been convicted by the Court Martial does not necessarily prevent his or her discharge under this section for the same conduct. This procedure should not be invoked lightly in cases where the Court Martial could have sentenced the officer to dismissal from the Service.

28 The commission is the formal instrument of an officer's appointment as such. While a person holds a commission which has not been cancelled, or expired on the death of the holder, that person remains an officer.

29 See section 2(3) of the Defence Act for the definition of this term.

30 See section 2(4) of the Defence Act for the definition of this term.

31 If an officer is discharged or dismissed from Her Majesty's Service, his or her commission must also be cancelled as a necessary concomitant of the discharge or dismissal. In certain circumstances, the commission of an officer who has been released may also be cancelled. These include where the officer wishes to accept a commission in the service of another State or where the officer's conduct has been so egregious that the Service Chief considers, and the Sovereign agrees, that the relevant person should no longer hold the status of an officer in Her Majesty's forces. In such cases, the cancellation of the commission has the effect of a discharge from the Service, including any Retired List of that Service.

If an officer is transferred between Services or between components of a Service, his or her commission must either be varied to reflect this, or a new commission issued and the previous commission cancelled.

The cancellation and variation of commissions is the sole province of the Sovereign and the Sovereign's representative, the Governor-General.

- (1A) The Governor-General may, from time to time, by writing under the Governor-General's hand, delegate to the Chief of Defence Force any of the Governor-General's powers specified in paragraphs (a), (c), and (d) of subsection (1); and section 30(4) to (9), with any necessary modifications, applies to the delegation.³²
- (2) The Chief of Defence Force shall cause notice of all appointments, commissions, and other acts done under this section to be promulgated by Defence Force Orders.

33 Appointment, enlistment, and engagement

- (1) No person who is under 17 years may be appointed to, or enlisted or engaged in, the Navy, the Army, or the Air Force.
- (2) Subject to subsection (1), section 36, and Defence Force Orders, the following persons may, in the prescribed manner, be appointed to, or enlisted or engaged in, the Navy, the Army, or the Air Force:
- (a) a New Zealand citizen or a citizen of any other Commonwealth country:
 - (b) any other person with the prior consent of the Chief of Defence Force.

33A Age requirements

Nothing in section 22 of the Human Rights Act 1993 shall apply to age requirements relating to recruitment, terms of service, or retirement in respect of service in the Armed Forces, excluding the category of General Service Hands.

34 Oath of allegiance

Every person who is appointed to, or is enlisted or engaged in, the Navy, the Army, or the Air Force shall take and subscribe before a commissioned officer, or such other person as may be prescribed,³³ an oath³⁴ of allegiance to the Sovereign in such form as may be prescribed from time to time.³⁵

35 Effect of oath of allegiance³⁶

An oath of allegiance shall bind the person subscribing it to serve in the Service to which that person is appointed, or in which that person is engaged or enlisted,

32 This subsection allows the Governor-General to delegate most of his or her powers under section 32 to CDF. On 21 July 1998, the Governor-General delegated to CDF the powers conferred by subs (1)(a) and (c), and the powers to release or discharge an officer or vary an officer's appointment. CDF may in turn delegate any or all of those powers to any other member of the Defence Force : section 30(4) of the Defence Act. The Governor-General retains the exclusive power to issue commissions in the name of and on behalf of the Sovereign, retaining the historic link between the Sovereign and her officers .

33 No other persons have been prescribed to administer or receive an oath of allegiance or an affirmation.

34 Section 4 of the Oaths and Declarations Act 1957 entitles every person to make an affirmation instead of taking an oath. The form that an affirmation is to take is set out in section 4(2) of the Oaths and Declarations Act 1957, which is reproduced in this volume.

35 The form of the oath of allegiance is set out in regulation 3 of the Defence Regulations 1990, which are reproduced in this volume.

36 This section reflects the employment relationship between members of the Armed Forces and the Crown, which is based on the concept of service. A member of the Armed Forces does not have an employment agreement : see section 45(5) of the Defence Act.

in accordance with the tenor of the oath until that person is discharged³⁷ from the Service.³⁸

Provisions relating to minors

36 Enlistment of minors

- (1) Subject to section 46 of the Care of Children Act 2004,³⁹ a person under 18 years of age (in this section referred to as a minor) shall not, unless he or she is or has been married or in a civil union, be eligible to enlist or be accepted for service in the Armed Forces if any of the persons referred to in subsection (2) of this section objects to the enlistment.
- (2) Subject to subsection (3) of this section, any such objection may be made—
 - (a) by a parent of the minor; or
 - (b) by any testamentary⁴⁰ or court-appointed guardian of the minor; or
 - (c) by a Court, if the minor is for the time being under the guardianship of that Court under the Care of Children Act 2004.
- (3) No such objection may be made by any parent or guardian who is for the time being under a disability.
- (4) Subject to section 46 of the Care of Children Act 2004, every application by a minor (being a minor who is not and has not been married or in a civil union) for enlistment in the Armed Forces shall be accompanied by—
 - (a) a consent in writing obtained—
 - (i) if both parents of the minor are alive, are guardians of the minor, and are not under a disability, from one of those parents; or
 - (ii) if both parents of the minor are alive, but only one of them is a guardian of the minor and is not under a disability and the minor has no other legal guardian, from that parent; or
 - (iii) if only one of the parents of the minor is alive (being a parent who is a guardian of the minor and not under a disability) and the minor does not have any other legal guardian, from the surviving parent; or
 - (iv) if both parents of the minor are alive but are under a disability, or if only one of the parents is alive but is under a disability, or if both of the parents are dead, and the minor has one or more testamentary or court-

³⁷ **Discharged** is defined in section 2(4) of the Defence Act. Note that, as a member of the Armed Forces binds himself or herself to serve in one of the three Services rather than in any particular component of these, the member continues to be bound by his or her oath when the member is “released” on being transferred from one component to another (see sections 2(3) and 11 of the Defence Act, and regulation 3 of the Defence Regulations). As to liability for and duration of service in each of the components, see sections 38 to 44 of the Defence Act. The use of the clause “until that person is discharged” may not, in view of sections 38 to 40, be used to prolong a member’s service beyond the time reasonably necessary to discharge or release the member when the period of the member’s service has expired, except in time of war or emergency.

³⁸ See section 51 of the Defence Act for the legal situation where a person is receiving pay but has not taken the oath or affirmation of allegiance.

³⁹ Section 46 of the Care of Children Act allows a Family Court Judge to review a parent or guardian’s decision or refusal to give consent where the child is 16 years or over.

⁴⁰ A **testamentary guardian** is a person appointed by the father or the mother of a child by will or deed to be a guardian of the child after the death of the father or mother.

appointed guardians, from that guardian or one of those guardians, as the case may be; or

- (v) if one of the parents of the minor is alive, and is a guardian of the minor and not under a disability, and the minor also has a testamentary or court-appointed guardian, from either the parent or the guardian; or
 - (vi) if both parents of the minor are alive but are under a disability or if only one of the parents is alive but is under a disability, or if both of the parents are dead, and the minor has no testamentary or court-appointed guardian, from a District Court Judge; or
 - (vii) if the minor is for the time being placed under the guardianship of the Court under the Care of Children Act 2004, from the Court that made the order placing the minor under its guardianship; and
- (b) a written acknowledgment by the person giving the consent that he or she is aware that the person enlisting will be liable for active service at any time after that person attains the age of 18 years.
- (5) An acknowledgment referred to in subsection (4)(b) of this section need not be given or signified separately from the written consent if the consent is given on a form that contains a conspicuous statement to the effect that the person enlisting will be liable for active service outside New Zealand at any time after attaining the relevant (specified) age.
- (6) If any such application is not accompanied by the required consent, it shall be accompanied by a statement of the reasons as to why consent has not or cannot be obtained.
- (7) The enlistment of any person pursuant to this section shall be binding on that person notwithstanding anything to the contrary in the Minors' Contracts Act 1969 or any other enactment.
- (8) For the purposes of this section, a person shall be deemed to be under a disability if, by reason of his or her mental condition, that person is unable to understand the nature of any objection or, as the case may be, any consent made or given for the purposes of this section.

37 Liability of minors for active service

No person serving in the Armed Forces who is under 18 years is liable for active service.⁴¹

Liability for and duration of service

38 Liability for and duration of service in regular forces

- (1) Subject to sections 36 and 37 of this Act, all members of the regular forces shall be liable at all times for service, either within New Zealand or elsewhere, subject to such conditions as may be prescribed.
- (2) Notwithstanding subsection (1) of this section,—
 - (a) when the period of service of a member of the regular forces has been completed, that member shall be discharged or released from the regular

⁴¹ **Active service** is defined in section 44 of the Defence Act.

forces without delay, but that member shall be liable to continue serving until that discharge or release is effected; and

- (b) in time of war or other like emergency, the Governor-General may, by Proclamation, make an order that members of the regular forces who would, but for the war or emergency, be entitled to be discharged or released shall be liable to continue to serve; and, on the making of any such Proclamation, those members shall be liable to continue to serve during the continuance of the state of war or emergency for such period as the Minister may determine; and
- (c) in the event of an actual or imminent emergency involving the deployment of members of the Armed Forces outside New Zealand, the Governor-General may, by Proclamation, make an order that members of the regular forces who would, but for the emergency, be entitled to be discharged or released shall be liable to continue to serve for such period not exceeding 6 months as may be specified in the Proclamation; and on the making of any such Proclamation, those members shall be liable to continue to serve until the emergency has passed or until the period specified in the Proclamation has expired, whichever is the sooner.⁴²

39 Liability for service in territorial forces

- (1) Subject to subsection (2) of this section, the terms and conditions of service in the territorial forces shall be such as may be prescribed from time to time.
- (2) In time of war or other like emergency or during any state of emergency declared under the Civil Defence Emergency Management Act 2002, the Governor-General may, by Proclamation, declare the territorial forces, or any specified part of those forces, to be liable for continuous service, either in New Zealand or elsewhere, during the continuance of the state of war or emergency.
- (3) In the event of an actual or imminent emergency involving the deployment of members of the Armed Forces outside New Zealand, the Governor-General may, by Proclamation, declare the territorial forces, or any specified part of those forces, to be liable for continuous service, either in New Zealand or elsewhere, for such period not exceeding 3 months as may be specified in the Proclamation or until the emergency has sooner passed.⁴³

40 Liability for service in reserve forces

- (1) Subject to subsection (2) of this section, the terms and conditions of service and training in the reserve forces shall be such as may be prescribed from time to time.
- (2) In time of war or other like emergency or during any state of emergency declared under the Civil Defence Emergency Management Act 2002, the Governor-General may, by Proclamation, transfer the reserve forces, or any specified part of those

42 The period of up to six months referred to in this subsection may be extended for a further period or periods not exceeding six months, provided that the total period does not exceed 12 months: section 41(3) of the Defence Act. See section 43 of the Defence Act as to the discretion to waive or postpone the requirement for continuous service.

43 The period of up to three months referred to in this subsection may be extended for a further period or periods not exceeding three months, provided that the total period does not exceed 12 months: section 41(4) of the Defence Act. See section 43 of the Defence Act as to the discretion to waive or postpone the requirement for continuous service.

See section 42 of the Defence Act as to protection of civilian employment when this subsection is invoked, and section 43 of the Act as to the discretion to waive or postpone the requirement for continuous service under this subsection.

forces, to the regular forces or the territorial forces; and on the making of any such Proclamation, the forces so transferred shall be liable for continuous service, either in New Zealand or elsewhere, during the continuance of the state of war or emergency for such period as the Minister may determine.

- (3) In the event of an actual or imminent emergency involving the deployment of members of the Armed Forces outside New Zealand, the Governor-General may, by Proclamation, transfer the reserve forces, or any specified part of those forces, to the regular forces or the territorial forces for such period not exceeding 3 months as may be specified in the Proclamation; and on the making of any such Proclamation, the forces so transferred shall be liable for continuous service, either in New Zealand or elsewhere, until the emergency has passed or the period specified in the Proclamation has expired, whichever is the sooner.⁴⁴

41 Further provisions relating to Proclamations

- (1) This section applies to every Proclamation made under section 38(2)(c) or section 39(3) or section 40(3) of this Act.
- (2) Every Proclamation to which this section applies shall have stated in it the reasons for its making.
- (3) The period specified in any Proclamation made under section 38(2)(c) of this Act may from time to time be extended, by Proclamation, for a further period or periods not exceeding 6 months on any one extension as may be specified in the Proclamation by which it is extended, but so that the total period shall not exceed 12 months.
- (4) The period specified in any Proclamation made under section 39(3) or section 40(3) of this Act may from time to time be extended, by Proclamation, for a further period or periods not exceeding 3 months on any one extension as may be specified in the Proclamation by which it is extended, but so that the total period shall not exceed 12 months.
- (5) On making any Proclamation to which this section applies, or any Proclamation under subsection (3) or subsection (4) of this section, the Governor-General shall inform the House of Representatives that the Proclamation has been made, and of the reasons for its making,—
- (a) forthwith, if the House of Representatives is then sitting; or
 - (b) if the House of Representatives is not then sitting, at the earliest practicable opportunity.

42 Protection of employment when Proclamation made

Part 2 of the Volunteers Employment Protection Act 1973 applies to—

- (a) every employee—
 - (i) who is a member of the territorial forces or the reserve forces; and
 - (ii) who, in time of war or other like emergency or during any state of emergency declared under the Civil Defence Emergency Management Act 2002, is, as a consequence of a Proclamation made under section 39(2) or section 40(2) of this Act, called out for continuous service, either in New Zealand or elsewhere; and

44 See footnote above.

- (iii) who was, at the time of the making of the Proclamation, employed by an employer:
- (b) every employee—
 - (i) who is a member of the territorial forces or the reserve forces; and
 - (ii) who, in the event of an actual or imminent emergency involving the deployment of members of the Armed Forces outside New Zealand, is, as a consequence of a Proclamation made under section 39(3) or section 40(3) of this Act, called out for continuous service, either in New Zealand or elsewhere; and
 - (iii) who was, at the time of the making of the Proclamation, employed by an employer.

43 Discretion to waive or postpone requirement for continuous service

- (1) Notwithstanding section 38 or section 39 or section 40 of this Act, the Chief of Defence Force, or an officer authorised for the purpose by the Chief of Defence Force, may at any time, either generally or in any particular case, waive in whole or in part, or postpone, the period of continuous service that would otherwise be required of any member of the regular forces or of the territorial forces or of the reserve forces by virtue of any Proclamation made under those sections.
- (2) A waiver or postponement under subsection (1) of this section may be made on the application of the member or (in the case of a member of the territorial forces or of the reserve forces) the member's employer.
- (3) Where the member is to be part of a deployment of the Armed Forces outside New Zealand, an application for a waiver or postponement under this section shall be made not less than 7 days before the date on which the member is due to leave New Zealand as part of that deployment.

44 Active service

- (1) For the purposes of this Act, any part of the Armed Forces is on active service when—
 - (a) there is for the time being in force an active service order⁴⁵ posting it for active service; or
 - (b) it is engaged in any operation against the enemy⁴⁶; or
 - (c) it is in armed occupation of any foreign country.
- (2) For the purposes of this Act, every member of the Armed Forces is on active service when—
 - (a) there is for the time being in force an active service order posting that member for active service; or
 - (b) the part of the Armed Forces with which that member is serving or which that member is visiting is on active service.
- (3) No person or part of the Armed Forces that is for the time being on active service

⁴⁵ **Active service order** is defined in section 2(1) of the Defence Act.

⁴⁶ **Enemy** is defined in section 2(1) of the Defence Act.

shall cease to be on active service until the issue of an active service order to that effect.

Pay and allowances, etc

45 Conditions of service in Armed Forces

- (1) Except as otherwise provided in this section, the conditions of service of members of the Armed Forces shall be prescribed by the Chief of Defence Force.⁴⁷
- (2) In prescribing conditions of service under subsection (1) of this section, the Chief of Defence Force shall have regard to the following criteria:⁴⁸
 - (a) the need to achieve and maintain fair relativity with the levels of remuneration received elsewhere; and
 - (b) the need to be fair both—
 - (i) to the persons or group of persons whose remuneration is being determined; and
 - (ii) to the taxpayer; and
 - (c) the need to recruit and retain competent persons.
- (3) The Chief of Defence Force shall consult with the State Services Commission when prescribing conditions of service of members of the Armed Forces under this section. The State Services Commission may at any time, either before or during the prescribing of such conditions of service, indicate to the Chief of Defence Force that it wishes to participate with the Chief of Defence Force in prescribing those conditions of service, and the Chief of Defence Force shall allow the State Services Commission to participate accordingly.
- (4) The remuneration of members holding the positions of—
 - (a) Chief of Defence Force; or
 - (b) the Chief of Navy; or
 - (c) the Chief of Army; or
 - (d) the Chief of Air Force,—
 shall be determined from time to time by the Remuneration Authority.

⁴⁷ Despite this section, CDF is not in law the employer of members of the Armed Forces. The employment relationship is between the members and the Crown, and is based on the concept of service. All members of the Armed Forces swear an oath of allegiance and are bound to serve according to the tenor of that oath until they are discharged: see sections 34, 35 and 45(5) of the Defence Act. The common law position is that a member of the Armed Forces holds his or her position at the pleasure of the Sovereign and his or her services can be terminated at will, without reason stated and without redress: *Deynzer v Campbell* [1950] NZLR 790 at 811 (CA); *Bradley v Attorney-General* [1986] 1 NZLR 176 at 185. This is however subject to the provisions of this Act and subordinate legislation, such as DFO 4, made under this Act.

⁴⁸ CDF is not required by this subsection to have regard to “good employer” principles, which can be contrasted with CDF’s duty under section 59(1) to “operate a personnel policy that complies with the principle of being a good employer” for the Civil Staff. This requirement is not applied by the Defence Act to members of the Armed Forces as it is neither appropriate nor practicable because of the fundamental differences in the nature and structure of the Armed Forces. It is sufficient if CDF has regard to the criteria set out — the weight, if any, which CDF gives to those criteria is CDF’s exclusive discretion. CDF will however incorporate, to the extent practicable, “good employer” principles in military personnel policies.

- (5) Nothing in the Employment Relations Act 2000 applies to the conditions of service of members of the Armed Forces.
- (6) Nothing in this section affects any conditions of service in force in respect of members of the Armed Forces immediately before the 1st day of April 1988.

46 Regulations fixing certain terms and conditions of service

Without limiting the power to make regulations under section 101 of this Act, regulations may be made under that section, not inconsistent with this Act, the Government Superannuation Fund Act 1956, or the War Pensions Act 1954, relating to all or any of the following matters:

- (a) the making of grants in the amounts and circumstances prescribed by the regulations⁴⁹ to—
- (i) discharged or retired members of the Armed Forces; or
 - (ii) dependants of members of the Armed Forces; or
 - (iii) dependants of deceased, discharged, or retired members of the Armed Forces; or
 - (iv) the executors or administrators of the estates of deceased members of the Armed Forces (whether or not probate or letters of administration have been granted):
- (b) the continuance or withholding of pay and allowances of members of the Armed Forces who are absent from duty without leave, in desertion, posted missing, or captured by the enemy:⁵⁰
- (c) providing for the payment of expenses to persons (not being members of the regular forces) required to attend medical examinations or selection boards or required to act on any matter that concerns the Defence Force:⁵¹
- (d) the payment of compensation for loss of or damage to service kit and personal effects:⁵²
- (e) providing for injuries suffered by members of the Armed Forces in authorised sports to be deemed to be attributable to service:⁵³
- (f) providing for the grant of travelling privileges or expenses, or both, to next of kin to visit the sick and wounded or to attend investitures:⁵⁴
- (g) providing for stoppages from the pay of a member of the Armed Forces⁵⁵—
- (i) to make good in whole or in part, damage to, or the loss or destruction of, any public or other property found after investigation to have been caused by that member in the course of or in connection with that member's duties by wrongful act or negligence; or
 - (ii) to make good loss found after investigation to have resulted from the unlawful retention of public or other money by that member in the course

49 See regulations 4 and 5 of the Defence Regulations 1990.

50 See regulations 6 and 12 of the Defence Regulations.

51 See regulation 7 of the Defence Regulations.

52 See regulation 8 of the Defence Regulations.

53 See regulation 9 of the Defence Regulations.

54 See regulations 10 and 11 of the Defence Regulations.

55 See regulation 13 of the Defence Regulations.

of or in connection with that member's duties:

- (h) requiring, in cases where for a special purpose public money has been or is to be advanced to or expended on behalf of a member of the Armed Forces, for that member to enter into a bond or deed of covenant in such form as may be prescribed;⁵⁶
- (i) providing for funerals and burials of deceased members of the Armed Forces;⁵⁷
- (j) providing for the establishment of educational, training, and entertainment funds and such other funds as the Minister, with the concurrence of the Minister of Finance, may prescribe.⁵⁸

47 *Repealed*

48 *Repealed*

Miscellaneous provisions relating to service

49 **Redress of complaints**

- (1) Except in respect of a matter that would properly be the subject of an appeal under the Court Martial Appeals Act 1953 or the Armed Forces Discipline Act 1971,⁵⁹ any member of the Armed Forces⁶⁰ who considers that he or she has been wronged⁶¹ in any matter may make a complaint as of right to such Service authority and in such manner as may be prescribed in Defence Force Orders.⁶²
- (2) If the complainant is not satisfied with the decision of the authority to whom the complaint was made, and that authority refuses or fails, when requested to do

56 See regulation 14 of the Defence Regulations.

57 See regulation 15 of the Defence Regulations.

58 See regulation 16 of the Defence Regulations.

59 Under the Court Martial Appeals Act, a member of the Armed Forces who is convicted by the Court Martial has the right to appeal against that conviction and any sentence or order imposed to the Court Martial Appeal Court. Under Part 5A of the AFDA, a member of the Armed Forces who is found guilty by a disciplinary officer has the right to appeal against that finding and any punishment or order imposed to the Summary Appeal Court.

60 Complaints may be made by members of the regular, territorial or reserve forces. A person who has been discharged from the Armed Forces has no right to make a complaint unless the complaint was first made prior to his or her discharge.

61 There is no limit to the subject matter of a complaint provided it concerns a matter in which the complainant genuinely considers that he or she has been wronged, ie treated unjustly. On the face of it, therefore, members of the Armed Forces may make complaints about matters which are beyond the power of the prescribed Service authorities to redress, other than by referring them to the appropriate agency (eg disputes with government agencies such as the IRD). Although such complaints should be rare in peacetime, it may well be that on operational service the Service authorities may have the only effective means of communication with the relevant agencies.

62 The Service authorities to whom complaints may be made, and the manner in which they are to be made, are prescribed in DFO 4 Chapter 12. The Service authorities prescribed reflect the chain of command. The prompt resolution of complaints through the command chain is important for effective command of Service members. Ombudsmen have no jurisdiction to investigate complaints relating to a person who is or was a member of the Armed Forces as far as the matter complained of relates to the terms and conditions of that person's service, or any order, command, decision, penalty or punishment given to or affecting the complainant during service: section 13(8) of the Ombudsmen Act 1975. Nor may members of the Armed Forces avail themselves of the personal grievance procedures of the Employment Relations Act 2000, as section 45(6) of the Defence Act provides that nothing in that Act applies to the conditions of service of members of the Armed Forces.

so, to forward the complaint to the next superior authority, the complainant shall be entitled to make a complaint direct to the next superior authority, and, in the case of any further refusal or failure, to the next superior authority, and so on as prescribed.

- (3) It is the duty of any authority receiving a complaint under this section to investigate it or have it investigated as soon as practicable and to take such steps for redressing the complaint as appear to that authority to be necessary.⁶³

50 Special service

- (1) Without limiting the provisions of sections 39(2) and 40(2) of this Act, but subject to sections 36 and 37 of this Act, the Governor-General may accept the offer of any member of the territorial forces or reserve forces, or any other person (not being a minor) for special service, either in New Zealand or elsewhere.
- (2) On any such offer being accepted, the member or other person shall be accordingly liable to serve whenever required, during the period to which the offer extends.
- (3) The Governor-General may, from time to time, by writing under the Governor-General's hand, delegate to the Chief of Defence Force the power that the Governor-General has, under subsection (1), to accept an offer of the kind described in that subsection.
- (4) Section 30(4) to (9), with any necessary modifications, applies to a delegation made under subsection (3).

50A Power to declare situation of national interest in relation to special service

The Governor-General may from time to time, by Order in Council published in the Gazette, declare that the need for members of the territorial forces or reserve forces or other persons to offer themselves, under section 50, for special service is such that it is in the national interest that, for such period as is specified in the order, protection under the Volunteers Employment Protection Act 1973 be given to any such member or other person—

- (a) who undertakes special service under section 50; and
- (b) whose obligation to undertake that service under section 50 arises from the acceptance, during the period specified in the order, of an offer that was made by the member or other person under section 50; and
- (c) who was, at the time of the making of the order, employed by an employer.

50B Protection of employment when situation of national interest declared

Part 3 of the Volunteers Employment Protection Act 1973⁶⁴ applies to—

- (a) every employee—
- (i) who is a member of the territorial forces or the reserve forces or other person; and

⁶³ The complainant only has the right to have his or her complaint investigated; he or she has no right to any particular form of redress. The redress, both as to form and extent, is entirely discretionary: *Bradley v Governor-General* (High Court, Auckland, M 1864/89, 28 February 1991). The manner in which complaints must be investigated is prescribed in DFO 4 Chapter 12.

⁶⁴ This legislation, which is accessible on the internet via www.legislation.govt.nz, entitles members of the territorial and reserve forces and other persons to leave from their civilian employment and protects their employment while on that leave, if they are undertaking special service when a situation of national interest has been declared pursuant to section 50A of the Defence Act.

- (ii) who undertakes special service under section 50 of this Act; and
 - (iii) whose obligation to undertake that service under section 50 of this Act arises from the acceptance, during a period specified in an order made under section 50A of this Act, of an offer that was made by the member or other person under section 50 of this Act; and
- (b) who was, at the beginning of the period specified in the order made under section 50A of this Act, employed by an employer.

51 Persons receiving pay but not properly attested

A person who, without having been properly attested,⁶⁵ has accepted pay as a member of a component of the Armed Forces referred to in section 11(3) to (5)—

- (a) is a member of that component until discharged; and
- (b) must be discharged without delay at any time before being properly attested, if he or she so requests.

Discharge or release from regular forces on notice

52 Members may give notice of intention to leave regular forces

- (1) Subject to section 38(2)(b) and sections 53 to 57 of this Act, a member of the regular forces may terminate his or her service in the regular forces at any time by giving notice to the officer in command of the member's ship or unit.
- (2) A notice given by a member of the regular forces for the purposes of this section shall be in writing, and the period of the notice shall commence to run on the day on which it is given to the officer in command of the member's ship or unit.
- (3) A member who gives notice to terminate his or her service in the regular forces shall be deemed to have completed his or her service on—
 - (a) the expiry of the notice; or
 - (b) if the period of notice is less than 3 months, the expiry of the period of 3 months commencing with the day on which the notice is given,—

or on such earlier date as the Chief of Defence Force may from time to time prescribe in Defence Force Orders.

53 Return of service obligation

Notwithstanding subsection (3) of section 52 of this Act, but without limiting section 54 or section 55 of this Act, if a member of the Armed Forces who is subject to a prescribed return of service obligation in respect of any prescribed training or overseas service gives notice under section 52 of this Act, that member's period of service shall not be deemed to have been completed until that member has fulfilled his or her return of service obligation.

54 State of critical manning

- (1) For the purposes of this section, a specified class of members of the Armed Forces is in a state of critical manning if it is declared to be so by the Chief of Defence Force.

⁶⁵ **Attest** means to administer an oath of allegiance to a recruit.

- (2) Notwithstanding subsection (3) of section 52 of this Act, but without limiting section 53 or section 55 of this Act, if a member of a class that is in a state of critical manning gives notice under section 52 of this Act, that member's period of service shall not be deemed to have been completed until the expiry of a period of 2 years commencing with the day on which the notice is given.

55 Notice while serving overseas, etc

Notwithstanding subsection (3) of section 52 of this Act, but without limiting section 53 or section 54 of this Act, if a member of the regular forces who is serving overseas, or who is under less than 3 months' notice to serve overseas, gives notice under section 52 of this Act, that member's period of service shall not be deemed to have been completed until he or she has completed that overseas duty.

56 Discretion to relax requirements

Notwithstanding sections 53 to 55 of this Act, the Chief of Defence Force, or a Chief of Service authorised for the purpose by the Chief of Defence Force, may at any time, either generally or in any particular case, waive in whole or in part the period of service that would otherwise be required of any member of the regular forces by virtue of any of those sections.⁶⁶

57 Notice while subject to disciplinary proceedings, etc

- (1) For the purposes of this section,—
- (a) a member of the regular forces is facing disciplinary proceedings if any proceedings (including any proceedings on appeal or review or by way of confirmation) against the member are continuing or pending under the Armed Forces Discipline Act 1971; and
 - (b) a member of the regular forces is serving a sentence of imprisonment or detention if the member is serving such a sentence imposed under the Armed Forces Discipline Act 1971.
- (2) Notwithstanding subsection (3) of section 52 of this Act, if a member of the regular forces who,—
- (a) while facing disciplinary proceedings, gives notice under that section; or
 - (b) having given notice under that section, subsequently faces disciplinary proceedings,—
- that member's period of service shall not be deemed to have been completed until the proceedings have been completed, and the member has served any sentence of imprisonment or detention imposed as a result of those proceedings.
- (3) Notwithstanding subsection (3) of section 52 of this Act but subject to subsection (2)(b) of this section, if a member of the regular forces who is serving a sentence of imprisonment or detention gives notice under that section, that member's period of service shall not be deemed to have been completed until the member has served that sentence.

⁶⁶ The Service Chiefs are authorised to waive outstanding periods of service in respect of return of service obligations (DFO 4, Chapter 2, Section 12), critical manning and overseas service (DFO 4, Chapter 16, Section 4).

*Discharge or release from services for incompatible behaviour***57A Members may be discharged or released for incompatible behaviour**

- (1) The Chief of Defence Force may institute the discharge or release of a member of the Services if the Chief of Defence Force has reasonable grounds for believing—
- (a) That the member has behaved in a manner which is incompatible with the maintenance of good order and discipline within a Service or which tends to bring a Service into disrepute; and
 - (b) That the discharge or release of the member is necessary—
 - (i) To maintain good order and discipline; or
 - (ii) To avoid prejudice to the reputation of that Service.
- (2) Subsection (1) of this section applies to behaviour of any kind including, but not limited to, sexual behaviour of a heterosexual, homosexual, lesbian, or bisexual kind.

*Unit funds, messes, etc***58 Unit and other non-public funds**

- (1) For the purposes of this section, the term **service authority** means—
- (a) in relation to funds established pursuant to subsection (2) of this section, the Chief of Defence Force; or
 - (b) in relation to funds established pursuant to subsection (3) of this section, the Chief of Navy; or
 - (c) in relation to funds established pursuant to subsection (4) of this section, the Chief of Army; or
 - (d) in relation to funds established pursuant to subsection (5) of this section, the Chief of Air Force.
- (2) The Chief of Defence Force may from time to time establish, or authorise the establishment of, such funds under such names as the Chief of Defence Force thinks fit for—
- (a) the benefit of members of the Armed Forces or discharged members of the Armed Forces generally or of members of the Armed Forces or discharged members of the Armed Forces of 2 or more Services, or of the dependants of members of the Armed Forces or discharged or deceased members of the Armed Forces, or the benefit of visiting members of the Armed Forces; and
 - (b) any other object of any kind that the Chief of Defence Force considers beneficial to the Armed Forces or to members of the Armed Forces.
- (3) The Chief of Navy may from time to time establish, or authorise the establishment of, such funds under such names as the Chief of Navy thinks fit for—
- (a) the benefit of any naval ship or naval establishment, or of members or discharged members of the Navy generally or members or discharged

- members of any part of the Navy, or of the dependants of any such members or discharged or deceased members; and
- (b) any other object of any kind that the Chief of Navy considers will be beneficial to the Navy or to members of the Navy.
- (4) The Chief of Army may from time to time establish, or authorise the establishment of, such funds under such names as the Chief of Army thinks fit for—
- (a) the benefit of any army camp or unit of the Army, or of members or discharged members of the Army generally or members or discharged members of any part of the Army, or of the dependants of any such members or discharged or deceased members; and
- (b) any other object of any kind that the Chief of Army considers will be beneficial to the Army or to members of the Army.
- (5) The Chief of Air Force may from time to time establish, or authorise the establishment of, such funds under such names as the Chief of Air Force thinks fit for—
- (a) the benefit of any Air Force base or unit of the Air Force, or of members or discharged members of the Air Force generally or members or discharged members of any part of the Air Force, or of the dependants of any such members or discharged or deceased members; and
- (b) any other object of any kind that the Chief of Air Force considers will be beneficial to the Air Force or to members of the Air Force.
- (6) Without limiting the provisions of subsections (2) to (5) of this section, money forming part of any fund established under this section may from time to time, with the prior consent of the appropriate service authority, be spent on the acquisition of any land (whether Crown land or otherwise) to be held for any of the objects of the fund. Notwithstanding anything in any enactment or rule of law, any land so acquired may be vested in and held in the name of Her Majesty the Queen for the purposes of this section.
- (7) Any land so acquired may, with the prior consent of the appropriate service authority, be disposed of for valuable consideration, and on any such disposal, the land shall cease to be subject to this section. The proceeds of any such disposition shall be held for the purposes of the fund from which the money for the acquisition of the land was expended.
- (8) All documents required to be executed for the purposes of subsection (6) or subsection (7) of this section by or on behalf of the Crown may be executed by the Chief of Defence Force.
- (9) Without limiting the power of the Chief of Defence Force to issue orders under section 27 of this Act, orders may be issued under that section prescribing rules for the administration, supervision, accounting, and auditing of any fund established under this section.
- (10) The appropriate service authority may from time to time vary the objects of any such fund, or abolish any such fund and transfer its assets to any other such fund, having due regard to the purposes for which the varied or abolished fund was established and to any conditions specifically imposed by any person from whom any money in the fund was received.

- (11) Notwithstanding anything in the Public Finance Act 1989, the assets of any fund established under this section shall be deemed not to be public money within the meaning of that Act, except that the accounts of any such fund may, if considered desirable by the Controller and Auditor-General, be audited by the Audit Office, which for that purpose shall have all such powers as it has under that Act in respect of public money.
- (12) The Crown shall not be liable in respect of any loss sustained by any fund established under this section, whether arising out of any act or omission of an employee of the Crown or by reason of any other cause.
- (13) The provisions of this section shall apply with respect to all funds established before the passing of this Act for any of the purposes specified in subsections (2) to (5) of this section and in existence at the passing of this Act as if they had been established under this section. If any question arises as to whether any fund is a fund to which this subsection applies, it shall be decided by the Minister, and that decision shall be final.
- (14) Where any part of any Service of the Armed Forces has been abolished, altered, or reconstituted, whether before or after the commencement of this Act, its non-public funds and all of its other property shall be disposed of, transferred, or held by the appropriate service authority for such purposes as are authorised by subsections (2) to (5) of this section, as the authority may determine, having due regard to the purposes for which the funds were established or the property was given or acquired, as the case may be, and to any conditions specifically imposed by any person from whom any property or any money in the funds was received.

PART 5

Terms and conditions of service in the Civil Staff

59 General principles

- (1) The Chief of Defence Force shall, in respect of the members of the Civil Staff, operate a personnel policy that complies with the principle of being a good employer.
- (2) For the purposes of this section, a good employer is an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring—
- (a) good and safe working conditions; and
 - (b) an equal employment opportunities programme; and
 - (c) the impartial selection of suitably qualified persons for appointment; and
 - (d) recognition of—
 - (i) the aims and aspirations of the Maori people; and
 - (ii) the employment requirements of the Maori people; and
 - (iii) the need for greater involvement of the Maori people in the public sector; and
 - (e) opportunities for the enhancement of the abilities of individual employees; and

- (f) recognition of the aims and aspirations, and the cultural differences, of ethnic or minority groups; and
 - (g) recognition of the employment requirements of women; and
 - (h) recognition of the employment requirements of persons with disabilities.
- (3) In addition to the requirements, specified in subsections (1) and (2) of this section, the Chief of Defence Force shall ensure that all members of the Civil Staff maintain proper standards of integrity, conduct, and concern for the public interest.

60 Code of conduct

The Chief of Defence Force may from time to time issue a code of conduct covering the minimum standards of integrity and conduct that are to apply in the Civil Staff.

61 Equal employment opportunities

- (1) The Chief of Defence Force—
- (a) shall in each year develop and publish an equal employment opportunities programme for the Civil Staff; and
 - (b) shall ensure in each year that the equal employment opportunities programme for that year is complied with throughout the Civil Staff.
- (2) The Chief of Defence Force shall include in the annual report of the Defence Force—
- (a) a summary of the equal employment opportunities programme for the year to which the report relates; and
 - (b) an account of the extent to which the Defence Force was able to meet, during the year to which the report relates, in respect of the Civil Staff the equal employment opportunities programme for that year.
- (3) For the purposes of this section and section 59 of this Act, an equal employment opportunities programme means a programme that is aimed at the identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect to the employment of any persons or group of persons.

61A Appointment of members of Civil Staff

- (1) Subject to this Part, the Chief of Defence Force—
- (a) may from time to time appoint such suitable persons, not being officers, ratings, soldiers, or airmen of the regular forces, to be employees (including acting or temporary or casual employees) of the Defence Force as the Chief of Defence Force thinks necessary for the efficient conduct of the Defence Force; and
 - (b) may, subject to any conditions of employment included in the employment agreement applying to the employee, at any time remove any such employee from that employee's employment.

- (2) Except as provided in sections 70 and 71, the Chief of Defence Force has all the rights, duties, and powers of an employer in respect of members of the Civil Staff.⁶⁷

62 Appointments on merit

The Chief of Defence Force, in making an appointment to any position in the Civil Staff under this Act, shall give preference to the person who is best suited to the position.

63 Obligation to notify vacancies

Where the Chief of Defence Force intends to fill a position that is vacant or is to become vacant in the Civil Staff, the Chief of Defence Force shall, wherever practicable, notify the vacancy or prospective vacancy in a manner sufficient to enable suitably qualified persons to apply for the position.

64 Acting appointments

- (1) In the case of absence from duty of any member of the Civil Staff (from whatever cause arising) or on the occurrence from any cause of a vacancy in any position in the Civil Staff (whether by reason of death, resignation, or otherwise) and from time to time while the absence or vacancy continues, all or any of the powers and duties of the member or pertaining to the position may be exercised and performed by any other member for the time being directed by the Chief of Defence Force to exercise and perform them, whether the direction has been given before the absence or vacancy occurs or while it continues.
- (2) No such direction and no acts done by any member of the Civil Staff acting pursuant to any such direction shall in any proceedings be questioned on the ground that the occasion for the direction had not arisen or had ceased, or on the ground that the member has not been appointed to any position to which the direction relates.

65 Evidence of appointments

- (1) Any appointment to any position in the Civil Staff shall be made, confirmed, or approved in writing by an instrument or minute by the Chief of Defence Force or by any person to whom the Chief of Defence Force has delegated power in that behalf in accordance with section 30 of this Act; and, notwithstanding anything to the contrary in any Act, it shall not be necessary for the Chief of Defence Force or any such person to execute any formal warrant or other instrument in special form.
- (2) A certificate signed by the Chief of Defence Force that any person named in the certificate was appointed to any position in the Civil Staff from and including a day stated therein shall be sufficient evidence that the person so named was duly so appointed to and continues to hold the position unless the contrary is proved.

66 Obligation to notify appointments

The Chief of Defence Force shall notify to the members of the Civil Staff every appointment (other than that of an acting, temporary, or casual employee) made by the Chief of Defence Force to an position in the Civil Staff.

⁶⁷ This subsection recognises the constitutional position that strictly speaking the Crown is the employer of the Civil Staff. The practical effect of the subsection is to make CDF the employer of the Civil Staff for the purposes of the Employment Relations Act 2000 and the common law. It reflects section 59(2) of the State Sector Act 1988 .

67 Review of appointments

- (1) The Chief of Defence Force shall put into place for the Civil Staff a procedure for reviewing those appointments made to positions in the Civil Staff that are the subject of any complaint by a member of the Civil Staff.
- (2) The procedure shall be approved by the State Services Commission and shall comply with guidelines prescribed by the Commission for such review procedures.
- (3) Nothing in this section relates to an acting appointment.

68 Power to transfer members within Civil Staff

- (1) Where the Chief of Defence Force at any time finds in respect of any duties being carried out by the Defence Force through the Civil Staff—
 - (a) that those duties are no longer to be carried out by the Civil Staff; or
 - (b) that a greater number of members of the Civil Staff is employed on those duties than is considered by the Chief of Defence Force to be necessary for the carrying out of those duties,—

the Chief of Defence Force may, without complying with sections 62 and 63 of this Act, but subject to consultation with the employee and to the relevant employment agreement, appoint to other positions in the Civil Staff any or all of those members who are carrying out those duties.

- (2) Nothing in section 67 of this Act applies in relation to any appointment made under this section.

*Application of Employment Relations Act 2000***69 Application to Civil Staff of Employment Relations Act 2000**

Except as otherwise provided in this Act, the Employment Relations Act 2000 applies in relation to the Civil Staff.

70 Negotiation of conditions of employment

- (1) The Chief of Defence Force is responsible for negotiating, under the Employment Relations Act 2000, every collective agreement applicable to employees in the Civil Staff.⁶⁸
- (2) The Chief of Defence Force must consult with the State Services Commissioner when negotiating any collective agreements under this section.
- (3) The State Services Commissioner may at any time either before or during the negotiation of such collective agreements indicate to the Chief of Defence Force that the State Services Commissioner wishes to participate with the Chief of Defence Force in negotiating those collective agreements, and the Chief of Defence Force must allow the State Services Commissioner to participate accordingly.

⁶⁸ The conditions of employment of each member of the Civil Staff is contained in employment agreements. These may be either individual agreements, as is the case with most senior management, or collective agreements. CDF may negotiate individual employment agreements without consulting the State Services Commissioner, however such negotiations may be limited by the existence of a collective agreement: see Part 6 of the Employment Relations Act 2000.

71 Personal grievances and disputes

Despite the provisions of sections 61A and 70,—

- (a) in relation to a personal grievance,⁶⁹ the employer is the Chief of Defence Force; and
- (b) in relation to a dispute about the interpretation, application, or operation of any collective agreement, the employer is the Chief of Defence Force acting, if the State Services Commissioner so requires, together with or in consultation with the State Services Commissioner.

72 *Repealed*

73 *Repealed*

PART 5A

Superannuation

73A Interpretation

For the purposes of sections 73B to 73D of this Act,—

Superannuation scheme or **scheme** has the same meaning as in the Superannuation Schemes Act 1989.

73B Chief of Defence Force may establish superannuation schemes for members of Defence Force

The Chief of Defence Force may—

- (a) arrange for any superannuation scheme or schemes to be established for members of the Defence Force:
- (b) join with any other employer (whether or not in the State services) in arranging for any superannuation scheme or trust arrangement which is part of a superannuation scheme to be established for the purpose of providing, or facilitating the provision of, superannuation for members of the Defence Force:
- (c) arrange for members of the Defence Force to become members of any established superannuation scheme:
- (d) provide arrangements in respect of the superannuation of any individual member of the Defence Force.

73C Requirements in respect of superannuation schemes for members of Defence Force

Before contributing to any superannuation scheme established or arranged in respect of one or more of the members of the Defence Force pursuant to section 73B of this Act, the Chief of Defence Force shall ensure—

⁶⁹ **Personal grievance** is defined by section 103 of the Employment Relations Act 2000, which is available on the internet via www.legislation.govt.nz. A personal grievance must be submitted to the employer within 90 days of when it occurred or came to notice. The employer or the Employment Relations Authority may waive this time limit: section 114 of the Employment Relations Act 2000.

- (a) that the scheme is registered under the Superannuation Schemes Act 1989;⁷⁰ and
- (b) that the scheme provides that the sum of all benefits (including any lump sum payments, annuities, and other benefits) payable from the scheme in respect of any member of the scheme will not exceed the sum of—
 - (i) contributions paid by or on behalf of a member and investment earnings thereon; and
 - (ii) any allocations to the member from surplus funds held within the scheme; and
 - (iii) the amount paid in respect of that member from any insurance policy effected for the benefit of members of the scheme; and
- (c) that the trust deed of the scheme defines the rates or amounts (if any) of contributions of the Chief of Defence Force or other employers and members of the Defence Force, or the basis on which such contributions are to be made; and
- (d) that the trust deed of the scheme entitles the Chief of Defence Force to cease contributing to the scheme on behalf of a person if that person ceases to be a member of the Defence Force; and
- (e) that the benefits provided by the scheme are fully funded as they accrue; and
- (f) that, if the scheme enables members to withdraw from the scheme, the scheme enables withdrawing members to transfer to other superannuation schemes the value (as determined in accordance with the terms of the scheme) of the benefits attributable to that person's membership of the scheme up to the date of withdrawal; and
- (g) that the scheme enables any person who becomes a member of the Defence Force, if the Chief of Defence Force agrees to contribute to the scheme on that person's behalf, to become a member of the scheme and to transfer to the scheme the value of the benefits attributable to that person's membership of other superannuation schemes; and
- (h) that the trust deed of the scheme does not permit amendments to be made to the scheme which would result in any provision of paragraphs (a) to (g) of this section ceasing to apply to the scheme.

70

Part 1 of the Superannuation Schemes Act authorises the Government Actuary to register any superannuation scheme on application, as long as at least one trustee of the scheme is a New Zealand resident, and the trust deed is governed by New Zealand law and specifies:

- (a) The conditions of entry of members to the scheme;
- (b) The conditions as to termination of membership of the scheme;
- (c) The contributions payable;
- (d) The conditions under which benefits become payable and the way in which the benefits are to be determined;
- (e) The number of trustees, and provision for their appointment and retirement; and
- (f) The circumstances in which the scheme may be wound up, and the way in which the assets of the scheme are to be distributed in the event of a winding up.

73D Chief of Defence Force to obtain confirmation from Government Actuary that scheme meets requirements of this Act

- (1) The Chief of Defence Force shall, before contributing to a superannuation scheme on behalf of members of the Defence Force, apply to the Government Actuary for confirmation that the superannuation scheme complies with the requirements of section 73C of this Act.
- (2) If confirmation is so obtained, the scheme shall be deemed, for the purpose of this Act, to comply with the requirements of that section.
- (3) The Government Actuary may charge reasonable fees for considering any application made under this section.

73E Contributions to superannuation schemes

The Chief of Defence Force may, for the purpose of providing retirement benefits to members of the Defence Force, contribute to any superannuation scheme that complies with the requirements of section 73C of this Act.

73F Chief of Defence Force may establish compulsory scheme for members of Armed Forces

The Chief of Defence Force may require that all members of the Armed Forces who are not required to contribute under Part 3A of the Government Superannuation Fund Act 1956,⁷¹ or any class of such members, contribute to any superannuation scheme established or arranged in respect of one or more members of the Armed Forces pursuant to section 73B of this Act.

PART 6**Cadet forces****74 Constitution of cadet forces**

- (1) The Minister may from time to time raise and maintain cadet forces comprising the Sea Cadet Corps, the New Zealand Cadet Corps, and the Air Training Corps.
- (1A) The cadet forces referred to in subsection (1) must be maintained under the direction of the Chief of Defence Force.
- (2) The Minister may from time to time—
 - (a) determine the number of units comprising—
 - (i) the Sea Cadet Corps; or
 - (ii) the New Zealand Cadet Corps; or
 - (iii) the Air Training Corps; or

⁷¹ Members of the Armed Forces who were enlisted or appointed on or after 5 December 1986 and on or before 30 June 1992 are required to contribute to the Armed Forces Scheme of the Government Superannuation Scheme under Part 3A of the Government Superannuation Fund Act 1956. See Chapter 17 of DFO 4 and section 71B(3) of the Government Superannuation Fund Act 1956 for the rules relating to members who had service during that period and then, after having obtained a discharge or release, subsequently rejoined after 30 June 1992.

- (iv) any combination of those corps; and
 - (b) authorise and direct the formation of a unit that is a unit of any of those corps or any combination of them, and determine or approve the size of the unit's membership; and
 - (c) authorise or direct the disbanding of any such unit.
- (3) All cadet forces raised and maintained under the Defence Act 1971 and in being immediately before the commencement of this Act shall continue in being as if they had been raised under this section.

75 Personnel of cadet forces

- (1) The Sea Cadet Corps shall consist of such cadet officers as are from time to time appointed to, and such sea cadets as from time to time become members of, the Corps.
- (2) The New Zealand Cadet Corps shall consist of such cadet officers as are from time to time appointed to, and such New Zealand cadets as from time to time become members of, the Corps.
- (3) The Air Training Corps shall consist of such cadet officers as are from time to time appointed to, and such air cadets as from time to time become members of, the Corps.

76 Cadet officers

The Minister may from time to time—

- (a) appoint suitably qualified persons to be cadet officers of either the Sea Cadet Corps, the New Zealand Cadet Corps, or the Air Training Corps; and
- (b) issue cadet commissions to cadet officers; and
- (c) prescribe the ranks that may be held by cadet officers; and
- (d) promote cadet officers to a higher rank; and
- (e) compulsorily retire a cadet officer or discharge a cadet officer or cancel a cadet officer's commission or vary a cadet officer's appointment; and
- (f) cause notice of all such appointments, commissions, and other acts done under this section to be notified to the cadet forces.

77 Functions of cadet forces

The cadet forces shall have the following functions:

- (a) the conduct of training courses or training programmes similar to those undertaken by the Armed Forces:
- (b) the promotion of an appreciation among members of the cadet forces of the functions and operation of the Armed Forces:
- (c) the development of good citizenship among members of the cadet forces.

78 Assistance to cadet forces⁷²

- (1) The Chief of Defence Force may from time to time, subject to such conditions and limitations as the Chief of Defence Force may decide,—
- (a) grant financial assistance out of money appropriated by Parliament to enable the cadet forces to conduct such activities as the Chief of Defence Force may approve; and
 - (b) determine the pay, allowances, expenses, grants, gratuities, and other emoluments (if any) to be paid out of money appropriated by Parliament to cadet officers and other members of the cadet forces; and
 - (c) determine any other terms and conditions of service of cadet officers and other members of the cadet forces; and
 - (d) provide the cadet forces with clothing, stores and equipment, and accommodation; and
 - (e) direct or authorise any member or class of members of the Armed Forces to direct, supervise, or assist any unit of the cadet forces when it is conducting any of its activities, either within or outside a defence area; and
 - (f) approve the conducting of training courses or other activities by any unit of the cadet forces within a defence area under the supervision and direction of a member of the Armed Forces.
- (2) When a member of the Armed Forces is engaged in directing, supervising, or assisting a unit of the cadet forces under subsection (1)(e), that member shall be deemed to be on duty.
- (3) The terms and conditions of service of cadet officers and other members of the cadet forces determined by the Chief of Defence Force under subsection (1) of this section shall be promulgated in such a manner as the Chief of Defence Force directs.
- (4) Nothing in Part 4 or Part 5 of this Act or in the Armed Forces Discipline Act 1971, the State Sector Act 1988, or the Government Superannuation Fund Act 1956 shall apply in respect of any member of the cadet forces.

79 Member of cadet forces may be removed from defence area in certain cases

If any member of a unit of the cadet forces that is conducting a training course or training programme or any other activity within a defence area refuses or fails to comply with the lawful orders or instructions of any member of the Armed Forces directing or supervising, or assisting in the direction or supervision of, the course, programme, or other activity, that member or any other member acting under his or her authority may remove the member of the unit from the area.

⁷² This section reflects the fact that under this Act the cadet forces are not part of the Armed Forces (see definition of **Armed Forces** in section 2(1)), but enjoy statutory recognition and receive financial and training assistance from the NZDF. Members of the cadet forces are not subject to military law, except when they are passengers in ships, aircraft, and vehicles of the Armed Forces: see AFDA s 15 and DM 69 (2 ed) Volume 1 Chapter 2 Section 5.

80 Members of cadet forces eligible for war pensions

- (1) All the provisions of the War Pensions Act 1954, so far as they are applicable and with any necessary modifications, shall apply to every member of the cadet forces for the time being participating in any activity being carried on by the unit of which he or she is a member as if he or she were a member of the forces as defined in section 2 of that Act.
- (2) Section 9 of the Crown Proceedings Act 1950 shall apply to every member of the cadet forces as if he or she were a member of the Armed Forces within the meaning of that section, and as if participation by that member in any activity carried on by the unit of which he or she is a member were service in the Armed Forces.

81 Recognition of civilian organisations

The Minister may from time to time recognise for the purposes of this section any civilian organisation⁷³ that has as its object or as one of its objects the promotion of the functions or interest of any corps or unit of the cadet forces for the purpose of permitting that organisation to assist the corps or unit to carry out its functions or activities.

PART 7**Offences punishable by civil courts****82 Procuring and assisting desertion**

Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$2,000 who, in New Zealand or elsewhere,—

- (a) intentionally or recklessly procures or persuades any member of the Armed Forces to desert or absent himself or herself without leave; or
- (b) knowing that any member of the Armed Forces is about to desert or to absent himself or herself without leave, assists that member in doing so; or
- (c) knowing any member of the Armed Forces to be a deserter or an absentee without leave from the Armed Forces,—
- (i) conceals that member; or
- (ii) assists that member in concealing himself or herself; or
- (iii) rescues that member from custody or assists in his or her rescue from custody.

83 Obstructing members of Armed Forces in execution of duty

Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding

⁷³ Civilian organisations are recognised by the Minister so that they may assist a cadet corps or unit conduct training and generally undertake cadet functions and activities. The recognised organisations may also be invited by the Minister to appoint representatives to the Cadet Advisory Committee, which reviews Cadet Forces' policy matters. Four civilian organisations are currently recognised by the Minister, namely, the Air Training Corps Association of New Zealand, Sea Cadet Association of New Zealand, Cadet Corps Association of New Zealand and the National Council of the Royal New Zealand Returned and Services Association.

\$1,000 who, in New Zealand or elsewhere,⁷⁴ intentionally or recklessly obstructs or interferes with any member of the Armed Forces acting in the execution of his or her duty.

84 Obstructing parades

Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$1,000 who, in New Zealand, intentionally or recklessly interrupts or obstructs any military exercise of any part of the Armed Forces.

85 Aiding malingering

Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$2,000 who, in New Zealand, or elsewhere,⁷⁵—

- (a) produces in a member of the Armed Forces any sickness or disability; or
- (b) supplies to or for any member of the Armed Forces any drug or preparation likely to render that member, or lead to the belief that that member is, permanently or temporarily unfit for service—

with intent to enable that member, either permanently or temporarily, to avoid service in the Armed Forces.

86 False statements regarding pay or allowances, etc

- (1) Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$2,000 who, in New Zealand or elsewhere,⁷⁶ makes any statement knowing it to be false, or knowingly withholds any required information, for the purpose—

- (a) of obtaining payment of any amount by way of pay, allowance, or gratuity under this Act, whether as a dependant of a member of the Armed Forces or otherwise; or
- (b) of obtaining any decoration, emblem, or award issued for gallantry or service in the Armed Forces.

- (2) If, as a consequence of the commission of an offence against this section, any amount is paid to a dependant of a member of the Armed Forces, or to any other person for the time being entitled to receive it, in excess of the amount to which the dependant or other person is entitled, the amount paid in excess, or any part of the amount, may be recovered from the dependant or other person out of money payable to the dependant or other person by the Crown but not yet paid, or out of money to become payable to the dependant or other person by the Crown, or may be recovered as a debt due to the Crown.

87 Failure to account for issued property

- (1) Every person in New Zealand to whom any property has been issued by or for

⁷⁴ If it is alleged that the offence was committed outside New Zealand, jurisdiction will only lie under this section if the accused is a New Zealand citizen, a person ordinarily resident in New Zealand, or a member of the Armed Forces: section 4(2) of the Defence Act.

⁷⁵ See footnote above.

⁷⁶ See footnote 74.

the purposes of the Armed Forces otherwise than for that person's permanent retention shall, on being required to do so by a notice in writing purporting to be signed by a member of the Defence Force and delivered to that person personally or posted by registered letter to his or her place of residence, return the property to such person and within such reasonable time as may be specified in the notice.

- (2) If any person to whom any such notice has been delivered fails, without lawful excuse, to return any such property as required by the notice, that person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.
- (3) If any person in New Zealand to whom any property has been issued by or for the purposes of the Armed Forces otherwise than for that person's permanent retention recklessly or negligently loses the property, that person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.

88 Giving false certificate, etc

Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$1,000 who, in New Zealand,—

- (a) gives any certificate; or
- (b) makes any return or statement in writing—

that the person knows to be false concerning any matter in respect of which the person is required by or under this Act to render any such certificate, return, or statement.

89 Bringing liquor into defence areas, etc

- (1) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$500 who, in New Zealand,—
 - (a) intentionally and without authority brings or conveys any alcoholic liquor into any naval ship or defence area, or any other place where members of the Armed Forces are quartered or serving, otherwise than for delivery into any canteen or mess or to any premises occupied as married quarters, with the knowledge that the ship is a naval ship, the area is a defence area, or the place is one where members of the Armed Forces are quartered or serving, as the case may be; or
 - (b) is knowingly and without authority in possession of any alcoholic liquor in any naval ship or defence area, or other place where members of the Armed Forces are quartered or serving; or
 - (c) being in possession of alcoholic liquor, approaches or loiters in the vicinity of any naval ship or defence area, or other place where members of the Armed Forces are quartered or serving, with intent to bring liquor into the ship or area otherwise than for delivery to a mess or canteen or to premises occupied as married quarters.
- (2) Any officer or non-commissioned officer who has reasonable grounds to suspect that an offence against subsection (1) of this section is being or has been committed, with or without persons under that officer's command, may—
 - (a) enter into or on and search any ship, aircraft, conveyance, or vehicle of any kind that is entering or is within a defence area or any place where members

of the Armed Forces are quartered or serving; and

- (b) detain any person whom that officer reasonably suspects is committing or has committed any such offence, and search any parcel, case, bag, luggage, jar, bottle, or other receptacle in that person's possession; and
 - (c) if any liquor is found as a result of any such search, seize the liquor, together with any receptacle holding it, unless the liquor is for delivery to any canteen or mess or to any premises occupied as married quarters.
- (3) Subject to subsection (4) of this section, any officer or non-commissioned officer or any member of the Police⁷⁷ may, with or without a warrant, apprehend or cause to be apprehended any person whom that officer or that member of the Police has reasonable grounds to suspect is committing or has committed an offence against this section, and bring that person or cause that person to be brought before a District Court Judge to be dealt with for the suspected offence.
- (4) If, in any case to which subsection (3) of this section applies, the person is subject to the Armed Forces Discipline Act 1971, that person shall be dealt with in accordance with the corresponding provisions of that Act.
- (5) Any liquor seized under the authority of this section shall, on the conviction of the person from whom the liquor was seized, together with any receptacles holding the liquor, be forfeited to the Crown. The liquor and receptacles so forfeited shall then be sold by public auction and the proceeds of sale shall be paid into an appropriate bank account in accordance with the Public Finance Act 1989.
- (6) For the purposes of this section, the term defence area does not include any road, street, or other thoroughfare through which members of the general public are authorised to pass.

90 Evidence

Any document that would be evidence in any proceedings under the Armed Forces Discipline Act 1971 by virtue of section 147(2) of that Act⁷⁸ shall, in like manner, be evidence in proceedings under this Part of this Act.

PART 8

Miscellaneous provisions

90A Locally employed civilians

The Chief of Defence Force may employ persons who are outside New Zealand to undertake work for the Defence Force outside New Zealand on terms and conditions specified or prescribed by the Chief of Defence Force.

91 Annual report

As soon as practicable after the end of each financial year, the Chief of Defence Force must, in accordance with section 43 of the Public Finance Act 1989, prepare a report on—

⁷⁷ **Member of the Police** is to be read as a reference to a constable: section 116(a) of the Policing Act 2008.

⁷⁸ AFDA s 147(2) has been repealed. Pursuant to section 22(2) of the Interpretation Act 1999, this reference to AFDA s 147(2) is to be read as a reference to sections 72 to 74 of the Court Martial Act 2007.

- (a) the operations of the Defence Force for that financial year; and
- (b) any other matters that the Chief of Defence Force considers to affect the operations of the Defence Force.

91A Territorial Forces Employer Support Council

- (1) The Minister must appoint a council to be called the Territorial Forces Employer Support Council.
- (2) The Council has—
 - (a) the role of promoting service in the territorial forces; and
 - (b) the duty of advising the Minister on such matters in relation to the territorial forces as are referred to the Council by the Minister; and
 - (c) such other functions as are from time to time determined by the Minister.
- (3) The Council is a statutory Board for the purposes of the Fees and Travelling Allowances Act 1951.
- (4) There may be paid out of public money to the members of the Council remuneration by way of fees, salaries, or allowances and travelling allowances and travelling expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act apply accordingly.
- (5) Subject to the provisions of this Act and of any regulations made under this Act, the Council may regulate its own procedure.

92 Arms, etc, to remain property of the Crown

- (1) All arms, equipment, uniforms, and other public property of any kind supplied by the Crown to the Armed Forces shall be presumed to remain the property of the Crown in the absence of proof to the contrary.
- (2) All arms, equipment, uniforms, and other public property of any kind supplied by the Crown to any member of the Armed Forces shall, unless issued to that member for retention by that member permanently, be presumed to remain the property of the Crown in the absence of proof to the contrary.
- (3) All property of the Crown of any kind for the time being in the possession of a member of the Armed Forces shall be exempt from seizure in execution.⁷⁹

93 Security of defence areas

- (1) Without limiting the power to make regulations under section 101 of this Act, regulations⁸⁰ may be made under that section prohibiting access or restricting access, on such conditions as may be prescribed, of any person to any defence area, naval ship, or military aircraft, and making such provision as may be necessary or expedient for the control and security of any such area, ship, or aircraft.

⁷⁹ **Seizure in execution** is a forcible taking possession of property in order to enforce or give effect to a court judgment.

⁸⁰ The regulations made under this section are contained in Part 3 of the Defence Regulations 1990. The arrest and search powers prescribed under those regulations are explained in DM 69 (2 ed) Volume 1 Chapter 3 Sections 2 and 3.

- (2) Regulations made pursuant to subsection (1) of this section may include provisions for all or any of the following purposes:
- (a) authorising the officer in charge of any defence area, naval ship, or military aircraft, or any member of the Defence Force duly authorised by that officer, to search and detain for the purposes of search any person while that person is in or is entering or leaving, or about to enter or leave, the area, ship, or aircraft, as to his or her person and also as to any vehicle, ship, boat, aircraft, receptacle, parcel, or chattel of every description in that person's possession or under that person's control:
 - (b) authorising any such officer or member of the Defence Force to seize from a person so searched any thing that the officer or member of the Defence Force has reasonable grounds to believe has been used or is being used in the commission of an offence (either against the law of New Zealand or, in the case of a defence area, if it is situated in a country other than New Zealand, against the law of that country), and providing for the sale or disposal of any such thing on the conviction of the person from whom the thing was seized of any such offence, or, if the person from whom the thing was taken is not proceeded against or not so convicted, for the return of the thing to that person:
 - (c) authorising any such officer or member of the Defence Force to apprehend and detain any person who is in or entering or leaving, or about to enter or leave, the area, ship, or aircraft in any case where the person is found committing or is suspected on reasonable grounds of having committed an offence (either against the law of New Zealand or, in the case of a defence area, if it is situated in a country other than New Zealand, against the law of that country) while that person is in or entering or leaving, or attempting to enter or leave, the area, for the purpose of—
 - (i) delivering that person to a member of the Police⁸¹ for the purpose of arrest by that member of the Police; or
 - (ii) if the area, ship, or aircraft is situated outside New Zealand, delivering that person to a member of the police of the civil power of that country, so that, where appropriate, that person may be arrested pursuant to the powers of that member; or
 - (iii) if the person apprehended or detained is a member of an allied force (whether that force is in New Zealand or elsewhere), delivering that person to the service authorities of that force:
 - (d) authorising any such officer, or member of the Defence Force to require any person who is in or entering or leaving, or about to enter or leave, the area, ship, or aircraft to identify himself or herself and give an explanation of his or her presence:
 - (e) authorising any such officer or member of the Defence Force to remove any person who, without lawful excuse, refuses or fails to comply with any direction to leave the area, ship, or aircraft:
 - (f) providing for members of the Police to exercise any of the powers conferred by any of the preceding provisions of this subsection:

- (g) requiring any member of the Defence Force duly authorised under paragraph (a) of this subsection to produce such warrant or other evidence of his or her authority as may be prescribed in the regulations when exercising any power under the regulations:
- (h) prescribing offences for breaches in New Zealand of any such regulations, and prescribing, on summary conviction for any offence, a term of imprisonment not exceeding 3 months or a fine not exceeding \$1,000.

94 Recovery of excess payments

If any amount in respect of pay, allowances, or other emoluments is paid to a member or discharged member of the Armed Forces, or to the dependant of any member, deceased member, or discharged member of the Armed Forces, or to any other person for the time being entitled to receive any pay, allowance, or other emolument on behalf of any such member, discharged member, or any dependant, in excess of the amount to which the member, discharged member, dependant, or other person is entitled under this Act, the amount so paid in excess or any part of it may be recovered from the member, discharged member, dependant, or other person.

95 *Repealed*

96 *Repealed*

96A Nelson Rifle Prize Fund abolished

- (1) On the repeal of section 96,^{—82}
 - (a) the Nelson Rifle Prize Fund (the Fund) is abolished; and
 - (b) the Public Trust ceases to administer the Fund; and
 - (c) all money comprising the Fund (including any income arising from the Fund) held by the Public Trust in its common fund immediately before that repeal must be transferred to the cadet forces.
- (2) The cadet forces must apply the money so transferred only for any or all of the following purposes:
 - (a) the promotion of firearm safety in the Nelson region:
 - (b) the provision of firearm training in the Nelson region:
 - (c) the provision of monetary or other prizes for national shooting competitions held in the Nelson region.
- (3) In this section, Nelson region means the area within the boundaries of Nelson City and the Tasman District.

97 Delegations not to lapse

- (1) Where the holder of an office or appointment, having delegated (either before or after the commencement of this Act) a function, duty, or power pursuant to this Act or the Armed Forces Discipline Act 1971 or any enactment repealed by this Act or that Act and not having revoked that delegation, ceases to hold that office or

⁸² Section 96 was repealed, as from 15 December 2005, by section 3 of the Defence Amendment Act (No 2) 2005 (2005 No 100).

appointment, the delegation—

- (a) shall be deemed not to have lapsed by reason of the fact that the holder of the office or appointment has ceased to hold that office or appointment; and
 - (b) shall continue to have full force and effect until revoked by a successor in the office or appointment.
- (2) Where a function, duty, or power has been delegated (either before or after the commencement of this Act) to the holder of an office or appointment pursuant to this Act or the Armed Forces Discipline Act 1971 or any enactment repealed by this Act or that Act and the delegation has not been revoked, the delegation shall be deemed not to have lapsed by reason only of the fact that the holder of the office or appointment has ceased to hold that office or appointment, and shall continue in force as if it had been made to his or her successor in that office or appointment.

98 Execution of instruments, etc

Except as may be prescribed from time to time, any order, direction, instruction, or decision required or authorised by or under this Act or by the Armed Forces Discipline Act 1971 to be made, given, or executed by a person who is employed in the Defence Force or the Ministry of Defence may be made, given, or executed by any person authorised by or under this Act for the purpose; and any instrument containing any such order, direction, instruction, or decision and purporting to be signed by a person stated in the instrument to be so authorised shall, in the absence of proof to the contrary, be evidence in all courts and proceedings and for all other purposes that the person who signed it had the necessary authority to do so.

99 Proclamations, etc

All Proclamations, Orders in Council, and warrants relating to the Defence Force shall be deemed to be sufficiently notified to all persons whom they purport to affect by being published in the *Gazette* or, as the case may require, in Defence Force Orders.

100 Promulgation of orders

- (1) All orders given under the authority of or in execution of this Act or under the Armed Forces Discipline Act 1971 by any officer of the Defence Force shall be valid and effectual if given orally, or by advertisement in a newspaper circulating in the locality, or by a printed or written notice affixed at a place previously appointed for the purpose, or issued in any other manner customary in the Defence Force, except in cases where this Act or the Armed Forces Discipline Act 1971 specially requires any such order to be in writing.
- (2) An order deviating from the prescribed form, if otherwise valid, shall not be rendered invalid by reason only of any such deviation.

101 Regulations

- (1) The Governor-General may from time to time, by Order in Council, make regulations, not inconsistent with this Act, for all or any of the following purposes:

- (a) providing for the establishment and conduct of messes in naval ships and defence areas:⁸³
- (b) providing for—⁸⁴
 - (i) the vesting in the Crown of all intellectual property—
 - (A) devised or developed or created in the course of the duties of a member of the Defence Force, whether or not the intellectual property might reasonably be expected to result; or
 - (B) devised or developed or created wholly or principally by or through the use of resources provided by the Crown:
 - (ii) the management and funding of the development and protection of intellectual property that is vested in the Crown pursuant to any regulations made under subparagraph (i); and
 - (iii) the payment of any amount by way of bonus or grant appropriate in the circumstances to a member of the Defence Force who devises or develops or creates any intellectual property that is vested in the Crown pursuant to any regulations made under subparagraph (i).
- (c) providing for the payment of grants to Defence Force bands, organisations, and affiliated bodies:⁸⁵
- (d) authorising civilian persons or organisations to conduct prescribed activities in defence areas:
- (e) controlling the packing, marking, handling, carriage, storage, and use in defence areas of hazardous substances as defined in section 2 of the Hazardous Substances and New Organisms Act 1996:
- (f) providing for the enlistment of forces under section 11(3)(e), (4)(d), or (5)(d), and providing for the terms and conditions of service of those forces:
- (g) providing for such matters as are specified in section 46 or section 93 of this Act:⁸⁶
- (ga) Authorising the officer in charge of any defence area to regulate traffic of all classes, whether vehicular, pedestrian, animal, or otherwise, and prohibit traffic or any class of traffic, either absolutely or conditionally, on any specified road or any specified class of road in the area:
- (gb) Authorising the officer in charge of any defence area to regulate the use of vehicles and specify the conditions upon or subject to which they may be used in the area:

83 See regulation 17 of the Defence Regulations 1990.

84 This paragraph was substituted for the previous paragraph (b) by section 21 of the Defence Amendment Act 1997. Part 2 to the Defence Regulations 1990 was made under the previous paragraph. Until new regulations are made under this paragraph, that Part continues in effect as if it were made under this paragraph: section 20(1) of the Interpretation Act 1999. The power to make regulations under this paragraph applies to both members of the Armed Forces and the Civil Staff, but the current regulations only apply to members of the Armed Forces.

85 See regulations 18 and 19 of the Defence Regulations.

86 See Parts 1 and 3 of the Defence Regulations.

- (gc) prescribing offences for the contravention of or non-compliance with any regulations made under paragraph (ga) or paragraph (gb), and providing that the maximum penalty that, on summary conviction, may be imposed for those offences is a term of imprisonment not exceeding 3 months or a fine not exceeding \$1,000:
- (h) providing that any specified regulations of the Civil Aviation Regulations 1953, being—
 - (i) Regulations that relate to obstructions to air navigation and lights; or
 - (ii) General regulations relating to the administration of enforcement of regulations that so relate,—

shall, with any necessary modifications, apply in respect of any military aerodrome and aircraft using such aerodromes:

 - (i) providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

(2) All regulations made under this section shall come into force on such date as may be specified in the regulations, being the date of the regulations or on any other date after the date on which they were made; except that any such regulations that confer a benefit on any person may have effect from a date before the date on which the regulations were made.

(3) Any such regulations may relate to the Defence Force generally or to any specified part of the Defence Force.

102 Transitional provisions

(1) Every reference in any Act to the New Zealand Naval Forces or the Naval Forces, or to the New Zealand Army or the Army, or to the Royal New Zealand Air Force or the Air Force means the New Zealand Naval Forces, the New Zealand Army, or the Royal New Zealand Air Force, as the case may be, constituted under section 11 of this Act.

(2) Every reference to the New Zealand Naval Board, the New Zealand Navy Board, the Naval Board of New Zealand, or the Naval Board of the New Zealand Defence Council in any Act, regulation, rule, order, other enactment, agreement, deed, instrument, application, notice, or other document in force immediately before the commencement of this Act shall, unless the context otherwise requires, be read as a reference to the Chief of Defence Force.

(3) Every reference to the Army Board or the Army Board of the New Zealand Defence Council in any Act, regulation, rule, order, other enactment, agreement, deed, instrument, application, notice, or other document in force immediately before the commencement of this Act shall, unless the context otherwise requires, be read as a reference to the Chief of Defence Force.

(4) Every reference to the Air Board or the Air Board of the New Zealand Defence Council in any Act, regulation, rule, order, other enactment, agreement, deed, instrument, application, notice, or other document in force immediately before the commencement of this Act shall, unless the context otherwise requires, be read as a reference to the Chief of Defence Force.

- (5) Every reference to the New Zealand Defence Council in any Act, regulation, rule, order, other enactment, agreement, deed, instrument, application, notice, or other document in force immediately before the commencement of this Act shall, unless the context otherwise requires, be read as a reference to the Chief of Defence Force.
- (6) All orders or instructions issued by or under the authority of the Naval Board or the Naval Board of the New Zealand Defence Council, the Army Board or the Army Board of the New Zealand Defence Council, or the Air Board or the Air Board of the New Zealand Defence Council, or the New Zealand Defence Council, that are in force immediately before the commencement of this Act shall, until revoked by the Chief of Defence Force, continue in force as if they were Defence Force Orders issued under section 27 of this Act. Any such orders or instructions may from time to time be amended by the Chief of Defence Force.
- (7) Every lease, licence, or other contract or arrangement in force immediately before the commencement of this Act and executed for any of the purposes of the Ministry of Defence shall continue to have effect according to its tenor notwithstanding that it may hereafter be intended that any right, title, privilege, or benefit presently enjoyed by the Ministry of Defence under the contract or arrangement shall be enjoyed by the Defence Force alone, or by the Defence Force and the Ministry of Defence jointly.
- (8) All conditions of employment fixed under section 46 of the Defence Act 1971, or under any corresponding former enactment, and in force immediately before the commencement of this Act shall be deemed to have been fixed under section 45 of this Act, and shall continue to have effect until they are revoked or superseded under that section of this Act.
- (9) Every member of the regular forces whose service commenced before the commencement of this Act is entitled, on completion of that service, to an Armed Forces Terminal Benefit of an amount prescribed by the Chief of the Defence Force in accordance with criteria applying immediately before that commencement.
- (10) Every award or agreement in force in relation to employees of the Ministry of Defence immediately before the commencement of this Act shall be deemed for the purposes of this Act to have been negotiated by the Chief of Defence Force under section 70 of the Act in relation to any relevant group of employees in the Civil Staff, and shall continue to apply to any such group until it is superseded by any other award or agreement negotiated by the Chief of Defence Force under that section.
- (11) For the purposes of any entitlement under any award or agreement or contract of employment, service with the Ministry of Defence shall be deemed to be service as a member of the Civil Staff.

103 Application of State Sector Act 1988

Schedule 1 to the State Sector Act 1988 is hereby amended by omitting from the item relating to the Ministry of Defence the words “(excluding the Armed Forces raised and maintained under section 4 of the Defence Act 1971)”.

104 Application of Public Finance Act 1989

The provisions of the Public Finance Act 1989, so far as they are applicable and with any necessary modifications, shall apply to the Defence Force as if—

- (a) the Defence Force were a department within the meaning of that Act; and

- (b) the Chief of Defence Force were the chief executive of the department within the meaning of that Act.

105 Consequential amendments and repeals

- (1) The enactments specified in the first column of Schedule 1 to this Act are hereby amended in the manner specified in the second column of that Schedule.
- (2) The enactments specified in Schedule 2 to this Act are hereby repealed.

SCHEDULES

Omitted from this manual

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DEFENCE REGULATIONS 1990

(SR 1990/78)

PURSUANT to section 93 and section 101 of the Defence Act 1990, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

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1 Title and commencement

- (1) These regulations may be cited as the Defence Regulations 1990.
- (2) These regulations shall come into force on the day after the date of their notification in the *Gazette*.¹

2 Interpretation

In these regulations, unless the context otherwise requires,—

The Act means the Defence Act 1990

Appointed member means a member of the Armed Forces appointed under section 93 of the Act by the Chief of Defence Force to enter into indentures of apprenticeship

Authorised person means any member of the Defence Force duly authorised under regulation 31 of these regulations by the officer in charge of any defence area²

Basic pay, in relation to a member of the Armed Forces, means the daily amount payable to the member as determined by the Chief of Defence Force, but excluding allowances

Gross pay or **pay** means all pay and allowances that a member of the Armed Forces is eligible to receive

Invention means any invention, discovery, or improvement in a process, apparatus, or machine used for the purposes of the Armed Forces

Member of the Police means a member of the Police of New Zealand³

Officer in charge, in relation to a defence area, means—

- (a) the officer commanding the area; or
- (b) if there is no officer commanding the area, the officer commanding the major unit occupying the area; or
- (c) any other person declared by the Chief of Defence Force to be the officer in charge:

Orders means Defence Force Orders issued under section 28 of the Act; and includes any orders and instructions that, by virtue of section 100(6) of the Act, are in force as if they were Defence Force Orders

¹ The date of notification in the *Gazette* was 5 April 1990.

² **Defence area** is defined in section 2(1) of the Defence Act 1990.

³ **Member of the Police** must be read as a reference to a constable: section 116(a) of the Policing Act 2008.

Ordinary risks of service means risks that arise solely out of and in the course of duty of a member of the Armed Forces from situations that are—

- (a) peculiar to conditions in the Armed Forces; or
- (b) common to conditions in the Armed Forces and in civilian life, if the Crown would be liable under any rule of law⁴ other than regulation 8 of these regulations for loss or damage suffered by the member arising out of any such risk:

Personal effects means any effects (other than service kit) that a member of the Armed Forces has in his or her possession

Restricted place means any defence area or part of a defence area that is declared to be a restricted place under regulation 37 of these regulations

Regular member means a member of the regular forces

Reserve member means a member of the reserve forces

Service kit includes all items of uniform, regulation kit, and special clothing that are purchased by or issued to or on loan to a member of the Armed Forces and are required by the member in the proper performance of his or her duty, and all items of arms, personal equipment, instructional publications, tools, and other stores that are on individual issue or loan to a member of the Armed Forces

Superior authority has the same meaning as the term superior commander has in section 2(1) of the Armed Forces Discipline Act 1971

Territorial member means a member of the territorial forces.

PART 1

Terms and conditions of service

3 Oath of allegiance

- (1) For the purpose of section 35 of the Act, the oath of allegiance shall be in the following form, or in a form to the like effect:

“I, [*Name*], solemnly promise and swear that I will be faithful and bear true allegiance to our Sovereign Lady the Queen, her heirs and successors, and that I will faithfully serve in the New Zealand Naval Forces/the New Zealand Army/the Royal New Zealand Air Force [*Delete the Services that are not appropriate*], and that I will loyally observe and obey all orders of Her Majesty, her heirs and successors, and of the officers set over me, until I shall be lawfully discharged. So help me God.”

- (2) This regulation does not derogate from section 4 of the Oaths and Declarations Act 1957, which entitles a person to make an affirmation instead of taking an oath.

4 Grants on death of regular members

- (1) Where a regular member dies during service, the Chief of Defence Force may authorise the making of a grant—

⁴ Section 6 of the Crown Proceedings Act 1950 provides that the Crown is subject to all those liabilities in tort to which it would be subject in respect of any breach of those duties which an employer owes to his or her servants at common law. In dealing with claims under regulation 8 of the Defence Regulations in which any such question arises, advice should be sought from a legal officer.

- (a) to any dependant or dependants of the member; or
- (b) in any case where it appears to the Chief of Defence Force that the member has no dependants, to his or her estate,—

not exceeding in the aggregate the amount that, if the member had taken the leave (other than leave granted as a terminal benefit) that the member had accrued at the date of his or her death, the member would have received in gross pay in respect of that leave.

- (2) Where a regular member dies during service, the Chief of Defence Force may also,—
- (a) if death is not attributable to service in the Armed Forces, authorise the making of a grant to any dependant or dependants of the member, not exceeding in the aggregate an amount equal to one-sixtieth of the gross annual pay of the member at the date of his or her death for each whole year of service that the member has completed; or
 - (b) if death is attributable to service in the Armed Forces, authorise the making of a grant to any dependant or dependants of the member, not exceeding in the aggregate either—
 - (i) an amount equal to the gross pay that the member would have received in terminal benefits if the member had completed his or her engagement on the date of his or her death; or
 - (ii) an amount equal to one-sixtieth of the gross annual pay of the member at the date of his or her death for each whole year of service that the member has completed,—

whichever amount is the greater.

- (3) At any time before finally authorising the making of any grant under subclause (1) or subclause (2) of this regulation in respect of any member to whom the subclause applies, the Chief of Defence Force may authorise the making of an immediate interim advance, not exceeding \$500 in the aggregate, to any dependant or dependants of the member. The interim advance shall be deducted from any grants that may be made to that dependant or those dependants under either of those subclauses.
- (4) Where a regular member dies during service, the Chief of Defence Force may also authorise a grant to the widow, widower, surviving civil union partner,⁵ or surviving de facto partner⁶ of the member or, if there is no widow, widower, surviving civil union partner, or surviving de facto partner, to any dependent child or children of the member, not exceeding the member's gross pay during any long service leave for which the member has qualified, being leave that the member has not taken and has not forfeited.

5 Grant on death of territorial member

Where a territorial member dies and his or her death is attributable to service in the Armed Forces, the Chief of Defence Force may, if it appears desirable to do so on grounds of financial hardship, authorise the making of an immediate grant to any dependant or dependants of the member, not exceeding in the aggregate \$500.

⁵ **Civil union partner** is defined by section 4 of the Civil Union Act 2004.

⁶ **De facto partner** is defined by section 29A of the Interpretation Act 1999.

6 Continuation of pay of missing or captured member

- (1) Subject to subclause (2) of this regulation, a member of the Armed Forces shall, during any period that the member is missing on active service or a captive of the enemy, continue to receive his or her basic pay and any allowances that are paid on a continuing basis with his or her basic pay, but the Chief of Defence Force may from time to time determine the manner in which the pay and allowances shall be paid out.
- (2) Where a court of inquiry finds that, by reason of his or her own wrongful conduct or neglect, a member of the Armed Forces is or was for any period missing on active service or a captive of the enemy, the pay that is due to the member and unpaid in respect of that period may be withheld from payment to the member or to his or her order.
- (3) Notwithstanding subclause (2) of this regulation, the Chief of Defence Force may authorise such allotments as the Chief of Defence Force specifies to be paid from the pay of the member to the member's dependants, and to meet contractual obligations for mortgage repayments, rent, superannuation contributions, insurance premiums, and other obligations.

7 Expenses for attending selection boards or medical examinations

- (1) A person (other than a regular member) who is required to attend a selection board or interview, or a medical examination in respect of an application for an appointment or for enlistment in the Armed Forces or for appointment as an officer in the Cadet Forces, or a medical examination arranged for dependants who are to accompany members of the Armed Forces overseas, shall be entitled—
 - (a) to be provided at public expense with return transport between the person's place of residence and the place where the selection board, interview, or medical examination is held; and
 - (b) to be provided at public expense with accommodation and meals while the person so attends or, at the discretion of the Chief of Defence Force, to be reimbursed for the actual and reasonable costs of any accommodation and meals paid for by the person while so attending.
- (2) An applicant for appointment or enlistment as a member of the territorial forces or the reserve forces (other than a regular member) who is required to attend during normal working hours a selection board or interview, or a medical examination, may at the discretion of the Chief of Defence Force be reimbursed for any salary or wages lost by the applicant in respect of the time that the applicant is absent from the member's place of employment for the purpose of that attendance.

8 Compensation for loss of or damage to kit

- (1) Where a member of the Armed Forces suffers any loss of or damage to the member's service kit, the following provisions shall apply:
 - (a) in the case of loss, or of damage that is of such a nature as to render the total or partial replacement of the kit necessary, the member shall be entitled to have the kit or the part replaced or, at the discretion of the Chief of Defence Force, to be reimbursed for the actual and reasonable cost of replacement:

- (b) in the case of damage that is not of such a nature as to render the total or partial replacement of the kit necessary, the member may be paid such amount as the Chief of Defence Force thinks fit in compensation for the damage.
- (2) A member of the Armed Forces who suffers any loss of or damage to the member's personal effects may be paid such amount as the Chief of Defence Force thinks fit in compensation for the loss or damage.
- (3) No compensation shall be awarded under this regulation in respect of the following:
- (a) loss or damage that is not attributable to the ordinary risks of service, except as provided in paragraph (b) of this subclause:
 - (b) loss of or damage to any article while the member is on leave, unless the article is lost or damaged while held in the custody of the Defence Force, or in the opinion of the Chief of Defence Force special circumstances exist:
 - (c) loss of money, or loss of any article (including money) by theft, unless the money is lost or the article is stolen while held in the custody of the Defence Force:
 - (d) loss of or damage to any article that is transported in any vehicle, ship, or aircraft, otherwise than for Service reasons:
 - (e) loss or damage that is covered by an insurance policy for which the premiums are payable or refundable to the member at public expense:
 - (f) loss of or damage to any personal effects if the member could have insured against the loss or damage at ordinary commercial rates without incurring additional premiums by reason of the nature of the member's duty in the Armed Forces:
 - (g) loss or damage that is attributable to the member's own neglect:
 - (h) loss or damage to any personal effects (other than personal effects held in the custody of the Defence Force) that are, in the opinion of the Chief of Defence Force, not personal effects that a member may be reasonably expected to have in his or her possession while on duty.
- (4) Where, under this regulation, a member of the Armed Forces has had any part of the member's service kit replaced or has been reimbursed for the cost of replacement, or has received compensation for damage to any part of the member's service kit or loss of or damage to any of the member's personal effects, and the article that has been replaced or in respect of which the member has been reimbursed or has received compensation is subsequently recovered, the member shall—
- (a) either return to the Defence Force the article that was issued by way of replacement, or pay to the Crown the value of the article so issued; or
 - (b) refund to the Crown the money paid to the member by way of reimbursement or compensation,—

as the case may be; but if the article so recovered is in a damaged condition, the member may claim compensation under this regulation in respect of that damage.

- (5) Where, under this regulation, a member of the Armed Forces has had any part of the member's service kit replaced or has been reimbursed for the cost of replacement, or has received compensation for damage to any part of the member's service kit or loss of or damage to any of the member's personal effects, the member shall, if required by the Chief of Defence Force to do so, pay to the Crown—
- (a) any amount recovered by the member under any insurance policy for the loss or damage, less the amount of any premium required to restore the policy to its original cover value; and
 - (b) any amount recovered by the member from any other person in respect of the loss or damage,—

but the total amount that the member may be required to pay under this subclause shall not exceed the value of the article issued to the member by way of replacement or, as the case may be, the amount that the member has received under this regulation by way of reimbursement or compensation.

- (6) Any money payable by a member of the Armed Forces to the Crown under subclause (4) or subclause (5) of this regulation shall, without prejudice to any other mode of recovery, be recoverable as a debt due to the Crown.

9 Injuries suffered by members of Armed Forces in organised sport

- (1) For the purposes of this regulation, a member of the Armed Forces is participating in an authorised sport if—
- (a) the member has been lawfully ordered to participate in that sport by any person who is entitled to exercise powers of command over the member; or
 - (b) the member's commanding officer has expressly or impliedly permitted the member to participate in that sport in the interests of the member's efficiency.
- (2) Subject to such conditions as may from time to time be prescribed by Orders, any injury suffered by a member of the Armed Forces while the member is participating in an authorised sport shall be deemed to be an injury that is attributable to the member's service in the Armed Forces.

10 Visits by next of kin to sick or wounded member of Armed Forces

Where a member of the Armed Forces in receipt of pay is seriously ill or is undergoing prolonged treatment in hospital, the Chief of Defence Force may, for the purpose of enabling any of the next of kin of the member to visit him or her, provide them with return travel at public expense between their places of residence and the place where the member is being treated, and may authorise the reimbursement to them of the actual and reasonable costs paid by them for any necessary accommodation incidental to such visits.

11 Travel privileges for next of kin attending Investitures

Where any order, decoration, or medal issued under Royal Warrant is to be conferred on or in respect of any person with regard to that person's service in the Armed Forces, the Chief of Defence Force may provide any of that person's next of kin with return travel at public expense between their places of residence and the place where the ceremony is to take place.

12 Withholding of pay, etc, of members of Armed Forces absent without leave or in desertion

- (1) Where any member of the Armed Forces is absent from duty without leave, or in desertion, all pay to which the member would otherwise be entitled in respect of any period during which the absence or desertion continues shall be withheld from the member.
- (2) All pay withheld under subclause (1) of this regulation shall be credited to the member as soon as practicable after the member's return to duty, except where—
 - (a) the member is to be charged with an offence against the Armed Forces Discipline Act 1971 in respect of the member's absence from duty without leave or desertion; or
 - (b) the member signs a written confession under section 110 of that Act that he or she has been guilty of desertion; or
 - (c) the member has been declared by a court of inquiry under section 201 of that Act to be an absentee, and, in accordance with subsection (3) of that section, the record of that declaration has acquired the legal effect of a conviction by court-martial for desertion before the member's return to duty.

13 Stoppages to pay in respect of loss or damage

- (1) Where, after an investigation has been held in accordance with Orders, it is found that any loss or destruction of or damage to public or other property has resulted directly or indirectly from the wrongful conduct or negligence of a member of the Armed Forces in the course of or in connection with the member's duties (whether or not the member was the sole cause of the loss, destruction, or damage), the Chief of Staff of the Service to which the member belongs or, in the case of a member who is for the time being attached to another Service, the Chief of Staff of that other Service, may order that such sum as the Chief of Staff specifies shall be stopped from the basic pay due or to become due to the member to make good wholly or partly the loss, destruction, or damage.
- (2) Where, after an investigation has been held in accordance with Orders, it is found that any loss has resulted from the unlawful retention by a member of the Armed Forces of any pay of another member, a superior authority may order that the sum required to make good that loss shall be stopped from the basic pay due or to become due to the first member.
- (3) No stoppage shall be ordered under this regulation that is greater than a sum sufficient to make good the loss or destruction of or damage to property, or the loss of the money, as the case may be, in respect of which the order is made.
- (4) Any stoppage ordered under this regulation may, without prejudice to any other mode of recovery, be deducted from the basic pay or any sums due or to become due to the member, but the rate of deduction shall not exceed such sum as will allow the member to draw a minimum of 20 percent of his or her basic pay per week.
- (5) Every stoppage under this regulation shall be applied for the purpose for which it is ordered.
- (6) No stoppage shall be ordered under this regulation unless the member concerned has been—

- (a) notified of the proposal to order the stoppage and of the reasons for it; and
- (b) given an opportunity to make representations to the Chief of Staff concerned as to why such a stoppage should not be ordered or as to the amount of the stoppage.

14 Bonds

- (1) Where any public money is to be specially advanced to or specially expended on behalf of a member of the Armed Forces with the approval of the Chief of Defence Force, in connection with transportation, education, training, sustenance, or any other purpose, the Chief of Defence Force may require the member as a condition of that advance or expenditure to sign a bond in a form to be determined by the Chief of Defence Force, requiring the member to repay to the Crown the sum specified if the member makes default in the performance of any condition of the bond.
- (2) The amount payable under the bond shall be reduced progressively during the currency of the bond by a proportion that is for the time being equivalent to that which the service rendered by the member in accordance with the condition of the bond bears to the full period of service required for the discharge of the bond.
- (3) The Chief of Defence Force may require that the bond shall also be signed as surety by a parent or guardian of the member, or by any other person approved by the Chief of Defence Force; and the parent or guardian or other person who signs the bond shall be jointly and severally liable under the bond with the member.
- (4) Every bond shall be enforceable by the Crown against the member, and against every surety who signs it.

15 Funerals

- (1) Subject to such conditions as may from time to time be prescribed by Orders, a Chief of Staff may order that a funeral be provided at public expense for a regular member who dies while serving in his or her Service, or for any other member in that Service who dies while in receipt of Service pay or whose death is attributable to service in the Armed Forces.
- (2) Where a funeral is provided for a member of the Armed Forces under this regulation, no liability shall be incurred by the Crown or the Chief of Defence Force or any Chief of Staff by reason of any instructions given by any relative or friend of the deceased.

16 Educational, training, and entertainment funds

- (1) The Minister, with the concurrence of the Minister of Finance, may from time to time authorise on such conditions as the Minister may specify the establishment, out of money appropriated by Parliament for the purpose, of funds for all or any of the following purposes:
 - (a) a fund for the provision and development in any Armed Forces establishment of educational activities and hobbies for members of the Armed Forces:
 - (b) a fund for the welfare and benefit of members of the Territorial Force of the New Zealand Army:
 - (c) a Training Service Fund in any naval training establishment:

- (d) a Ship's Improvement Fund for any naval ship or establishment:
- (e) to provide allowances for seagoing naval ships in commission for the entertainment of official guests.

(2) Every existing Training Service Fund, and every existing educational and hobbies fund, and every existing Ship's Improvement Fund, established under regulation 15 of the Defence Regulations 1972, or deemed by subclause (2) of that regulation to have been established under that regulation, shall be deemed to have been established under this regulation.

17 Establishment of messes

- (1) The commanding officer of any naval ship, unit, or defence area, or of any other place where any part of the Armed Forces is situated, may establish and name messes and make rules for the conduct and membership of such messes in accordance with the appropriate Service usage.
- (2) The commanding officer may authorise a mess to purchase intoxicating liquor and other commodities, articles, and amenities from the Armed Forces Canteen Council or any other lawful source, for sale and supply in the mess to members, and may also authorise members and their guests to possess and consume such liquor in the mess.
- (3) All profits derived from a mess shall belong to the mess funds of that mess, and shall not be part of any unit funds.
- (4) If any part or parts of the Armed Forces having an established mess are at any time abolished, altered, amalgamated, or reconstituted, any mess funds and mess property belonging to that part or parts of the Armed Forces shall be disposed of in accordance with the directions of the Chief of Staff of the Service concerned.
- (5) Every established mess that is conducted in accordance with the Defence Regulations 1972 shall be deemed to have been established under this regulation.

18 Grants to bands

- (1) The Minister, with the concurrence of the Minister of Finance, may authorise on such conditions as the Minister may specify the payment, out of money appropriated by Parliament for the purpose, of an annual grant to each band of the territorial or reserve forces approved by the Chief of Defence Force.
- (2) Every grant shall be made as soon as possible after the 1st day of April in each year and shall be applied for the upkeep and maintenance of the band in respect of which it is made.

19 Social welfare organisations

- (1) The Minister may authorise any social welfare organisation to provide welfare amenities for members of the Armed Forces on such conditions, if any, as the Minister may from time to time specify.
- (2) The Minister may at any time revoke any such authority.

20 *Omitted from this manual in view of the repeal of section 95 of the Defence Act 1990*

PART 2

Inventions and patents

21 Application of Part 2

This Part of these regulations shall apply to—

- (a) regular members; and
- (b) territorial members and reserve members who are for the time being liable for continuous service under section 40 or section 41 of the Act.

22 Restrictions on applications for patents

- (1) No member of the Armed Forces may apply for or obtain a patent for any invention except in accordance with this Part of these regulations and Orders.⁷
- (2) Every invention made by a member of the Armed Forces shall be deemed to belong to and be held in trust for the Crown until such time as a decision in respect of the invention has been given by the Chief of Defence Force. Pending that decision, an inventor shall not disclose to unauthorised persons the subject-matter of the invention, or permit any information relating to the invention to be published.

23 Restrictions on trials of inventions

- (1) Every invention shall in the first instance be referred to the Chief of Defence Force or to such person as the Chief of Defence Force may direct.
- (2) No member of the Armed Forces shall authorise the trial of any invention unless the member has first obtained the authority of the Chief of Defence Force.

24 Employment of agents

- (1) Any inventor who desires to obtain patent protection shall be permitted, without prior authority, to file in the New Zealand Patent Office an application for a patent accompanied by a provisional specification; but the inventor shall not, without the prior written authority of the Chief of Defence Force, employ an agent or any other person in connection with the preparation of the specifications and the filing of the application at the Patent Office.
- (2) The Chief of Defence Force shall not withhold authority under subclause (1) of this regulation if the title of the invention and the name of the proposed agent is disclosed, and the Chief of Defence Force is satisfied that no disclosure of information that may be detrimental to the interests of the State would be involved by the employment of that agent or other person.

25 Compulsory applications for patents

- (1) An inventor who does not wish to apply for the grant of a patent shall nevertheless, if required to do so by the Chief of Defence Force, at public expense do all necessary acts in order to obtain the grant of letters patent in New Zealand or in any other specified country to secure protection of the invention for Government purposes.
- (2) In all other circumstances, the expenses in connection with an application for and the grant of letters patent shall be borne by the inventor.

⁷ No DFOs have been issued on this matter.

26 Agreements to be entered into

An inventor shall, as soon as practicable after filing an application in the Patent Office, send 2 copies of the provisional specification to the inventor's commanding officer through the normal channels, together with 3 completed and signed copies of an agreement in the form or to the effect prescribed in the Second Schedule to these regulations.

27 Powers of Chief of Defence Force

Without restricting the general powers of the Chief of Defence Force in that behalf, the Chief of Defence Force may do any of the following:

- (a) where the Chief of Defence Force wishes to retain complete control of any invention, order the assignment of the invention, and any letters patent granted in respect of the invention, to the Crown or such Government department or person on behalf of the Crown as the Minister may direct, in either of which cases the inventor shall not dispose of any commercial uses of the invention except as provided in the succeeding provisions of this regulation:
- (b) where the Chief of Defence Force is satisfied with an agreement giving to the New Zealand Government, and, if the Chief of Defence Force considers it is necessary, the Government of any other Commonwealth country, and any persons authorised by any such Government, a right to use any invention for the services of the State without legal obligation, give leave to the inventor to dispose of the invention for commercial purposes:
- (c) where the Chief of Defence Force does not consider that the Crown has any interest in any invention, authorise the inventor to deal with the invention as he or she thinks fit, in which case the inventor shall be deemed to be thereby released from the obligations into which the inventor has entered pursuant to regulation 26 of these regulations.

28 Royalties and rewards

- (1) Where an invention having an industrial application has been assigned to the Crown or to any person on behalf of the Crown, the Chief of Defence Force may—
 - (a) deal with the commercial rights, in which case the inventor shall be granted an appropriate share of any royalties or other money received from those rights; or
 - (b) grant to the inventor the right to deal with the commercial rights subject to such conditions as the Chief of Defence Force may impose.
- (2) Notwithstanding anything in subclause (1) of this regulation, an inventor shall be entitled to apply to the Minister for an ex gratia reward in respect of the use of the invention by the Crown.

29 Appeals

- (1) An inventor may appeal to an Inventions Appeal Committee constituted under this regulation in the following circumstances:

- (a) in the case of an invention dealt with under regulation 28(1)(a) of these regulations, if the inventor considers that the share of royalties or commercial proceeds offered by the Chief of Defence Force is inadequate, or if no such share is offered to the inventor:
 - (b) in the case of an invention dealt with under regulation 28(1)(b) of these regulations, if the inventor considers that any share of royalties or commercial proceeds that the inventor is called upon by the Chief of Defence Force to pay is excessive:
 - (c) in the case of a reward offered to the inventor by the Minister under regulation 28(2) of these regulations, if the inventor considers that the reward is inadequate.
- (2) Every Inventions Appeal Committee shall consist of a District Court Judge and 2 assessors, of whom one shall be appointed by the Chief of Defence Force and one by the inventor.
 - (3) Any inventor wishing to appeal under subclause (1) of this regulation shall give written notice of appeal to the Chief of Defence Force, specifying the name of the person whom the inventor appoints to act as assessor at the hearing of the appeal. The assessor shall give written assent to act.
 - (4) Within 21 days after receipt of the notice of appeal, the Chief of Defence Force shall inform the inventor of the names of the Judge before whom the appeal will be heard and the assessor appointed by the Chief of Defence Force, and shall at the same time forward to the Judge a copy of the decision appealed against and of the notice of appeal, together with a notice of the appointment of an assessor by the Chief of Defence Force.
 - (5) The Inventions Appeal Committee shall hear and determine the appeal at such convenient time and place as the Judge shall decide. The date shall not be more than 42 days after the receipt by the Chief of Defence Force of the notice of appeal.
 - (6) The Judge shall cause at least 5 days' notice of the time and place of the hearing to be given to each assessor, the Chief of Defence Force, and the inventor.
 - (7) At the hearing of the appeal the inventor may appear in person or be represented by some other person. The Chief of Defence Force may be represented by any person appointed by the Chief of Defence Force.
 - (8) The Judge may from time to time adjourn the hearing or consideration or determination of the appeal as the Judge thinks fit.
 - (9) If the inventor or his or her representative fails to appear at the hearing, the appeal may be determined in his or her absence on such evidence as is available. If the inventor appears, the evidence shall be taken in his or her presence or in the presence of his or her representative or both.
 - (10) The Inventions Appeal Committee shall not be bound to follow any formal procedure, but shall comply with the rules of natural justice. It may, in its discretion, receive such evidence as it thinks fit (whether on oath or otherwise), and may act on any statement, document, information, or matter, that in the opinion of the Committee may assist it to deal with the matter before it, whether or not the same would be legally admissible in a Court of law.
 - (11) The determination in respect of the appeal shall be made in writing by the Judge and at least one of the assessors, together with their reasons for the determination,

and shall be signed by them. A copy shall be forwarded by the Judge to the inventor and to the Chief of Defence Force, and the Chief of Defence Force shall forthwith give effect to the determination.

- (12) If for any reason the Judge named in accordance with subclause (4) of this regulation is unable to perform his or her functions under this regulation, any other Judge may perform those functions in place of that Judge.
- (13) If for any reason the Judge so named is not present at the time and place fixed for the hearing of the appeal, and no other Judge is available, the assessors may from time to time adjourn the hearing of the appeal for such period, not exceeding 14 days, as they think fit.
- (14) If for any reason any assessor is unable to be present at the time and place fixed for the hearing of the appeal, the Chief of Defence Force or the inventor, as the case may be, shall make a fresh appointment of an assessor, and shall forthwith give written notice of the appointment to the Judge and to the other party. The Judge may adjourn the hearing of the appeal for such period, not exceeding 14 days, as the Judge thinks fit.
- (15) Any notice to be given or document to be served under this regulation may be given or served personally, or by registered letter addressed to the person to whom the notice is to be given, or the document is to be served, at that person's last known place of residence or business. In the latter case, it shall be deemed to be given or served at the time when it would be delivered in the ordinary course of post.
- (16) Subject to the other provisions of this regulation, the Inventions Appeal Committee shall determine its own procedure.

PART 3

Control and security of defence areas, naval ships, and military aircraft⁸**30 Warning notices**

The officer in charge of every defence area shall cause notices in the form or to the effect prescribed in the Third Schedule to these regulations to be erected at the entrances to and the limits of—

- (a) the defence area; and
- (b) every restricted place⁹ within the defence area—

for the purpose of giving reasonable notice to the public of the existence of the area and places, and of the requirements of this Part of these regulations in respect of the area and places.

31 General powers of officer in charge

The officer in charge of a defence area, naval ship, or military aircraft may—

- (a) for the purpose of controlling, or maintaining the security of, the area, ship, or aircraft
 - (i) prohibit or restrict the entry of all or any persons, vehicles, ships, boats, and aircraft to the area; or
 - (ii) prohibit or restrict the entry of all or any persons on board the ship or aircraft; or
 - (iii) prohibit or restrict the movements and activities of all or any persons, vehicles, ships, boats, and aircraft within the area; or
 - (iv) prohibit or restrict the movements and activities of all or any persons on board the ship or aircraft; or

8 Because the definition of **defence area** in section 2(1) of the Defence Act includes areas outside New Zealand, it is necessary to have regard to the relevant rules at international law.

Armed conflict. If a New Zealand force is in occupation of foreign territory it is bound by the law of armed conflict. In that context the force commander is permitted to issue orders applying Part 3 of the Defence Regulations 1990 to the occupied territory under article 64 of the Fourth Geneva Convention. Section III of the Regulations annexed to the Hague Convention of 1907 on the Laws and Customs of War on Land is also relevant.

Operations under Chapter VII of the UN Charter. If the New Zealand force is present on foreign territory with a UN Security Council mandate, the legitimacy of the force commander issuing orders applying Part 3 of the Defence Regulations to a defence area established on that territory will depend on the nature of the mandate. The advice of a legal officer must be sought before such orders are issued.

Force present with consent of host government. If the force has established a defence area on sovereign foreign territory with the consent of a host government, New Zealand legislation cannot be applied to the local citizens unless the local law expressly provides for it. Such legislation may be enacted by the host government pursuant to a status of forces agreement, for example the Five Power Defence Arrangements, which are bilateral treaties between the host States and New Zealand. In the absence of such legislation, the force commander would have to arrange for the local civil police to provide security for the defence area.

HMNZ ships and aircraft. The COs of HMNZ ships and military aircraft captains may exercise the powers conferred by this Part outside New Zealand only on board the ship or aircraft, or in its immediate vicinity. The consequences of asserting these powers if challenged by the local authorities would turn on the application of the law of sovereign immunity. In such cases, the advice of a legal officer should be sought immediately.

9 See regulation 37 of the Defence Regulations in respect of restricted places.

- (v) direct any person or persons within the area or on board the ship or aircraft to leave the area, ship, or aircraft or any part of it, either immediately or within the time that the officer in charge specifies; or
 - (vi) direct any person owning or in possession or control of or driving a vehicle, ship, boat, or aircraft within the area or any part of it to remove it from the area or that part, either immediately or within the time that the officer in charge specifies; or
- (b) authorise any person in writing for the purposes of all or any of the provisions of this Part.

32 Powers of search¹⁰

- (1) The officer in charge of a defence area, naval ship, or military aircraft or any authorised person may, for the purpose of maintaining the security of the area, ship, or aircraft, detain and search any person who is in, or is entering or leaving, or is about to enter or leave, the area, ship, or aircraft, both as to—
- (a) his or her person; and
 - (b) any vehicle, ship, boat, aircraft, receptacle, parcel, or chattel of any description in his or her possession or under his or her control.
- (2) The officer or authorised person intending to exercise any power of detention or search under subclause (1) of this regulation shall, if requested to do so by the person to be detained or searched, show his or her written authorisation to that person.
- (3) No person shall be searched as to the person by or in the presence of a person of the opposite sex.
- (4) If any person without lawful excuse refuses to be detained, or refuses to permit or submit to, or resists, any search under subclause (1) of this regulation, any authorised person may use such force as may be reasonably necessary against that person to effect the detention or search.
- (5) The officer or authorised person conducting any search under this regulation may seize from the person searched any thing that the officer or authorised person has reasonable grounds to believe has been used or is being used in the commission of an offence (either against the law of New Zealand or, if the defence area, naval ship, or military aircraft is situated in a country other than New Zealand, against the law of that country).
- (6) Where the person from whom any thing is seized under subclause (5) of this regulation is convicted, the Court may, instead of or in addition to imposing any other penalty, order that the thing be forfeited to the Crown, in which case it shall be sold or otherwise disposed of as the Minister may direct.
- (7) If no proceedings are brought or the person is acquitted, the thing shall be returned to the person.

¹⁰ See DM 69 (2 ed) Volume 1 Chapter 3 Section 3 for explanation of these search powers.

33 Person may be required to supply information

- (1) The officer in charge of a defence area, naval ship, or military aircraft, or any authorised person, or any member of the Police may require any person who is in the area or on board the ship or aircraft, or who is entering or leaving it, or who is about to enter or leave it, to supply to the officer, authorised person, or member of the Police the following information:
- (a) his or her true name; and
 - (b) his or her residential address; and
 - (c) an explanation of his or her presence or intended presence in the area, or on board the ship or aircraft.

34 Removal of persons

- (1) An authorised person may remove a person (A) from a defence area, naval ship, or military aircraft or any part of a defence area, naval ship, or military aircraft if A, without lawful excuse, refuses or fails to comply with a direction given to A under regulation 31 to leave the area, ship, or aircraft or part of the area, ship, or aircraft.
- (2) The authorised person may use the force that is reasonably necessary for removing A.

35 Apprehension and detention of persons committing offences

- (1) This regulation applies to a person (A) who is found committing, or is suspected on reasonable grounds of having committed, an offence against the law of the country¹¹ in which a defence area, naval ship, or military aircraft is situated (whether New Zealand or elsewhere) while A is—
- (a) in the area or on board the ship or aircraft; or
 - (b) entering or leaving the area, ship, or aircraft; or
 - (c) attempting to enter or leave the area, ship, or aircraft.
- (2) The officer in charge of the area, ship, or aircraft, or any authorised person, may, for the purposes of subclauses (4) or (5), apprehend and detain A if A is—
- (a) in the area or on board the ship or aircraft; or
 - (b) entering or leaving the area, ship, or aircraft; or
 - (c) attempting to enter or leave the area, ship, or aircraft.
- (3) The officer or the authorised person may use the force that is reasonably necessary for apprehending and detaining A.
- (4) Subject to subclause (5), every officer or authorised person who detains a person under subclause (2) (not being a person subject to the Armed Forces Discipline Act 1971) must as soon as possible deliver that person to a member of the police of the civil power of the country in which the area, ship, or aircraft is situated for the purpose of that person's arrest under the powers of that member of the police.

¹¹ In any case involving foreign citizens outside New Zealand, the legitimacy (or otherwise) of applying these regulations must be considered. See footnote 7 above. The advice of a legal officer is to be sought in every such case.

- (5) Every officer or authorised person who detains a member of an allied force under subclause (2) must as soon as possible deliver that person to the officer commanding that force, or any member of that force acting under the authority of the commanding officer, for the purpose of that person's arrest under the powers of that officer or member.

36 Members of police may exercise powers

Any power that may be exercised in a defence area or on board a naval ship or military aircraft by an authorised person under this Part may, at the request of the officer in charge of the area, ship, or aircraft, be exercised by a member of the police.¹²

37 Restricted places

- (1) The officer in charge of a defence area, naval ship, or military aircraft may at any time declare the area, ship, or aircraft or any part of the area, ship, or aircraft to be a restricted place.
- (2) In the case of a defence area or part of it, the officer must cause the restricted place to be clearly delineated or otherwise defined. The requirements of this subclause are in addition to the requirements of regulation 30.
- (3) A person must not enter or remain in a restricted place except with the permission of the officer in charge of it and in accordance with any conditions that the officer may impose.

38 Offences in respect of defence areas, naval ships, and military aircraft

- (1) Every person commits an offence against this Part who, without lawful excuse,—
- (a) enters or remains in a defence area or any part of it in contravention of a prohibition or restriction imposed under regulation 31 by the officer in charge of the area; or
 - (b) boards or remains on board a naval ship or military aircraft or part of a naval ship or military aircraft in contravention of a prohibition or restriction imposed under regulation 31 by the officer in charge of the ship or aircraft; or
 - (c) contravenes or fails to comply with any direction given to that person under regulation 31 by the officer in charge of the defence area, naval ship, or military aircraft; or
 - (d) refuses to permit, or submit to, or resists, any detention or search that he or she is required to undergo under regulation 32; or
 - (e) contravenes regulation 33 or regulation 37(3); or
 - (f) wilfully obstructs any of the following persons in the exercise of any powers under this Part:
 - (i) the officer in charge of a defence area, naval ship, or military aircraft;
 - (ii) an authorised person;
 - (iii) a member of the police.

¹² **Member of the police** means a constable in the New Zealand Police: see regulation 2 and section 116(a) of the Policing Act 2008.

- (2) Every person commits an offence against this Part who, without the permission of the officer in charge of the defence area, naval ship, or military aircraft—
- (a) injures, weakens, breaks down, or destroys—
 - (i) any structure or equipment, or any earthworks, road, drain, tree, or vegetation, in or on the defence area; or
 - (ii) any structure or equipment on board the ship or aircraft; or
 - (b) defaces, obliterates, removes, or destroys any printed or written notice, direction, or regulation posted, attached, or affixed to or upon any building, erection, post, fence, gate, or other structure, or to or upon any other public property, in or on the defence area; or
 - (c) defaces, or attaches or affixes anything to or upon,—
 - (i) any building, erection, post, fence, gate, or other structure, or any other public property, in or on the defence area; or
 - (ii) the ship or aircraft.

39 Penalties

Every person who commits an offence against this Part is liable on summary conviction¹³ to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$1,000 or both.

40 Application of Part 3 to other countries¹⁴

Nothing in this Part authorises any act in a defence area, or on board a naval ship or military aircraft, situated in a country other than New Zealand if the act would be contrary to the law of that country.

PART 4

Revocations

41 Revocation

The regulations specified in the Fourth Schedule to these regulations are hereby revoked.

SCHEDULE 1

Indenture of apprenticeship

Omitted from this manual in view of the repeal of section 95 of the Defence Act 1990

¹³ **Summary conviction** means a conviction by a District Court Judge or by 1 or more Justices of the Peace in accordance with the Summary Proceedings Act 1957: section 29 of the Interpretation Act 1999.

¹⁴ See footnote 7 above.

SCHEDULE 2

Reg 26

Agreement with respect to invention

Address:

I (WE) HAVE applied (am (are) about to apply) to the Patent Office for a patent for [*Describe nature of invention*]

Date:

I (we) will act in accordance with the Defence Regulations 1990 and Defence Force Orders and as directed by the Chief of Defence Force and agree to be bound by the following conditions:

- (a) I (we) have not left a complete specification with the application nor will I (we) subsequently leave a complete specification or take any further steps in the matter after applying for provisional protection without the direction or permission of the Chief of Defence Force:
- (b) I (we) will supply to my (our) commanding officer 2 copies of the provisional specification as soon as the application has been filed at the Patent Office, and any further information and particulars regarding my (our) invention as may be required by the Chief of Defence Force:
- (c) I (we) will, if so ordered, assign to the Crown, or to such Department or person on behalf of the Crown as the Minister of Defence may direct, the benefit of the invention and of any patent that may be granted, or will enter into such agreement for its use by the Government of any Commonwealth country and their contractors and the other persons authorised by them, as may be directed by the Chief of Defence Force:
- (d) I (we) will not assign or deal with the invention or patent, or grant any licences or rights for the use the invention or patent, to anyone except with the previous authority of the Chief of Defence Force, or under the terms of any agreement with the Minister of Defence:
- (e) I (we) agree that the terms of payment (if any) for any assignment of the invention or patent directed by the Chief of Defence Force or for its use in Her Majesty's service, will, subject to regulation 29 of the Defence Regulations 1990, be decided by the Chief of Defence Force and that regard will be paid to any facilities in originating, working out, and perfecting the invention that I (we) may have enjoyed by reason of my (our) official position(s), and to all other factors that may be relevant:
- (f) I (we) will not apply for a patent in any other country than New Zealand without the authority of the Chief of Defence Force:
- (g) I (we) will if so required by the Chief of Defence Force do all acts necessary for obtaining a patent in New Zealand or in any other specified country at the expense of the Crown and under such conditions as may be prescribed by the Chief of Defence Force.

Inventor's Signature:

Rank:

Certificate to be signed by commanding officer

I certify that to the best of my belief the applicant is the true originator of the invention referred to. I have furnished the applicant with a copy of this agreement.

Signature:

Rank:

Date:

SCHEDULE 3

Reg 30

Notices to be erected in defence areas and restricted places

DEFENCE AREA

NO ADMISSION EXCEPT ON BUSINESS

Any person proceeding beyond this notice or remaining in this defence area is subject to restrictions imposed under Part 3 of the Defence Regulations 1990 and may, at the discretion of the [*Specify the designation of the officer in charge of the area*] or of any authorised person be detained and searched both as to his or her person, and as to any vehicle, ship, boat, aircraft, receptacle, parcel, or chattel in his or her possession or under his or her control.

By order of

Minister of Defence

RESTRICTED PLACE

NO ADMISSION EXCEPT BY AUTHORITY

It is an offence punishable by imprisonment for a term not exceeding 3 months and a fine not exceeding \$1,000 to proceed beyond this notice without the permission of [*Specify the designation of the officer in charge of the defence area*].

By order of

Minister of Defence

SCHEDULE 4

Reg 41

Regulations revoked

Omitted from this manual

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SECTION 1**GENEVA CONVENTIONS ACT 1958**

Public Act 1958 No 19

Date of assent 18 September 1958

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An Act to enable effect to be given to certain International Conventions done at Geneva on the 12th day of August 1949 and to certain Protocols additional to those Conventions, and for purposes connected therewith

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

1 Short Title

This Act may be cited as the Geneva Conventions Act 1958.

2 Interpretation

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

The First Convention means the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, adopted at Geneva on the 12th day of August 1949, a copy of which Convention (not including the annexes to that Convention) is set out in Schedule 1 to this Act

The Second Convention means the Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, adopted at Geneva on the 12th day of August 1949, a copy of which Convention (not including the annex to that Convention) is set out in Schedule 2 to this Act

The Third Convention means the Geneva Convention relative to the Treatment of Prisoners of War adopted at Geneva on the 12th day of August 1949, a copy of which Convention (not including the annexes to that Convention) is set out in Schedule 3 to this Act

The Fourth Convention means the Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted at Geneva on the 12th day of August 1949, a copy of which Convention (not including the annexes to that Convention) is set out in Schedule 4 to this Act

The Conventions means the First Convention, the Second Convention, the Third Convention, and the Fourth Convention

New Zealand aircraft means any aircraft that is registered or required to be registered in New Zealand under the Civil Aviation Act 1990; and includes any aircraft belonging to or in the service of Her Majesty in right of New Zealand, whether a civil or a military aircraft

New Zealand ship means a New Zealand ship or ship belonging to Her Majesty as those terms are defined in the Shipping and Seamen Act 1952; and includes an unregistered ship which is by Part 12 of that Act required to be registered in New Zealand or in some other Commonwealth country¹

Protected internee means a person protected by the Fourth Convention and interned in New Zealand

Protected prisoner of war means a person protected by the Third Convention

The protecting power, in relation to a protected prisoner of war or a protected internee, means the power or organisation which is carrying out, in the interests of the power of which he is a national, or of whose forces he is, or was at any material time, a member, the duties assigned to protecting powers under the Third Convention or the Fourth Convention, as the case may be.

The First Protocol means the Protocol Additional to the Conventions and relating to the protection of victims of international armed conflicts, adopted at Geneva on the 8th day of June 1977, a copy of which Protocol (not including the annexes to that Protocol) is set out in Schedule 5 to this Act

The Second Protocol means the Protocol Additional to the Conventions and relating to the protection of victims of non-international armed conflicts, adopted at Geneva on the 8th day of June 1977, a copy of which Protocol is set out in Schedule 6 to this Act

The Protocols means the First Protocol and the Second Protocol.

- (2) If the ratification on behalf of New Zealand of any of the Conventions or of either of the Protocols is subject to a reservation or is accompanied by a declaration, that Convention or that Protocol, as the case may require, shall, for the purposes

¹ The Shipping and Seamen Act 1952 was repealed by section 202(1) of the Maritime Transport Act 1994 on 1 February 1995. Under section 22(2) of the Interpretation Act 1999, the references to the terms **New Zealand ship** and **ship belonging to Her Majesty** are deemed to be references to the equivalent terms in the Maritime Transport Act and the Ship Registration Act 1992.

of this Act, have effect and be construed subject to and in accordance with that reservation or declaration.

Punishment of offenders against Conventions or First Protocol

3 Punishment for grave breaches of Conventions or First Protocol

- (1) Any person who in New Zealand or elsewhere commits, or aids or abets or procures the commission by another person of, a grave breach of any of the Conventions or of the First Protocol is guilty of an indictable offence.
- (2) For the purposes of this section—
 - (a) a grave breach of the First Convention is a breach of that Convention involving an act referred to in Article 50 of that Convention committed against persons or property protected by that Convention:
 - (b) a grave breach of the Second Convention is a breach of that Convention involving an act referred to in Article 51 of that Convention committed against persons or property protected by that Convention:
 - (c) a grave breach of the Third Convention is a breach of that Convention involving an act referred to in Article 130 of that Convention committed against persons or property protected by that Convention:
 - (d) a grave breach of the Fourth Convention is a breach of that Convention involving an act referred to in Article 147 of that Convention committed against persons or property by that Convention:
 - (e) a grave breach of the First Protocol is a breach of that Protocol involving—
 - (i) an act or omission referred to in paragraph 4 of Article 11 of that Protocol committed against or omitted in respect of persons protected by paragraph 1 of that Article; or
 - (ii) an act referred to in paragraph 2 of Article 85 of that Protocol committed against persons or property protected by that paragraph; or
 - (iii) An act referred to in paragraph 3 of Article 85 of that Protocol committed against persons or property protected by that paragraph; or
 - (iv) an act or omission referred to in paragraph 4 of Article 85 of that Protocol committed against or omitted in respect of persons or property protected by that paragraph.
- (3) This section applies to persons regardless of their nationality or citizenship.
- (4) The punishment for an offence against this section shall be,—
 - (a) where the offence involves the wilful killing of a person protected by the relevant Convention or by the First Protocol, as the case may require, the same as that for the time being for murder:
 - (b) in any other case, imprisonment for life or a lesser term.
- (5) No one shall be prosecuted for an offence against this section without the leave of the Attorney-General.

(6) The provisions of section 5 of this Act (other than subsection (2)) shall apply in relation to the trial of a person who is not a protected prisoner of war for an offence against this section in like manner as they apply in relation to the trial of a protected prisoner of war.

(7) If—

- (a) in any proceedings under this section in respect of a grave breach of any of the Conventions any question arises under Article 2 of that Convention (which relates to the circumstances in which the Convention applies); or
- (b) in any proceedings under this section in respect of a grave breach of the First Protocol any question arises under paragraph 3 or paragraph 4 of Article 1 of that Protocol or under Article 3 of that Protocol (which relate to the circumstances in which that Protocol applies),—

that question shall be determined by the Minister of Foreign Affairs and Trade, and a certificate purporting to set out any such determination and to be signed by or on behalf of that Minister shall be received in evidence and be deemed to be so signed without further proof, unless the contrary is shown.

(8) *Repealed*

Provisions as to certain legal proceedings

4 Notice of trial of protected persons to be served on protecting power, etc

(1) The Court before which—

- (a) a protected prisoner of war is brought up for trial for any offence; or
- (b) a protected internee is brought up for trial for an offence for which that Court has power to sentence him to imprisonment for a term of 2 years or more—

shall not proceed with the trial until it is proved to the satisfaction of the Court that a notice containing the particulars mentioned in subsection (2) of this section, so far as they are known to the prosecutor, has been served not less than 3 weeks previously on the protecting power (if there is a protecting power), on the accused, and (if the accused is a protected prisoner of war) on the prisoners' representative.

(2) The particulars referred to in subsection (1) of this section are—

- (a) the full name and description of the accused, including the date of his birth and his profession or trade, if any, and, if the accused is a protected prisoner of war, his rank and his army, regimental, personal, or serial number;
- (b) his place of detention, internment, or residence;
- (c) the offence with which he is charged; and
- (d) the Court before which the trial is to take place and the time and place appointed for the trial.

(3) For the purposes of this section a document purporting—

- (a) to be signed on behalf of the protecting power or by the prisoners' representative or by the person accused, as the case may be; and

- (b) to be an acknowledgment of the receipt by that power, representative, or person on a specified day of a notice described therein as a notice under this section—

shall, unless the contrary is shown, be sufficient evidence that the notice required by subsection (1) of this section was served on that power, representative, or person on that day.

- (4) In this section the expression **prisoners' representative** in relation to a particular protected prisoner of war at a particular time means the person by whom the functions of prisoners' representative within the meaning of Article 79 of the Third Convention were exercisable in relation to that prisoner at the camp or place at which that prisoner was, at or last before that time, detained as a protected prisoner of war.
- (5) Any Court which adjourns a trial for the purpose of enabling the requirements of this section to be complied with may, notwithstanding anything in any other enactment or any rule of law, remand the accused for the period of the adjournment.

5 Legal representation of prisoners of war

- (1) The Court before which a protected prisoner of war is brought up for trial for any offence shall not proceed with the trial, unless—
 - (a) the accused is represented by counsel; and
 - (b) it is proved to the satisfaction of the Court that a period of not less than 14 days has elapsed since instructions for the representation of the accused at the trial were first given to counsel for the accused;

and if the Court adjourns the trial for the purpose of enabling the requirements of this subsection to be complied with, then, notwithstanding anything in any other enactment or rule of law, the Court may remand the accused for the period of the adjournment.

- (2) In the absence of counsel accepted by the accused as representing him, counsel instructed for the purpose on behalf of the protecting power shall, without prejudice to the requirements of paragraph (b) of subsection (1) of this section, be regarded for the purposes of that subsection as representing the accused.
- (3) If the Court adjourns the trial in pursuance of subsection (1) of this section by reason that the accused is not represented by counsel, the Court shall direct that a counsel be assigned to watch over the interests of the accused at any further proceedings in connection with the offence; and at any such further proceedings, in the absence of counsel either accepted by the accused as representing him or instructed as mentioned in subsection (2) of this section, counsel assigned in pursuance of this subsection shall, without prejudice to the requirements of paragraph (b) of subsection (1) of this section, be regarded for the purposes of the said subsection (1) as representing the accused.
- (4) A counsel shall be assigned in pursuance of subsection (3) of this section in such manner as may be prescribed by regulations made under this Act, and any counsel so assigned shall be entitled to receive, out of money appropriated by Parliament for the purpose, such remuneration and disbursements as may be in like manner prescribed. While there are no regulations for the purposes of this section or so far as any such regulations do not apply, the provisions of the Legal Services Act

1991² and of any regulations made under that Act shall apply to the assignment, remuneration, and disbursement of counsel under this section.

6 Appeals by protected persons

- (1) Where a protected prisoner of war or a protected internee has been sentenced by a Court to imprisonment for a term of 2 years or more, the time allowed in relation to the institution of an appeal or an application for leave to appeal against the conviction or sentence shall, notwithstanding anything to the contrary in any other enactment, be the period from the date of his conviction or, in the case of an appeal against sentence, of his sentence to the expiration of 28 days after the date on which the convicted person receives a notice that the protecting power has been notified of his conviction and sentence, being a notice given,—
 - (a) in the case of a protected prisoner of war, by an officer of the New Zealand armed forces; or
 - (b) in the case of a protected internee, by or on behalf of the person in charge of the prison or place in which he is confined.
- (2) *Repealed*
- (3) Where subsection (1) of this section applies in relation to a convicted person, then, unless the Court otherwise orders, an order of the Court relating to the restitution of property or the payment of compensation to an aggrieved person shall not take effect, and any provision of law relating to the revesting of property on conviction shall not take effect in relation to the conviction, while an appeal by the convicted person against his conviction or sentence is possible.
- (4) Subsections (1) and (2) of this section shall not apply in relation to an appeal against a conviction or sentence if, at the time of the conviction or sentence, there is no protecting power.

7 Reduction of sentence, and custody of protected prisoners of war and internees

- (1) When a protected prisoner of war or a protected internee is convicted of an offence, the Court shall,—
 - (a) in fixing a term of imprisonment in respect of the offence, deduct from the term which it would otherwise have fixed any period during which the convicted person has been in custody in connection with that offence before the trial; and
 - (b) in fixing any penalty other than imprisonment in respect of the offence, take that period of custody into account.
- (2) Where the Minister of Justice is satisfied that a protected prisoner of war accused of an offence has been in custody in connection with that offence, while awaiting trial, in a place other than a camp or place in which protected prisoners of war are detained, for an aggregate period of not less than 3 months, that Minister may direct that the prisoner shall be transferred from that custody to the custody of an officer of the New Zealand armed forces and thereafter remain in military custody at a camp or place in which protected prisoners of war are detained, and be brought before the Court at the time appointed for his trial.

² The Legal Services Act 1991 was repealed and replaced by the Legal Services Act 2000 on 1 February 2001. This reference to the 1991 Act is deemed to be a reference to the 2000 Act pursuant to section 22(2) of the Interpretation Act 1999.

*Prevention of abuse of Red Cross and other emblems***8 Use of Red Cross and other emblems**

- (1) Subject to the provisions of this section, it shall not be lawful for any person, without the authority of the Minister of Defence or a person authorised by him in writing to give consent under this section, to use for any purpose whatsoever any of the following emblems, designations, designs, or wordings, that is to say:
- (a) the emblem of a red cross with vertical and horizontal arms of the same length on, and completely surrounded by, a white ground, or the designation **Red Cross** or **Geneva Cross**:
 - (b) the emblem of a red crescent moon on, and completely surrounded by, a white ground, or the designation **Red Crescent**:
 - (c) the following emblem in red on, and completely surrounded by, a white ground, that is to say, a lion passing from right to left of, and with its face turned towards, the observer, holding erect in its raised right forepaw a scimitar, with, appearing above the lion's back, the upper half of the sun shooting forth rays, or the designation **Red Lion and Sun**:
 - (d) any design consisting of a white or silver cross with vertical and horizontal arms of the same length on, and completely surrounded by, a red ground, being the heraldic emblem of the Swiss Confederation, or any other design so nearly resembling that design as to be capable of being mistaken for that heraldic emblem:
 - (e) any design or wording so nearly resembling any of the emblems or designations specified in the foregoing provisions of this subsection as to be capable of being mistaken for, or, as the case may be, understood as referring to, one of those emblems.
- (2) If any person contravenes the foregoing provisions of this section he shall be guilty of an offence and be liable on summary conviction to a fine not exceeding \$1,000 and to forfeit any goods upon or in connection with which the emblem, designation, design, or wording was used.
- (3) The Minister of Defence or a person authorised by that Minister to give consents under this section shall not refuse to give such a consent, and shall not withdraw such a consent, except for the purpose of giving effect to the provisions of the Conventions or of the Protocols.
- (4) In the case of a trade mark registered before the passing of this Act, the foregoing provisions of this section shall not apply by reason only of its consisting of or containing a design or wording which reproduces or resembles an emblem or designation specified in paragraph (b) or paragraph (c) of subsection (1) of this section.
- (5) Where a person is charged with using a design or wording to which subsection (4) of this section applies for any purpose and it is proved that he used it otherwise than as, or as part of, a trade mark registered as aforesaid, it shall be a defence for him to prove—
- (a) that he lawfully used that design or wording for that purpose before the passing of this Act; or

- (b) in a case where he is charged with using the design or wording upon goods, that the design or wording had been applied to the goods before he acquired them by some other person who had manufactured or dealt with the goods in the course of trade and who lawfully used the design or wording upon similar goods before the passing of this Act.
- (6) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (7) This section extends to the use in or outside New Zealand of an emblem, designation, design, or wording referred to in subsection (1) of this section on any New Zealand ship or New Zealand aircraft.
- (8) No one shall be prosecuted for an offence under this section without the leave of the Attorney-General.
- (9) Subsection (2) of section 18 of the Trade Marks Act 1953 is hereby consequentially repealed.

Miscellaneous

9 Regulations

The Governor-General may, from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) providing for the assignment, remuneration, and disbursement of counsel for the purposes of section 5 of this Act:
- (b) prescribing the form of flags, emblems, signs, signals, designations, designs, wordings, uniforms, and insignia for use for the purposes of the Conventions or the Protocols or both, and regulating their use:
- (c) prescribing the form of identification cards for use for the purposes of the Conventions or the Protocols or both, and regulating their use:
- (d) for the purpose of giving effect to Article 38 or Article 39 of the First Protocol, prohibiting or restricting the use of such flags, emblems, signs, signals, insignia, or uniforms as may be specified in the regulations:
- (e) providing for the keeping of such records, and the recording of such information, as are required to be kept or recorded under the Conventions or the Protocols:
- (f) prescribing offences in respect of the contravention of or noncompliance with any regulations made under this section, and prescribing the amounts of the fines that may be imposed in respect of such offences, which fines shall be an amount not exceeding \$1,000:
- (g) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

10 Application of Act to island territories

- (1) This Act shall be in force in the Cook Islands, and Tokelau.
- (2) In this Act, except in this section, both in New Zealand and in the Cook Islands, and Tokelau, the term **New Zealand** shall be construed as including the Cook Islands, and Tokelau.
- (3) Every reference in this Act to the Attorney-General shall be construed,—
 - (a) in the application of this Act to the Cook Islands, other than Niue, as including the High Commissioner of the Cook Islands:
 - (b) in the application of this Act to the Island of Niue, as including the Cabinet of Ministers of Niue:
 - (c) in the application of this Act to Tokelau, as including the Administrator of Tokelau.
- (4) The other Ministers specified in this Act may exercise the powers conferred on them by this Act in the Cook Islands, and Tokelau.
- (5) All criminal jurisdiction conferred by this Act may be exercised by the High Court of the Cook Islands in the ordinary course of its criminal jurisdiction. For the purposes of this subsection, subsection (1) of section 3 of this Act shall apply as if the word **indictable** were omitted.

11 Repeal and savings

- (1) The Geneva Convention Act 1936 is hereby repealed.
- (2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of any provision by this Act shall not affect any document made or any thing whatsoever done under the provision so repealed or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done.

SCHEDULE 1

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949

Preamble

The undersigned Plenipotentiaries of the Governments represented at the Diplomatic Conference held at Geneva from April 21, to August 12, 1949, for the purpose of revising the Geneva Convention for the Relief of the Wounded and Sick in Armies in the Field of July 27, 1929, have agreed as follows:

Chapter I - General Provisions

Article 2

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

Article 3

In addition to the provisions which shall be implemented in peace time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between 2 or more of the High Contracting Parties, even if the state of war is not recognised by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

Article 4

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) Violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture;
- (b) Taking of hostages;
- (c) Outrages upon personal dignity, in particular, humiliating and degrading treatment;

- (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted Court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Article 5

Neutral Powers shall apply by analogy the provisions of the present Convention to the wounded and sick, and to members of the medical personnel and to chaplains of the armed forces of the Parties to the conflict, received or interned in their territory, as well as to dead persons found.

Article 6

For the protected persons who have fallen into the hands of the enemy, the present Convention shall apply until their final repatriation.

Article 7

In addition to the agreements expressly provided for in Articles 10, 15, 23, 28, 31, 36, 37 and 52 the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of the wounded and sick, of members of the medical personnel or of chaplains, as defined by the present Convention, nor restrict the rights which it confers upon them.

Wounded and sick, as well as medical personnel and chaplains, shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict.

Article 8

Wounded and sick, as well as members of the medical personnel and chaplains, may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

Article 9

The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties. Their activities shall only be restricted as an exceptional and temporary measure when this is rendered necessary by imperative military necessities.

Article 10

The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organisation may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of wounded and sick, medical personnel and chaplains, and for their relief.

Article 11

The High Contracting Parties may at any time agree to entrust to an organisation which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When wounded and sick or medical personnel and chaplains do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organisation provided for in the paragraph above, the Detaining Power shall request a neutral State, or such an organisation, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organisation, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power, or any organisation invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention also applies to substitute organisations in the sense of the present Article.

Article 12

In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

For this purpose, each of the Protecting Powers, may either at the invitation of one Party or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, in particular of the authorities responsible for the wounded and sick, members of medical

personnel and chaplains, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict a person belonging to a neutral Power, or delegated by the International Committee of the Red Cross, who shall be invited to take part in such a meeting.

Chapter II - Wounded and Sick

Article 13

Members of the armed forces and other persons mentioned in the following Article who are wounded or sick, shall be respected and protected in all circumstances.

They shall be treated humanely and cared for by the Party to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. Any attempts on their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not wilfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.

Only urgent medical reasons will authorise priority in the order of treatment to be administered.

Women shall be treated with all consideration due to their sex.

The Party to the conflict which is compelled to abandon wounded or sick to the enemy shall, as far as military considerations permit, leave with them a part of its medical personnel and material to assist in their care.

Article 14

The present Convention shall apply to the wounded and sick belonging to the following categories:

- (1) Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces;
- (2) Members of other militias and members of other volunteer corps, including those of organised resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps including such organised resistance movements, fulfil the following conditions:
 - (a) That of being commanded by a person responsible for his subordinates;
 - (b) That of having a fixed distinctive sign recognisable at a distance;
 - (c) That of carrying arms openly;
 - (d) That of conducting their operations in accordance with the laws and customs of war.
- (3) Members of regular armed forces who profess allegiance to a Government or an authority not recognised by the Detaining Power;
- (4) Persons who accompany the armed forces without actually being members thereof, such as civil members of military aircraft crews, war correspondents, supply

contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorisation from the armed forces which they accompany;

- (5) Members of crews including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions in international law;
- (6) Inhabitants of a non-occupied territory who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

Article 15

Subject to the provisions of Article 12, the wounded and sick of a belligerent who fall into enemy hands shall be prisoners of war, and the provisions of international law concerning prisoners of war shall apply to them.

Article 16

At all times, and particularly after an engagement, Parties to the conflict shall, without delay, take all possible measures to search for and collect the wounded and sick, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead and prevent their being despoiled.

Whenever circumstances permit, an armistice or a suspension of fire shall be arranged, or local arrangements made, to permit the removal, exchange and transport of the wounded left on the battlefield.

Likewise, local arrangements may be concluded between Parties to the conflict for the removal or exchange of wounded and sick from a besieged or encircled area, and for the passage of medical and religious personnel and equipment on their way to that area.

Article 17

Parties to the conflict shall record as soon as possible, in respect of each wounded, sick, or dead person of the adverse Party falling into their hands, any particulars which may assist in his identification.

These records should if possible include:

- (a) Designation of the Power on which he depends;
- (b) Army, regimental, personal or serial number;
- (c) Surname;
- (d) First name or names;
- (e) Date of birth;
- (f) Any other particulars shown on his identity card or disc;
- (g) Date and place of capture or death;
- (h) Particulars concerning wounds or illness, or cause of death.

As soon as possible the abovementioned information shall be forwarded to the Information Bureau described in Article 122 of the Geneva Convention relative to the Treatment of

Prisoners of War of August 12, 1949, which shall transmit this information to the Power on which these persons depend through the intermediary of the Protecting Power and of the Central Prisoners of War Agency.

Parties to the conflict shall prepare and forward to each other through the same bureau, certificates of death or duly authenticated lists of the dead. They shall likewise collect and forward through the same bureau one half of a double identity disc, last wills or other documents of importance to the next of kin, money and in general all articles of an intrinsic or sentimental value, which are found on the dead. These articles, together with unidentified articles, shall be sent in sealed packets, accompanied by statements giving all particulars necessary for the identification of the deceased owners, as well as by a complete list of the contents of the parcel.

Article 18

Parties to the conflict shall ensure that burial or cremation of the dead, carried out individually as far as circumstances permit, is preceded by a careful examination and if possible by a medical examination, of the bodies, with a view to confirming death, establishing identity and enabling a report to be made.

One half of the double identity disc, or the identity disc itself if it is a single disc, should remain on the body. Bodies shall not be cremated except for imperative reasons of hygiene or for motives based on the religion of the deceased.

In case of cremation the circumstances and reasons for cremation shall be stated in detail in the death certificate or on the authenticated list of the dead.

They shall further ensure that the dead are honourably interred, if possible according to the rites of the religion to which they belonged, that their graves are respected, grouped if possible according to the nationality of the deceased, properly maintained and marked so that they may always be found. For this purpose, they shall organise at the commencement of hostilities an Official Graves Registration Service, to allow subsequent exhumations and to ensure the identification of bodies, whatever the site of the graves, and their possible transportation to the home country. These provisions shall likewise apply to the ashes, which shall be kept by the Graves Registration Service until proper disposal thereof in accordance with the wishes of the home country.

As soon as circumstances permit, and at latest at the end of hostilities, these Services shall exchange, through the Information Bureau mentioned in the second paragraph of Article 16, lists showing the exact location and markings of the graves, together with particulars of the dead interred therein.

Article 19

The military authorities may appeal to the charity of the inhabitants voluntarily to collect and care for, under their direction, the wounded and sick, granting persons who have responded to this appeal the necessary protection and facilities. Should the adverse party take or retake control of the area, he shall likewise grant these persons the same protection and the same facilities.

The military authorities shall permit the inhabitants and relief societies, even in invaded or occupied areas, spontaneously to collect and care for wounded or sick of whatever nationality.

The civilian population shall respect these wounded and sick, and in particular abstain from offering them violence.

No one may ever be molested or convicted for having nursed the wounded or sick.

The provisions of the present Article do not relieve the occupying Power of its obligations to give both physical and moral care to the wounded and sick.

Chapter III - Medical Units and Establishments

Article 20

Fixed establishments and mobile medical units of the Medical Service may in no circumstances be attacked, but shall at all times be respected and protected by the Parties to the conflict. Should they fall into the hands of the adverse Party, their personnel shall be free to pursue their duties, as long as the capturing Power has not itself ensured the necessary care of the wounded and sick found in such establishments and units.

The responsible authorities shall ensure that the said medical establishments and units are, as far as possible, situated in such a manner that attacks against military objectives cannot imperil their safety.

Article 21

Hospital ships entitled to the protection of the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, shall not be attacked from the land.

Article 22

The protection to which fixed establishments and mobile medical units of the Medical Service are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after a due warning has been given, naming in all appropriate cases a reasonable time limit and after such warning has remained unheeded.

Article 23

The following conditions shall not be considered as depriving a medical unit or establishment of the protection guaranteed by Article 19:

- (1) That the personnel of the unit or establishment are armed, and that they use the arms in their own defence, or in that of the wounded and sick in their charge.
- (2) That in the absence of armed orderlies, the unit or establishment is protected by a picket or by sentries or by an escort.
- (3) That small arms and ammunition taken from the wounded and sick, and not yet handed to the proper service, are found in the unit or establishment.
- (4) That personnel and material of the veterinary service are found in the unit or establishment, without forming an integral part thereof.
- (5) That the humanitarian activities of medical units and establishments or of their personnel extend to the care of civilian wounded or sick.

Article 24

In time of peace, the High Contracting Parties and, after the outbreak of hostilities, the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital zones and localities so organised as to protect the wounded and sick from the effects of war, as well as the personnel entrusted with the organisation and administration of these zones and localities and with the care of the persons therein assembled.

Upon the outbreak and during the course of hostilities, the Parties concerned may conclude agreements on mutual recognition of the hospital zones and localities they have created. They may for this purpose implement the provisions of the Draft Agreement annexed to the present Convention, with such amendments as they may consider necessary.

The Protecting Powers and the International Committee of the Red Cross are invited to lend their good offices in order to facilitate the institution and recognition of these hospital zones and localities.

Chapter IV - Personnel

Article 25

Medical personnel exclusively engaged in the search for, or the collection, transport or treatment of the wounded or sick, or in the prevention of disease, staff exclusively engaged in the administration of medical units and establishments, as well as chaplains attached to the armed forces, shall be respected and protected in all circumstances.

Article 26

Members of the armed forces specially trained for employment, should the need arise, as hospital orderlies, nurses or auxiliary stretcherbearers, in the search for or the collection, transport or treatment of the wounded and sick shall likewise be respected and protected if they are carrying out these duties at the time when they come into contact with the enemy or fall into his hands.

Article 27

The staff of national Red Cross societies and that of other voluntary aid societies, duly recognised and authorised by their Governments, who may be employed on the same duties as the personnel named in Article 24, are placed on the same footing as the personnel named in the said Article, provided that the staff of such societies are subject to military laws and regulations.

Each High Contracting Party shall notify to the other, either in time of peace or at the commencement of, or during hostilities, but in any case before actually employing them, the names of the societies which it has authorised, under its responsibility, to render assistance to the regular medical service of its armed forces.

Article 28

A recognised society of a neutral country can only lend the assistance of its medical personnel and units to a Party to the conflict with the previous consent of its own Government and the authorisation of the Party to the conflict concerned. That personnel and those units shall be placed under the control of that Party to the conflict.

The neutral Government shall notify this consent to the adversary of the State which accepts such assistance. The Party to the conflict who accepts such assistance is bound to notify the adverse Party thereof before making any use of it.

In no circumstances shall this assistance be considered as interference in the conflict.

The members of the personnel named in the first paragraph shall be duly furnished with the identity cards provided for in Article 40 before leaving the neutral country to which they belong.

Article 29

Personnel designated in Articles 24 and 26 who fall into the hands of the adverse Party, shall be retained only in so far as the state of health, the spiritual needs and the number of prisoners of war require.

Personnel thus retained shall not be deemed prisoners of war. Nevertheless they shall at least benefit by all the provisions of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949. Within the framework of the military laws and regulations of the Detaining Power, and under the authority of its competent service, they shall continue to carry out, in accordance with their professional ethics, their medical and spiritual duties on behalf of prisoners of war, preferably those of the armed forces to which they themselves belong. They shall further enjoy the following facilities for carrying out their medical or spiritual duties:

- (a) They shall be authorised to visit periodically the prisoners of war in labour units or hospitals outside the camp. The Detaining Power shall put at their disposal the means of transport required.
- (b) In each camp the senior medical officer of the highest rank shall be responsible to the military authorities of the camp for the professional activity of the retained medical personnel. For this purpose, from the outbreak of hostilities, the Parties to the conflict shall agree regarding the corresponding seniority of the ranks of their medical personnel, including those of the societies designated in Article 26. In all questions arising out of their duties, this medical officer, and the chaplains, shall have direct access to the military and medical authorities of the camp who shall grant them the facilities they may require for correspondence relating to these questions.
- (c) Although retained personnel in a camp shall be subject to its internal discipline, they shall not, however, be required to perform any work outside their medical or religious duties.

During hostilities the Parties to the conflict shall make arrangements for relieving where possible retained personnel, and shall settle the procedure of such relief. None of the preceding provisions shall relieve the Detaining Power of the obligations imposed upon it with regard to the medical and spiritual welfare of the prisoners of war.

Article 30

Members of the personnel designated in Article 25 who have fallen into the hands of the enemy, shall be prisoners of war, but shall be employed on their medical duties in so far as the need arises.

Article 31

Personnel whose retention is not indispensable by virtue of the provisions of Article 28 shall be returned to the Party to the conflict to whom they belong, as soon as a road is open for their return and military requirements permit.

Pending their return, they shall not be deemed prisoners of war. Nevertheless they shall at least benefit by all the provisions of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949. They shall continue to fulfil their duties under the orders of the adverse Party and shall preferably be engaged in the care of the wounded and sick of the Party to the conflict to which they themselves belong.

On their departure, they shall take with them the effects, personal belongings, valuables and instruments belonging to them.

Article 32

The selection of personnel for return under Article 30, shall be made irrespective of any consideration of race, religion or political opinion, but preferably according to the chronological order of their capture and their state of health.

As from the outbreak of hostilities, Parties to the conflict may determine by special agreement the percentage of personnel to be retained, in proportion to the number of prisoners and the distribution of the said personnel in the camps.

Article 33

Persons designated in Article 27 who have fallen into the hands of the adverse Party may not be detained.

Unless otherwise agreed, they shall have permission to return to their country, or, if this is not possible, to the territory of the Party to the conflict in whose service they were, as soon as a route for their return is open and military considerations permit.

Pending their release, they shall continue their work under the direction of the adverse Party; they shall preferably be engaged in the care of the wounded and sick of the Party to the conflict in whose service they were.

On their departure, they shall take with them their effects, personal articles and valuables and the instruments, arms and if possible the means of transport belonging to them.

The Parties to the conflict shall secure to this personnel, while in their power, the same food, lodging, allowances and pay as are granted to the corresponding personnel of their armed forces. The food shall in any case be sufficient as regards quantity, quality and variety to keep the said personnel in a normal state of health.

Chapter V - Buildings and Material

Article 34

The material of mobile medical units of the armed forces which fall into the hands of the enemy, shall be reserved for the care of wounded and sick.

The buildings, material and stores of fixed medical establishments of the armed forces shall remain subject to the laws of war, but may not be diverted from their purpose as long as they are required for the care of wounded and sick. Nevertheless, the commanders of forces in the field may make use of them, in case of urgent military necessity, provided that

they make previous arrangements for the welfare of the wounded and sick who are nursed in them.

The material and stores defined in the present Article shall not be intentionally destroyed.

Article 35

The real and personal property of aid societies which are admitted to the privileges of the Convention shall be regarded as private property.

The right of requisition recognised for belligerents by the laws and customs of war shall not be exercised except in case of urgent necessity and only after the welfare of the wounded and sick has been ensured.

Chapter VI - Medical Transports

Article 36

Transports of wounded and sick or of medical equipment shall be respected and protected in the same way as mobile medical units.

Should such transports or vehicles fall into the hands of the adverse Party, they shall be subject to the laws of war, on condition that the Party to the conflict who captures them shall in all cases ensure the care of the wounded and sick they contain.

The civilian personnel and all means of transport obtained by requisition shall be subject to the general rules of international law.

Article 37

Medical aircraft, that is to say, aircraft exclusively employed for the removal of wounded and sick and for the transport of medical personnel and equipment, shall not be attacked, but shall be respected by the belligerents, while flying at heights, times and on routes specifically agreed upon between the belligerents concerned.

They shall bear, clearly marked, the distinctive emblem prescribed in Article 38, together with their national colours, on their lower, upper and lateral surfaces. They shall be provided with any other markings or means of identification that may be agreed upon between the belligerents upon the outbreak or during the course of hostilities.

Unless agreed otherwise, flights over enemy or enemy-occupied territory are prohibited.

Medical aircraft shall obey every summons to land. In the event of a landing thus imposed, the aircraft with its occupants may continue its flight after examination, if any.

In the event of an involuntary landing in enemy or enemy-occupied territory, the wounded and sick, as well as the crew of the aircraft shall be prisoners of war. The medical personnel shall be treated according to Article 24 and the Articles following.

Article 38

Subject to the provisions of the second paragraph, medical aircraft of Parties to the conflict may fly over the territory of neutral Powers, land on it in case of necessity, or use it as a port of call. They shall give the neutral Powers previous notice of their passage over the said territory and obey all summons to alight, on land or water. They will be immune from attack only when flying on routes, at heights and at times specifically agreed upon between the Parties to the conflict and the neutral Power concerned.

The neutral Powers may, however, place conditions or restrictions on the passage or landing of medical aircraft on their territory. Such possible conditions or restrictions shall be applied equally to all Parties to the conflict.

Unless agreed otherwise between the neutral Power and the Parties to the conflict, the wounded and sick who are disembarked, with the consent of the local authorities, on neutral territory by medical aircraft, shall be detained by the neutral Power, where so required by international law, in such a manner that they cannot again take part in operations of war. The cost of their accommodation and internment shall be borne by the Power on which they depend.

Chapter VII - The Distinctive Emblem

Article 39

As a compliment to Switzerland, the heraldic emblem of the red cross on a white ground, formed by reversing the Federal colours, is retained as the emblem and distinctive sign of the Medical Service of armed forces.

Nevertheless, in the case of countries which already use as emblem, in place of the red cross, the red crescent or the red lion and sun on the white ground, those emblems are also recognised by the terms of the present Convention.

Article 40

Under the direction of the competent military authority, the emblem shall be displayed on the flags, armlets and on all equipment employed in the Medical Service.

Article 41

The personnel designated in Article 24 and in Articles 26 and 27 shall wear, affixed to the left arm, a water-resistant armlet bearing the distinctive emblem, issued and stamped by the military authority.

Such personnel, in addition to wearing the identity disc mentioned in Article 16, shall also carry a special identity card bearing the distinctive emblem. This card shall be water-resistant and of such size that it can be carried in the pocket. It shall be worded in the national language, shall mention at least the surname and first names, the date of birth, the rank and the service number of the bearer, and shall state in what capacity he is entitled to the protection of the present Convention. The card shall bear the photograph of the owner and also either his signature or his fingerprints or both. It shall be embossed with the stamp of the military authority.

The identity card shall be uniform throughout the same armed forces and, as far as possible, of a similar type in the armed forces of the High Contracting Parties. The parties to the conflict may be guided by the model which is annexed, by way of example, to the present Convention. They shall inform each other, at the outbreak of hostilities, of the model they are using. Identity cards should be made out, if possible, at least in duplicate, one copy being kept by the home country.

In no circumstances may the said personnel be deprived of their insignia or identity cards nor of the right to wear the armlet. In case of loss, they shall be entitled to receive duplicates of the cards and to have the insignia replaced.

Article 42

The personnel designated in Article 25 shall wear, but only while carrying out medical duties, a white armlet bearing in its centre the distinctive sign in miniature; the armlet shall be issued and stamped by the military authority.

Military identity documents to be carried by this type of personnel shall specify what special training they have received, the temporary character of the duties they are engaged upon, and their authority for wearing the armlet.

Article 43

The distinctive flag of the Convention shall be hoisted only over such medical units and establishments as are entitled to be respected under the Convention, and only with the consent of the military authorities.

In mobile units, as in fixed establishments, it may be accompanied by the national flag of the Party to the conflict to which the unit or establishment belongs.

Nevertheless, medical units which have fallen into the hands of the enemy shall not fly any flag other than that of the Convention.

Parties to the conflict shall take the necessary steps, in so far as military considerations permit, to make the distinctive emblems indicating medical units and establishments clearly visible to the enemy land, air or naval forces, in order to obviate the possibility of any hostile action.

Article 44

The medical units belonging to neutral countries, which may have been authorised to lend their services to a belligerent under the conditions laid down in Article 27, shall fly, along with the flag of the Convention, the national flag of that belligerent, wherever the latter makes use of the faculty conferred on him by Article 42.

Subject to orders to the contrary by the responsible military authorities, they may, on all occasions, fly their national flag, even if they fall into the hands of the adverse Party.

Article 45

With the exception of the cases mentioned in the following paragraphs of the present Article, the emblem of the Red Cross on a white ground and the words **Red Cross**, or **Geneva Cross** may not be employed, either in time of peace or in time of war, except to indicate or to protect the medical units and establishments, the personnel and material protected by the present Convention and other Conventions dealing with similar matters. The same shall apply to the emblems mentioned in Article 38, second paragraph, in respect of the countries which use them. The national Red Cross societies and other societies designated in Article 26 shall have the right to use the distinctive emblem conferring the protection of the Convention only within the framework of the present paragraph.

Furthermore, national Red Cross (Red Crescent, Red Lion and Sun) societies may, in time of peace, in accordance with their national legislation, make use of the name and emblem of the Red Cross for their other activities which are in conformity with the principles laid down by the International Red Cross Conferences. When those activities are carried out in time of war, the conditions for the use of the emblem shall be such that it cannot be considered as conferring the protection of the Convention; the emblem shall be comparatively small in size and may not be placed on armlets or on the roofs of buildings.

The international Red Cross organisations and their duly authorised personnel shall be permitted to make use, at all times, of the emblem of the Red Cross on a white ground.

As an exceptional measure, in conformity with national legislation and with the express permission of one of the national Red Cross (Red Crescent, Red Lion and Sun) societies, the emblem of the Convention may be employed in time of peace to identify vehicles used as ambulances and to mark the position of aid stations exclusively assigned to the purpose of giving free treatment to the wounded or sick.

Chapter VIII - Execution of the Convention

Article 46

Each Party to the conflict, acting through its commanders-in-chief, shall ensure the detailed execution of the preceding Articles, and provide for unforeseen cases, in conformity with the general principles of the present Convention.

Article 47

Reprisals against the wounded, sick, personnel, buildings or equipment protected by the Convention are prohibited.

Article 48

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains.

Article 49

The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities, through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

Chapter IX - Repression of Abuses and Infractions

Article 50

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own Courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.

Article 51

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

Article 52

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

Article 53

At the request of a Party to the conflict, an inquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the inquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

Article 54

The use by individuals, societies, firms or companies either public or private, other than those entitled thereto under the present Convention, of the emblem or the designation **Red Cross** or **Geneva Cross**, or any sign or designation constituting an imitation thereof, whatever the object of such use, and irrespective of the date of its adoption, shall be prohibited at all times.

By reason of the tribute paid to Switzerland by the adoption of the reversed Federal colours, and of the confusion which may arise between the arms of Switzerland and the distinctive emblem of the Convention, the use by private individuals, societies, or firms, of the arms of the Swiss Confederation, or of marks constituting an imitation thereof, whether as trademarks or commercial marks, or as parts of such marks, or for a purpose contrary to commercial honesty, or in circumstances capable of wounding Swiss national sentiment, shall be prohibited at all times.

Nevertheless, such High Contracting Parties as were not party to the Geneva Convention of July 27, 1929, may grant to prior users of the emblems, designations, signs or marks designated in the first paragraph, a time limit not to exceed 3 years from the coming into force of the present Convention to discontinue such use, provided that the said use shall not be such as would appear, in time of war, to confer the protection of the Convention.

The prohibition laid down in the first paragraph of the present Article shall also apply, without effect on any rights acquired through prior use, to the emblems and marks mentioned in the second paragraph of Article 38.

Article 55

The High Contracting Parties shall, if their legislation is not already adequate, take measures necessary for the prevention and repression, at all times, of the abuses referred to under Article 53.

Final Provisions

Article 56

The present Convention is established in English and in French. Both texts are equally authentic.

The Swiss Federal Council shall arrange for official translations of the Convention to be made in the Russian and Spanish languages.

Article 57

The present Convention, which bears the date of this day, is open to signature until 12th February, 1950, in the name of the Powers represented at the Conference which opened at Geneva on 21st April, 1949; furthermore, by Powers not represented at that Conference but which are parties to the Geneva Conventions of 1864, 1906 or 1929 for the Relief of the Wounded and Sick in Armies in the Field.

Article 58

The present Convention shall be ratified as soon as possible and the ratifications shall be deposited at Berne.

A record shall be drawn up of the deposit of each instrument of ratification and certified copies of this record shall be transmitted by the Swiss Federal Council to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

Article 59

The present Convention shall come into force 6 months after not less than 2 instruments of ratification have been deposited.

Thereafter, it shall come into force for each High Contracting Party 6 months after the deposit of the instrument of ratification.

Article 60

The present Convention replaces the Conventions of August 22, 1864, July 6, 1906, and July 27, 1929, in relations between the High Contracting Parties.

Article 61

From the date of its coming into force, it shall be open to any Power in whose name the present Convention has not been signed, to accede to this Convention.

Article 62

Accessions shall be notified in writing to the Swiss Federal Council, and shall take effect 6 months after the date on which they are received.

The Swiss Federal Council shall communicate the accessions to all the powers in whose name the Convention has been signed, or whose accession has been notified.

Article 63

The situations provided for in Articles 2 and 3 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the beginning of hostilities or occupation. The Swiss Federal Council shall communicate by the quickest method any ratifications or accessions received from Parties to the conflict.

Article 64

Each of the High Contracting Parties shall be at liberty to denounce the present Convention.

The denunciation shall be notified in writing to the Swiss Federal Council, which shall transmit it to the Governments of all the High Contracting Parties.

The denunciation shall take effect one year after the notification thereof has been made to the Swiss Federal Council. However, a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded, and until after operations connected with the release and repatriation of the persons protected by the present Convention have been terminated.

The denunciation shall have effect only in respect of the denouncing Power. It shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations, as they result from the usages established among civilised peoples, from the laws of humanity and the dictates of the public conscience.

Article 65

The Swiss Federal Council shall register the present Convention with the Secretariat of the United Nations. The Swiss Federal Council shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to the present Convention.

In witness whereof the undersigned, having deposited their respective full powers, have signed the present Convention.

Done at Geneva this 12th day of August, 1949, in the English and French languages. The original shall be deposited in the Archives of the Swiss Confederation. The Swiss Federal Council shall transmit certified copies thereof to each of the signatory and acceding States. [Here follow the signatures and Annexes.]

SCHEDULE 2

Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949

Preamble

The undersigned Plenipotentiaries of the Governments represented at the Diplomatic Conference held at Geneva from April 21 to August 12, 1949, for the purpose of revising the Xth Hague Convention of October 18, 1907, for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 1906, have agreed as follows:

Chapter I - General Provisions

Article 1

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

Article 2

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between 2 or more of the High Contracting Parties, even if the state of war is not recognised by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

Article 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat*, by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) Violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture;
- (b) Taking of hostages;
- (c) Outrages upon personal dignity, in particular, humiliating and degrading treatment;

- (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted Court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples.

(2) The wounded, sick and shipwrecked shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Article 4

In case of hostilities between land and naval forces of Parties to the conflict, the provisions of the present Convention shall apply only to forces on board ship.

Forces put ashore shall immediately become subject to the provisions of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949.

Article 5

Neutral Powers shall apply by analogy the provisions of the present Convention to the wounded, sick and shipwrecked, and to members of the medical personnel and to chaplains of the armed forces of the Parties to the conflict received or interned in their territory, as well as to dead persons found.

Article 6

In addition to the agreements expressly provided for in Articles 10, 18, 31, 38, 39, 40, 43 and 53, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of wounded, sick and shipwrecked persons, of members of the medical personnel or of chaplains, as defined by the present Convention, nor restrict the rights which it confers upon them.

Wounded, sick and shipwrecked persons, as well as medical personnel and chaplains, shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict.

Article 7

Wounded, sick and shipwrecked persons, as well as members of the medical personnel and chaplains, may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

Article 8

The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers.

The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties. Their activities shall only be restricted as an exceptional and temporary measure when this is rendered necessary by imperative military necessities.

Article 9

The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organisation may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of wounded, sick and shipwrecked persons, medical personnel and chaplains, and for their relief.

Article 10

The High Contracting Parties may at any time agree to entrust to an organisation which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When wounded, sick and shipwrecked, or medical personnel and chaplains do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organisation provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organisation, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organisation, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power, or any organisation invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention also applies to substitute organisations in the sense of the present Article.

Article 11

In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

For this purpose, each of the Protecting Powers may, either at the invitation of one Party or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, in particular of the authorities responsible for the wounded, sick and shipwrecked, medical personnel and chaplains, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict, a person belonging to a neutral power or delegated by the International Committee of the Red Cross, who shall be invited to take part in such a meeting.

Chapter II - Wounded, Sick and Shipwrecked

Article 12

Members of the armed forces and other persons mentioned in the following Article, who are at sea and who are wounded, sick or shipwrecked, shall be respected and protected in all circumstances, it being understood that the term **shipwreck** means shipwreck from any cause and includes forced landings at sea by or from aircraft.

Such persons shall be treated humanely and cared for by the Parties to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not wilfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.

Only urgent medical reasons will authorise priority in the order of treatment to be administered.

Women shall be treated with all consideration due to their sex.

Article 13

The present Convention shall apply to the wounded, sick and shipwrecked at sea belonging to the following categories:

- (1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces;
- (2) Members of other militias and members of other volunteer corps, including those of organised resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organised resistance movements, fulfil the following conditions:
 - (a) That of being commanded by a person responsible for his subordinates;
 - (b) That of having a fixed distinctive sign recognisable at a distance;
 - (c) That of carrying arms openly;
 - (d) That of conducting their operations in accordance with the laws and customs of war;
- (3) Members of regular armed forces who profess allegiance to a Government or an authority not recognised by the Detaining Power;

- (4) Persons who accompany the armed forces without actually being members thereof, such as civil members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorisation from the armed forces which they accompany;
- (5) Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law;
- (6) Inhabitants of a nonoccupied territory who, on the approach of the enemy, spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

Article 14

All warships of a belligerent Party shall have the right to demand that the wounded, sick or shipwrecked on board military hospital ships, and hospital ships belonging to relief societies or to private individuals, as well as merchant vessels, yachts and other craft shall be surrendered, whatever their nationality, provided that the wounded and sick are in a fit state to be moved and that the warship can provide adequate facilities for necessary medical treatment.

Article 15

If wounded, sick or shipwrecked persons are taken on board a neutral warship or a neutral military aircraft, it shall be ensured, where so required by international law, that they can take no further part in operations of war.

Article 16

Subject to the provisions of Article 12, the wounded, sick and shipwrecked of a belligerent who fall into enemy hands shall be prisoners of war, and the provisions of international law concerning prisoners of war shall apply to them. The captor may decide according to circumstances, whether it is expedient to hold them, or to convey them to a port in the captor's own country, to a neutral port or even to a port in enemy territory. In the last case, prisoners of war thus returned to their home country may not serve for the duration of the war.

Article 17

Wounded, sick or shipwrecked persons who are landed in neutral ports with the consent of the local authorities, shall, failing arrangements to the contrary between the neutral and the belligerent Powers, be so guarded by the neutral Power, where so required by international law, that the said persons cannot again take part in operations of war.

The costs of hospital accommodation and internment shall be borne by the Power on whom the wounded, sick or shipwrecked persons depend.

Article 18

After each engagement, Parties to the conflict shall, without delay, take all possible measures to search for and collect the shipwrecked, wounded and sick, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead and prevent their being despoiled.

Whenever circumstances permit, the Parties to the conflict shall conclude local arrangements for the removal of the wounded and sick by sea from a besieged or encircled area and for the passage of medical and religious personnel and equipment on their way to that area.

Article 19

The Parties to the conflict shall record as soon as possible, in respect of each shipwrecked, wounded, sick or dead person of the adverse Party falling into their hands, any particulars which may assist in his identification. These records should if possible include:

- (a) Designation of the Power on which he depends;
- (b) Army, regimental, personal or serial number;
- (c) Surname;
- (d) First name or names;
- (e) Date of birth;
- (f) Any other particulars shown on his identity card or disc;
- (g) Date and place of capture or death;
- (h) Particulars concerning wounds or illness, or cause of death.

As soon as possible the above-mentioned information shall be forwarded to the information bureau described in Article 122 of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, which shall transmit this information to the Power on which these persons depend through the intermediary of the Protecting Power and of the Central Prisoners of War Agency.

Parties to the conflict shall prepare and forward to each other through the same bureau, certificates of death or duly authenticated lists of the dead. They shall likewise collect and forward through the same bureau one half of the double identity disc, or the identity disc itself if it is a single disc, last wills or other documents of importance to the next of kin, money and in general all articles of an intrinsic or sentimental value, which are found on the dead. These articles, together with unidentified articles, shall be sent in sealed packets, accompanied by statements giving all particulars necessary for the identification of the deceased owners, as well as by a complete list of the contents of the parcel.

Article 20

Parties to the conflict shall ensure that burial at sea of the dead, carried out individually as far as circumstances permit, is preceded by a careful examination, if possible by a medical examination, of the bodies, with a view to confirming death, establishing identity and enabling a report to be made. Where a double identity disc is used, one half of the disc should remain on the body.

If dead persons are landed, the provisions of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, shall be applicable.

Article 21

The Parties to the conflict may appeal to the charity of commanders of neutral merchant vessels, yachts or other craft, to take on board and care for wounded, sick or shipwrecked persons, and to collect the dead.

Vessels of any kind responding to this appeal, and those having of their own accord collected wounded, sick or shipwrecked persons, shall enjoy special protection and facilities to carry out such assistance.

They may, in no case, be captured on account of any such transport; but, in the absence of any promise to the contrary, they shall remain liable to capture for any violations of neutrality they may have committed.

Chapter III - Hospital Ships

Article 22

Military hospital ships, that is to say, ships built or equipped by the Powers specially and solely with a view to assisting the wounded, sick and shipwrecked, to treating them and to transporting them, may in no circumstances be attacked or captured, but shall at all times be respected and protected, on condition that their names and descriptions have been notified to the Parties to the conflict 10 days before those ships are employed.

The characteristics which must appear in the notification shall include registered gross tonnage, the length from stem to stern and the number of masts and funnels.

Article 23

Establishments ashore entitled to the protection of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, shall be protected from bombardment or attack from the sea.

Article 24

Hospital ships utilised by national Red Cross societies, by officially recognised relief societies or by private persons shall have the same protection as military hospital ships and shall be exempt from capture, if the Party to the conflict on which they depend has given them an official commission and in so far as the provisions of Article 22 concerning notification have been complied with.

These ships must be provided with certificates of the responsible authorities, stating that the vessels have been under their control while fitting out and on departure.

Article 25

Hospital ships utilised by national Red Cross societies, officially recognised relief societies, or private persons of neutral countries shall have the same protection as military hospital ships and shall be exempt from capture, on condition that they have placed themselves under the control of one of the Parties to the conflict, with the previous consent of their own governments and with the authorisation of the Party to the conflict concerned, in so far as the provisions of Article 22 concerning notification have been complied with.

Article 26

The protection mentioned in Articles 22, 24 and 25 shall apply to hospital ships of any tonnage and to their lifeboats, wherever they are operating. Nevertheless, to ensure the maximum comfort and security, the Parties to the conflict shall endeavour to utilise, for the transport of wounded, sick and shipwrecked over long distances and on the high seas, only hospital ships of over 2,000 tons gross.

Article 27

Under the same conditions as those provided for in Articles 22 and 24 small craft, employed by the State or by the officially recognised lifeboat institutions for coastal rescue operations, shall also be respected and protected, so far as operational requirements permit.

The same shall apply so far as possible to fixed coastal installations used exclusively by these craft for their humanitarian missions.

Article 28

Should fighting occur on board a warship, the sick bays shall be respected and spared as far as possible. Sick bays and their equipment shall remain subject to the laws of warfare, but may not be diverted from their purpose, so long as they are required for the wounded and sick. Nevertheless, the commander into whose power they have fallen may, after ensuring the proper care of the wounded and sick who are accommodated therein, apply them to other purposes in case of urgent military necessity.

Article 29

Any hospital ship in a port which falls into the hands of the enemy shall be authorised to leave the said port.

Article 30

The vessels described in Articles 22, 24, 25 and 27 shall afford relief and assistance to the wounded, sick and shipwrecked without distinction of nationality.

The High Contracting Parties undertake not to use these vessels for any military purpose.

Such vessels shall in no wise hamper the movements of the combatants.

During and after an engagement, they will act at their own risk.

Article 31

The parties to the conflict shall have the right to control and search the vessels mentioned in Articles 22, 24, 25 and 27. They can refuse assistance from these vessels, order them off, make them take a certain course, control the use of their wireless and other means of communication, and even detain them for a period not exceeding seven days from the time of interception, if the gravity of the circumstances so requires.

They may put a commissioner temporarily on board whose sole task shall be to see that orders given in virtue of the provisions of the preceding paragraph are carried out.

As far as possible, the Parties to the conflict shall enter in the log of the hospital ship, in a language he can understand, the orders they have given the captain of the vessel.

Parties to the conflict may, either unilaterally or by particular agreements, put on board their ships neutral observers who shall verify the strict observation of the provisions contained in the present Convention.

Article 32

Vessels described in Articles 22, 24, 25 and 27 are not classed as warships as regards their stay in a neutral port.

Article 33

Merchant vessels which have been transformed into hospital ships cannot be put to any other use throughout the duration of hostilities.

Article 34

The protection to which hospital ships and sick bays are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after due warning has been given, naming in all appropriate cases a reasonable time limit, and after such warning has remained unheeded.

In particular, hospital ships may not possess or use a secret code for their wireless or other means of communication.

Article 35

The following conditions shall not be considered as depriving hospital ships or sick bays of vessels of the protection due to them:

- (1) The fact that the crews of ships or sick bays are armed for the maintenance of order, for their own defence or that of the sick and wounded.
- (2) The presence on board of apparatus exclusively intended to facilitate navigation or communication.
- (3) The discovery on board hospital ships or in sick bays of portable arms and ammunition taken from the wounded, sick and shipwrecked and not yet handed to the proper service.
- (4) The fact that the humanitarian activities of hospital ships and sick bays of vessels or of the crews extend to the care of wounded, sick or shipwrecked civilians.
- (5) The transport of equipment and of personnel intended exclusively for medical duties, over and above the normal requirements.

Chapter IV - Personnel

Article 36

The religious, medical and hospital personnel of hospital ships and their crews shall be respected and protected; they may not be captured during the time they are in the service of the hospital ship, whether or not there are wounded and sick on board.

Article 37

The religious, medical and hospital personnel assigned to the medical or spiritual care of the persons designated in Articles 12 and 13 shall, if they fall into the hands of the enemy, be respected and protected; they may continue to carry out their duties as long as this is necessary for the care of the wounded and sick. They shall afterwards be sent back as soon as the Commander in Chief, under whose authority they are, considers it practicable. They may take with them, on leaving the ship, their personal property.

If, however, it proves necessary to retain some of this personnel owing to the medical or spiritual needs of prisoners of war, everything possible shall be done for their earliest possible landing.

Retained personnel shall be subject, on landing, to the provisions of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949.

Chapter V - Medical Transports

Article 38

Ships chartered for that purpose shall be authorised to transport equipment exclusively intended for the treatment of wounded and sick members of armed forces or for the prevention of disease, provided that the particulars regarding their voyage have been notified to the adverse Power and approved by the latter. The adverse Power shall preserve the right to board the carrier ships but not to capture them or seize the equipment carried.

By agreement amongst the Parties to the conflict, neutral observers may be placed on board such ships to verify the equipment carried. For this purpose, free access to the equipment shall be given.

Article 39

Medical aircraft, that is to say, aircraft exclusively employed for the removal of the wounded, sick and shipwrecked, and for the transport of medical personnel and equipment, may not be the object of attack, but shall be respected by the Parties to the conflict, while flying at heights, at times and on routes specifically agreed upon between the Parties to the conflict concerned.

They shall be clearly marked with the distinctive emblem prescribed in Article 41, together with their national colours, on their lower, upper and lateral surfaces. They shall be provided with any other markings or means of identification which may be agreed upon between the Parties to the conflict upon the outbreak or during the course of hostilities.

Unless agreed otherwise, flights over enemy or enemy-occupied territory are prohibited.

Medical aircraft shall obey every summons to alight on land or water. In the event of having thus to alight, the aircraft with its occupants may continue its flight after examination, if any.

In the event of alighting involuntarily on land or water in enemy or enemy-occupied territory, the wounded, sick and shipwrecked, as well as the crew of the aircraft shall be prisoners of war. The medical personnel shall be treated according to Articles 36 and 37.

Article 40

Subject to the provisions of the second paragraph, medical aircraft of Parties to the conflict may fly over the territory of neutral Powers, land thereon in case of necessity, or use it as a port of call. They shall give neutral Powers prior notice of their passage over the said territory, and obey every summons to alight, on land or water. They will be immune from attack only when flying on routes, at heights and at times specifically agreed upon between the Parties to the conflict and the neutral Power concerned.

The neutral Powers may, however, place conditions or restrictions on the passage or landing of medical aircraft on their territory. Such possible conditions or restrictions shall be applied equally to all Parties to the conflict.

Unless otherwise agreed between the neutral Powers and the Parties to the conflict, the wounded, sick or shipwrecked who are disembarked with the consent of the local authorities on neutral territory by medical aircraft shall be detained by the neutral Power, where so required by international law, in such a manner that they cannot again take part in operations of war. The cost of their accommodation and internment shall be borne by the Power on which they depend.

Chapter VI - The Distinctive Emblem

Article 41

Under the direction of the competent military authority, the emblem of the red cross on a white ground shall be displayed on the flags, armlets and on all equipment employed in the Medical Service.

Nevertheless, in the case of countries which already use as emblem, in place of the red cross, the red crescent or the red lion and sun on a white ground, these emblems are also recognised by the terms of the present Convention.

Article 42

The personnel designated in Articles 36 and 37 shall wear, affixed to the left arm, a water-resistant armlet bearing the distinctive emblem, issued and stamped by the military authority.

Such personnel, in addition to wearing the identity disc mentioned in Article 19, shall also carry a special identity card bearing the distinctive emblem. This card shall be water-resistant and of such size that it can be carried in the pocket. It shall be worded in the national language, shall mention at least the surname and first names, the date of birth, the rank and the service number of the bearer, and shall state in what capacity he is entitled to the protection of the present Convention. The card shall bear the photograph of the owner and also either his signature or his finger-prints or both. It shall be embossed with the stamp of the military authority.

The identity card shall be uniform throughout the same armed forces and, as far as possible, of a similar type in the armed forces of the High Contracting Parties. The Parties to the conflict may be guided by the model which is annexed, by way of example, to the present Convention. They shall inform each other, at the outbreak of hostilities, of the model they are using. Identity cards should be made out, if possible, at least in duplicate, one copy being kept by the home country.

In no circumstances may the said personnel be deprived of their insignia or identity cards nor of the right to wear the armlet. In case of loss they shall be entitled to receive duplicates of the cards and to have the insignia replaced.

Article 43

The ships designated in Articles 22, 24, 25, and 27 shall be distinctively marked as follows:

- (a) All exterior surfaces shall be white.
- (b) One or more dark red crosses as large as possible shall be painted and displayed on each side of the hull and on the horizontal surfaces, so placed as to afford the greatest possible visibility from the sea and from the air.

All hospital ships shall make themselves known by hoisting their national flag and further, if they belong to a neutral state, the flag of the Party to the conflict whose direction they have accepted. A white flag with a red cross shall be flown at the mainmast as high as possible.

Lifeboats of hospital ships, coastal lifeboats and all small craft used by the Medical Service shall be painted white with dark red crosses prominently displayed and shall, in general, comply with the identification system prescribed above for hospital ships.

The above-mentioned ships and craft which may wish to ensure by night and in times of reduced visibility the protection to which they are entitled must, subject to the assent of the

Party to the conflict under whose power they are, take the necessary measures to render their painting and distinctive emblems sufficiently apparent.

Hospital ships which, in accordance with Article 31 are provisionally detained by the enemy, must haul down the flag of the Party to the conflict in whose service they are or whose direction they have accepted.

Coastal lifeboats, if they continue to operate with the consent of the Occupying Power from a base which is occupied, may be allowed, when away from their base, to continue to fly their own national colours along with a flag carrying a red cross on a white ground, subject to prior notification to all the Parties to the conflict concerned.

All the provisions in this Article relating to the red cross shall apply equally to the other emblems mentioned in Article 41.

Parties to the conflict shall at all times endeavour to conclude mutual agreements in order to use the most modern methods available to facilitate the identification of hospital ships.

Article 44

The distinguishing signs referred to in Article 43 can only be used, whether in time of peace or war, for indicating or protecting the ships therein mentioned, except as may be provided in any other international Convention or by agreement between all the parties to the conflict concerned.

Article 45

The High Contracting Parties shall, if their legislation is not already adequate, take the measures necessary for the prevention and repression, at all times, of any abuse of the distinctive signs provided for under Article 43.

Chapter VII - Execution of the Convention

Article 46

Each Party to the conflict, acting through its Commander in Chief, shall ensure the detailed execution of the preceding Articles, and provide for unforeseen cases, in conformity with the general principles of the present Convention.

Article 47

Reprisals against the wounded, sick and shipwrecked persons, the personnel, the vessels or the equipment protected by the Convention are prohibited.

Article 48

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains.

Article 49

The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

Chapter VIII - Repression of Abuses and Infractions

Article 50

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own Courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.

Article 51

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

Article 52

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

Article 53

At the request of a Party to the conflict, an inquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the inquiry, the Parties should agree on the choice of an umpire, who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

Final Provisions

Article 54

The present Convention is established in English and in French. Both texts are equally authentic.

The Swiss Federal Council shall arrange for official translations of the Convention to be made in the Russian and Spanish languages.

Article 55

The present Convention, which bears the date of this day, is open to signature until February 12, 1950, in the name of the Powers represented at the Conference which opened at Geneva on April 21, 1949; furthermore, by Powers not represented at that Conference, but which are parties to the Xth Hague Convention of October 18, 1907, for the adaptation to Maritime Warfare of the principles of the Geneva Convention of 1906, or to the Geneva Conventions of 1864, 1906 or 1929 for the Relief of the Wounded and Sick in Armies in the Field.

Article 56

The present Convention shall be ratified as soon as possible and the ratifications shall be deposited at Berne.

A record shall be drawn up of the deposit of each instrument of ratification and certified copies of this record shall be transmitted by the Swiss Federal Council to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

Article 57

The present Convention shall come into force 6 months after not less than two instruments of ratification have been deposited.

Thereafter, it shall come into force for each High Contracting Party 6 months after the deposit of the instrument of ratification.

Article 58

The present Convention replaces the Xth Hague Convention of October 18, 1907, for the adaptation to Maritime Warfare of the principles of the Geneva Convention of 1906, in relations between the High Contracting Parties.

Article 59

From the date of its coming into force, it shall be open to any Power in whose name the present Convention has not been signed, to accede to this Convention.

Article 60

Accessions shall be notified in writing to the Swiss Federal Council, and shall take effect 6 months after the date on which they are received.

The Swiss Federal Council shall communicate the accessions to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

Article 61

The situation provided for in Articles 2 and 3 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the beginning of hostilities or occupation.

The Swiss Federal Council shall communicate by the quickest method any ratifications or accessions received from Parties to the conflict.

Article 62

Each of the High Contracting Parties shall be at liberty to denounce the present Convention.

The denunciation shall be notified in writing to the Swiss Federal Council, which shall transmit it to the Governments of all the High Contracting Parties.

The denunciation shall take effect one year after the notification thereof has been made to the Swiss Federal Council.

However, a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded, and until after operations connected with the release and repatriation of the persons protected by the present Convention have been terminated.

The denunciation shall have effect only in respect of the denouncing Power. It shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations, as they result from the usages established among civilised peoples, from the laws of humanity and the dictates of the public conscience.

Article 63

The Swiss Federal Council shall register the present Convention with the Secretariat of the United Nations. The Swiss Federal Council shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to the present Convention.

In witness whereof the undersigned, having deposited their respective full powers, have signed the present Convention.

Done at Geneva this 12th day of August 1949, in the English and French languages. The original shall be deposited in the Archives of the Swiss Confederation. The Swiss Federal Council shall transmit certified copies thereof to each of the signatory and acceding States. [Here follow the signatures and Annex.]

SCHEDULE 3**Geneva Convention relative to the Treatment of
Prisoners of War of August 12, 1949****Preamble**

The undersigned Plenipotentiaries of the Governments represented at the Diplomatic Conference held at Geneva from April 21 to August 12, 1949, for the purpose of revising the Convention concluded at Geneva on July 27, 1929, relative to the Treatment of Prisoners of War, have agreed as follows:

Part I - General Provisions**Article 1**

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

Article 2

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between 2 or more of the High Contracting Parties, even if the state of war is not recognised by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

Article 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
 - (a) Violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture;
 - (b) Taking of hostages;
 - (c) Outrages upon personal dignity, in particular, humiliating and degrading treatment;

- (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted Court affording all the judicial guarantees which are recognised as indispensable by civilised peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Article 4

- A. Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:
- (1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces;
 - (2) Members of other militias and members of other volunteer corps, including those of organised resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organised resistance movements, fulfil the following conditions:
 - (a) That of being commanded by a person responsible for his subordinates;
 - (b) That of having a fixed distinctive sign recognisable at a distance;
 - (c) That of carrying arms openly;
 - (d) That of conducting their operations in accordance with the laws and customs of war;
 - (3) Members of regular armed forces who profess allegiance to a government or an authority not recognised by the Detaining Power;
 - (4) Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorisation from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model;
 - (5) Members of crews, including masters, pilots and apprentices of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law;
 - (6) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

- B. The following shall likewise be treated as prisoners of war under the present Convention:
- (1) Persons belonging, or having belonged, to the armed forces of the occupied country, if the occupying Power considers it necessary by reason of such allegiance to intern them, even though it had originally liberated them while hostilities were going on outside the territory it occupies, in particular where such persons have made an unsuccessful attempt to rejoin the armed forces to which they belong and which are engaged in combat, or where they fail to comply with a summons made to them with a view to internment.
 - (2) The persons belonging to one of the categories enumerated in the present Article, who have been received by neutral or nonbelligerent Powers on their territory and whom these Powers are required to intern under international law, without prejudice to any more favourable treatment which these Powers may choose to give and with the exception of Articles 8, 10, 15, 30, fifth paragraph, 58, 67, 92, 126 and, where diplomatic relations exist between the Parties to the conflict and the neutral or nonbelligerent Power concerned, those Articles concerning the Protecting Power. Where such diplomatic relations exist, the Parties to a conflict on whom these persons depend shall be allowed to perform towards them the functions of a Protecting Power as provided in the present Convention, without prejudice to the functions which these Parties normally exercise in conformity with diplomatic and consular usage and treaties.
- C. This Article shall in no way affect the status of medical personnel and chaplains as provided for in Article 33 of the present Convention.

Article 5

The present Convention shall apply to the persons referred to in Article 4 from the time they fall into the power of the enemy and until their final release and repatriation.

Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.

Article 6

In addition to the agreements expressly provided for in Articles 10, 23, 28, 33, 60, 65, 66, 67, 72, 73, 75, 109, 110, 118, 119, 122 and 132, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of prisoners of war, as defined by the present Convention, nor restrict the rights which it confers upon them.

Prisoners of war shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict.

Article 7

Prisoners of war may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

Article 8

The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said Delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties.

Article 9

The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organisation may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of prisoners of war and for their relief.

Article 10

The High Contracting Parties may at any time agree to entrust to an organisation which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When prisoners of war do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organisation provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organisation, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organisation, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power or any organisation invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention applies to substitute organisations in the sense of the present Article.

Article 11

In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or

interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

For this purpose, each of the Protecting Powers may, either at the invitation of one Party or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for prisoners of war, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict a person belonging to a neutral Power, or delegated by the International Committee of the Red Cross, who shall be invited to take part in such a meeting.

Part II - General Protection of Prisoners of War

Article 12

Prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them.

Prisoners of war may only be transferred by the Detaining Power to a Power which is a party to the Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the Convention. When prisoners of war are transferred under such circumstances, responsibility for the application of the Convention rests on the Power accepting them while they are in its custody.

Nevertheless, if that Power fails to carry out the provisions of the Convention in any important respect, the Power by whom the prisoners of war were transferred shall, upon being notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the prisoners of war. Such requests must be complied with.

Article 13

Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental, or hospital treatment of the prisoner concerned and carried out in his interest. Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity.

Measures of reprisals against prisoners of war are prohibited.

Article 14

Prisoners of war are entitled in all circumstances to respect for their persons and their honour.

Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men.

Prisoners of war shall retain the full civil capacity which they enjoyed at the time of their capture. The Detaining Power may not restrict the exercise, either within or without its own territory, of the rights such capacity confers except in so far as the captivity requires.

Article 15

The Power detaining prisoners of war shall be bound to provide free of charge for their maintenance and for the medical attention required by their state of health.

Article 16

Taking into consideration the provisions of the present Convention relating to rank and sex, and subject to any privileged treatment which may be accorded to them by reason of their state of health, age or professional qualifications, all prisoners of war shall be treated alike by the Detaining Power, without any adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria.

Part III - Captivity

Section I—Beginning of Captivity

Article 17

Every prisoner of war, when questioned on the subject, is bound to give only his surname, first names and rank, date of birth, and army, regimental, personal or serial number, or failing this, equivalent information.

If he wilfully infringes this rule, he may render himself liable to a restriction of the privileges accorded to his rank or status.

Each Party to a conflict is required to furnish the persons under its jurisdiction who are liable to become prisoners of war, with an identity card showing the owner's surname, first names, rank, army, regimental, personal or serial number or equivalent information, and date of birth. The identity card may, furthermore, bear the signature or the fingerprints or both of the owner, and may bear, as well, any other information the Party to the conflict may wish to add concerning persons belonging to its armed forces. As far as possible the card shall measure 6.5 x 10cm, and shall be issued in duplicate. The identity card shall be shown by the prisoner of war upon demand, but may in no case be taken away from him.

No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind.

Prisoners of war who, owing to their physical or mental condition, are unable to state their identity, shall be handed over to the medical service. The identity of such prisoners shall be established by all possible means, subject to the provisions of the preceding paragraph.

The questioning of prisoners of war shall be carried out in a language which they understand.

Article 18

All effects and articles of personal use, except arms, horses, military equipment and military documents, shall remain in the possession of prisoners of war, likewise their metal helmets and gas masks and like articles issued for personal protection. Effects and articles used for their clothing or feeding shall likewise remain in their possession, even if such effects and articles belong to their regulation military equipment.

At no time should prisoners of war be without identity documents. The Detaining Power shall supply such documents to prisoners of war who possess none.

Badges of rank and nationality, decorations and articles having above all a personal or sentimental value may not be taken from prisoners of war.

Sums of money carried by prisoners of war may not be taken away from them except by order of an officer, and after the amount and particulars of the owner have been recorded in a special register and an itemised receipt has been given, legibly inscribed with the name, rank and unit of the person issuing the said receipt. Sums in the currency of the Detaining Power, or which are changed into such currency at the prisoner's request, shall be placed to the credit of the prisoner's account as provided in Article 64.

The Detaining Power may withdraw articles of value from prisoners of war only for reasons of security; when such articles are withdrawn, the procedure laid down for sums of money impounded shall apply.

Such objects, likewise sums taken away in any currency other than that of the Detaining Power and the conversion of which has not been asked for by the owners, shall be kept in the custody of the Detaining Power and shall be returned in their initial shape to prisoners of war at the end of their captivity.

Article 19

Prisoners of war shall be evacuated, as soon as possible after their capture, to camps situated in an area far enough from the combat zone for them to be out of danger.

Only those prisoners of war who, owing to wounds or sickness, would run greater risks by being evacuated than by remaining where they are, may be temporarily kept back in a danger zone.

Prisoners of war shall not be unnecessarily exposed to danger while awaiting evacuation from a fighting zone.

Article 20

The evacuation of prisoners of war shall always be effected humanely, and in conditions similar to those for the forces of the Detaining Power in their changes of station.

The Detaining Power shall supply prisoners of war who are being evacuated with sufficient food and potable water, and with the necessary clothing and medical attention. The Detaining Power shall take all suitable precautions to ensure their safety during evacuation, and shall establish as soon as possible a list of the prisoners of war who are evacuated.

If prisoners of war must, during evacuation, pass through transit camps, their stay in such camps shall be as brief as possible.

Section II—Internment of Prisoners of War

Chapter I - General Observations

Article 21

The Detaining Power may subject prisoners of war to internment. It may impose on them the obligation of not leaving, beyond certain limits, the camp where they are interned, or if the said camp is fenced in, of not going outside its perimeter. Subject to the provisions of the present Convention relative to penal and disciplinary sanctions, prisoners of war may not be

held in close confinement except where necessary to safeguard their health and then only during the continuation of the circumstances which make such confinement necessary.

Prisoners of war may be partially or wholly released on parole or promise, in so far as is allowed by the laws of the Power on which they depend. Such measures shall be taken particularly in cases where this may contribute to the improvement of their state of health. No prisoner of war shall be compelled to accept liberty on parole or promise.

Upon the outbreak of hostilities, each Party to the conflict shall notify the adverse Party of the laws and regulations allowing or prohibiting its own nationals to accept liberty on parole or promise. Prisoners of war who are paroled or who have given their promise in conformity with the laws and regulations so notified, are bound on their personal honour scrupulously to fulfil, both towards the Power on which they depend and towards the Power which has captured them, the engagements of their paroles or promises. In such cases, the Power on which they depend is bound neither to require nor to accept from them any service incompatible with the parole or promise given.

Article 22

Prisoners of war may be interned only in premises located on land and affording every guarantee of hygiene and healthfulness. Except in particular cases which are justified by the interest of the prisoners themselves, they shall not be interned in penitentiaries.

Prisoners of war interned in unhealthy areas, or where the climate is injurious for them, shall be removed as soon as possible to a more favourable climate.

The Detaining Power shall assemble prisoners of war in camps or camp compounds according to their nationality, language and customs, provided that such prisoners shall not be separated from prisoners of war belonging to the armed forces with which they were serving at the time of their capture, except with their consent.

Article 23

No prisoner of war may at any time be sent to, or detained in areas where he may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations.

Prisoners of war shall have shelters against air bombardment and other hazards of war, to the same extent as the local civilian population. With the exception of those engaged in the protection of their quarters against the aforesaid hazards, they may enter such shelters as soon as possible after the giving of the alarm. Any other protective measure taken in favour of the population shall also apply to them.

Detaining Powers shall give the Powers concerned, through the intermediary of the Protecting Powers, all useful information regarding the geographical location of prisoner of war camps.

Whenever military considerations permit, prisoner of war camps shall be indicated in the daytime by the letters PW or PG, placed so as to be clearly visible from the air. The Powers concerned may, however, agree upon any other system of marking. Only prisoner of war camps shall be marked as such.

Article 24

Transit or screening camps of a permanent kind shall be fitted out under conditions similar to those described in the present Section, and the prisoners therein shall have the same treatment as in other camps.

*Chapter II - Quarters, Food and Clothing of Prisoners of War***Article 25**

Prisoners of war shall be quartered under conditions as favourable as those for the forces of the Detaining Power who are billeted in the same area. The said conditions shall make allowance for the habits and customs of the prisoners and shall in no case be prejudicial to their health.

The foregoing provisions shall apply in particular to the dormitories of prisoners of war as regards both total surface and minimum cubic space, and the general installations, bedding and blankets.

The premises provided for the use of prisoners of war individually or collectively, shall be entirely protected from dampness and adequately heated and lighted, in particular between dusk and lights out. All precautions must be taken against the danger of fire.

In any camps in which women prisoners of war, as well as men, are accommodated, separate dormitories shall be provided for them.

Article 26

The basic daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies. Account shall also be taken of the habitual diet of the prisoners.

The Detaining Power shall supply prisoners of war who work with such additional rations as are necessary for the labour on which they are employed.

Sufficient drinking water shall be supplied to prisoners of war. The use of tobacco shall be permitted.

Prisoners of war shall, as far as possible, be associated with the preparation of their meals; they may be employed for that purpose in the kitchens. Furthermore, they shall be given the means of preparing, themselves, the additional food in their possession.

Adequate premises shall be provided for messing.

Collective disciplinary measures affecting food are prohibited.

Article 27

Clothing, underwear and footwear shall be supplied to prisoners of war in sufficient quantities by the Detaining Power, which shall make allowance for the climate of the region where the prisoners are detained. Uniforms of enemy armed forces captured by the Detaining Power should, if suitable for the climate, be made available to clothe prisoners of war.

The regular replacement and repair of the above articles shall be assured by the Detaining Power. In addition, prisoners of war who work shall receive appropriate clothing, wherever the nature of the work demands.

Article 28

Canteens shall be installed in all camps, where prisoners of war may procure foodstuffs, soap and tobacco and ordinary articles in daily use. The tariff shall never be in excess of local market prices.

The profits made by camp canteens shall be used for the benefit of the prisoners; a special fund shall be created for this purpose. The prisoners' representative shall have the right to collaborate in the management of the canteen and of this fund.

When a camp is closed down, the credit balance of the special fund shall be handed to an international welfare organisation, to be employed for the benefit of prisoners of war of the same nationality as those who have contributed to the fund.

In case of a general repatriation, such profits shall be kept by the Detaining Power, subject to any agreement to the contrary between the Powers concerned.

Chapter III - Hygiene and Medical Attention

Article 29

The Detaining Power shall be bound to take all sanitary measures necessary to ensure the cleanliness and healthfulness of camps and to prevent epidemics.

Prisoners of war shall have for their use, day and night, conveniences which conform to the rules of hygiene and are maintained in a constant state of cleanliness. In any camps in which women prisoners of war are accommodated, separate conveniences shall be provided for them.

Also, apart from the baths and showers with which the camps shall be furnished, prisoners of war shall be provided with sufficient water and soap for their personal toilet and for washing their personal laundry; the necessary installations, facilities and time shall be granted them for that purpose.

Article 30

Every camp shall have an adequate infirmary where prisoners of war may have the attention they require, as well as appropriate diet. Isolation wards shall, if necessary, be set aside for cases of contagious or mental disease.

Prisoners of war suffering from serious disease, or whose condition necessitates special treatment, a surgical operation or hospital care, must be admitted to any military or civilian medical unit where such treatment can be given, even if their repatriation is contemplated in the near future. Special facilities shall be afforded for the care to be given to the disabled, in particular to the blind, and for their rehabilitation, pending repatriation.

Prisoners of war shall have the attention, preferably, of medical personnel of the Power on which they depend and, if possible, of their nationality.

Prisoners of war may not be prevented from presenting themselves to the medical authorities for examination. The detaining authorities shall, upon request, issue to every prisoner who has undergone treatment, an official certificate indicating the nature of his illness or injury, and the duration and kind of treatment received. A duplicate of this certificate shall be forwarded to the Central Prisoners of War Agency.

The costs of treatment, including those of any apparatus necessary for the maintenance of prisoners of war in good health, particularly dentures and other artificial appliances, and spectacles, shall be borne by the Detaining Power.

Article 31

Medical inspections of prisoners of war shall be held at least once a month. They shall include the checking and the recording of the weight of each prisoner of war. Their purpose

shall be, in particular, to supervise the general state of health, nutrition and cleanliness of prisoners and to detect contagious diseases, especially tuberculosis, malaria and venereal disease. For this purpose the most efficient methods available shall be employed, eg periodic mass miniature radiography for the early detection of tuberculosis.

Article 32

Prisoners of war who, though not attached to the medical service of their armed forces, are physicians, surgeons, dentists, nurses or medical orderlies, may be required by the Detaining Power to exercise their medical functions in the interests of prisoners of war dependent on the same Power. In that case they shall continue to be prisoners of war, but shall receive the same treatment as corresponding medical personnel retained by the Detaining Power. They shall be exempted from any other work under Article 49.

Chapter IV - Medical Personnel and Chaplains Retained to Assist Prisoners of War

Article 33

Members of the medical personnel and chaplains while retained by the Detaining Power with a view to assisting prisoners of war, shall not be considered as prisoners of war. They shall, however, receive as a minimum the benefits and protection of the present Convention, and shall also be granted all facilities necessary to provide for the medical care of, and religious ministrations to prisoners of war.

They shall continue to exercise their medical and spiritual functions for the benefit of prisoners of war, preferably those belonging to the armed forces upon which they depend, within the scope of the military laws and regulations of the Detaining Power and under the control of its competent services, in accordance with their professional etiquette. They shall also benefit by the following facilities in the exercise of their medical or spiritual functions:

- (a) They shall be authorised to visit periodically prisoners of war situated in working detachments or in hospitals outside the camp. For this purpose, the Detaining Power shall place at their disposal the necessary means of transport.
- (b) The senior medical officer in each camp shall be responsible to the camp military authorities for everything connected with the activities of retained medical personnel. For this purpose, Parties to the conflict shall agree at the outbreak of hostilities on the subject of the corresponding ranks of the medical personnel, including that of societies mentioned in Article 26 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949. This senior medical officer, as well as chaplains, shall have the right to deal with the competent authorities of the camp on all questions relating to their duties. Such authorities shall afford them all necessary facilities or correspondence relating to these questions.
- (c) Although they shall be subject to the internal discipline of the camp in which they are retained such personnel may not be compelled to carry out any work other than that concerned with their medical or religious duties.

During hostilities, the Parties to the conflict shall agree concerning the possible relief of retained personnel and shall settle the procedure to be followed.

None of the preceding provisions shall relieve the Detaining Power of its obligations with regard to prisoners of war from the medical or spiritual point of view.

*Chapter V - Religious, Intellectual and Physical Activities***Article 34**

Prisoners of war shall enjoy complete latitude in the exercise of their religious duties, including attendance at the service of their faith, on condition that they comply with the disciplinary routine prescribed by the military authorities.

Adequate premises shall be provided where religious services may be held.

Article 35

Chaplains who fall into the hands of the enemy Power and who remain or are retained with a view to assisting prisoners of war, shall be allowed to minister to them and to exercise freely their ministry amongst prisoners of war of the same religion, in accordance with their religious conscience. They shall be allocated among the various camps and labour detachments containing prisoners of war belonging to the same forces, speaking the same language or practising the same religion. They shall enjoy the necessary facilities, including the means of transport provided for in Article 33, for visiting the prisoners of war outside their camp. They shall be free to correspond, subject to censorship, on matters concerning their religious duties with the ecclesiastical authorities in the country of detention and with international religious organisations. Letters and cards which they may send for this purpose shall be in addition to the quota provided for in Article 71.

Article 36

Prisoners of war who are ministers of religion, without having officiated as chaplains to their own forces, shall be at liberty, whatever their denomination, to minister freely to the members of their community. For this purpose, they shall receive the same treatment as the chaplains retained by the Detaining Power. They shall not be obliged to do any other work.

Article 37

When prisoners of war have not the assistance of a retained chaplain or of a prisoner of war minister of their faith, a minister belonging to the prisoners' or a similar denomination, or in his absence a qualified layman, if such a course is feasible from a confessional point of view, shall be appointed at the request of the prisoners concerned to fill this office. This appointment, subject to the approval of the Detaining Power, shall take place with the agreement of the community of prisoners concerned and, wherever necessary, with the approval of the local religious authorities of the same faith. The person thus appointed shall comply with all regulations established by the Detaining Power in the interests of discipline and military security.

Article 38

While respecting the individual preferences of every prisoner, the Detaining Power shall encourage the practice of the intellectual, educational, and recreational pursuits, sports and games amongst prisoners, and shall take the measures necessary to ensure the exercise thereof by providing them with adequate premises and necessary equipment.

Prisoners shall have opportunities for taking physical exercise including sports and games, and for being out of doors. Sufficient open spaces shall be provided for this purpose in all camps.

*Chapter VI - Discipline***Article 39**

Every prisoner of war camp shall be put under the immediate authority of a responsible commissioned officer belonging to the regular armed forces of the Detaining Power. Such officer shall have in his possession a copy of the present Convention; he shall ensure that its provisions are known to the camp staff and the guard and shall be responsible, under the direction of his government, for its application.

Prisoners of war, with the exception of officers, must salute and show to all officers of the Detaining Power the external marks of respect provided for by the regulations applying in their own forces.

Officer prisoners of war are bound to salute only officers of a higher rank of the Detaining Power; they must, however, salute the camp commander regardless of his rank.

Article 40

The wearing of badges of rank and nationality, as well as of decorations, shall be permitted.

Article 41

In every camp the text of the present Convention and its Annexes and the contents of any special agreement provided for in Article 6, shall be posted, in the prisoners' own language, at places where all may read them. Copies shall be supplied, on request, to the prisoners who cannot have access to the copy which has been posted.

Regulations, orders, notices and publications of every kind relating to the conduct of prisoners of war shall be issued to them in a language which they understand. Such regulations, orders and publications shall be posted in the manner described above and copies shall be handed to the prisoners' representative.

Every order and command addressed to prisoners of war individually must likewise be given in a language which they understand.

Article 42

The use of weapons against prisoners of war, especially against those who are escaping or attempting to escape, shall constitute an extreme measure, which shall always be preceded by warnings appropriate to the circumstances.

*Chapter VII - Rank of Prisoners of War***Article 43**

Upon the outbreak of hostilities, the Parties to the conflict shall communicate to one another the titles and ranks of all the persons mentioned in Article 4 of the present Convention, in order to ensure equality of treatment between prisoners of equivalent rank. Titles and ranks which are subsequently created shall form the subject of similar communications.

The Detaining Power shall recognise promotions in rank which have been accorded to prisoners of war and which have been duly notified by the Power on which these prisoners depend.

Article 44

Officers and prisoners of equivalent rank shall be treated with the regard due to their rank and age.

In order to ensure service in officers' camps, other ranks of the same armed forces who, as far as possible, speak the same language, shall be assigned in sufficient numbers, account being taken of the rank of officers and prisoners of equivalent status. Such orderlies shall not be required to perform any other work.

Supervision of the mess by the officers themselves shall be facilitated in every way.

Article 45

Prisoners of war other than officers and prisoners of equivalent status shall be treated with the regard due to their rank and age.

Supervision of the mess by the prisoners themselves shall be facilitated in every way.

Chapter VIII - Transfer of Prisoners of War After Their Arrival in Camp

Article 46

The Detaining Power, when deciding upon the transfer of prisoners of war, shall take into account the interests of the prisoners themselves, more especially so as not to increase the difficulty of their repatriation.

The transfer of prisoners of war shall always be effected humanely and in conditions not less favourable than those under which the forces of the Detaining Power are transferred. Account shall always be taken of the climatic conditions to which the prisoners of war are accustomed and the conditions of transfer shall in no case be prejudicial to their health.

The Detaining Power shall supply prisoners of war during transfer with sufficient food and drinking water to keep them in good health, likewise with the necessary clothing, shelter and medical attention. The Detaining Power shall take adequate precautions especially in case of transport by sea or by air, to ensure their safety during transfer, and shall draw up a complete list of all transferred prisoners before their departure.

Article 47

Sick or wounded prisoners of war shall not be transferred as long as their recovery may be endangered by the journey, unless their safety imperatively demands it. If the combat zone draws closer to a camp, the prisoners of war in the said camp shall not be transferred unless their transfer can be carried out in adequate conditions of safety, or unless they are exposed to greater risks by remaining on the spot than by being transferred.

Article 48

In the event of transfer, prisoners of war shall be officially advised of their departure and of their new postal address. Such notifications shall be given in time for them to pack their luggage and inform their next of kin.

They shall be allowed to take with them their personal effects, and the correspondence and parcels which have arrived for them. The weight of such baggage may be limited, if the conditions of transfer so require, to what each prisoner can reasonably carry, which shall in no case be more than 25 kilograms per head.

Mail and parcels addressed to their former camp shall be forwarded to them without delay. The camp commander shall take, in agreement with the prisoners' representative, any measures needed to ensure the transport of the prisoners' community property and of the luggage they are unable to take with them in consequence of restrictions imposed by virtue of the second paragraph of this Article.

The costs of transfers shall be borne by the Detaining Power.

Section III—Labour of Prisoners of War

Article 49

The Detaining Power may utilise the labour of prisoners of war who are physically fit, taking into account their age, sex, rank and physical aptitude, and with a view particularly to maintaining them in a good state of physical and mental health.

Non-commissioned officers who are prisoners of war shall only be required to do supervisory work. Those not so required may ask for other suitable work which shall, so far as possible, be found for them.

If officers or persons of equivalent status ask for suitable work, it shall be found for them, so far as possible, but they may in no circumstances be compelled to work.

Article 50

Besides work connected with camp administration, installation or maintenance, prisoners of war may be compelled to do only such work as is included in the following classes:

- (a) Agriculture;
- (b) Industries connected with the production or the extraction of raw materials, and manufacturing industries, with the exception of metallurgical, machinery and chemical industries; public works and building operations which have no military character or purpose;
- (c) Transport and handling of stores which are not military in character or purpose;
- (d) Commercial business, and arts and crafts;
- (e) Domestic service;
- (f) Public utility services having no military character or purpose.

Should the above provisions be infringed, prisoners of war shall be allowed to exercise their right of complaint, in conformity with Article 78.

Article 51

Prisoners of war must be granted suitable working conditions, especially as regards accommodation, food, clothing and equipment; such conditions shall not be inferior to those enjoyed by nationals of the Detaining Power employed in similar work; account shall also be taken of climatic conditions.

The Detaining Power, in utilising the labour of prisoners of war, shall ensure that in areas in which such prisoners are employed, the national legislation concerning the protection of labour, and, more particularly, the regulations for the safety of workers, are duly applied.

Prisoners of war shall receive training and be provided with the means of protection suitable to the work they will have to do and similar to those accorded to the nationals of the Detaining Power. Subject to the provisions of Article 52, prisoners may be submitted to the normal risks run by these civilian workers.

Conditions of labour shall in no case be rendered more arduous by disciplinary measures.

Article 52

Unless he be a volunteer, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature.

No prisoner of war shall be assigned to labour which would be looked upon as humiliating for a member of the Detaining Power's own forces.

The removal of mines or similar devices shall be considered as dangerous labour.

Article 53

The duration of the daily labour of prisoners of war, including the time of the journey to and fro, shall not be excessive, and must in no case exceed that permitted for civilian workers in the district, who are nationals of the Detaining Power and employed on the same work.

Prisoners of war must be allowed, in the middle of the day's work, a rest of not less than one hour. This rest will be the same as that to which workers of the Detaining Power are entitled, if the latter is of longer duration. They shall be allowed in addition a rest of 24 consecutive hours every week, preferably on Sunday or the day of rest in their country of origin. Furthermore, every prisoner who has worked for one year shall be granted a rest of 8 consecutive days, during which his working pay shall be paid him.

If methods of labour such as piece work are employed, the length of the working period shall not be rendered excessive thereby.

Article 54

The working pay due to prisoners of war shall be fixed in accordance with the provisions of Article 62 of the present Convention.

Prisoners of war who sustain accidents in connection with work, or who contract a disease in the course, or in consequence of their work, shall receive all the care their condition may require. The Detaining Power shall furthermore deliver to such prisoners of war a medical certificate enabling them to submit their claims to the Power on which they depend, and shall send a duplicate to the Central Prisoners of War Agency provided for in Article 123.

Article 55

The fitness of prisoners of war for work shall be periodically verified by medical examinations, at least once a month. The examinations shall have particular regard to the nature of the work which prisoners of war are required to do.

If any prisoner of war considers himself incapable of working, he shall be permitted to appear before the medical authorities of his camp. Physicians or surgeons may recommend that the prisoners who are, in their opinion, unfit for work, be exempted therefrom.

Article 56

The organisation and administration of labour detachments shall be similar to those of prisoner of war camps.

Every labour detachment shall remain under the control of and administratively part of a prisoner of war camp. The military authorities and the commander of the said camp shall be responsible, under the direction of their Government, for the observance of the provisions of the present Convention in labour detachments.

The camp commander shall keep an up-to-date record of the labour detachments dependent on his camp, and shall communicate it to the delegates of the Protecting Power, of the International Committee of the Red Cross, or of other agencies giving relief to prisoners of war, who may visit the camp.

Article 57

The treatment of prisoners of war who work for private persons, even if the latter are responsible for guarding and protecting them, shall not be inferior to that which is provided for by the present Convention. The Detaining Power, the military authorities and the commander of the camp to which such prisoners belong shall be entirely responsible for the maintenance, care, treatment, and payment of the working pay of such prisoners of war.

Such prisoners of war shall have the right to remain in communication with the prisoners' representatives in the camps on which they depend.

Section IV—Financial Resources of Prisoners of War

Article 58

Upon the outbreak of hostilities, and pending an arrangement on this matter with the Protecting Power, the Detaining Power may determine the maximum amount of money in cash or in any similar form, that prisoners may have in their possession. Any amount in excess, which was properly in their possession and which has been taken or withheld from them, shall be placed to their account, together with any money deposited by them, and shall not be converted into any other currency without their consent.

If prisoners of war are permitted to purchase services or commodities outside the camp against payment in cash, such payments shall be made by the prisoner himself or by the camp administration who will charge them to the accounts of the prisoners concerned. The Detaining Power will establish the necessary rules in this respect.

Article 59

Cash which was taken from prisoners of war, in accordance with Article 18, at the time of their capture, and which is in the currency of the Detaining Power, shall be placed to their separate accounts, in accordance with the provisions of Article 64 of the present Section.

The amounts, in the currency of the Detaining Power, due to the conversion of sums in other currencies that are taken from the prisoners of war at the same time, shall also be credited to their separate accounts.

Article 60

The Detaining Power shall grant all prisoners of war a monthly advance of pay, the amount of which shall be fixed by conversion, into the currency of the said Power, of the following amount:

- | | |
|--------------|---|
| Category I: | Prisoners ranking below sergeants: 8 Swiss francs. |
| Category II: | Sergeants and other noncommissioned officers, or prisoners of equivalent rank: 12 Swiss francs. |

- Category III: Warrant officers and commissioned officers below the rank of major or prisoners of equivalent rank: 50 Swiss francs.
- Category IV: Majors, lieutenant-colonels, colonels or prisoners of equivalent rank: 60 Swiss francs.
- Category V: General officers or prisoners of war of equivalent rank: 75 Swiss francs.

However, the Parties to the conflict concerned may by special agreement modify the amount of advances of pay due to prisoners of the preceding categories.

Furthermore, if the amounts indicated in the first paragraph above would be unduly high compared with the pay of the Detaining Power's armed forces or would, for any reason, seriously embarrass the Detaining Power, then, pending the conclusion of a special agreement with the Power on which the prisoners depend to vary the amounts indicated above, the Detaining Power:

- (a) Shall continue to credit the accounts of the prisoners with the amounts indicated in the first paragraph above;
- (b) May temporarily limit the amount made available from these advances of pay to prisoners of war for their own use, to sums which are reasonable, but which, for Category I, shall never be inferior to the amount that the Detaining Power gives to the members of its own armed forces.

The reasons for any limitation will be given without delay to the Protecting Power.

Article 61

The Detaining Power shall accept for distribution as supplementary pay to prisoners of war sums which the Power on which the prisoners depend may forward to them, on condition that the sums to be paid shall be the same for each prisoner of the same category, shall be payable to all prisoners of that category depending on that Power, and shall be placed in their separate accounts, at the earliest opportunity, in accordance with the provisions of Article 64. Such supplementary pay shall not relieve the Detaining Power of any obligation under this Convention.

Article 62

Prisoners of war shall be paid a fair working rate of pay by the detaining authorities direct. The rate shall be fixed by the said authorities, but shall at no time be less than one-fourth of one Swiss franc for a full working day. The Detaining Power shall inform prisoners of war, as well as the Power on which they depend, through the intermediary of the Protecting Power, of the rate of daily working pay that it has fixed.

Working pay shall likewise be paid by the detaining authorities to prisoners of war permanently detailed to duties or to a skilled or semi-skilled occupation in connection with the administration, installation or maintenance of camps, and to the prisoners who are required to carry out spiritual or medical duties on behalf of their comrades.

The working pay of the prisoners' representative, of his advisers, if any, and of his assistants, shall be paid out of the fund maintained by canteen profits. The scale of this working pay shall be fixed by the prisoners' representative and approved by the camp commander. If there is no such fund, the detaining authorities shall pay these prisoners a fair working rate of pay.

Article 63

Prisoners of war shall be permitted to receive remittances of money addressed to them individually or collectively.

Every prisoner of war shall have at his disposal the credit balance of his account as provided for in the following Article, within the limits fixed by the Detaining Power, which shall make such payments as are requested. Subject to financial or monetary restrictions which the Detaining Power regards as essential, prisoners of war may also have payments made abroad. In this case payments addressed by prisoners of war to dependents shall be given priority.

In any event, and subject to the consent of the Power on which they depend, prisoners may have payments made in their own country, as follows: the Detaining Power shall send to the aforesaid Power through the Protecting Power, a notification giving all the necessary particulars concerning the prisoners of war, the beneficiaries of the payments, and the amount of the sums to be paid, expressed in the Detaining Power's currency. The said notification shall be signed by the prisoners and countersigned by the camp commander. The Detaining Power shall debit the prisoners' account by a corresponding amount; the sum thus debited shall be placed by it to the credit of the power on which the prisoners depend.

To apply the foregoing provisions, the Detaining Power may usefully consult the Model Regulations in Annex V of the present Convention.

Article 64

The Detaining Power shall hold an account for each prisoner of war, showing at least the following:

- (1) The amounts due to the prisoner or received by him as advances of pay, as working pay or derived from any other source; the sums in the currency of the Detaining Power which were taken from him; the sums taken from him and converted at his request into the currency of the said Power.
- (2) The payments made to the prisoner in cash, or in any other similar form; the payments made on his behalf and at his request; the sums transferred under Article 63, third paragraph.

Article 65

Every item entered in the account of a prisoner of war shall be countersigned or initialled by him, or by the prisoners' representative acting on his behalf.

Prisoners of war shall at all times be afforded reasonable facilities for consulting and obtaining copies of their accounts, which may likewise be inspected by the representatives of the Protecting Powers at the time of visits to the camp.

When prisoners of war are transferred from one camp to another, their personal accounts will follow them. In case of transfer from one Detaining Power to another, the moneys which are their property and are not in the currency of the Detaining Power will follow them. They shall be given certificates for any other moneys standing to the credit of their accounts.

The Parties to the conflict concerned may agree to notify to each other at specific intervals through the Protecting Power, the amount of the accounts of the prisoners of war.

Article 66

On the termination of captivity, through the release of a prisoner of war or his repatriation, the Detaining Power shall give him a statement, signed by an authorised officer of that

Power, showing the credit balance then due to him. The Detaining Power shall also send through the Protecting Power to the government upon which the prisoner of war depends, lists giving all appropriate particulars of all prisoners of war whose captivity has been terminated by repatriation, release, escape, death or any other means, and showing the amount of their credit balances. Such lists shall be certified on each sheet by an authorised representative of the Detaining Power.

Any of the above provisions of this Article may be varied by mutual agreement between any 2 Parties to the conflict.

The Power on which the prisoner of war depends shall be responsible for settling with him any credit balance due to him from the Detaining Power on the termination of his captivity.

Article 67

Advances of pay, issued to prisoners of war in conformity with Article 60, shall be considered as made on behalf of the Power on which they depend. Such advances of pay, as well as all payments made by the said Power under Article 63, third paragraph, and Article 68, shall form the subject of arrangements between the Powers concerned, at the close of hostilities.

Article 68

Any claim by a prisoner of war for compensation in respect of any injury or other disability arising out of work shall be referred to the Power on which he depends, through the Protecting Power. In accordance with Article 54, the Detaining Power will, in all cases, provide the prisoner of war concerned with a statement showing the nature of the injury or disability, the circumstances in which it arose and particulars of medical or hospital treatment given for it. This statement will be signed by a responsible officer of the Detaining Power and the medical particulars certified by a medical officer.

Any claim by a prisoner of war for compensation in respect of personal effects, moneys, or valuables impounded by the Detaining Power under Article 18 and not forthcoming on his repatriation, or in respect of loss alleged to be due to the fault of the Detaining Power or any of its servants, shall likewise be referred to the Power on which he depends. Nevertheless, any such personal effects required for use by the prisoners of war whilst in captivity shall be replaced at the expense of the Detaining Power. The Detaining Power will, in all cases, provide the prisoner of war with a statement, signed by a responsible officer, showing all available information regarding the reasons why such effects, moneys or valuables have not been restored to him. A copy of this statement will be forwarded to the Power on which he depends through the Central Prisoners of War Agency provided for in Article 123.

Section V—Relations of Prisoners of War with the Exterior

Article 69

Immediately upon prisoners of war falling into its power, the Detaining Power shall inform them and the Powers on which they depend, through the Protecting Power, of the measures taken to carry out the provisions of the present Section. They shall likewise inform the parties concerned of any subsequent modifications of such measures.

Article 70

Immediately upon capture, or not more than one week after arrival at a camp, even if it is a transit camp, likewise in case of sickness or transfer to hospital or to another camp, every prisoner of war shall be enabled to write direct to his family, on the one hand, and to

the Central Prisoners of War Agency provided for in Article 123, on the other hand, a card similar, if possible, to the model annexed to the present Convention, informing his relatives of his capture, address and state of health. The said cards shall be forwarded as rapidly as possible and may not be delayed in any manner.

Article 71

Prisoners of war shall be allowed to send and receive letters and cards. If the Detaining Power deems it necessary to limit the number of letters and cards sent by each prisoner of war, the said number shall not be less than 2 letters, and 4 cards monthly, exclusive of the capture cards provided for in Article 70, and conforming as closely as possible to the models annexed to the present Convention. Further limitations may be imposed only if the Protecting Power is satisfied that it would be in the interests of the prisoners of war concerned to do so owing to difficulties of translation caused by the Detaining Power's inability to find sufficient qualified linguists to carry out the necessary censorship. If limitations must be placed on the correspondence addressed to prisoners of war, they may be ordered only by the Power on which the prisoners depend, possibly at the request of the Detaining Power. Such letters and cards must be conveyed by the most rapid method at the disposal of the Detaining Power; they may not be delayed or retained for disciplinary reasons.

Prisoners of war who have been without news for a long period, or who are unable to receive news from their next of kin or to give them news by the ordinary postal route, as well as those who are at a great distance from their homes, shall be permitted to send telegrams, the fees being charged against the prisoners of war's accounts with the Detaining Power or paid in the currency at their disposal. They shall likewise benefit by this measure in cases of urgency.

As a general rule, the correspondence of prisoners of war shall be written in their native language. The Parties to the conflict may allow correspondence in other languages.

Sacks containing prisoners of war mail must be securely sealed and labelled so as clearly to indicate their contents, and must be addressed to offices of destination.

Article 72

Prisoners of war shall be allowed to receive by post or by any other means individual parcels or collective shipments containing, in particular, foodstuffs, clothing, medical supplies and articles of a religious, educational or recreational character which may meet their needs, including books, devotional articles, scientific equipment, examination papers, musical instruments, sports outfits and materials allowing prisoners of war to pursue their studies or their cultural activities.

Such shipments shall in no way free the Detaining Power from the obligations imposed upon it by virtue of the present Convention.

The only limits which may be placed on these shipments shall be those proposed by the Protecting Power in the interest of the prisoners themselves, or by the International Committee of the Red Cross or any other organisation giving assistance to the prisoners, in respect of their own shipments only, on account of exceptional strain on transport or communications.

The conditions for the sending of individual parcels and collective relief shall, if necessary, be the subject of special agreements between the Powers concerned, which may in no case delay the receipt by the prisoners of relief supplies. Books may not be included in parcels of clothing and foodstuffs. Medical supplies shall, as a rule, be sent in collective parcels.

Article 73

In the absence of special agreements between the Powers concerned on the conditions for the receipt and distribution of collective relief shipments, the rules and regulations concerning collective shipments, which are annexed to the present Convention, shall be applied.

The special agreements referred to above shall in no case restrict the right of prisoners' representatives to take possession of collective relief shipments intended for prisoners of war, to proceed to their distribution or to dispose of them in the interest of the prisoners.

Nor shall such agreements restrict the right of representatives of the Protecting Power, the International Committee of the Red Cross or any other organisation giving assistance to prisoners of war and responsible for the forwarding of collective shipments, to supervise their distribution to the recipients.

Article 74

All relief shipments for prisoners of war shall be exempt from import, Customs and other dues.

Correspondence, relief shipments and authorised remittances of money addressed to prisoners of war or dispatched by them through the post office, either direct or through the Information Bureaux provided for in Article 122 and the Central Prisoners of War Agency provided for in Article 123, shall be exempt from any postal dues, both in the countries of origin and destination, and in intermediate countries.

If relief shipments intended for prisoners of war cannot be sent through the post office by reason of weight or for any other cause, the cost of transportation shall be borne by the Detaining Power in all the territories under its control. The other Powers party to the Convention shall bear the cost of transport in their respective territories.

In the absence of special agreements between the Parties concerned, the costs connected with transport of such shipments, other than costs covered by the above exemption, shall be charged to the senders.

The High Contracting Parties shall endeavour to reduce, so far as possible, the rates charged for telegrams sent by prisoners of war, or addressed to them.

Article 75

Should military operations prevent the Powers concerned from fulfilling their obligation to assure the transport of the shipments referred to in Articles 70, 71, 72 and 77, the Protecting Powers concerned, the International Committee of the Red Cross or any other organisation duly approved by the Parties to the conflict may undertake to ensure the conveyance of such shipments by suitable means (railway wagons, motor vehicles, vessels, or aircraft, etc). For this purpose, the High Contracting Parties shall endeavour to supply them with such transport and to allow its circulation, especially by granting the necessary safe-conducts.

Such transport may also be used to convey:

- (a) Correspondence, lists and reports exchanged between the Central Information Agency referred to in Article 123 and the National Bureaux referred to in Article 122;
- (b) Correspondence and reports relating to prisoners of war which the Protecting Powers, the International Committee of the Red Cross or any other body

assisting the prisoners, exchange either with their own delegates or with the Parties to the conflict.

These provisions in no way detract from the right of any Party to the conflict to arrange other means of transport, if it should so prefer, nor preclude the granting of safe-conducts, under mutually agreed conditions, to such means of transport.

In the absence of special agreements, the costs occasioned by the use of such means of transport shall be borne proportionally by the Parties to the conflict whose nationals are benefited thereby.

Article 76

The censoring of correspondence addressed to prisoners of war or dispatched by them shall be done as quickly as possible.

Mail shall be censored only by the dispatching State and the receiving State, and once only by each.

The examination of consignments intended for prisoners of war shall not be carried out under conditions that will expose the goods contained in them to deterioration; except in the case of written or printed matter, it shall be done in the presence of the addressee, or of a fellow prisoner duly delegated by him.

The delivery to prisoners of individual or collective consignments shall not be delayed under the pretext of difficulties of censorship.

Any prohibition of correspondence ordered by parties to the conflict, either for military or political reasons, shall be only temporary and its duration shall be as short as possible.

Article 77

The Detaining Power shall provide all facilities for the transmission, through the Protecting Power or the Central Prisoners of War Agency provided for in Article 123, of instruments, papers or documents intended for prisoners of war or dispatched by them, especially powers of attorney and wills.

In all cases they shall facilitate the preparation and execution of such documents on behalf of prisoners of war; in particular, they shall allow them to consult a lawyer and shall take what measures are necessary for the authentication of their signatures.

Section VI—Relations Between Prisoners of War and the Authorities

Chapter I - Complaints of Prisoners of War Respecting the Conditions of Captivity

Article 78

Prisoners of war shall have the right to make known to the military authorities in whose power they are, their requests regarding the conditions of captivity to which they are subjected.

They shall also have the unrestricted right to apply to the representatives of the Protecting Powers either through their prisoners' representative or, if they consider it necessary, direct, in order to draw their attention to any points on which they may have complaints to make regarding their conditions of captivity.

These requests and complaints shall not be limited nor considered to be a part of the correspondence quota referred to in Article 71. They must be transmitted immediately. Even if they are recognised to be unfounded, they may not give rise to any punishment.

Prisoners' representatives may send periodic reports on the situation in the camps and the needs of the prisoners of war to the representatives of the Protecting Powers.

Chapter II - Prisoners of War Representatives

Article 79

In all places where there are prisoners of war, except in those where there are officers, the prisoners shall freely elect by secret ballot, every 6 months, and also in case of vacancies, prisoners' representatives entrusted with representing them before the military authorities, the Protecting Powers, the International Committee of the Red Cross and any other organisation which may assist them. These prisoners' representatives shall be eligible for re-election.

In camps for officers and persons of equivalent status or in mixed camps, the senior officer among the prisoners of war shall be recognised as the camp prisoners' representative. In camps for officers, he shall be assisted by one or more advisers chosen by the officers; in mixed camps, his assistants shall be chosen from among the prisoners of war who are not officers and shall be elected by them.

Officer prisoners of war of the same nationality shall be stationed in labour camps for prisoners of war, for the purpose of carrying out the camp administration duties for which the prisoners of war are responsible. These officers may be elected as prisoners' representatives under the first paragraph of this Article. In such a case the assistants to the prisoners' representatives shall be chosen from among those prisoners of war who are not officers.

Every representative elected must be approved by the Detaining Power before he has the right to commence his duties. Where the Detaining Power refuses to approve a prisoner of war elected by his fellow prisoners of war, it must inform the Protecting Power of the reason for such refusal.

In all cases the prisoners' representative must have the same nationality, language and customs as the prisoners of war whom he represents. Thus, prisoners of war distributed in different sections of a camp, according to their nationality, language or customs, shall have for each section their own prisoners' representative, in accordance with the foregoing paragraphs.

Article 80

Prisoners' representatives shall further the physical, spiritual and intellectual wellbeing of prisoners of war.

In particular, where the prisoners decide to organise amongst themselves a system of mutual assistance, this organisation will be within the province of the prisoners' representative, in addition to the special duties entrusted to him by other provisions of the present Convention.

Prisoners' representatives shall not be held responsible, simply by reason of their duties, for any offences committed by prisoners of war.

Article 81

Prisoners' representatives shall not be required to perform any other work, if the accomplishment of their duties is thereby made more difficult.

Prisoners' representatives may appoint from amongst the prisoners such assistants as they may require. All material facilities shall be granted them, particularly a certain freedom of movement necessary for the accomplishment of their duties (inspection of labour detachments, receipt of supplies, etc).

Prisoners' representatives shall be permitted to visit premises where prisoners of war are detained, and every prisoner of war shall have the right to consult freely his prisoners' representative.

All facilities shall likewise be accorded to the prisoners' representatives for communication by post and telegraph with the detaining authorities, the Protecting Powers, the International Committee of the Red Cross and their delegates, the Mixed Medical Commissions and the bodies which give assistance to prisoners of war. Prisoners' representatives of labour detachments shall enjoy the same facilities for communication with the prisoners' representatives of the principal camp.

Such communications shall not be restricted, nor considered as forming a part of the quota mentioned in Article 71. Prisoners' representatives who are transferred shall be allowed a reasonable time to acquaint their successors with current affairs.

In case of dismissal, the reasons therefor shall be communicated to the Protecting Power.

Chapter III - Penal and Disciplinary Sanctions

I. General Provisions

Article 82

A prisoner of war shall be subject to the laws, regulations and orders in force in the armed forces of the Detaining Power; the Detaining Power shall be justified in taking judicial or disciplinary measures in respect of any offence committed by a prisoner of war against such laws, regulations or orders. However, no proceedings or punishment contrary to the provisions of this Chapter shall be allowed.

If any law, regulation or order of the Detaining Power shall declare acts committed by a prisoner of war to be punishable, whereas the same acts would not be punishable if committed by a member of the forces of the Detaining Power, such acts shall entail disciplinary punishments only.

Article 83

In deciding whether proceedings in respect of an offence alleged to have been committed by a prisoner of war shall be judicial or disciplinary, the Detaining Power shall ensure that the competent authorities exercise the greatest leniency and adopt wherever possible disciplinary rather than judicial measures.

Article 84

A prisoner of war shall be tried only by a military Court, unless the existing laws of the Detaining Power expressly permit the civil Courts to try a member of the armed forces of the Detaining Power in respect of the particular offence alleged to have been committed by the prisoner of war.

In no circumstances whatever shall a prisoner of war be tried by a Court of any kind which does not offer the essential guarantees of independence and impartiality as generally recognised, and, in particular, the procedure of which does not afford the accused the rights and means of defence provided for in Article 105.

Article 85

Prisoners of war prosecuted under the laws of the Detaining Power for acts committed prior to capture shall retain, even if convicted, the benefits of the present Convention.

Article 86

No prisoner of war may be punished more than once for the same act or on the same charge.

Article 87

Prisoners of war may not be sentenced by the military authorities and Courts of the Detaining Power to any penalties except those provided for in respect of members of the armed forces of the said Power who have committed the same acts.

When fixing the penalty, the Courts or authorities of the Detaining Power shall take into consideration, to the widest extent possible, the fact that the accused, not being a national of the Detaining Power, is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will. The said Courts or authorities shall be at liberty to reduce the penalty provided for the violation of which the prisoner of war is accused, and shall therefore not be bound to apply the minimum penalty prescribed.

Collective punishment for individual acts, corporal punishment, imprisonment in premises without daylight and, in general, any form of torture or cruelty, are forbidden.

No prisoner of war may be deprived of his rank by the Detaining Power, or prevented from wearing his badges.

Article 88

Officers, non-commissioned officers and men who are prisoners of war undergoing a disciplinary or judicial punishment, shall not be subjected to more severe treatment than that applied in respect of the same punishment to members of the armed forces of the Detaining Power of equivalent rank.

A woman prisoner of war shall not be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a woman member of the armed forces of the Detaining Power dealt with for a similar offence.

In no case may a woman prisoner of war be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a male member of the armed forces of the Detaining Power dealt with for a similar offence.

Prisoners of war who have served disciplinary or judicial sentences may not be treated differently from other prisoners of war.

II. Disciplinary Sanctions

Article 89

The disciplinary punishments applicable to prisoners of war are the following:

- (1) A fine which shall not exceed 50 percent of the advances of pay and working pay which the prisoner of war would otherwise receive under the provisions of Articles 60 and 62 during a period of not more than 30 days;
- (2) Discontinuance of privileges granted over and above the treatment provided for by the present Convention;
- (3) Fatigue duties not exceeding 2 hours daily;
- (4) Confinement.

The punishment referred to under (3) shall not be applied to officers.

In no case shall disciplinary punishments be inhuman, brutal or dangerous to the health of prisoners of war.

Article 90

The duration of any single punishment shall in no case exceed 30 days. Any period of confinement awaiting the hearing of a disciplinary offence or the award of disciplinary punishment shall be deducted from an award pronounced against a prisoner of war.

The maximum of 30 days provided above may not be exceeded, even if the prisoner of war is answerable for several acts at the same time when he is awarded punishment, whether such acts are related or not.

The period between the pronouncing of an award of disciplinary punishment and its execution shall not exceed one month.

When a prisoner of war is awarded a further disciplinary punishment a period of at least 3 days shall elapse between the execution of any two of the punishments, if the duration of one of these is ten days or more.

Article 91

The escape of a prisoner of war shall be deemed to have succeeded when:

- (1) He has joined the armed forces of the Power on which he depends, or those of an allied Power;
- (2) He has left the territory under the control of the Detaining Power, or of an ally of the said Power;
- (3) He has joined a ship flying the flag of the Power on which he depends, or of an allied Power in the territorial waters of the Detaining Power, the said ship not being under the control of the last named Power.

Prisoners of war who have made good their escape in the sense of this Article and who are recaptured, shall not be liable to any punishment in respect of their previous escape.

Article 92

A prisoner of war who attempts to escape and is recaptured before having made good his escape in the sense of Article 91 shall be liable only to a disciplinary punishment in respect of this act, even if it is a repeated offence.

A prisoner of war who is recaptured shall be handed over without delay to the competent military authority.

Article 88, fourth paragraph, notwithstanding, prisoners of war punished as a result of an unsuccessful escape may be subjected to special surveillance. Such surveillance must not affect the state of their health, must be undergone in a prisoner of war camp, and must not entail the suppression of any of the safeguards granted them by the present Convention.

Article 93

Escape or attempt to escape, even if it is a repeated offence, shall not be deemed an aggravating circumstance if the prisoner of war is subjected to trial by judicial proceedings in respect of an offence committed during his escape or attempt to escape.

In conformity with the principle stated in Article 83, offences committed by prisoners of war with the sole intention of facilitating their escape and which do not entail any violence against life or limb, such as offences against public property, theft without intention of self-enrichment, the drawing up or use of false papers, or the wearing of civilian clothing, shall occasion disciplinary punishment only.

Prisoners of war who aid or abet an escape or an attempt to escape shall be liable on this count to disciplinary punishment only.

Article 94

If an escaped prisoner of war is recaptured, the Power on which he depends shall be notified thereof in the manner defined in Article 122, provided notification of his escape has been made.

Article 95

A prisoner of war accused of an offence against discipline shall not be kept in confinement pending the hearing unless a member of the armed forces of the Detaining Power would be so kept if he were accused of a similar offence, or if it is essential in the interests of camp order and discipline.

Any period spent by a prisoner of war in confinement awaiting the disposal of an offence against discipline shall be reduced to an absolute minimum and shall not exceed 14 days.

The provisions of Articles 97 and 98 of this Chapter shall apply to prisoners of war who are in confinement awaiting the disposal of offences against discipline.

Article 96

Acts which constitute offences against discipline shall be investigated immediately.

Without prejudice to the competence of Courts and superior military authorities, disciplinary punishment may be ordered only by an officer having disciplinary powers in his capacity as camp commander, or by a responsible officer who replaces him or to whom he has delegated his disciplinary powers.

In no case may such powers be delegated to a prisoner of war or be exercised by a prisoner of war.

Before any disciplinary award is pronounced, the accused shall be given precise information regarding the offences of which he is accused, and given an opportunity of explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if necessary, to the services of a qualified interpreter. The decision shall be announced to the accused prisoner of war and to the prisoners' representative.

A record of disciplinary punishments shall be maintained by the camp commander and shall be open to inspection by representatives of the Protecting Power.

Article 97

Prisoners of war shall not in any case be transferred to penitentiary establishments (prisons, penitentiaries, convict prisons, etc) to undergo disciplinary punishment therein.

All premises in which disciplinary punishments are undergone shall conform to the sanitary requirements set forth in Article 25. A prisoner of war undergoing punishment shall be enabled to keep himself in a state of cleanliness, in conformity with Article 29.

Officers and persons of equivalent status shall not be lodged in the same quarters as non-commissioned officers or men.

Women prisoners of war undergoing disciplinary punishment shall be confined in separate quarters from male prisoners of war and shall be under the immediate supervision of women.

Article 98

A prisoner of war undergoing confinement as a disciplinary punishment, shall continue to enjoy the benefits of the provisions of this Convention except in so far as these are necessarily rendered inapplicable by the mere fact that he is confined.

In no case may he be deprived of the benefits of the provisions of Articles 78 and 126.

A prisoner of war awarded disciplinary punishment may not be deprived of the prerogatives attached to his rank.

Prisoners of war awarded disciplinary punishment shall be allowed to exercise and to stay in the open air at least 2 hours daily.

They shall be allowed, on their request, to be present at the daily medical inspections. They shall receive the attention which their state of health requires and, if necessary, shall be removed to the camp infirmary or to a hospital.

They shall have permission to read and write, likewise to send and receive letters. Parcels and remittances of money, however, may be withheld from them until the completion of the punishment; they shall meanwhile be entrusted to the prisoners' representative, who will hand over to the infirmary the perishable goods contained in such parcels.

III. Judicial Proceedings

Article 99

No prisoner of war may be tried or sentenced for an act which is not forbidden by the law of the Detaining Power or by international law, in force at the time the said act was committed.

No moral or physical coercion may be exerted on a prisoner of war in order to induce him to admit himself guilty of the act of which he is accused.

No prisoner of war may be convicted without having had an opportunity to present his defence and the assistance of a qualified advocate or counsel.

Article 100

Prisoners of war and the Protecting Powers shall be informed as soon as possible of the offences which are punishable by the death sentence under the laws of the Detaining Power.

Other offences shall not thereafter be made punishable by the death penalty without the concurrence of the Power on which the prisoners of war depend.

The death sentence cannot be pronounced on a prisoner of war unless the attention of the Court has, in accordance with Article 87, second paragraph, been particularly called to the fact that since the accused is not a national of the Detaining Power, he is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will.

Article 101

If the death penalty is pronounced on a prisoner of war, the sentence shall not be executed before the expiration of a period of at least 6 months from the date when the Protecting Power receives, at an indicated address, the detailed communication provided for in Article 107.

Article 102

A prisoner of war can be validly sentenced only if the sentence has been pronounced by the same Courts according to the same procedure as in the case of members of the armed forces of the Detaining Power, and if, furthermore, the provisions of the present Chapter have been observed.

Article 103

Judicial investigations relating to a prisoner of war shall be conducted as rapidly as circumstances permit and so that his trial shall take place as soon as possible. A prisoner of war shall not be confined while awaiting trial unless a member of the armed forces of the Detaining Power would be so confined if he were accused of a similar offence, or if it is essential to do so in the interests of national security. In no circumstances shall this confinement exceed 3 months.

Any period spent by a prisoner of war in confinement awaiting trial shall be deducted from any sentence of imprisonment passed upon him and taken into account in fixing any penalty.

The provisions of Articles 97 and 98 of this Chapter shall apply to a prisoner of war whilst in confinement awaiting trial.

Article 104

In any case in which the Detaining Power has decided to institute judicial proceedings against a prisoner of war, it shall notify the Protecting Power as soon as possible and at least 3 weeks before the opening of the trial. This period of 3 weeks shall run as from the day on which such notification reaches the Protecting Power at the address previously indicated by the following information:

- (1) Surname and first names of the prisoner of war, his rank, his army, regimental, personal or serial number, his date of birth, and his profession or trade, if any;
- (2) Place of internment or confinement;

- (3) Specification of the charge or charges on which the prisoner of war is to be arraigned, giving the legal provisions applicable;
- (4) Designation of the Court which will try the case, likewise the date and place fixed for the opening of the trial.

The same communication shall be made by the Detaining Power to the prisoners' representative.

If no evidence is submitted, at the opening of a trial, that the notification referred to above was received by the Protecting Power, by the prisoner of war and by the prisoners' representative concerned, at least 3 weeks before the opening of the trial, then the latter cannot take place and must be adjourned.

Article 105

The prisoner of war shall be entitled to assistance by one of his prisoner comrades, to defence by a qualified advocate or counsel of his own choice, to the calling of witnesses and, if he deems necessary, to the services of a competent interpreter. He shall be advised of these rights by the Detaining Power in due time before the trial.

Failing a choice by the prisoner of war, the Protecting Power shall find him an advocate or counsel, and shall have at least one week at its disposal for the purpose. The Detaining Power shall deliver to the said Power, on request, a list of persons qualified to present the defence. Failing a choice of an advocate or counsel by the prisoner of war or the Protecting Power, the Detaining Power shall appoint a competent advocate or counsel to conduct the defence.

The advocate or counsel conducting the defence on behalf of the prisoner of war shall have at his disposal a period of 2 weeks at least before the opening of the trial, as well as the necessary facilities to prepare the defence of the accused. He may, in particular, freely visit the accused and interview him in private. He may also confer with any witnesses for the defence, including prisoners of war. He shall have the benefit of these facilities until the term of appeal or petition has expired.

Particulars of the charge or charges on which the prisoner of war is to be arraigned, as well as the documents which are generally communicated to the accused by virtue of the laws in force in the armed forces of the Detaining Power, shall be communicated to the accused prisoner of war in a language which he understands, and in good time before the opening of the trial. The same communication in the same circumstances shall be made to the advocate or counsel conducting the defence on behalf of the prisoner of war.

The representatives of the Protecting Power shall be entitled to attend the trial of the case, unless, exceptionally, this is held in camera in the interest of State security. In such a case the Detaining Power shall advise the Protecting Power accordingly.

Article 106

Every prisoner of war shall have, in the same manner as the members of the armed forces of the Detaining Power, the right of appeal or petition from any sentence pronounced upon him, with a view to the quashing or revising of the sentence or the reopening of the trial. He shall be fully informed of his right to appeal or petition and of the time limit within which he may do so.

Article 107

Any judgment and sentence pronounced upon a prisoner of war shall be immediately reported to the Protecting Power in the form of a summary communication, which shall also

indicate whether he has the right of appeal with a view to the quashing of the sentence or the reopening of the trial. This communication shall likewise be sent to the prisoners' representative concerned. It shall also be sent to the accused prisoner of war in a language he understands, if the sentence was not pronounced in his presence. The Detaining Power shall also immediately communicate to the Protecting Power the decision of the prisoner of war to use or to waive his right of appeal.

Furthermore, if a prisoner of war is finally convicted or if a sentence pronounced on a prisoner of war in the first instance is a death sentence, the Detaining Power shall as soon as possible address to the Protecting Power a detailed communication containing:

- (1) The precise wording of the finding and sentence;
- (2) A summarised report of any preliminary investigation and of the trial, emphasising in particular the elements of the prosecution and the defence;
- (3) Notification, where applicable, of the establishment where the sentence will be served.

The communications provided for in the foregoing subparagraphs shall be sent to the Protecting Power at the address previously made known to the Detaining Power.

Article 108

Sentences pronounced on prisoners of war after a conviction has become duly enforceable, shall be served in the same establishments and under the same conditions as in the case of members of the armed forces of the Detaining Power. These conditions shall in all cases conform to the requirements of health and humanity.

A woman prisoner of war on whom such a sentence has been pronounced shall be confined in separate quarters and shall be under the supervision of women.

In any case, prisoners of war sentenced to a penalty depriving them of their liberty shall retain the benefit of the provisions of Articles 78 and 126 of the present Convention. Furthermore, they shall be entitled to receive and dispatch correspondence, to receive at least one relief parcel monthly, to take regular exercise in the open air, to have the medical care required by their state of health, and the spiritual assistance they may desire.

Penalties to which they may be subjected shall be in accordance with the provisions of Article 87, third paragraph.

Part IV - Termination of Captivity

Section I—Direct Repatriation and Accommodation in Neutral Countries

Article 109

Subject to the provisions of the third paragraph of this Article, Parties to the conflict are bound to send back to their own country, regardless of number or rank, seriously wounded and seriously sick prisoners of war, after having cared for them until they are fit to travel, in accordance with the first paragraph of the following Article.

Throughout the duration of hostilities, Parties to the conflict shall endeavour, with the cooperation of the neutral Powers concerned, to make arrangements for the accommodation in neutral countries of the sick and wounded prisoners of war referred to in the second paragraph of the following Article.

They may, in addition, conclude agreements with a view to the direct repatriation or internment in a neutral country of able-bodied prisoners of war who have undergone a long period of captivity.

No sick or injured prisoner of war who is eligible for repatriation under the first paragraph of this Article, may be repatriated against his will during hostilities.

Article 110

The following shall be repatriated direct:

- (1) Incurably wounded and sick whose mental or physical fitness seems to have been gravely diminished.
- (2) Wounded and sick who, according to medical opinion, are not likely to recover within one year, whose condition requires treatment and whose mental or physical fitness seems to have been gravely diminished.
- (3) Wounded and sick who have recovered, but whose mental or physical fitness seems to have been gravely and permanently diminished.

The following may be accommodated in a neutral country:

- (1) Wounded and sick whose recovery may be expected within one year of the date of the wound or the beginning of the illness, if treatment in a neutral country might increase the prospects of a more certain and speedy recovery.
- (2) Prisoners of war whose mental or physical health, according to medical opinion, is seriously threatened by continued captivity but whose accommodation in a neutral country might remove such a threat.

The conditions which prisoners of war accommodated in a neutral country must fulfil in order to permit their repatriation shall be fixed, as shall likewise their status, by agreement between the Powers concerned. In general, prisoners of war who have been accommodated in a neutral country, and who belong to the following categories, should be repatriated:

- (1) Those whose state of health has deteriorated so as to fulfil the conditions laid down for direct repatriation;
- (2) Those whose mental or physical powers remain, even after treatment, considerably impaired.

If no special agreements are concluded between the Parties to the conflict concerned, to determine the cases of disablement or sickness entailing direct repatriation or accommodation in a neutral country, such cases shall be settled in accordance with the principles laid down in the Model Agreement concerning direct repatriation and accommodation in neutral countries of wounded and sick prisoners of war and in the Regulations concerning Mixed Medical Commissions annexed to the present Convention.

Article 111

The Detaining Power, the Power on which the prisoners of war depend, and a neutral Power agreed upon by these 2 Powers, shall endeavour to conclude agreements which will enable prisoners of war to be interned in the territory of the said neutral Power until the close of hostilities.

Article 112

Upon the outbreak of hostilities, Mixed Medical Commissions shall be appointed to examine sick and wounded prisoners of war, and to make all appropriate decisions regarding them.

The appointment, duties and functions of these Commissions shall be in conformity with the provisions of the Regulations annexed to the present Convention.

However, prisoners of war who, in the opinion of the medical authorities of the Detaining Power, are manifestly seriously injured or seriously sick, may be repatriated without having to be examined by a Mixed Medical Commission.

Article 113

Besides those who are designated by the medical authorities of the Detaining Power, wounded or sick prisoners of war belonging to the categories listed below shall be entitled to present themselves for examination by the Mixed Medical Commissions provided for in the foregoing Article:

- (1) Wounded and sick proposed by a physician or surgeon who is of the same nationality, or a national of a Party to the conflict allied with the Power on which the said prisoners depend, and who exercises his functions in the camp;
- (2) Wounded and sick proposed by their prisoners' representative;
- (3) Wounded and sick proposed by the Power on which they depend, or by an organisation duly recognised by the said Power and giving assistance to the prisoners.

Prisoners of war who do not belong to one of the three foregoing categories may nevertheless present themselves for examination by Mixed Medical Commissions, but shall be examined only after those belonging to the said categories.

The physician or surgeon of the same nationality as the prisoners who present themselves for examination by the Mixed Medical Commission, likewise the prisoners' representative of the said prisoners, shall have permission to be present at the examination.

Article 114

Prisoners of war who meet with accidents shall, unless the injury is self-inflicted, have the benefit of the provisions of this Convention as regards repatriation or accommodation in a neutral country.

Article 115

No prisoner of war on whom a disciplinary punishment has been imposed and who is eligible for repatriation or for accommodation in a neutral country, may be kept back on the plea that he has not undergone his punishment.

Prisoners of war detained in connection with a judicial prosecution or conviction and who are designated for repatriation or accommodation in a neutral country, may benefit by such measures before the end of the proceedings or the completion of the punishment, if the Detaining Power consents.

Parties to the conflict shall communicate to each other the names of those who will be detained until the end of the proceedings or the completion of the punishment.

Article 116

The costs of repatriating prisoners of war or of transporting them to a neutral country shall be borne, from the frontiers of the Detaining Power, by the Power on which the said prisoners depend.

Article 117

No repatriated person may be employed on active military service.

Section II—Release and Repatriation of Prisoners of War at the Close of Hostilities

Article 118

Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities.

In the absence of stipulations to the above effect in any agreement concluded between the Parties to the conflict with a view to the cessation of hostilities, or failing any such agreement, each of the Detaining Powers shall itself establish and execute without delay a plan of repatriation in conformity with the principle laid down in the foregoing paragraph.

In either case, the measures adopted shall be brought to the knowledge of the prisoners of war.

The costs of repatriation of prisoners of war shall in all cases be equitably apportioned between the Detaining Power and the Power on which the prisoners depend. This apportionment shall be carried out on the following basis:

- (a) If the 2 Powers are contiguous, the Power on which the prisoners of war depend shall bear the costs of repatriation from the frontiers of the Detaining Power.
- (b) If the 2 Powers are not contiguous, the Detaining Power shall bear the costs of transport of prisoners of war over its own territory as far as its frontier or its port of embarkation nearest to the territory of the Power on which the prisoners of war depend. The Parties concerned shall agree between themselves as to the equitable apportionment of the remaining costs of the repatriation. The conclusion of this agreement shall in no circumstances justify any delay in the repatriation of the prisoners of war.

Article 119

Repatriation shall be effected in conditions similar to those laid down in Articles 46 to 48 inclusive of the present Convention for the transfer of prisoners of war, having regard to the provisions of Article 118 and to those of the following paragraphs.

On repatriation, any articles of value impounded from prisoners of war under Article 18, and any foreign currency which has not been converted into the currency of the Detaining Power, shall be restored to them. Articles of value and foreign currency which, for any reason whatever, are not restored to prisoners of war on repatriation, shall be dispatched to the Information Bureau set up under Article 122.

Prisoners of war shall be allowed to take with them their personal effects, and any correspondence and parcels which have arrived for them. The weight of such baggage may be limited, if the conditions of repatriation so require, to what each prisoner can reasonably carry. Each prisoner shall in all cases be authorised to carry at least twenty-five kilograms.

The other personal effects of the repatriated prisoner shall be left in the charge of the Detaining Power which shall have them forwarded to him as soon as it has concluded an agreement to this effect, regulating the conditions of transport and the payment of the costs involved, with the Power on which the prisoner depends.

Prisoners of war against whom criminal proceedings for an indictable offence are pending may be detained until the end of such proceedings, and, if necessary, until the completion of the punishment. The same shall apply to prisoners of war already convicted for an indictable offence.

Parties to the conflict shall communicate to each other the names of any prisoners of war who are detained until the end of proceedings or until punishment has been completed.

By agreement between the Parties to the conflict, commissions shall be established for the purpose of searching for dispersed prisoners of war and of assuring their repatriation with the least possible delay.

Section III—Death of Prisoners of War

Article 120

Wills of prisoners of war shall be drawn up so as to satisfy the conditions of validity required by the legislation of their country of origin, which will take steps to inform the Detaining Power of its requirements in this respect. At the request of the prisoner of war and, in all cases, after death, the will shall be transmitted without delay to the Protecting Power; a certified copy shall be sent to the Central Agency.

Death certificates, in the form annexed to the present Convention, or lists certified by a responsible officer, of all persons who die as prisoners of war shall be forwarded as rapidly as possible to the Prisoner of War Information Bureau established in accordance with Article 122. The death certificates or certified lists shall show particulars of identity as set out in the third paragraph of Article 17, and also the date and place of death, the cause of death, the date and place of burial and all particulars necessary to identify the graves.

The burial or cremation of a prisoner of war shall be preceded by a medical examination of the body with a view to confirming death and enabling a report to be made and, where necessary, establishing identity.

The detaining authorities shall ensure that prisoners of war who have died in captivity, are honourably buried, if possible according to the rites of the religion to which they belonged, and that their graves are respected, suitably maintained and marked so as to be found at any time. Wherever possible, deceased prisoners of war who depended on the same Power shall be interred in the same place.

Deceased prisoners of war shall be buried in individual graves unless unavoidable circumstances require the use of collective graves. Bodies may be cremated only for imperative reasons of hygiene, on account of the religion of the deceased or in accordance with his express wish to this effect. In case of cremation, the fact shall be stated and the reasons given in the death certificate of the deceased.

In order that graves may always be found, all particulars of burials and graves shall be recorded with a Graves Registration Service established by the Detaining Power. Lists of graves and particulars of the prisoners of war interred in cemeteries and elsewhere shall be transmitted to the Power on which such prisoners of war depended. Responsibility for the care of these graves and for records of any subsequent moves of the bodies shall rest on the Power controlling the territory, if a Party to the present Convention. These provisions shall also apply to the ashes, which shall be kept by the Graves Registration Service until proper disposal thereof in accordance with the wishes of the home country.

Article 121

Every death or serious injury of a prisoner of war caused or suspected to have been caused by a sentry, another prisoner of war, or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an official inquiry by the Detaining Power.

A communication on this subject shall be sent immediately to the Protecting Power. Statements shall be taken from witnesses, especially from those who are prisoners of war, and a report including such statements shall be forwarded to the Protecting Power.

If the inquiry indicates the guilt of one or more persons, the Detaining Power shall take all measures for the prosecution of the person or persons responsible.

Part V - Information Bureaux and Relief Societies for Prisoners of War

Article 122

Upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall institute an official Information Bureau for prisoners of war who are in its power. Neutral or non-belligerent Powers who may have received within their territory persons belonging to one of the categories referred to in Article 4, shall take the same action with respect to such persons. The Power concerned shall ensure that the Prisoners of War Information Bureau is provided with the necessary accommodation, equipment and staff to ensure its efficient working. It shall be at liberty to employ prisoners of war in such a Bureau under the conditions laid down in the Section of the present Convention dealing with work by prisoners of war.

Within the shortest possible period, each of the Parties to the conflict shall give its Bureau the information referred to in the fourth, fifth and sixth paragraphs of this Article regarding any enemy person belonging to one of the categories referred to in Article 4, who has fallen into its power. Neutral or non-belligerent Powers shall take the same action with regard to persons belonging to such categories whom they have received within their territory.

The Bureau shall immediately forward such information by the most rapid means to the Powers concerned, through the intermediary of the Protecting Powers and likewise the Central Agency provided for in Article 123.

This information shall make it possible quickly to advise the next of kin concerned. Subject to the provisions of Article 17, the information shall include, in so far as available to the Information Bureau, in respect of each prisoner of war, his surname, first names, rank, army, regimental, personal or serial number, place and full date of birth, indication of the Power on which he depends, first name of the father and maiden name of the mother, name and address of the person to be informed and the address to which correspondence for the prisoner may be sent.

The Information Bureau shall receive from the various departments concerned information regarding transfers, releases, repatriations, escapes, admissions to hospital, and deaths, and shall transmit such information in the manner described in the third paragraph above.

Likewise, information regarding the state of health of prisoners of war who are seriously ill or seriously wounded shall be supplied regularly, every week if possible.

The Information Bureau shall also be responsible for replying to all inquiries sent to it concerning prisoners of war, including those who have died in captivity; it will make any inquiries necessary to obtain the information which is asked for if this is not in its

possession.

All written communications made by the Bureau shall be authenticated by a signature or a seal.

The Information Bureau shall furthermore be charged with collecting all personal valuables, including sums in currencies other than that of the Detaining Power and documents of importance to the next of kin, left by prisoners of war who have been repatriated or released, or who have escaped or died, and shall forward the said valuables to the Powers concerned.

Such articles shall be sent by the Bureau in sealed packets which shall be accompanied by statements giving clear and full particulars of the identity of the person to whom the articles belonged, and by a complete list of the contents of the parcel. Other personal effects of such prisoners of war shall be transmitted under arrangements agreed upon between the Parties to the conflict concerned.

Article 123

A Central Prisoner of War Information Agency shall be created in a neutral country. The International Committee of the Red Cross shall, if it deems necessary, propose to the Powers concerned the organisation of such an Agency.

The function of the Agency shall be to collect all information it may obtain through official or private channels respecting prisoners of war, and to transmit it as rapidly as possible to the country of origin of the prisoners of war or to the Power on which they depend. It shall receive from the Parties to the conflict all facilities for effecting such transmissions.

The High Contracting Parties, and in particular those whose nationals benefit by the services of the Central Agency, are requested to give the said Agency the financial aid it may require.

The foregoing provisions shall in no way be interpreted as restricting the humanitarian activities of the International Committee of the Red Cross, or of the relief societies provided for in Article 125.

Article 124

The national Information Bureaux and the Central Information Agency shall enjoy free postage for mail, likewise all the exemptions provided for in Article 74, and further, so far as possible, exemption from telegraphic charges or, at least, greatly reduced rates.

Article 125

Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet any other reasonable need the representatives of religious organisations, relief societies, or any other organisations assisting prisoners of war, shall receive from the said Powers, for themselves and their duly accredited agents, all necessary facilities for visiting the prisoners, for distributing relief supplies and material, from any source, intended for religious, educational or recreative purposes, and for assisting them in organising their leisure time within the camps. Such societies or organisations may be constituted in the territory of the Detaining Power or in any other country, or they may have an international character.

The Detaining Power may limit the number of societies and organisations whose delegates are allowed to carry out their activities in its territory and under its supervision, on condition, however, that such limitation shall not hinder the effective operation of adequate relief to all prisoners of war.

The special position of the International Committee of the Red Cross in this field shall be recognised and respected at all times.

As soon as relief supplies or material intended for the above-mentioned purposes are handed over to prisoners of war, or very shortly afterwards, receipts for each consignment, signed by the prisoners' representative, shall be forwarded to the relief society or organisation making the shipment. At the same time, receipts for these consignments shall be supplied by the administrative authorities responsible for guarding the prisoners.

Part VI - Execution of the Convention

Section I—General Provisions

Article 126

Representatives or delegates of the Protecting Powers shall have permission to go to all places where prisoners of war may be, particularly to places of internment, imprisonment and labour, and shall have access to all premises occupied by prisoners of war; they shall also be allowed to go to the places of departure, passage and arrival of prisoners who are being transferred. They shall be able to interview the prisoners, and in particular the prisoners' representatives, without witnesses, either personally or through an interpreter.

Representatives and delegates of the Protecting Powers shall have full liberty to select the places they wish to visit. The duration and frequency of these visits shall not be restricted. Visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure.

The Detaining Power and the Power on which the said prisoners of war depend may agree, if necessary, that compatriots of these prisoners of war be permitted to participate in the visits.

The delegates of the International Committee of the Red Cross shall enjoy the same prerogatives. The appointment of such delegates shall be submitted to the approval of the Power detaining the prisoners of war to be visited.

Article 127

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to all their armed forces and to the entire population.

Any military or other authorities, who in time of war assume responsibilities in respect of prisoners of war, must possess the text of the Convention and be specially instructed as to its provisions.

Article 128

The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities, through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

Article 129

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own Courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the present Convention.

Article 130

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing of great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention.

Article 131

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

Article 132

At the request of a Party to the conflict, an inquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the inquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

Section II—Final Provisions

Article 133

The present Convention is established in English and in French. Both texts are equally authentic.

The Swiss Federal Council shall arrange for official translations of the Convention to be made in the Russian and Spanish languages.

Article 134

The present Convention replaces the Convention of July 27, 1929, in relations between the High Contracting Parties.

Article 135

In the relations between the Powers which are bound by the Hague Convention respecting the Laws and Customs of War on Land, whether that of July 29, 1899, or that of October 18, 1907, and which are parties to the present Convention, this last Convention shall be complementary to Chapter II of the Regulations annexed to the above-mentioned Conventions of the Hague.

Article 136

The present Convention, which bears the date of this day, is open to signature until February 12, 1950, in the name of the Powers represented at the Conference which opened at Geneva on April 21, 1949; furthermore, by Powers not represented at that Conference, but which are parties to the Convention of July 27, 1929.

Article 137

The present Convention shall be ratified as soon as possible and the ratifications shall be deposited at Berne.

A record shall be drawn up of the deposit of each instrument of ratification and certified copies of this record shall be transmitted by the Swiss Federal Council to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

Article 138

The present Convention shall come into force 6 months after not less than 2 instruments of ratification have been deposited.

Thereafter, it shall come into force for each High Contracting Party 6 months after the deposit of the instrument of ratification.

Article 139

From the date of its coming into force, it shall be open to any Power in whose name the present Convention has not been signed, to accede to this Convention.

Article 140

Accessions shall be notified in writing to the Swiss Federal Council, and shall take effect 6 months after the date on which they are received.

The Swiss Federal Council shall communicate the accessions to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

Article 141

The situations provided for in Articles 2 and 3 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the beginning of hostilities or occupation. The Swiss Federal Council shall communicate by the quickest method any ratifications or accessions received from Parties to the conflict.

Article 142

Each of the High Contracting Parties shall be at liberty to denounce the present Convention.

The denunciation shall be notified in writing to the Swiss Federal Council, which shall transmit it to the Governments of all the High Contracting Parties.

The denunciation shall take effect one year after the notification thereof has been made to the Swiss Federal Council.

However, a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded, and until after operations connected with release and repatriation of the persons protected by the present Convention have been terminated.

The denunciation shall have effect only in respect of the denouncing Power. It shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations, as they result from the usages established among civilised peoples, from the laws of humanity and the dictates of the public conscience.

Article 143

The Swiss Federal Council shall register the present Convention with the Secretariat of the United Nations. The Swiss Federal Council shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to the present Convention.

In witness whereof the undersigned, having deposited their respective full powers, have signed the present Convention.

Done at Geneva this 12th day of August 1949, in the English and French languages. The original shall be deposited in the Archives of the Swiss Confederation. The Swiss Federal Council shall transmit certified copies thereof to each of the signatory and acceding States. [Here follow the signatures and Annexes]

SCHEDULE 4**Geneva Convention relative to the Protection of Civilian
Persons in Time of War of August 12, 1949****Preamble**

The undersigned Plenipotentiaries of the Governments represented at the Diplomatic Conference held at Geneva from April 21 to August 12, 1949, for the purpose of establishing a Convention for the Protection of Civilian Persons in Time of War, have agreed as follows:

Part I - General Provisions**Article 1**

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

Article 2

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between 2 or more of the High Contracting Parties, even if the state of war is not recognised by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

Article 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) Violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture;
- (b) Taking of hostages;
- (c) Outrages upon personal dignity, in particular, humiliating and degrading treatment;

- (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted Court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Article 4

Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a cobelligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.

The provisions of Part II are, however, wider in application, as defined in Article 13.

Persons protected by the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, or by the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, or by the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, shall not be considered as protected persons within the meaning of the present Convention.

Article 5

Where, in the territory of a Party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State.

Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention.

In each case, such person shall nevertheless be treated with humanity, and in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention.

They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the State or Occupying Power, as the case may be.

Article 6

The present Convention shall apply from the outset of any conflict or occupation mentioned in Article 2.

In the territory of Parties to the conflict, the application of the present Convention shall cease on the general close of military operations.

In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of the present Convention: 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, 143.

Protected persons whose release, repatriation or reestablishment may take place after such dates shall meanwhile continue to benefit by the present Convention.

Article 7

In addition to the agreements expressly provided for in Articles 11, 14, 15, 17, 36, 108, 109, 132, 133 and 149, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of protected persons, as defined by the present Convention, nor restrict the rights which it confers upon them.

Protected persons shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict.

Article 8

Protected persons may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

Article 9

The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties.

Article 10

The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organisation may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of civilian persons and for their relief.

Article 11

The High Contracting Parties may at any time agree to entrust to an organisation which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When persons protected by the present Convention do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organisation provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organisation, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organisation, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power, or any organisation invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention applies to substitute organisations in the sense of the present Article.

The provisions of this Article shall extend and be adapted to cases of nationals of a neutral State who are in occupied territory or who find themselves in the territory of a belligerent State in which the State of which they are nationals has not normal diplomatic representation.

Article 12

In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

For this purpose, each of the Protecting Powers may, either at the invitation of one Party or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for protected persons, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict, a person belonging to a neutral Power or delegated by the International Committee of the Red Cross, who shall be invited to take part in such a meeting.

Part II - General Protection of Populations Against Certain Consequences of War

Article 13

The provisions of Part II cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the suffering caused by war.

Article 14

In time of peace, the High Contracting Parties and, after the outbreak of hostilities, the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital and safety zones and localities so organised as to protect from the effects of war, wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven.

Upon the outbreak and during the course of hostilities, the Parties concerned may conclude agreements on mutual recognition of the zones and localities they have created. They may for this purpose implement the provisions of the Draft Agreement annexed to the present Convention, with such amendments as they may consider necessary.

The Protecting Powers and the International Committee of the Red Cross are invited to lend their good offices in order to facilitate the institution and recognition of these hospital and safety zones and localities.

Article 15

Any Party to the conflict may, either direct or through a neutral State or some humanitarian organisation, propose to the adverse Party to establish, in the regions where fighting is taking place, neutralised zones intended to shelter from the effects of war the following persons, without distinction:

- (a) Wounded and sick combatants or non-combatants;
- (b) Civilian persons who take no part in hostilities, and who, while they reside in the zones, perform no work of a military character.

When the Parties concerned have agreed upon the geographical position, administration, food supply and supervision of the proposed neutralised zone, a written agreement shall be concluded and signed by the representatives of the Parties to the conflict. The agreement shall fix the beginning and the duration of the neutralisation of the zone.

Article 16

The wounded and sick, as well as the infirm, and expectant mothers shall be the object of particular protection and respect.

As far as military considerations allow, each Party to the conflict shall facilitate the steps taken to search for the killed and wounded, to assist the shipwrecked and other persons exposed to grave danger, and to protect them against pillage and ill-treatment.

Article 17

The Parties to the conflict shall endeavour to conclude local agreements for the removal from besieged or encircled areas, of wounded, sick, infirm, and aged persons, children and maternity cases, and for the passage of ministers of all religions, medical personnel and medical equipment on their way to such areas.

Article 18

Civilian hospitals organised to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack, but shall at all times be respected and protected by the Parties to the conflict.

States which are Parties to a conflict shall provide all civilian hospitals with certificates showing that they are civilian hospitals and that the buildings which they occupy are not used for any purpose which would deprive these hospitals of protection in accordance with Article 19.

Civilian hospitals shall be marked by means of the emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, but only if so authorised by the State.

The Parties to the conflict shall, in so far as military considerations permit, take the necessary steps to make the distinctive emblems indicating civilian hospitals clearly visible to the enemy land, air and naval forces in order to obviate the possibility of any hostile action.

In view of the dangers to which hospitals may be exposed by being close to military objectives, it is recommended that such hospitals be situated as far as possible from such objectives.

Article 19

The protection to which civilian hospitals are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after due warning has been given, naming, in all appropriate cases, a reasonable time limit and after such warning has remained unheeded.

The fact that sick or wounded members of the armed forces are nursed in these hospitals, or the presence of small arms and ammunition taken from such combatants and not yet handed to the proper service, shall not be considered to be acts harmful to the enemy.

Article 20

Persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases, shall be respected and protected.

In occupied territory and in zones of military operations, the above personnel shall be recognisable by means of an identity card certifying their status, bearing the photograph of the holder and embossed with the stamp of the responsible authority, and also by means of a stamped, water-resistant armband which they shall wear on the left arm while carrying out their duties. This armband shall be issued by the State and shall bear the emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the field of August 12, 1949.

Other personnel who are engaged in the operation and administration of civilian hospitals shall be entitled to respect and protection and to wear the armband, as provided in and under the conditions prescribed in this Article, while they are employed on such duties. The identity card shall state the duties on which they are employed.

The management of each hospital shall at all times hold at the disposal of the competent national or occupying authorities an up-to-date list of such personnel.

Article 21

Convoys of vehicles or hospital trains on land or specially provided vessels on sea, conveying wounded and sick civilians, the infirm and maternity cases shall be respected and protected in the same manner as the hospitals provided for in Article 18, and shall be marked, with the consent of the State, by the display of the distinctive emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949.

Article 22

Aircraft exclusively employed for the removal of wounded and sick civilians, the infirm and maternity cases, or for the transport of medical personnel and equipment, shall not be attacked, but shall be respected while flying at heights, times and on routes specifically agreed upon between all the Parties to the conflict concerned.

They may be marked with the distinctive emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949.

Unless agreed otherwise, flights over enemy or enemy-occupied territory are prohibited.

Such aircraft shall obey every summons to land. In the event of a landing thus imposed, the aircraft with its occupants may continue its flight after examination, if any.

Article 23

Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary.

It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under 15, expectant mothers and maternity cases.

The obligation of a High Contracting Party to allow the free passage of the consignments indicated in the preceding paragraph is subject to the condition that this Party is satisfied that there are no serious reasons for fearing:

- (a) That the consignments may be diverted from their destination,
- (b) That the control may not be effective, or
- (c) That a definite advantage may accrue to the military efforts or economy of the enemy through the substitution of the above-mentioned consignments for goods which would otherwise be provided or produced by the enemy or through the release of such material, services or facilities as would otherwise be required for the production of such goods.

The Power which allows the passage of the consignments indicated in the first paragraph of this Article may make such permission conditional on the distribution to the persons benefited thereby being made under the local supervision of the Protecting Powers.

Such consignments shall be forwarded as rapidly as possible, and the Power which permits their free passage shall have the right to prescribe the technical arrangements under which such passage is allowed.

Article 24

The Parties to the conflict shall take the necessary measures to ensure that children under 15, who are orphaned or are separated from their families as a result of the war, are not left

to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition.

The Parties to the conflict shall facilitate the reception of such children in a neutral country for the duration of the conflict with the consent of the Protecting power, if any, and under due safeguards for the observance of the principles stated in the first paragraph.

They shall, furthermore, endeavour to arrange for all children under twelve to be identified by the wearing of identity discs, or by some other means.

Article 25

All persons in the territory of a Party to the conflict, or in a territory occupied by it, shall be enabled to give news of a strictly personal nature to members of their families, wherever they may be, and to receive news from them. This correspondence shall be forwarded speedily and without undue delay.

If, as a result of circumstances, it becomes difficult or impossible to exchange family correspondence by the ordinary post, the Parties to the conflict concerned shall apply to a neutral intermediary, such as the Central Agency provided for in Article 140, and shall decide in consultation with it how to ensure the fulfilment of their obligations under the best possible conditions, in particular with the co-operation of the national Red Cross (Red Crescent, Red Lion and Sun) societies.

If the Parties to the conflict deem it necessary to restrict family correspondence, such restrictions shall be confined to the compulsory use of standard forms containing 25 freely chosen words, and to the limitation of the number of these forms dispatched to one each month.

Article 26

Each Party to the conflict shall facilitate inquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible. It shall encourage, in particular, the work of organisations engaged on this task provided they are acceptable to it and conform to its security regulations.

Part III - Status and Treatment of Protected Persons

Section I—Provisions Common to the Territories of the Parties to the Conflict and to Occupied Territories

Article 27

Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict

in whose power they are, without any adverse distinction, based, in particular, on race, religion or political opinion.

However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.

Article 28

The presence of a protected person may not be used to render certain points or areas immune from military operations.

Article 29

The Party to the conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents irrespective of any individual responsibility which may be incurred.

Article 30

Protected persons shall have every facility for making application to the Protecting Powers, the International Committee of the Red Cross, the national Red Cross (Red Crescent, Red Lion and Sun) society of the country where they may be, as well as to any organisation that might assist them.

These several organisations shall be granted all facilities for that purpose by the authorities, within the bounds set by military or security considerations.

Apart from the visits of the delegates of the Protecting Powers and of the International Committee of the Red Cross, provided for by Article 143, the Detaining or Occupying Powers shall facilitate as much as possible visits to protected persons by the representatives of other organisations whose object is to give spiritual aid or material relief to such persons.

Article 31

No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties.

Article 32

The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents.

Article 33

No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.

Pillage is prohibited.

Reprisals against protected persons and their property are prohibited.

Article 34

The taking of hostages is prohibited.

Section II—Aliens in the Territory of a Party to the Conflict

Article 35

All protected persons who may desire to leave the territory at the outset of, or during a conflict, shall be entitled to do so, unless their departure is contrary to the national interests of the State. The applications of such persons to leave shall be determined in accordance with regularly established procedures and the decision shall be taken as rapidly as possible. Those persons permitted to leave may provide themselves with the necessary funds for their journey and take with them a reasonable amount of their effects and articles of personal use.

If any such person is refused permission to leave the territory, he shall be entitled to have such refusal reconsidered as soon as possible by an appropriate Court or administrative board designated by the Detaining Power for that purpose.

Upon request, representatives of the Protecting Power shall, unless reasons of security prevent it, or the persons concerned object, be furnished with the reasons for refusal of any request for permission to leave the territory and be given, as expeditiously as possible, the names of all persons who have been denied permission to leave.

Article 36

Departures permitted under the foregoing Article shall be carried out in satisfactory conditions as regards safety, hygiene, sanitation and food. All costs in connection therewith, from the point of exit in the territory of the Detaining Power, shall be borne by the country of destination or, in the case of accommodation in a neutral country, by the Power whose nationals are benefited. The practical details of such movements may, if necessary, be settled by special agreements between the Powers concerned.

The foregoing shall not prejudice such special agreements as may be concluded between Parties to the conflict concerning the exchange and repatriation of their nationals in enemy hands.

Article 37

Protected persons who are confined pending proceedings or serving a sentence involving loss of liberty, shall during their confinement be humanely treated.

As soon as they are released, they may ask to leave the territory in conformity with the foregoing Articles.

Article 38

With the exception of special measures authorised by the present Convention, in particular by Articles 27 and 41 thereof, the situation of protected persons shall continue to be regulated, in principle, by the provisions concerning aliens in time of peace. In any case, the following rights shall be granted to them:

- (1) They shall be enabled to receive the individual or collective relief that may be sent to them;
- (2) They shall, if their state of health so requires, receive medical attention and hospital treatment to the same extent as the nationals of the State concerned;
- (3) They shall be allowed to practise their religion and to receive spiritual assistance from ministers of their faith;

- (4) If they reside in an area particularly exposed to the dangers of war, they shall be authorised to move from that area to the same extent as the nationals of the State concerned;
- (5) Children under 15 years, pregnant women and mothers of children under 7 years shall benefit by any preferential treatment to the same extent as the nationals of the State concerned.

Article 39

Protected persons who, as a result of the war, have lost their gainful employment, shall be granted the opportunity to find paid employment. That opportunity shall, subject to security considerations and to the provisions of Article 40, be equal to that enjoyed by the nationals of the Power in whose territory they are.

Where a Party to the conflict applies to a protected person methods of control which result in his being unable to support himself, and especially if such a person is prevented for reasons of security from finding paid employment on reasonable conditions, the said Party shall ensure his support and that of his dependants.

Protected persons may in any case receive allowances from their home country, the Protecting Power, or the relief societies referred to in Article 30.

Article 40

Protected persons may be compelled to work only to the same extent as nationals of the Party to the conflict in whose territory they are.

If protected persons are of enemy nationality, they may only be compelled to do work which is normally necessary to ensure the feeding, sheltering, clothing, transport and health of human beings and which is not directly related to the conduct of military operations.

In the cases mentioned in the 2 preceding paragraphs, protected persons compelled to work shall have the benefit of the same working conditions and of the same safeguards as national workers, in particular as regards wages, hours of labour, clothing and equipment, previous training and compensation for occupational accidents and diseases.

If the above provisions are infringed, protected persons shall be allowed to exercise their right of complaint in accordance with Article 30.

Article 41

Should the Power in whose hands protected persons may be consider the measures of control mentioned in the present Convention to be inadequate, it may not have recourse to any other measure of control more severe than that of assigned residence or internment, in accordance with the provisions of Articles 42 and 43.

In applying the provisions of Article 39, second paragraph, to the cases of persons required to leave their usual places of residence by virtue of a decision placing them in assigned residence elsewhere, the Detaining Power shall be guided as closely as possible by the standards of welfare set forth in Part III, Section IV of this Convention.

Article 42

The internment or placing in assigned residence of protected persons may be ordered only if the security of the Detaining Power makes it absolutely necessary.

If any person, acting through the representatives of the Protecting Power, voluntarily demands internment, and if his situation renders this step necessary, he shall be interned by the Power in whose hands he may be.

Article 43

Any protected person who has been interned or placed in assigned residence shall be entitled to have such action reconsidered as soon as possible by an appropriate Court or administrative board designated by the Detaining Power for that purpose. If the internment or placing in assigned residence is maintained, the Court or administrative board shall periodically, and at least twice yearly, give consideration to his or her case, with a view to the favourable amendment of the initial decision, if circumstances permit.

Unless the protected persons concerned object, the Detaining Power shall, as rapidly as possible, give the Protecting Power the names of any protected persons who have been interned or subjected to assigned residence, or who have been released from internment or assigned residence. The decisions of the Courts or boards mentioned in the first paragraph of the present Article shall also, subject to the same conditions, be notified as rapidly as possible to the Protecting Power.

Article 44

In applying the measures of control mentioned in the present Convention, the Detaining Power shall not treat as enemy aliens exclusively on the basis of their nationality *de jure* of an enemy State, refugees who do not, in fact, enjoy the protection of any Government.

Article 45

Protected persons shall not be transferred to a Power which is not a party to the Convention.

This provision shall in no way constitute an obstacle to the repatriation of protected persons, or to their return to their country of residence after the cessation of hostilities.

Protected persons may be transferred by the Detaining Power only to a Power which is a party to the present Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the present Convention. If protected persons are transferred under such circumstances, responsibility for the application of the present Convention rests on the Power accepting them, while they are in its custody. Nevertheless, if that Power fails to carry out the provisions of the present Convention in any important respect, the Power by which the protected persons were transferred shall, upon being so notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the protected persons. Such request must be complied with.

In no circumstances shall a protected person be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs.

The provisions of this Article do not constitute an obstacle to the extradition, in pursuance of extradition treaties concluded before the outbreak of hostilities, of protected persons accused of offences against ordinary criminal law.

Article 46

In so far as they have not been previously withdrawn, restrictive measures taken regarding protected persons shall be cancelled as soon as possible after the close of hostilities.

Restrictive measures affecting their property shall be cancelled, in accordance with the law of the Detaining Power, as soon as possible after the close of hostilities.

Section III—Occupied Territories

Article 47

Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.

Article 48

Protected persons who are not nationals of the Power whose territory is occupied, may avail themselves of the right to leave the territory subject to the provisions of Article 35, and decisions thereon shall be taken according to the procedure which the Occupying Power shall establish in accordance with the said Article.

Article 49

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement.

Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.

The Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place.

The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand.

The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

Article 50

The Occupying Power shall, with the co-operation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children.

The Occupying Power shall take all necessary steps to facilitate the identification of children and the registration of their parentage. It may not, in any case, change their personal status, nor enlist them in formations or organisations subordinate to it.

Should the local institutions be inadequate for the purpose, the Occupying Power shall make arrangements for the maintenance and education, if possible by persons of their own nationality, language and religion, of children who are orphaned or separated from their parents as a result of the war and who cannot be adequately cared for by a near relative or friend.

A special section of the Bureau set up in accordance with Article 136 shall be responsible for taking all necessary steps to identify children whose identity is in doubt. Particulars of their parents or other near relatives should always be recorded if available.

The Occupying Power shall not hinder the application of any preferential measures in regard to food, medical care and protection against the effects of war, which may have been adopted prior to the occupation in favour of children under 15 years, expectant mothers, and mothers of children under 7 years.

Article 51

The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted.

The Occupying Power may not compel protected persons to work unless they are over 18 years of age, and then only on work which is necessary either for the needs of the army of occupation, or for the public utility services, or for the feeding, sheltering, clothing, transportation or health of the population of the occupied country. Protected persons may not be compelled to undertake any work which would involve them in the obligation of taking part in military operations. The Occupying Power may not compel protected persons to employ forcible means to ensure the security of the installations where they are performing compulsory labour.

The work shall be carried out only in the occupied territory where the persons whose services have been requisitioned are. Every such person shall, so far as possible, be kept in his usual place of employment. Workers shall be paid a fair wage and the work shall be proportionate to their physical and intellectual capacities. The legislation in force in the occupied country concerning working conditions, and safeguards as regards, in particular, such matters as wages, hours of work, equipment, preliminary training and compensation for occupational accidents and diseases, shall be applicable to the protected persons assigned to the work referred to in this Article.

In no case shall requisition of labour lead to a mobilisation of workers in an organisation of a military or semi-military character.

Article 52

No contract, agreement or regulation shall impair the right of any worker, whether voluntary or not and wherever he may be, to apply to the representatives of the Protecting Power in order to request the said Power's intervention.

All measures aiming at creating unemployment or at restricting the opportunities offered to workers in an occupied territory, in order to induce them to work for the Occupying Power, are prohibited.

Article 53

Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or co-operative organisations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.

Article 54

The Occupying Power may not alter the status of public officials or Judges in the occupied territories, or in any way apply sanctions to or take any measures of coercion or discrimination against them, should they abstain from fulfilling their functions for reasons of conscience.

This prohibition does not prejudice the application of the second paragraph of Article 51. It does not affect the right of the Occupying Power to remove public officials from their posts.

Article 55

To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate.

The Occupying Power may not requisition foodstuffs, articles or medical supplies available in the occupied territory, except for use by the occupation forces and administration personnel, and then only if the requirements of the civilian population have been taken into account. Subject to the provisions of other international Conventions, the Occupying Power shall make arrangements to ensure that fair value is paid for any requisitioned goods.

The Protecting Power shall, at any time, be at liberty to verify the state of the food and medical supplies in occupied territories, except where temporary restrictions are made necessary by imperative military requirements.

Article 56

To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the co-operation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics. Medical personnel of all categories shall be allowed to carry out their duties.

If new hospitals are set up in occupied territory and if the competent organs of the occupied State are not operating there, the occupying authorities shall, if necessary, grant them the recognition provided for in Article 18. In similar circumstances, the occupying authorities shall also grant recognition to hospital personnel and transport vehicles under the provisions of Articles 20 and 21.

In adopting measures of health and hygiene and in their implementation, the Occupying Power shall take into consideration the moral and ethical susceptibilities of the population of the occupied territory.

Article 57

The Occupying Power may requisition civilian hospitals only temporarily and only in cases of urgent necessity for the care of military wounded and sick, and then on condition that

suitable arrangements are made in due time for the care and treatment of the patients and for the needs of the civilian population for hospital accommodation.

The material and stores of civilian hospitals cannot be requisitioned so long as they are necessary for the needs of the civilian population.

Article 58

The Occupying Power shall permit ministers of religion to give spiritual assistance to the members of their religious communities. The Occupying Power shall also accept consignments of books and articles required for religious needs and shall facilitate their distribution in occupied territory.

Article 59

If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal.

Such schemes, which may be undertaken either by States or by impartial humanitarian organisations such as the International Committee of the Red Cross, shall consist, in particular, of the provision of consignments of foodstuffs, medical supplies and clothing.

All Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection.

A Power granting free passage to consignments on their way to territory occupied by an adverse Party to the conflict shall, however, have the right to search the consignments, to regulate their passage according to prescribed times and routes, and to be reasonably satisfied through the Protecting Power that these consignments are to be used for the relief of the needy population and are not to be used for the benefit of the Occupying Power.

Article 60

Relief consignments shall in no way relieve the Occupying Power of any of its responsibilities under Articles 55, 56 and 59. The Occupying Power shall in no way whatsoever divert relief consignments from the purpose for which they are intended, except in cases of urgent necessity, in the interests of the population of the occupied territory and with the consent of the Protecting Power.

Article 61

The distribution of the relief consignments referred to in the foregoing Articles shall be carried out with the co-operation and under the supervision of the Protecting Power. This duty may also be delegated, by agreement between the Occupying Power and the Protecting Power, to a neutral Power, to the International Committee of the Red Cross or to any other impartial humanitarian body.

Such consignments shall be exempt in occupied territory from all charges, taxes or Customs duties unless these are necessary in the interests of the economy of the territory. The Occupying Power shall facilitate the rapid distribution of these consignments.

All Contracting Parties shall endeavour to permit the transit and transport, free of charge, of such relief consignments on their way to occupied territories.

Article 62

Subject to imperative reasons of security, protected persons in occupied territories shall be permitted to receive the individual relief consignments sent to them.

Article 63

Subject to temporary and exceptional measures imposed for urgent reasons of security by the Occupying Power:

- (a) Recognised national Red Cross (Red Crescent, Red Lion and Sun) societies shall be able to pursue their activities in accordance with Red Cross principles, as defined by the International Red Cross Conferences. Other relief societies shall be permitted to continue their humanitarian activities under similar conditions;
- (b) The Occupying Power may not require any changes in the personnel or structure of these societies, which would prejudice the aforesaid activities.

The same principles shall apply to the activities and personnel of special organisations of a nonmilitary character, which already exist or which may be established, for the purpose of ensuring the living conditions of the civilian population by the maintenance of the essential public utility services, by the distribution of relief and by the organisation of rescues.

Article 64

The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention. Subject to the latter consideration and to the necessity for ensuring the effective administration of justice, the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws.

The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them.

Article 65

The penal provisions enacted by the Occupying Power shall not come into force before they have been published and brought to the knowledge of the inhabitants in their own language. The effect of these penal provisions shall not be retroactive.

Article 66

In case of a breach of the penal provisions promulgated by it by virtue of the second paragraph of Article 64, the Occupying Power may hand over the accused to its properly constituted, non-political military Courts, on condition that the said Courts sit in the occupied country. Courts of appeal shall preferably sit in the occupied country.

Article 67

The Courts shall apply only those provisions of law which were applicable prior to the offence, and which are in accordance with general principles of law, in particular the principle that the penalty shall be proportionate to the offence. They shall take into consideration the fact that the accused is not a national of the Occupying Power.

Article 68

Protected persons who commit an offence which is solely intended to harm the Occupying Power, but which does not constitute an attempt on the life or limb of members of the

occupying forces or administration, nor a grave collective danger, nor seriously damage the property of the occupying forces or administration or the installations used by them, shall be liable to internment or simple imprisonment, provided the duration of such internment or imprisonment is proportionate to the offence committed. Furthermore, internment or imprisonment shall, for such offences, be the only measure adopted for depriving protected persons of liberty. The Courts provided for under Article 66 of the present Convention may at their discretion convert a sentence of imprisonment to one of internment for the same period.

The penal provisions promulgated by the Occupying Power in accordance with Articles 64 and 65 may impose the death penalty on a protected person only in cases where the person is guilty of espionage, of serious acts of sabotage against the military installations of the Occupying Power or of intentional offences which have caused the death of one or more persons, provided that such offences were punishable by death under the law of the occupied territory in force before the occupation began.

The death penalty may not be pronounced against a protected person unless the attention of the Court has been particularly called to the fact that, since the accused is not a national of the Occupying Power, he is not bound to it by any duty of allegiance.

In any case, the death penalty may not be pronounced against a protected person who was under 18 years of age at the time of the offence.

Article 69

In all cases, the duration of the period during which a protected person accused of an offence is under arrest awaiting trial or punishment shall be deducted from any period of imprisonment awarded.

Article 70

Protected persons shall not be arrested, prosecuted or convicted by the Occupying Power for acts committed or for opinions expressed before the occupation, or during a temporary interruption thereof, with the exception of breaches of the laws and customs of war.

Nationals of the Occupying Power who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State, shall not be arrested, prosecuted, convicted or deported from the occupied territory, except for offences committed after the outbreak of hostilities, or for offences under common law committed before the outbreak of hostilities which, according to the law of the occupied State, would have justified extradition in time of peace.

Article 71

No sentence shall be pronounced by the competent Courts of the Occupying Power except after a regular trial.

Accused persons who are prosecuted by the Occupying Power shall be promptly informed, in writing, in a language which they understand, of the particulars of the charges preferred against them, and shall be brought to trial as rapidly as possible.

The Protecting Power shall be informed of all proceedings instituted by the Occupying Power against protected persons in respect of charges involving the death penalty or imprisonment for 2 years or more; it shall be enabled, at any time, to obtain information regarding the state of such proceedings.

Furthermore, the Protecting Power shall be entitled, on request, to be furnished with all particulars of these and of any other proceedings instituted by the Occupying Power against protected persons.

The notification to the Protecting Power, as provided for in the second paragraph above, shall be sent immediately, and shall in any case reach the Protecting Power 3 weeks before the date of the first hearing. Unless, at the opening of the trial, evidence is submitted that the provisions of this Article are fully complied with, the trial shall not proceed. The notification shall include the following particulars:

- (a) Description of the accused;
- (b) Place of residence or detention;
- (c) Specification of the charge or charges (with mention of the penal provisions under which it is brought);
- (d) Designation of the Court which will hear the case;
- (e) Place and date of the first hearing.

Article 72

Accused persons shall have the right to present evidence necessary to their defence and may, in particular, call witnesses.

They shall have the right to be assisted by a qualified advocate or counsel of their own choice, who shall be able to visit them freely and shall enjoy the necessary facilities for preparing the defence.

Failing a choice by the accused, the Protecting Power may provide him with an advocate or counsel. When an accused person has to meet a serious charge and the Protecting Power is not functioning, the Occupying Power, subject to the consent of the accused, shall provide an advocate or counsel.

Accused persons shall, unless they freely waive such assistance, be aided by an interpreter, both during preliminary investigation and during the hearing in Court. They shall have the right at any time to object to the interpreter and to ask for his replacement.

Article 73

A convicted person shall have the right of appeal provided for by the laws applied by the Court. He shall be fully informed of his right to appeal or petition and of the time limit within which he may do so.

The penal procedure provided in the present Section shall apply, as far as it is applicable, to appeals. Where the laws applied by the Court make no provision for appeals, the convicted person shall have the right to petition against the finding and sentence to the competent authority of the Occupying Power.

Article 74

Representatives of the Protecting Power shall have the right to attend the trial of any protected person, unless the hearing has, as an exceptional measure, to be held in camera in the interests of the security of the Occupying Power, which shall then notify the Protecting Power. A notification in respect of the date and place of trial shall be sent to the Protecting Power.

Any judgment involving a sentence of death, or imprisonment for two years or more, shall be communicated, with the relevant grounds, as rapidly as possible to the Protecting Power.

The notification shall contain a reference to the notification made under Article 71, and, in the case of sentences of imprisonment, the name of the place where the sentence is to be served. A record of judgments other than those referred to above shall be kept by the Court and shall be open to inspection by representatives of the Protecting Power. Any period allowed for appeal in the case of sentences involving the death penalty or imprisonment of 2 years or more, shall not run until notification of judgment has been received by the Protecting Power.

Article 75

In no case shall persons condemned to death be deprived of the right of petition for pardon or reprieve.

No death sentence shall be carried out before the expiration of a period of at least 6 months, from the date of receipt by the Protecting Power of the notification of the final judgment confirming such death sentence, or of an order denying pardon or reprieve.

The 6 months' period of suspension of the death sentence herein prescribed may be reduced in individual cases in circumstances of grave emergency involving an organised threat to the security of the Occupying Power or its forces, provided always that the Protecting Power is notified of such reduction and is given reasonable time and opportunity to make representations to the competent occupying authorities in respect of such death sentences.

Article 76

Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein. They shall, if possible, be separated from other detainees and shall enjoy conditions of food and hygiene which will be sufficient to keep them in good health, and which will be at least equal to those obtaining in prisons in the occupied country.

They shall receive the medical attention required by their state of health.

They shall also have the right to receive any spiritual assistance which they may require.

Women shall be confined in separate quarters and shall be under the direct supervision of women.

Proper regard shall be paid to the special treatment due to minors.

Protected persons who are detained shall have the right to be visited by delegates of the Protecting Power and of the International Committee of the Red Cross, in accordance with the provisions of Article 143.

Such persons shall have the right to receive at least one relief parcel monthly.

Article 77

Protected persons who have been accused of offences or convicted by the Courts in occupied territory, shall be handed over at the close of occupation, with the relevant records, to the authorities of the liberated territory.

Article 78

If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment.

Decisions regarding such assigned residence or internment shall be made according to a regular procedure to be prescribed by the Occupying Power in accordance with the provisions of the present Convention. This procedure shall include the right of appeal for the parties concerned. Appeals shall be decided with the least possible delay. In the event of the decision being upheld, it shall be subject to periodical review, if possible every 6 months, by a competent body set up by the said Power.

Protected persons made subject to assigned residence and thus required to leave their homes shall enjoy the full benefit of Article 39 of the present Convention.

Section IV—Regulations for the Treatment of Internees

Chapter I - General Provisions

Article 79

The Parties to the conflict shall not intern protected persons, except in accordance with the provisions of Articles 41, 42, 43, 68 and 78.

Article 80

Internees shall retain their full civil capacity and shall exercise such attendant rights as may be compatible with their status.

Article 81

Parties to the conflict who intern protected persons shall be bound to provide free of charge for their maintenance, and to grant them also the medical attention required by their state of health.

No deduction from the allowances, salaries or credits due to the internees shall be made for the repayment of these costs.

The Detaining Power shall provide for the support of those dependent on the internees, if such dependants are without adequate means of support or are unable to earn a living.

Article 82

The Detaining Power shall, as far as possible, accommodate the internees according to their nationality, language and customs. Internees who are nationals of the same country shall not be separated merely because they have different languages.

Throughout the duration of their internment, members of the same family, and in particular parents and children, shall be lodged together in the same place of internment, except when separation of a temporary nature is necessitated for reasons of employment or health or for the purposes of enforcement of the provisions of Chapter IX of the present Section. Internees may request that their children who are left at liberty without parental care shall be interned with them.

Wherever possible, interned members of the same family shall be housed in the same premises and given separate accommodation from other internees, together with facilities for leading a proper family life.

*Chapter II - Places of Internment***Article 83**

The Detaining Power shall not set up places of internment in areas particularly exposed to the dangers of war.

The Detaining Power shall give the enemy Powers, through the intermediary of the Protecting Powers, all useful information regarding the geographical location of places of internment.

Whenever military considerations permit, internment camps shall be indicated by the letters IC, placed so as to be clearly visible in the daytime from the air. The Powers concerned may, however, agree upon any other system of marking. No place other than an internment camp shall be marked as such.

Article 84

Internees shall be accommodated and administered separately from prisoners of war and from persons deprived of liberty for any other reason.

Article 85

The Detaining Power is bound to take all necessary and possible measures to ensure that protected persons shall, from the outset of their internment, be accommodated in buildings or quarters which afford every possible safeguard as regards hygiene and health, and provide efficient protection against the rigours of the climate and the effects of the war. In no case shall permanent places of internment be situated in unhealthy areas, or in districts the climate of which is injurious to the internees. In all cases where the district, in which a protected person is temporarily interned, is in an unhealthy area or has a climate which is harmful to his health, he shall be removed to a more suitable place of internment as rapidly as circumstances permit.

The Premises shall be fully protected from dampness, adequately heated and lighted, in particular between dusk and lights out. The sleeping quarters shall be sufficiently spacious and well ventilated, and the internees shall have suitable bedding and sufficient blankets, account being taken of the climate, and the age, sex, and state of health of the internees.

Internees shall have for their use, day and night, sanitary conveniences which conform to the rules of hygiene and are constantly maintained in a state of cleanliness. They shall be provided with sufficient water and soap for their daily personal toilet and for washing their personal laundry; installations and facilities necessary for this purpose shall be granted to them.

Showers or baths shall also be available. The necessary time shall be set aside for washing and for cleaning.

Whenever it is necessary, as an exceptional and temporary measure, to accommodate women internees who are not members of a family unit in the same place of internment as men, the provision of separate sleeping quarters and sanitary conveniences for the use of such women internees shall be obligatory.

Article 86

The Detaining Power shall place at the disposal of interned persons, of whatever denomination, premises suitable for the holding of their religious services.

Article 87

Canteens shall be installed in every place of internment, except where other suitable facilities are available. The purpose shall be to enable internees to make purchases, at prices not higher than local market prices, of foodstuffs and articles of everyday use, including soap and tobacco, such as would increase their personal well-being and comfort.

Profits made by canteens shall be credited to a welfare fund to be set up for each place of internment, and administered for the benefit of the internees attached to such place of internment. The Internee Committee provided for in Article 102 shall have the right to check the management of the canteen and of the said fund.

When a place of internment is closed down, the balance of the welfare fund shall be transferred to the welfare fund of a place of internment for internees of the same nationality, or, if such a place does not exist, to a central welfare fund which shall be administered for the benefit of all internees remaining in the custody of the Detaining Power. In case of a general release, the said profits shall be kept by the Detaining Power, subject to any agreement to the contrary between the Powers concerned.

Article 88

In all places of internment exposed to air raids and other hazards of war, shelters adequate in number and structure to ensure the necessary protection shall be installed. In case of alarms, the internees shall be free to enter such shelters as quickly as possible, excepting those who remain for the protection of their quarters against the aforesaid hazards. Any protective measures taken in favour of the population shall also apply to them.

All due precautions must be taken in places of internment against the danger of fire.

Chapter III - Food and Clothing

Article 89

Daily food rations for internees shall be sufficient in quantity, quality and variety to keep internees in a good state of health and prevent the development of nutritional deficiencies. Account shall also be taken of the customary diet of the internees.

Internees shall also be given the means by which they can prepare for themselves any additional food in their possession.

Sufficient drinking water shall be supplied to internees. The use of tobacco shall be permitted.

Internees who work shall receive additional rations in proportion to the kind of labour which they perform.

Expectant and nursing mothers and children under fifteen years of age shall be given additional food, in proportion to their physiological needs.

Article 90

When taken into custody, internees shall be given all facilities to provide themselves with the necessary clothing, footwear and change of underwear, and later on, to procure further supplies if required. Should any internees not have sufficient clothing, account being taken of the climate, and be unable to procure any, it shall be provided free of charge to them by the Detaining Power.

The clothing supplied by the Detaining Power to internees and the outward markings placed on their own clothes shall not be ignominious nor expose them to ridicule.

Workers shall receive suitable working outfits, including protective clothing, whenever the nature of their work so requires.

Chapter IV - Hygiene and Medical Attention

Article 91

Every place of internment shall have an adequate infirmary, under the direction of a qualified doctor, where internees may have the attention they require, as well as an appropriate diet. Isolation wards shall be set aside for cases of contagious or mental diseases.

Maternity cases and internees suffering from serious diseases, or whose condition requires special treatment, a surgical operation or hospital care, must be admitted to any institution where adequate treatment can be given and shall receive care not inferior to that provided for the general population.

Internees shall, for preference, have the attention of medical personnel of their own nationality.

Internees may not be prevented from presenting themselves to the medical authorities for examination. The medical authorities of the Detaining Power shall, upon request, issue to every internee who has undergone treatment an official certificate showing the nature of his illness or injury, and the duration and nature of the treatment given. A duplicate of this certificate shall be forwarded to the Central Agency provided for in Article 140.

Treatment, including the provision of any apparatus necessary for the maintenance of internees in good health, particularly dentures and other artificial appliances and spectacles, shall be free of charge to the internee.

Article 92

Medical inspections of internees shall be made at least once a month. Their purpose shall be, in particular, to supervise the general state of health, nutrition and cleanliness of internees, and to detect contagious diseases, especially tuberculosis, malaria, and venereal diseases. Such inspections shall include, in particular, the checking of weight of each internee and, at least once a year, radioscopic examination.

Chapter V - Religious, Intellectual and Physical Activities

Article 93

Internees shall enjoy complete latitude in the exercise of their religious duties, including attendance at the services of their faith, on condition that they comply with the disciplinary routine prescribed by the detaining authorities.

Ministers of religion who are interned shall be allowed to minister freely to the members of their community. For this purpose, the Detaining Power shall ensure their equitable allocation amongst the various places of internment in which there are internees speaking the same language and belonging to the same religion. Should such ministers be too few in number, the Detaining Power shall provide them with the necessary facilities, including means of transport, for moving from one place to another, and they shall be authorised to visit any internees who are in hospital. Ministers of religion shall be at liberty to correspond on matters concerning their ministry with the religious authorities in the country of detention and, as far as possible, with the international religious organisations of their faith. Such correspondence shall not be considered as forming a part of the quota mentioned in Article 107. It shall, however, be subject to the provisions of Article 112.

When internees do not have at their disposal the assistance of ministers of their faith, or should these latter be too few in number, the local religious authorities of the same faith may appoint, in agreement with the Detaining Power, a minister of the internees' faith or, if such a course is feasible from a denominational point of view, a minister of similar religion or a qualified layman. The latter shall enjoy the facilities granted to the ministry he has assumed. Persons so appointed shall comply with all regulations laid down by the Detaining Power in the interests of discipline and security.

Article 94

The Detaining Power shall encourage intellectual, educational and recreational pursuits, sports and games amongst internees, whilst leaving them free to take part in them or not. It shall take all practicable measures to ensure the exercise thereof, in particular by providing suitable premises.

All possible facilities shall be granted to internees to continue their studies or to take up new subjects. The education of children and young people shall be ensured; they shall be allowed to attend schools either within the place of internment or outside.

Internees shall be given opportunities for physical exercise, sports and outdoor games. For this purpose, sufficient open spaces shall be set aside in all places of internment. Special playgrounds shall be reserved for children and young people.

Article 95

The Detaining Power shall not employ internees as workers, unless they so desire. Employment which, if undertaken under compulsion by a protected person not in internment, would involve a breach of Articles 40 or 51 of the present Convention, and employment on work which is of a degrading or humiliating character are in any case prohibited.

After a working period of 6 weeks, internees shall be free to give up work at any moment, subject to 8 days' notice.

These provisions constitute no obstacle to the right of the Detaining Power to employ interned doctors, dentists and other medical personnel in their professional capacity on behalf of their fellow internees, or to employ internees for administrative and maintenance work in places of internment and to detail such persons for work in the kitchens or for other domestic tasks, or to require such persons to undertake duties connected with the protection of internees against aerial bombardment or other war risks. No internee may, however, be required to perform tasks for which he is, in the opinion of a medical officer, physically unsuited.

The Detaining Power shall take entire responsibility for all working conditions, for medical attention, for the payment of wages, and for ensuring that all employed internees receive compensation for occupational accidents and diseases. The standards prescribed for the said working conditions and for compensation shall be in accordance with the national laws and regulations, and with the existing practice; they shall in no case be inferior to those obtaining for work of the same nature in the same district. Wages for work done shall be determined on an equitable basis by special agreements between the internees, the Detaining Power, and, if the case arises, employers other than the Detaining Power, due regard being paid to the obligation of the Detaining Power to provide for free maintenance of internees and for the medical attention which their state of health may require. Internees permanently detailed for categories of work mentioned in the third paragraph of this Article, shall be paid fair wages by the Detaining Power. The working conditions and the scale of compensation for occupational accidents and diseases to internees, thus detailed, shall not be inferior to those applicable to work of the same nature in the same district.

Article 96

All labour detachments shall remain part of and dependent upon a place of internment. The competent authorities of the Detaining Power and the commandant of a place of internment shall be responsible for the observance in a labour detachment of the provisions of the present Convention. The commandant shall keep an up-to-date list of the labour detachments subordinate to him and shall communicate it to the delegates of the Protecting Power, of the International Committee of the Red Cross and of other humanitarian organisations who may visit the places of internment.

Chapter VI - Personal Property and Financial Resources

Article 97

Internees shall be permitted to retain articles of personal use. Moneys, cheques, bonds, etc., and valuables in their possession may not be taken from them except in accordance with established procedure. Detailed receipts shall be given therefor.

The amounts shall be paid into the account of every internee as provided for in Article 98. Such amounts may not be converted into any other currency unless legislation in force in the territory in which the owner is interned so requires or the internee gives his consent.

Articles which have above all a personal or sentimental value may not be taken away.

A woman internee shall not be searched except by a woman. On release or repatriation, internees shall be given all articles, moneys or other valuables taken from them during internment and shall receive in currency the balance of any credit to their accounts kept in accordance with Article 98, with the exception of any articles or amounts withheld by the Detaining Power by virtue of its legislation in force. If the property of an internee is so withheld, the owner shall receive a detailed receipt.

Family or identity documents in the possession of internees may not be taken away without a receipt being given. At no time shall internees be left without identity documents. If they have none, they shall be issued with special documents drawn up by the detaining authorities, which will serve as their identity papers until the end of their internment.

Internees may keep on their persons a certain amount of money, in cash or in the shape of purchase coupons, to enable them to make purchases.

Article 98

All internees shall receive regular allowances, sufficient to enable them to purchase goods and articles, such as tobacco, toilet requisites, etc. Such allowances may take the form of credits or purchase coupons.

Furthermore, internees may receive allowances from the Power to which they owe allegiance, the Protecting Powers, the organisations which may assist them, or their families, as well as the income on their property in accordance with the law of the Detaining Power. The amount of allowances granted by the Power to which they owe allegiance shall be the same for each category of internees (infirm, sick, pregnant woman, etc.), but may not be allocated by that Power or distributed by the Detaining Power on the basis of discriminations between internees which are prohibited by Article 27 of the present Convention.

The Detaining Power shall open a regular account for every internee, to which shall be credited the allowances named in the present Article, the wages earned and the remittances received, together with such sums taken from him as may be available under the legislation in force in the territory in which he is interned. Internees shall be granted

all facilities consistent with the legislation in force in such territory to make remittances to their families and to other dependants. They may draw from their accounts the amounts necessary for their personal expenses, within the limits fixed by the Detaining Power. They shall at all times be afforded reasonable facilities for consulting and obtaining copies of their accounts. A statement of accounts shall be furnished to the Protecting Power on request, and shall accompany the internee in case of transfer.

Chapter VII - Administration and Discipline

Article 99

Every place of internment shall be put under the authority of a responsible officer, chosen from the regular military forces or the regular civil administration of the Detaining Power. The officer in charge of the place of internment must have in his possession a copy of the present Convention in the official language, or one of the official languages, of his country and shall be responsible for its application. The staff in control of internees shall be instructed in the provisions of the present Convention and of the administrative measures adopted to ensure its application.

The text of the present Convention and the texts of special agreements concluded under the said Convention shall be posted inside the place of internment, in a language which the internees understand, or shall be in the possession of the Internee Committee.

Regulations, orders, notices and the publications of every kind shall be communicated to the internees and posted inside the places of internment, in a language which they understand.

Every order and command addressed to internees individually must likewise be given in a language which they understand.

Article 100

The disciplinary regime in places of internment shall be consistent with humanitarian principles, and shall in no circumstances include regulations imposing on internees any physical exertion dangerous to their health or involving physical or moral victimisation. Identification by tattooing or imprinting signs or markings on the body, is prohibited.

In particular, prolonged standing and roll calls, punishment drill, military drill and manoeuvres, or the reduction of food rations, are prohibited.

Article 101

Internees shall have the right to present to the authorities in whose power they are, any petition with regard to the conditions of internment to which they are subjected.

They shall also have the right to apply without restriction through the Internee Committee or, if they consider it necessary, direct to the representatives of the Protecting Power, in order to indicate to them any points on which they may have complaints to make with regard to the conditions of internment.

Such petitions and complaints shall be transmitted forthwith and without alteration, and even if the latter are recognised to be unfounded, they may not occasion any punishment.

Periodic reports on the situation in places of internment and as to the needs of the internees, may be sent by the Internee Committees to the representatives of the Protecting Powers.

Article 102

In every place of internment, the internees shall freely elect by secret ballot every 6 months, the members of a Committee empowered to represent them before the Detaining and Protecting Powers, the International Committee of the Red Cross and any other organisation which may assist them. The members of the Committee shall be eligible for re-election.

Internees so elected shall enter upon their duties after their election has been approved by the detaining authorities. The reasons for any refusals or dismissals shall be communicated to the Protecting Powers concerned.

Article 103

The Internee Committees shall further the physical, spiritual and intellectual wellbeing of the internees.

In case the internees decide, in particular, to organise a system of mutual assistance amongst themselves, this organisation would be within the competence of the Committees in addition to the special duties entrusted to them under other provisions of the present Convention.

Article 104

Members of Internee Committees shall not be required to perform any other work, if the accomplishment of their duties is rendered more difficult thereby.

Members of Internee Committees may appoint from amongst the internees such assistants as they may require. All material facilities shall be granted to them, particularly a certain freedom of movement necessary for the accomplishment of their duties (visits to labour detachments, receipt of supplies, etc.).

All facilities shall likewise be accorded to members of Internee Committees for communication by post and telegraph with the detaining authorities, the Protecting Powers, the International Committee of the Red Cross and their delegates, and with the organisations which give assistance to internees. Committee members in labour detachments shall enjoy similar facilities for communication with their Internee Committee in the principal place of internment. Such communications shall not be limited, nor considered as forming a part of the quota mentioned in Article 107.

Members of Internee Committees who are transferred shall be allowed a reasonable time to acquaint their successors with current affairs.

Chapter VIII - Relations with the Exterior

Article 105

Immediately upon interning protected persons, the Detaining Powers shall inform them, the Power to which they owe allegiance and their Protecting Power of the measures taken for executing the provisions of the present Chapter. The Detaining Powers shall likewise inform the Parties concerned of any subsequent modifications of such measures.

Article 106

As soon as he is interned, or at the latest not more than one week after his arrival in a place of internment, and likewise in cases of sickness or transfer to another place of internment or to a hospital, every internee shall be enabled to send direct to his family, on the one hand, and to the Central Agency provided for by Article 140, on the other, an internment card similar, if possible, to the model annexed to the present Convention, informing his

relatives of his detention, address and state of health. The said cards shall be forwarded as rapidly as possible and may not be delayed in any way.

Article 107

Internees shall be allowed to send and receive letters and cards. If the Detaining Power deems it necessary to limit the number of letters and cards sent by each internee, the said number shall not be less than 2 letters and 4 cards monthly; these shall be drawn up so as to conform as closely as possible to the models annexed to the present Convention. If limitations must be placed on the correspondence addressed to internees, they may be ordered only by the Power to which such internees owe allegiance, possibly at the request of the Detaining Power. Such letters and cards must be conveyed with reasonable dispatch; they may not be delayed or retained for disciplinary reasons.

Internees who have been a long time without news, or who find it impossible to receive news from their relatives, or to give them news by the ordinary postal route, as well as those who are at a considerable distance from their homes, shall be allowed to send telegrams, the charges being paid by them in the currency at their disposal. They shall likewise benefit by this provision in cases which are recognised to be urgent.

As a rule, internees' mail shall be written in their own language. The Parties to the conflict may authorise correspondence in other languages.

Article 108

Internees shall be allowed to receive, by post or by any other means, individual parcels or collective shipments containing in particular foodstuffs, clothing, medical supplies, as well as books and objects of a devotional, educational or recreational character which may meet their needs. Such shipments shall in no way free the Detaining Power from the obligations imposed upon it by virtue of the present Convention.

Should military necessity require the quantity of such shipments to be limited, due notice thereof shall be given to the Protecting Power and to the International Committee of the Red Cross, or to any other organisation giving assistance to the internees and responsible for the forwarding of such shipments.

The conditions for the sending of individual parcels and collective shipments shall, if necessary, be the subject of special agreements between the Powers concerned, which may in no case delay the receipt by the internees of relief supplies. Parcels of clothing and foodstuffs may not include books. Medical relief supplies shall, as a rule, be sent in collective parcels.

Article 109

In the absence of special agreements between Parties to the conflict regarding the conditions for the receipt and distribution of collective relief shipments, the regulations concerning collective relief which are annexed to the present Convention shall be applied.

The special agreements provided for above shall in no case restrict the right of Internee Committees to take possession of collective relief shipments intended for internees, to undertake their distribution and to dispose of them in the interests of the recipients.

Nor shall such agreements restrict the right of representatives of the Protecting Powers, the International Committee of the Red Cross, or any other organisation giving assistance to internees and responsible for the forwarding of collective shipments, to supervise their distribution to the recipients.

Article 110

All relief shipments for internees shall be exempt from import, Customs and other dues.

All matter sent by mail, including relief parcels sent by parcel post and remittances of money, addressed from other countries to internees or dispatched by them through the post office, either direct or through the Information Bureaux provided for in Article 136 and the Central Information Agency provided for in Article 140, shall be exempt from all postal dues both in the countries of origin and destination and in intermediate countries. To this end, in particular, the exemption provided by the Universal Postal Convention of 1947 and by the agreements of the Universal Postal Union in favour of civilians of enemy nationality detained in camps or civilian prisons, shall be extended to the other interned persons protected by the present Convention. The countries not signatory to the above-mentioned agreements shall be bound to grant freedom from charges in the same circumstances.

The cost of transporting relief shipments which are intended for internees and which, by reason of their weight or any other cause, cannot be sent through the post office, shall be borne by the Detaining Power in all the territories under its control. Other Powers which are Parties to the present Convention shall bear the cost of transport in their respective territories.

Costs connected with the transport of such shipments, which are not covered by the above paragraphs, shall be charged to the senders.

The High Contracting Parties shall endeavour to reduce, so far as possible, the charges for telegrams sent by internees, or addressed to them.

Article 111

Should military operations prevent the Powers concerned from fulfilling their obligation to ensure the conveyance of the mail and relief shipments provided for in Articles 106, 107, 108 and 113, the Protecting Powers concerned, the International Committee of the Red Cross or any other organisation duly approved by the Parties to the conflict may undertake the conveyance of such shipments by suitable means (rail, motor vehicles, vessels or aircraft, etc.). For this purpose, the High Contracting Parties shall endeavour to supply them with such transport and to allow its circulation, especially by granting the necessary safe-conducts.

Such transport may also be used to convey:

- (a) Correspondence, lists and reports exchanged between the Central Information Agency referred to in Article 140 and the National Bureaux referred to in Article 136;
- (b) Correspondence and reports relating to internees which the Protecting Powers, the International Committee of the Red Cross or any other organisation assisting the internees exchange either with their own delegates or with the Parties to the conflict.

These provisions in no way detract from the right of any Party to the conflict to arrange other means of transport if it should so prefer, nor preclude the granting of safe-conducts, under mutually agreed conditions, to such means of transport.

The costs occasioned by the use of such means of transport shall be borne, in proportion to the importance of the shipments, by the Parties to the conflict whose nationals are benefited thereby.

Article 112

The censoring of correspondence addressed to internees or dispatched by them shall be done as quickly as possible.

The examination of consignments intended for internees shall not be carried out under conditions that will expose the goods contained in them to deterioration. It shall be done in the presence of the addressee, or of a fellow internee duly delegated by him. The delivery to internees of individual or collective consignments shall not be delayed under the pretext of difficulties of censorship.

Any prohibition of correspondence ordered by the Parties to the conflict either for military or political reasons, shall be only temporary and its duration shall be as short as possible.

Article 113

The Detaining Powers shall provide all reasonable facilities for the transmission, through the Protecting Power or the Central Agency provided for in Article 140, or as otherwise required, of wills, powers of attorney, letters of authority, or any other documents intended for internees or dispatched by them.

In all cases the Detaining Powers shall facilitate the execution and authentication in due legal form of such documents on behalf of internees, in particular by allowing them to consult a lawyer.

Article 114

The Detaining Power shall afford internees all facilities to enable them to manage their property, provided this is not incompatible with the conditions of internment and the law which is applicable. For this purpose, the said Power may give them permission to leave the place of internment in urgent cases and if circumstances allow.

Article 115

In all cases where an internee is a party to proceedings in any Court, the Detaining Power shall, if he so requests, cause the Court to be informed of his detention and shall, within legal limits, ensure that all necessary steps are taken to prevent him from being in any way prejudiced, by reason of his internment, as regards the preparation and conduct of his case or as regards the execution of any judgment of the Court.

Article 116

Every internee shall be allowed to receive visitors, especially near relatives, at regular intervals and as frequently as possible.

As far as is possible, internees shall be permitted to visit their homes in urgent cases, particularly in cases of death or serious illness of relatives.

Chapter IX - Penal and Disciplinary Sanctions

Article 117

Subject to the provisions of the present Chapter, the laws in force in the territory in which they are detained will continue to apply to internees who commit offences during internment.

If general laws, regulations or orders declare acts committed by internees to be punishable, whereas the same acts are not punishable when committed by persons who are not internees, such acts shall entail disciplinary punishments only.

No internee may be punished more than once for the same act, or on the same count.

Article 118

The Courts or authorities shall in passing sentence take as far as possible into account the fact that the defendant is not a national of the Detaining Power. They shall be free to reduce the penalty prescribed for the offence with which the internee is charged and shall not be obliged, to this end, to apply the minimum sentence prescribed.

Imprisonment in premises without daylight and, in general, all forms of cruelty without exception are forbidden.

Internees who have served disciplinary or judicial sentences shall not be treated differently from other internees.

The duration of preventive detention undergone by an internee shall be deducted from any disciplinary or judicial penalty involving confinement to which he may be sentenced.

Internee Committees shall be informed of all judicial proceedings instituted against internees whom they represent, and of their result.

Article 119

The disciplinary punishments applicable to internees shall be the following:

- (1) A fine which shall not exceed 50 percent of the wages which the internee would otherwise receive under the provisions of Article 95 during a period of not more than thirty days;
- (2) Discontinuance of privileges granted over and above the treatment provided for by the present Convention;
- (3) Fatigue duties, not exceeding 2 hours daily, in connection with the maintenance of the place of internment;
- (4) Confinement.

In no case shall disciplinary penalties be inhuman, brutal or dangerous for the health of internees. Account shall be taken of the internee's age, sex and state of health.

The duration of any single punishment shall in no case exceed a maximum of 30 consecutive days, even if the internee is answerable for several breaches of discipline when his case is dealt with, whether such breaches are connected or not.

Article 120

Internees who are recaptured after having escaped or when attempting to escape, shall be liable only to disciplinary punishment in respect of this act, even if it is a repeated offence.

Article 118, paragraph 3, notwithstanding, internees punished as a result of escape or attempt to escape, may be subjected to special surveillance, on condition that such surveillance does not affect the state of their health, that it is exercised in a place of internment and that it does not entail the abolition of any of the safeguards granted by the present Convention.

Internees who aid and abet and escape or attempt to escape, shall be liable on this count to disciplinary punishment only.

Article 121

Escape, or attempt to escape, even if it is a repeated offence, shall not be deemed an aggravating circumstance in cases where an internee is prosecuted for offences committed during his escape.

The Parties to the conflict shall ensure that the competent authorities exercise leniency in deciding whether punishment inflicted for an offence shall be of a disciplinary or judicial nature, especially in respect of acts committed in connection with an escape, whether successful or not.

Article 122

Acts which constitute offences against discipline shall be investigated immediately. This rule shall be applied, in particular, in cases of escape or attempt to escape. Recaptured internees shall be handed over to the competent authorities as soon as possible.

In cases of offences against discipline, confinement awaiting trial shall be reduced to an absolute minimum for all internees, and shall not exceed 14 days. Its duration shall in any case be deducted from any sentence of confinement.

The provisions of Articles 124 and 125 shall apply to internees who are in confinement awaiting trial for offences against discipline.

Article 123

Without prejudice to the competence of Courts and higher authorities, disciplinary punishment may be ordered only by the commandant of the place of internment, or by a responsible officer or official who replaces him, or to whom he has delegated his disciplinary powers.

Before any disciplinary punishment is awarded, the accused internee shall be given precise information regarding the offences of which he is accused, and given an opportunity of explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if necessary, to the services of a qualified interpreter. The decision shall be announced in the presence of the accused and of a member of the Internee Committee.

The period elapsing between the time of award of a disciplinary punishment and its execution shall not exceed one month.

When an internee is awarded a further disciplinary punishment, a period of at least 3 days shall elapse between the execution of any 2 of the punishments, if the duration of one of these is 10 days or more.

A record of disciplinary punishments shall be maintained by the commandant of the place of internment and shall be open to inspection by representatives of the Protecting Power.

Article 124

Internees shall not in any case be transferred to penitentiary establishments (prisons, penitentiaries, convict prisons, etc.) to undergo disciplinary punishment therein.

The premises in which disciplinary punishments are undergone shall conform to sanitary requirements; they shall in particular be provided with adequate bedding. Internees undergoing punishment shall be enabled to keep themselves in a state of cleanliness.

Women internees undergoing disciplinary punishment shall be confined in separate quarters from male internees and shall be under the immediate supervision of women.

Article 125

Internees awarded disciplinary punishment shall be allowed to exercise and to stay in the open air at least 2 hours daily.

They shall be allowed, if they so request, to be present at the daily medical inspections. They shall receive the attention which their state of health requires and, if necessary, shall be removed to the infirmary of the place of internment or to a hospital.

They shall have permission to read and write, likewise to send and receive letters. Parcels and remittances of money, however, may be withheld from them until the completion of their punishment; such consignments shall meanwhile be entrusted to the Internee Committee, who will hand over to the infirmary the perishable goods contained in the parcels.

No internee given a disciplinary punishment may be deprived of the benefit of the provisions of Articles 107 and 143 of the present Convention.

Article 126

The provisions of Articles 71 to 76 inclusive shall apply, by analogy, to proceedings against internees who are in the national territory of the Detaining Power.

Chapter X - Transfers of Internees

Article 127

The transfer of internees shall always be effected humanely. As a general rule, it shall be carried out by rail or other means of transport, and under conditions at least equal to those obtaining for the forces of the Detaining Power in their changes of station. If as an exceptional measure, such removals have to be effected on foot, they may not take place unless the internees are in a fit state of health, and may not in any case expose them to excessive fatigue.

The Detaining Power shall supply internees during transfer with drinking water and food sufficient in quantity, quality and variety to maintain them in good health, and also with the necessary clothing, adequate shelter and the necessary medical attention. The Detaining Power shall take all suitable precautions to ensure their safety during transfer, and shall establish before their departure a complete list of all internees transferred.

Sick, wounded or infirm internees and maternity cases shall not be transferred if the journey would be seriously detrimental to them, unless their safety imperatively so demands.

If the combat zone draws close to a place of internment, the internees in the said place shall not be transferred, unless their removal can be carried out in adequate conditions of safety, or unless they are exposed to greater risks by remaining on the spot than by being transferred.

When making decisions regarding the transfer of internees, the Detaining Power shall take their interests into account and, in particular, shall not do anything to increase the difficulties of repatriating them or returning them to their own homes.

Article 128

In the event of transfer internees shall be officially advised of their departure and of their new postal address. Such notification shall be given in time for them to pack their luggage and inform their next of kin.

They shall be allowed to take with them their personal effects, and the correspondence and parcels which have arrived for them. The weight of such baggage may be limited if the conditions of transfer so require, but in no case to less than 25 kilograms per internee.

Mail and parcels addressed to their former place of internment shall be forwarded to them without delay.

The commandant of the place of internment shall take, in agreement with the Internee Committee, any measures needed to ensure the transport of the internees' community property and of the luggage the internees are unable to take with them in consequence of restrictions imposed by virtue of the second paragraph.

Chapter XI - Deaths

Article 129

The wills of internees shall be received for safe keeping by the responsible authorities; and in the event of the death of an internee his will shall be transmitted without delay to a person whom he has previously designated.

Deaths of internees shall be certified in every case by a doctor, and a death certificate shall be made out, showing the causes of death and the conditions under which it occurred.

An official record of the death, duly registered, shall be drawn up in accordance with the procedure relating thereto in force in the territory where the place of internment is situated, and a duly certified copy of such record shall be transmitted without delay to the Protecting Power as well as to the Central Agency referred to in Article 140.

Article 130

The detaining authorities shall ensure that internees who die while interned are honourably buried, if possible according to the rites of the religion to which they belonged, and that their graves are respected, properly maintained, and marked in such a way that they can always be recognised.

Deceased internees shall be buried in individual graves unless unavoidable circumstances require the use of collective graves. Bodies may be cremated only for imperative reasons of hygiene, on account of the religion of the deceased or in accordance with his expressed wish to this effect. In case of cremation, the fact shall be stated and the reasons given in the death certificate of the deceased. The ashes shall be retained for safe keeping by the detaining authorities and shall be transferred as soon as possible to the next of kin on their request.

As soon as circumstances permit, and not later than the close of hostilities, the Detaining Power shall forward lists of graves of deceased internees to the Powers on whom the deceased internees depended through the Information Bureaux provided for in Article 136. Such lists shall include all particulars necessary for the identification of the deceased internees, as well as the exact location of their graves.

Article 131

Every death or serious injury of an internee, caused or suspected to have been caused by a sentry, another internee or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an official inquiry by the Detaining Power.

A communication on this subject shall be sent immediately to the Protecting Power. The evidence of any witnesses shall be taken, and a report including such evidence shall be prepared and forwarded to the said Protecting Power.

If the inquiry indicates the guilt of one or more persons, the Detaining Power shall take all necessary steps to ensure the prosecution of the person or persons responsible.

Chapter XII - Release, Repatriation and Accommodation in Neutral Countries

Article 132

Each interned person shall be released by the Detaining Power as soon as the reasons which necessitated his internment no longer exist.

The Parties to the conflict shall, moreover, endeavour during the course of hostilities, to conclude agreements for the release, the repatriation, the return to places of residence or the accommodation in a neutral country of certain classes of internees, in particular children, pregnant women and mothers with infants and young children, wounded and sick, and internees who have been detained for a long time.

Article 133

Internment shall cease as soon as possible after the close of hostilities.

Internees in the territory of a Party to the conflict against whom penal proceedings are pending for offences not exclusively subject to disciplinary penalties, may be detained until the close of such proceedings and, if circumstances require, until the completion of the penalty. The same shall apply to internees who have been previously sentenced to a punishment depriving them of liberty.

By agreement between the Detaining Power and the Powers concerned, committees may be set up after the close of hostilities, or of the occupation of territories, to search for dispersed internees.

Article 134

The High Contracting Parties shall endeavour, upon the close of hostilities or occupation, to ensure the return of all internees to their last place of residence, or to facilitate their repatriation.

Article 135

The Detaining Power shall bear the expense of returning released internees to the places where they were residing when interned, or, if it took them into custody while they were in transit or on the high seas, the cost of completing their journey or of their return to their point of departure.

Where a Detaining Power refuses permission to reside in its territory to a released internee who previously had his permanent domicile therein, such Detaining Power shall pay the cost of the said internee's repatriation. If, however, the internee elects to return to his country on his own responsibility or in obedience to the Government of the Power to which he owes allegiance, the Detaining Power need not pay the expenses of his journey beyond the point of his departure from its territory.

The Detaining Power need not pay the costs of repatriation of an internee who was interned at his own request.

If internees are transferred in accordance with Article 45, the transferring and receiving Powers shall agree on the portion of the above costs to be borne by each.

The foregoing shall not prejudice such special agreements as may be concluded between Parties to the conflict concerning the exchange and repatriation of their nationals in enemy hands.

Section V—Information Bureaux and Central Agency**Article 136**

Upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall establish an official Information Bureau responsible for receiving and transmitting information in respect of the protected persons who are in its power.

Each of the Parties to the conflict shall, within the shortest possible period, give its Bureau information of any measure taken by it concerning any protected persons who are kept in custody for more than 2 weeks, who are subjected to assigned residence or who are interned. It shall, furthermore, require its various departments concerned with such matters to provide the aforesaid Bureau promptly with information concerning all changes pertaining to these protected persons, as, for example, transfers, releases, repatriations, escapes, admittances to hospitals, births and deaths.

Article 137

Each national Bureau shall immediately forward information concerning protected persons by the most rapid means to the Powers of whom the aforesaid persons are nationals, or to Powers in whose territory they resided, though the intermediary of the Protecting Powers and likewise through the Central Agency provided for in Article 140. The Bureaux shall also reply to all inquiries which may be received regarding protected persons.

Information Bureaux shall transmit information concerning a protected person unless its transmission might be detrimental to the person concerned or to his or her relatives. Even in such a case, the information may not be withheld from the Central Agency which, upon being notified of the circumstances, will take the necessary precautions indicated in Article 140.

All communications in writing made by any Bureau shall be authenticated by a signature or a seal.

Article 138

The information received by the national Bureau and transmitted by it shall be of such a character as to make it possible to identify the protected person exactly and to advise his next of kin quickly. The information in respect of each person shall include at least his surname, first names, place and date of birth, nationality, last residence and distinguishing characteristics, the first name of the father and the maiden name of the mother, the date, place and nature of the action taken with regard to the individual, the address at which correspondence may be sent to him and the name and address of the person to be informed.

Likewise, information regarding the state of health of internees who are seriously ill or seriously wounded shall be supplied regularly and if possible every week.

Article 139

Each national Information Bureau shall, furthermore, be responsible for collecting all personal valuables left by protected persons mentioned in Article 136, in particular those who have been repatriated or released, or who have escaped or died; it shall forward the said valuables to those concerned, either direct, or, if necessary, through the Central Agency. Such articles shall be sent by the Bureau in sealed packets which shall be accompanied by statements giving clear and full identity particulars of the person to whom the articles belonged, and by a complete list of the contents of the parcel. Detailed records shall be maintained of the receipt and dispatch of all such valuables.

Article 140

A Central Information Agency for protected persons, in particular for internees, shall be created in a neutral country. The International Committee of the Red Cross shall, if it deems necessary, propose to the Powers concerned the organisation of such an Agency, which may be the same as that provided for in Article 123 of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.

The function of the Agency shall be to collect all information of the type set forth in Article 136 which it may obtain through official or private channels and to transmit it as rapidly as possible to the countries of origin or of residence of the persons concerned, except in cases where such transmissions might be detrimental to the persons whom the said information concerns, or to their relatives. It shall receive from the Parties to the conflict all reasonable facilities for effecting such transmissions.

The High Contracting Parties, and in particular those whose nationals benefit by the services of the Central Agency, are requested to give the said Agency the financial aid it may require.

The foregoing provisions shall in no way be interpreted as restricting the humanitarian activities of the International Committee of the Red Cross and of the relief societies described in Article 142.

Article 141

The national Information Bureaux and the Central Information Agency shall enjoy free postage for all mail, likewise the exemptions provided for in Article 110, and further, so far as possible, exemption from telegraphic charges, or, at least, greatly reduced rates.

Part IV - Execution of the Convention

Section I—General Provisions

Article 142

Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet any other reasonable need, the representatives of religious organisations, relief societies, or any other organisations assisting the protected persons, shall receive from these Powers, for themselves or their duly accredited agents, all facilities for visiting the protected persons, for distributing relief supplies and material from any source, intended for educational, recreational or religious purposes, or for assisting them in organising their leisure time within the places of internment. Such societies or organisations may be constituted in the territory of the Detaining Power, or in any other country, or they may have an international character.

The Detaining Power may limit the number of societies and organisations whose delegates are allowed to carry out their activities in its territory and under its supervision, on condition, however, that such limitation shall not hinder the supply of effective and adequate relief to all protected persons.

The special position of the International Committee of the Red Cross in this field shall be recognised and respected at all times.

Article 143

Representatives or delegates of the Protecting Powers shall have permission to go to all places where protected persons are, particularly to places of internment, detention and work.

They shall have access to all premises occupied by protected persons and shall be able to interview the latter without witnesses, personally or through an interpreter.

Such visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure. Their duration and frequency shall not be restricted.

Such representatives and delegates shall have full liberty to select the places they wish to visit. The Detaining or Occupying Power, the Protecting Power and when occasion arises Power of origin of the persons to be visited, may agree that compatriots of the internees shall be permitted to participate in the visits.

The delegates of the International Committee of the Red Cross shall also enjoy the above prerogatives. The appointment of such delegates shall be submitted to the approval of the Power governing the territories where they will carry out their duties.

Article 144

The High Contracting parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population.

Any civilian, military, police or other authorities, who in time of war assume responsibilities in respect of protected persons, must possess the text of the Convention and be specially instructed as to its provisions.

Article 145

The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities, through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

Article 146

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own Courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those

following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.

Article 147

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

Article 148

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

Article 149

At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

Section II—Final Provisions

Article 150

The present Convention is established in English and in French. Both texts are equally authentic.

The Swiss Federal Council shall arrange for official translations of the Convention to be made in the Russian and Spanish languages.

Article 151

The present Convention, which bears the date of this day, is open to signature until February 12, 1950, in the name of the Powers represented at the Conference which opened at Geneva on April 21, 1949.

Article 152

The present Convention shall be ratified as soon as possible and the ratifications shall be deposited at Berne.

A record shall be drawn up of the deposit of each instrument of ratification and certified copies of this record shall be transmitted by the Swiss Federal Council to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

Article 153

The present Convention shall come into force 6 months after not less than 2 instruments of ratification have been deposited. Thereafter, it shall come into force for each High Contracting Party 6 months after the deposit of the instrument of ratification.

Article 154

In the relations between the Powers who are bound by the Hague Conventions respecting the Laws and Customs of War on Land, whether that of July 29, 1899, or that of October 18, 1907, and who are parties to the present Convention, this last Convention shall be supplementary to Sections II and III of the Regulations annexed to the above-mentioned Conventions of The Hague.

Article 155

From the date of its coming into force, it shall be open to any Power in whose name the present Convention has not been signed, to accede to this Convention.

Article 156

Accessions shall be notified in writing to the Swiss Federal Council, and shall take effect 6 months after the date on which they are received.

The Swiss Federal Council shall communicate the accession to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

Article 157

The situations provided for in Articles 2 and 3 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the beginning of hostilities or occupation. The Swiss Federal Council shall communicate by the quickest method any ratifications or accessions received from Parties to the conflict.

Article 158

Each of the High Contracting Parties shall be at liberty to denounce the present Convention.

The denunciation shall be notified in writing to the Swiss Federal Council, which shall transmit it to the Governments of all the High Contracting Parties.

The denunciation shall take effect one year after the notification thereof has been made to the Swiss Federal Council. However, a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded, and until after operations connected with the release, repatriation and re-establishment of the persons protected by the present Convention have been terminated.

The denunciation shall have effect only in respect of the denouncing Power. It shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations, as they result from the usages established among civilised peoples, from the laws of humanity and the dictates of the public conscience.

Article 159

The Swiss Federal Council shall register the present Convention with the Secretariat of the United Nations. The Swiss Federal Council shall also inform the Secretariat of the United

Nations of all ratifications, accessions and denunciations received by it with respect to the present Convention.

In witness whereof the undersigned, having deposited their respective full powers, have signed the present Convention.

Done at Geneva this 12th day of August 1949, in the English and French languages. The original shall be deposited in the Archives of the Swiss Confederation. The Swiss Federal Council shall transmit certified copies thereof to each of the signatory and acceding States.
[Here follow the signatures and Annexes.]

SCHEDULE 5**Protocol I****Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)****Preamble**

The High Contracting Parties,

Proclaiming their earnest wish to see peace prevail among peoples,

Recalling that every State has the duty, in conformity with the Charter of the United Nations, to refrain in its international relations from the threat or use of force against the sovereignty, territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

Believing it necessary nevertheless to reaffirm and develop the provisions protecting the victims of armed conflicts and to supplement measures intended to reinforce their application,

Expressing their conviction that nothing in this Protocol or in the Geneva Conventions of 12 August 1949 can be construed as legitimising or authorising any act of aggression or any other use of force inconsistent with the Charter of the United Nations,

Reaffirming further that the provisions of the Geneva Conventions of 12 August 1949 and of this Protocol must be fully applied in all circumstances to all persons who are protected by those instruments, without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the conflict,

Have agreed on the following:

Part I**General Provisions****Article 1 - General principles and scope of application**

1. The High Contracting Parties undertake to respect and to ensure respect for this Protocol in all circumstances.
2. In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection an authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.
3. This Protocol, which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in the situations referred to in Article 2 common to those Conventions.
4. The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of

International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

Article 2 - Definitions

For the purposes of this Protocol:

- (a) **First Convention, Second Convention, Third Convention and Fourth Convention** mean, respectively, the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949; the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked members of Armed Forces at Sea of 12 August 1949; the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949; the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949; **the Conventions** means the four Geneva Conventions of 12 August 1949 for the protection of war victims;
- (b) **rules of international law applicable in armed conflict** means the rules applicable in armed conflict set forth in international agreements to which the Parties to the conflict are Parties and the generally recognised principles and rules of international law which are applicable to armed conflict;
- (c) **Protecting Power** means a neutral or other State not a Party to the conflict which has been designated by a Party to the conflict and accepted by the adverse Party and has agreed to carry out the functions assigned to a Protecting Power under the Conventions and this Protocol;
- (d) **substitute** means an organisation acting in place of a Protecting Power in accordance with Article 5.

Article 3 - Beginning and end of application

Without prejudice to the provisions which are applicable at all times:

- (a) the Conventions and this Protocol shall apply from the beginning of any situation referred to in Article 1 of this Protocol;
- (b) the application of the Conventions and of this Protocol shall cease, in the territory of Parties to the conflict, on the general close of military operations and, in the case of occupied territories, on the termination of the occupation, except, in either circumstance, for those persons whose final release, repatriation or re-establishment takes place thereafter. These persons shall continue to benefit from the relevant provisions of the Conventions and of this Protocol until their final release, repatriation or re-establishment.

Article 4 - Legal status of the Parties to the conflict

The application of the Conventions and of this Protocol, as well as the conclusion of the agreements provided for therein, shall not affect the legal status of the Parties to the conflict. Neither the occupation of a territory nor the application of the Conventions and this Protocol shall affect the legal status of the territory in question.

Article 5 - Appointment of Protecting Powers and of their substitute

1. It is the duty of the Parties to a conflict from the beginning of that conflict to secure the supervision and implementation of the Conventions and of this Protocol by the application of the system of Protecting Powers, including *inter alia* the designation

and acceptance of those Powers, in accordance with the following paragraphs. Protecting Powers shall have the duty of safeguarding the interests of the Parties to the conflict.

2. From the beginning of a situation referred to in Article 1, each Party to the conflict shall without delay designate a Protecting Power for the purpose of applying the Conventions and this Protocol and shall, likewise without delay and for the same purpose, permit the activities of a Protecting Power which has been accepted by it as such after designation by the adverse Party.
3. If a Protecting Power has not been designated or accepted from the beginning of a situation referred to in Article 1, the International Committee of the Red Cross, without prejudice to the right of other impartial humanitarian organisations to do likewise, shall offer its good offices to the Parties to the conflict with a view to the designation without delay of a Protecting Power to which the Parties to the conflict consent. For that purpose it may, *inter alia*, ask each Party to provide it with a list of at least five States which that party considers acceptable to act as Protecting Power on its behalf in relation to an adverse Party, and ask each adverse Party to provide a list of at least five States which it would accept as the Protecting Power of the first Party; these lists shall be communicated to the Committee within two weeks after the receipt of the request; it shall compare them and seek the agreement of any proposed State named on both lists.
4. If, despite the foregoing, there is no Protecting Power, the Parties to the conflict shall accept without delay an offer which may be made by the International Committee of the Red Cross or by any other organisation which offers all guarantees of impartiality and efficacy, after due consultations with the said Parties and taking into account the result of these consultations, to act as a substitute. The functioning of such a substitute is subject to the consent of the Parties to the conflict; every effort shall be made by the Parties to the conflict to facilitate the operations of the substitute in the performance of its tasks under the Conventions and this Protocol.
5. In accordance with Article 4, the designation and acceptance of Protecting Powers for the purpose of applying the Conventions and this Protocol shall not affect the legal status of the Parties to the conflict or of any territory, including occupied territory.
6. The maintenance of diplomatic relations between Parties to the conflict or the entrusting of the protection of a Party's interests and those of its nationals to a third State in accordance with the rules of international law relating to diplomatic relations is no obstacle to the designation of Protecting Powers for the purpose of applying the Conventions and this Protocol.
7. Any subsequent mention in this Protocol of a Protecting Power includes also a substitute.

Article 6 - Qualified persons

1. The High Contracting Parties shall, also in peacetime, endeavour, with the assistance of the national Red Cross (Red Crescent, Red Lion and Sun) Societies, to train qualified personnel to facilitate the application of the Conventions and of this Protocol, and in particular the activities of the Protecting Powers.
2. The recruitment and training of such personnel are within domestic jurisdiction.

3. The International Committee of the Red Cross shall hold at the disposal of the High Contracting Parties the lists of persons so trained which the High Contracting Parties may have established and may have transmitted to it for that purpose.
4. The conditions governing the employment of such personnel outside the national territory shall, in each case, be the subject of special agreements between the Parties concerned.

Article 7 - Meetings

The depositary of this Protocol shall convene a meeting of the High Contracting Parties, at the request of one or more of the said Parties and upon the approval of the majority of the said Parties, to consider general problems concerning the application of the Conventions and of the Protocol.

Part II

Wounded, Sick and Shipwrecked

Section I—General Protection

Article 8 - Terminology

For the purposes of this Protocol:

- (a) **wounded and sick** mean persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility. These terms also cover maternity cases, new-born babies and other persons who may be in need of immediate medical assistance or care, such as the infirm or expectant mothers, and who refrain from any act of hostility;
- (b) **shipwrecked** means person, whether military or civilian, who are in peril at sea or in other waters as a result of misfortune affecting them or the vessel or aircraft carrying them and who refrain from any act of hostility. These persons, provided that they continue to refrain from any act of hostility, shall continue to be considered shipwrecked during their rescue until they acquire another status under the Conventions or this Protocol;
- (c) **medical personnel** means those persons assigned, by a Party to the conflict, exclusively to the medical purposes enumerated under subparagraph (e) or to the administration of medical units or to the operation or administration of medical transports. Such assignments may be either permanent or temporary. The term includes:
 - (i) medical personnel of a Party to the conflict, whether military or civilian, including those described in the First and Second Conventions, and those assigned to civil defence organisations;
 - (ii) medical personnel of national Red Cross (Red Crescent, Red Lion and Sun) Societies and other national voluntary aid societies duly recognised and authorised by a Party to the conflict;
 - (iii) medical personnel of medical units or medical transports described in Article 9, paragraph 2;

- (d) **religious personnel** means military or civilian persons, such as chaplains, who are exclusively engaged in the work of their ministry and attached:
- (i) to the armed forces of a Party to the conflict;
 - (ii) to medical units or medical transports of a Party to the conflict;
 - (iii) to medical units or medical transports described in Article 9, paragraph 2; or
 - (iv) to civil defence organisations of a Party to the conflict.

The attachment of religious personnel may be either permanent or temporary, and the relevant provisions mentioned under subparagraph (k) apply to them;

- (e) **medical units** means establishments and other units, whether military or civilian, organised for medical purposes, namely the search for, collection, transportation, diagnosis or treatment—including first-aid treatment—of the wounded, sick and shipwrecked, or for the prevention of disease. The term includes, for example, hospitals and other similar units, blood transfusion centres, preventive medicine centres and institutes, medical depots and the medical and pharmaceutical stores of such units.
- (f) **medical transportation** means the conveyance by land, water or air of the wounded, sick, shipwrecked, medical personnel, religious personnel, medical equipment or medical supplies protected by the Conventions and by this Protocol;
- (g) **medical transports** means any means of transportation, whether military or civilian, permanent or temporary, assigned exclusively to medical transportation and under the control of a competent authority of a Party to the conflict;
- (h) **medical vehicles** means any medical transports by land;
- (i) **medical ships and craft** means any medical transports by water;
- (j) **medical aircraft** means any medical transports by air;
- (k) **permanent medical personnel, permanent medical units and permanent medical transports** mean those assigned exclusively to medical purposes for an indeterminate period. **Temporary medical transports** mean those devoted exclusively to medical purposes for limited periods during the whole of such periods. Unless otherwise specified, the terms **medical personnel, medical units and medical transports** cover both permanent and temporary categories;
- (l) **distinctive emblem** means the distinctive emblem of the red cross, red crescent or red lion and sun on a white ground when used for the protection of medical units and transports, or medical and religious personnel, equipment or supplies;
- (m) **distinctive signal** means any signal or message specified for the identification exclusively of medical units or transports in Chapter III of Annex I to this Protocol.

Article 9 - Field of application

1. This Part, the provisions of which are intended to ameliorate the condition of the wounded, sick and shipwrecked, shall apply to all those affected by a situation referred to in Article 1, without any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria.
2. The relevant provisions of Articles 27 and 32 of the First Convention shall apply to permanent medical units and transports (other than hospital ships, to which Article 25 of the Second Convention applies) and their personnel made available to a Party to the conflict for humanitarian purposes:
 - (a) by a neutral or other State which is not a Party to that conflict;
 - (b) by a recognised and authorised aid society of such a State;
 - (c) by an impartial international humanitarian organisation.

Article 10 - Protection and care

1. All the wounded, sick and shipwrecked, to whichever Party they belong, shall be respected and protected.
2. In all circumstances they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones.

Article 11 - Protection of persons

1. The physical or mental health and integrity of persons who are in the power of the adverse Party or who are interned, detained or otherwise deprived of liberty as a result of a situation referred to in Article 1 shall not be endangered by any unjustified act or omission. Accordingly, it is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards which would be applied under similar medical circumstances to persons who are nationals of the Party conducting the procedure and who are in no way deprived of liberty.
2. It is, in particular prohibited to carry out on such persons, even with their consent:
 - (a) physical mutilations;
 - (b) medical or scientific experiments;
 - (c) removal of tissue or organs for transplantation, except where these acts are justified in conformity with the conditions provided for in paragraph 1.
3. Exceptions to the prohibition in paragraph 2(c) may be made only in the case of donations of blood for transfusion or of skin for grafting, provided that they are given voluntarily and without any coercion or inducement, and then only for therapeutic purposes, under conditions consistent with generally accepted medical standards and controls designed for the benefit of both the donor and the recipient.
4. Any wilful act or omission which seriously endangers the physical or mental health or integrity of any person who is in the power of a Party other than the one on which he depends and which either violates any of the prohibitions in paragraphs 1 and 2

or fails to comply with the requirements of paragraph 3 shall be a grave breach of this Protocol.

5. The persons described in paragraph 1 have the right to refuse any surgical operation. In case of refusal, medical personnel shall endeavour to obtain a written statement to that effect, signed or acknowledged by the patient.
6. Each Party to the conflict shall keep a medical record for every donation of blood for transfusion or skin for grafting by persons referred to in paragraph 1, if that donation is made under the responsibility of that Party. In addition, each Party to the conflict shall endeavour to keep a record of all medical procedures undertaken with respect to any person who is interned, detained or otherwise deprived of liberty as a result of a situation referred to in Article 1. These records shall be available at all times for inspection by the Protecting Power.

Article 12 - Protection of medical units

1. Medical units shall be respected and protected at all times and shall not be the object of attack.
2. Paragraph 1 shall apply to civilian medical units, provided that they:
 - (a) belong to one of the Parties to the conflict;
 - (b) are recognised and authorised by the competent authority of one of the Parties to the conflict; or
 - (c) are authorised in conformity with Article 9, paragraph 2, of this Protocol or Article 27 of the First Convention.
3. The Parties to the conflict are invited to notify each other of the location of their fixed medical units. The absence of such notification shall not exempt any of the Parties from the obligation to comply with the provisions of paragraph 1.
4. Under no circumstances shall medical units be used in an attempt to shield military objectives from attack. Whenever possible, the Parties to the conflict shall ensure that medical units are so sited that attacks against military objectives do not imperil their safety.

Article 13 - Discontinuance of protection of civilian medical units

1. The protection to which civilian medical units are entitled shall not cease unless they are used to commit, outside their humanitarian function, acts harmful to the enemy. Protection may, however, cease only after a warning has been given setting, whenever appropriate, a reasonable time-limit, and after such warning has remained unheeded.
2. The following shall not be considered as acts harmful to the enemy:
 - (a) that the personnel of the unit are equipped with light individual weapons for their own defence or for that of the wounded and sick in their charge;
 - (b) that the unit is guarded by a picket or by sentries or by an escort;
 - (c) that small arms and ammunition taken from the wounded and sick, and not yet handed to the proper service, are found in the units;
 - (d) that members of the armed forces or other combatants are in the unit for medical reasons.

Article 14 - Limitations on requisition of civilian medical units

1. The Occupying Power has the duty to ensure that the medical needs of the civilian population in occupied territory continue to be satisfied.
2. The Occupying Power shall not, therefore, requisition civilian medical units, their equipment, their *matériel* or the services of their personnel, so long as these resources are necessary for the provision of adequate medical services for the civilian population and for the continuing medical care of any wounded and sick already under treatment.
3. Provided that the general rule in paragraph 2 continues to be observed, the Occupying Power may requisition the said resources, subject to the following particular conditions:
 - (a) that the resources are necessary for the adequate and immediate medical treatment of the wounded and sick members of the armed forces of the Occupying Power or of prisoners of war;
 - (b) that the requisition continues only while such necessity exists; and
 - (c) that immediate arrangements are made to ensure that the medical needs of the civilian population, as well as those of any wounded and sick under treatment who are affected by the requisition, continue to be satisfied.

Article 15 - Protection of civilian medical and religious personnel

1. Civilian medical personnel shall be respected and protected.
2. If needed, all available help shall be afforded to civilian medical personnel in an area where civilian medical services are disrupted by reason of combat activity.
3. The Occupying Power shall afford civilian medical personnel in occupied territories every assistance to enable them to perform, to the best of their ability, their humanitarian functions. The Occupying Power may not require that, in the performance of those functions, such personnel shall give priority to the treatment of any person except on medical grounds. They shall not be compelled to carry out tasks which are not compatible with their humanitarian mission.
4. Civilian medical personnel shall have access to any place where their services are essential, subject to such supervisory and safety measures as the relevant Party to the conflict may deem necessary.
5. Civilian religious personnel shall be respected and protected. The provisions of the Conventions and of this Protocol concerning the protection and identification of medical personnel shall apply equally to such persons.

Article 16 - General protection of medical duties

1. Under no circumstances shall any person be punished for carrying out medical activities compatible with medical ethics, regardless of the person benefiting therefrom.
2. Persons engaged in medical activities shall not be compelled to perform acts or to carry out work contrary to the rules of medical ethics or to other medical rules designed from the benefit of the wounded and sick or to the provisions of the Conventions or of this Protocol, or to refrain from performing acts or from carrying out work required by those rules and provisions.

3. No person engaged in medical activities shall be compelled to give to anyone belonging either to an adverse Party, or to his own Party except as required by the law of the latter Party, any information concerning the wounded and sick who are, or who have been, under his care, if such information would, in his opinion, prove harmful to the patients concerned or to their families. Regulations for the compulsory notification of communicable diseases shall, however, be respected.

Article 17 - Role of the civilian population and of aid societies

1. The civilian population shall respect the wounded, sick and shipwrecked, even if they belong to the adverse Party, and shall commit no act of violence against them. The civilian population and aid societies, such as national Red Cross (Red Crescent, Red Lion and Sun) Societies, shall be permitted, even on their own initiative, to collect and care for the wounded, sick and shipwrecked, even in invaded or occupied areas. No one shall be harmed, prosecuted, convicted or punished for such humanitarian acts.
2. The Parties to the conflict may appeal to the civilian population and the aid societies referred to in paragraph 1 to collect and care for the wounded, sick and shipwrecked, and to search for the dead and report their location; they shall grant both protection and the necessary facilities to those who respond to this appeal. If the adverse Party gains or regains control of the area, that Party also shall afford the same protection and facilities for so long as they are needed.

Article 18 - Identification

1. Each Party to the conflict shall endeavour to ensure that medical and religious personnel and medical units and transports are identifiable.
2. Each Party to the conflict shall also endeavour to adopt and to implement methods and procedures which will make it possible to recognise medical units and transports which use the distinctive emblem and distinctive signals.
3. In occupied territory and in areas where fighting is taking place or if likely to take place, civilian medical personnel and civilian religious personnel should be recognisable by the distinctive emblem and an identity card certifying their status.
4. With consent of the competent authority, medical units and transports shall be marked by the distinctive emblem. The ships and craft referred to in Article 22 of this Protocol shall be marked in accordance with the provisions of the Second Convention.
5. In addition to the distinctive emblem, a Party to the conflict may, as provided in Chapter III of Annex I to this Protocol, authorise the use of distinctive signals to identify medical units and transports. Exceptionally, in the special cases covered in that Chapter, medical transports may use distinctive signals without displaying the distinctive emblem.
6. The application of the provisions of paragraphs 1 to 5 of this Article is governed by Chapters I to III of Annex I to this Protocol. Signals designated in Chapter III of the Annex for the exclusive use of medical units and transports shall not, except as provided therein, be used for any purpose other than to identify the medical units and transports specified in that Chapter.
7. This Article does not authorise any wider use of the distinctive emblem in peacetime than is prescribed in Article 44 of the First Convention.

8. The provisions of the Conventions and of this Protocol relating to supervision of the use of the distinctive emblem and to the prevention and repression of any misuse thereof shall be applicable to distinctive signals.

Article 19 - Neutral and other states not parties to the conflict

Neutral and other States not Parties to the conflict shall apply the relevant provisions of this Protocol to persons protected by this Part who may be received or interned within their territory, and to any dead of the Parties to that conflict whom they may find.

Article 20 - Prohibition of reprisals

Reprisals against the persons and objects protected by this Part are prohibited.

Section II—Medical Transportation

Article 21 - Medical vehicles

Medical vehicles shall be respected and protected in the same way as mobile medical units under the Conventions and this Protocol.

Article 22 - Hospital ships and coastal rescue craft

1. The provisions of the Conventions relating to:
- (a) vessels described in Articles 22, 24, 25 and 27 of the Second Convention,
 - (b) their lifeboats and small craft,
 - (c) their personnel and crews, and
 - (d) the wounded, sick and shipwrecked on board,
- shall also apply where these vessels carry civilian wounded, sick and shipwrecked who do not belong to any of the categories mentioned in Article 13 of the Second Convention. Such civilians shall not, however, be subject to surrender to any Party which is not their own, or to capture at sea. If they find themselves in the power of a Party to the conflict other than their own they shall be covered by the Fourth Convention and by this Protocol.
2. The protection provided by the Conventions to vessels described in Article 25 of the Second Convention shall extend to hospital ships made available for humanitarian purposes to a Party to the conflict:
- (a) by a neutral or other State which is not a Party to that conflict; or
 - (b) by an impartial international humanitarian organisation, provided that, in either case, the requirements set out in that Article are complied with.
3. Small craft described in Article 27 of the Second Convention shall be protected even if the notification envisaged by that Article has not been made. The Parties to the conflict are, nevertheless, invited to inform each other of any details of such craft which will facilitate their identification and recognition.

Article 23 - Other medical ships and craft

1. Medical ships and craft other than those referred to in Article 22 of this Protocol and Article 38 of the Second Convention shall, whether at sea or in other waters, be respected and protected in the same way as mobile medical units under the

Conventions and this Protocol. Since this protection can only be effective if they can be identified and recognised as medical ships or craft, such vessels should be marked with the distinctive emblem and as far as possible comply with the second paragraph of Article 43 of the Second Convention.

2. The ships and craft referred to in paragraph 1 shall remain subject to the laws of war. Any warship on the surface able immediately to enforce its command may order them to stop, order them off, or make them take a certain course, and they shall obey every such command. Such ships and craft may not in any other way be diverted from their medical mission so long as they are needed for the wounded, sick and shipwrecked on board.
3. The protection provided in paragraph 1 shall cease only under the conditions set out in Articles 34 and 35 of the Second Convention. A clear refusal to obey a command given in accordance with paragraph 2 shall be an act harmful to the enemy under Article 34 of the Second Convention.
4. A Party to the conflict may notify any adverse Party as far in advance of sailing as possible of the name, description, expected time of sailing, course and estimated speed of the medical ship or craft, particularly in the case of ships of over 2,000 gross tons, and may provide any other information which would facilitate identification and recognition. The adverse Party shall acknowledge receipt of such information.
5. The provisions of Article 37 of the Second Convention shall apply to medical and religious personnel in such ships and craft.
6. The provisions of the Second Convention shall apply to the wounded, sick and shipwrecked belonging to the categories referred to in Article 13 of the Second Convention and in Article 44 of this Protocol who may be on board such medical ships and craft. Wounded, sick and shipwrecked civilians who do not belong to any of the categories mentioned in Article 13 of the Second Convention shall not be subject, at sea, either to surrender to any Party which is not their own, or to removal from such ships or craft; if they find themselves in the power of a Party to the conflict other than their own, they shall be covered by the Fourth Convention and by this Protocol.

Article 24 - Protection of medical aircraft

Medical aircraft shall be respected and protected, subject to the provisions of this Part.

Article 25 - Medical aircraft in areas not controlled by an adverse Party

In and over land areas physically controlled by friendly forces, or in and over sea areas not physically controlled by an adverse Party, the respect and protection of medical aircraft of a Party to the conflict is not dependent on any agreement with an adverse Party. For greater safety, however, a Party to the conflict operating its medical aircraft in these areas may notify the adverse Party, as provided in Article 29, in particular when such aircraft are making flights bringing them within range of surface-to-air weapons systems of the adverse Party.

Article 26 - Medical aircraft in contact or similar zones

1. In and over those parts of the contact zone which are physically controlled by friendly forces and in and over those areas the physical control of which is not clearly established, protection for medical aircraft can be fully effective only by prior agreement between the competent military authorities of the Parties to the conflict,

as provided for in Article 29. Although, in the absence of such an agreement, medical aircraft operate at their own risk, they shall nevertheless be respected after they have been recognized as such.

2. **Contact zone** means any area on land where the forward elements of opposing forces are in contact with each other, especially where they are exposed to direct fire from the ground.

Article 27 - Medical aircraft in areas controlled by an adverse Party

1. The medical aircraft of a Party to the conflict shall continue to be protected while flying over land or sea areas physically controlled by an adverse Party, provided that prior agreement to such flights has been obtained from the competent authority of that adverse Party.
2. A medical aircraft which flies over an area physically controlled by an adverse Party without, or in deviation from the terms of, an agreement provided for in paragraph 1, either through navigational error or because of an emergency affecting the safety of the flight, shall make every effort to identify itself and to inform the adverse Party of the circumstances. As soon as such medical aircraft has been recognized by the adverse Party, that Party shall make all reasonable efforts to give the order to land or to alight on water, referred to in Article 30, paragraph 1, or to take other measures to safeguard its own interests, and, in either case, to allow the aircraft time for compliance, before resorting to an attack against the aircraft.

Article 28 - Restrictions on operations of medical aircraft

1. The Parties to the conflict are prohibited from using their medical aircraft to attempt to acquire any military advantage over an adverse Party. The presence of medical aircraft shall not be used in an attempt to render military objectives immune from attack.
2. Medical aircraft shall not be used to collect or transmit intelligence data and shall not carry any equipment intended for such purposes. They are prohibited from carrying any persons or cargo not included within the definition in Article 8, subparagraph (f). The carrying on board of the personal effects of the occupants or of equipment intended solely to facilitate navigation, communication or identification shall not be considered as prohibited.
3. Medical aircraft shall not carry any armament except small arms and ammunition taken from the wounded, sick and shipwrecked on board and not yet handed to the proper service, and such light individual weapons as may be necessary to enable the medical personnel on board to defend themselves and the wounded, sick and shipwrecked in their charge.
4. While carrying out the flights referred to in Articles 26 and 27, medical aircraft shall not, except by prior agreement with the adverse Party, be used to search for the wounded, sick and shipwrecked.

Article 29 - Notifications and agreements concerning medical aircraft

1. Notifications under Article 25, or requests for prior agreement under Articles 26, 27, 28 (paragraph 4), or 31 shall state the proposed number of medical aircraft, their flight plans and means of identification, and shall be understood to mean that every flight will be carried out in compliance with Article 28.
2. A Party which receives a notification given under Article 25 shall at once acknowledge receipt of such notification.

3. A Party which receives a request for prior agreement under Articles 26, 27, 28 (paragraph 4), or 31 shall, as rapidly as possible, notify the requesting Party:
 - (a) that the request is agreed to;
 - (b) that the request is denied; or
 - (c) of reasonable alternative proposals to the request. It may also propose a prohibition or restriction of other flights in the area during the time involved. If the Party which submitted the request accepts the alternative proposals, it shall notify the other Party of such acceptance.
4. The Parties shall take the necessary measures to ensure that notifications and agreements can be made rapidly.
5. The Parties shall also take the necessary measures to disseminate rapidly the substance of any such notifications and agreements to the military units concerned and shall instruct those units regarding the means of identification that will be used by the medical aircraft in question.

Article 30 - Landing and inspection of medical aircraft

1. Medical aircraft flying over areas which are physically controlled by an adverse Party, or over areas the physical control of which is not clearly established, may be ordered to land or to alight on water, as appropriate, to permit inspection in accordance with the following paragraphs. Medical aircraft shall obey any such order.
2. If such an aircraft lands or alights on water, whether ordered to do so or for other reasons, it may be subjected to inspection solely to determine the matters referred to in paragraphs 3 and 4. Any such inspection shall be commenced without delay and shall be conducted expeditiously. The inspecting Party shall not require the wounded and sick to be removed from the aircraft unless their removal is essential for the inspection. That Party shall in any event ensure that the condition of the wounded and sick is not adversely affected by the inspection or by the removal.
3. If the inspection discloses that the aircraft:
 - (a) is a medical aircraft within the meaning of Article 8, sub-paragraph (j),
 - (b) is not in violation of the conditions prescribed in Article 28, and
 - (c) has not flown without or in breach of a prior agreement where such agreement is required,the aircraft and those of its occupants who belong to the adverse Party or to a neutral or other State not a Party to the conflict shall be authorised to continue the flight without delay.
4. If the inspection discloses that the aircraft:
 - (a) is not a medical aircraft within the meaning of Article 8, sub-paragraph (j),
 - (b) is in violation of the conditions prescribed in Article 28, or
 - (c) has flown without or in breach of a prior agreement where such agreement is required,

the aircraft may be seized. Its occupants shall be treated in conformity with the relevant provisions of the Conventions and of this Protocol. Any aircraft seized which

had been assigned as a permanent medical aircraft may be used thereafter only as a medical aircraft.

Article 31 - Neutral or other States not Parties to the conflict

1. Except by prior agreement, medical aircraft shall not fly over or land in the territory of a neutral or other State not a Party to the conflict. However, with such an agreement, they shall be respected throughout their flight and also for the duration of any calls in the territory. Nevertheless they shall obey any summons to land or to alight on water, as appropriate.
2. Should a medical aircraft, in the absence of an agreement or in deviation from the terms of an agreement, fly over the territory of a neutral or other State not a Party to the conflict, either through navigational error or because of an emergency affecting the safety of the flight, it shall make every effort to give notice of the flight and to identify itself. As soon as such medical aircraft is recognised, that State shall make all reasonable efforts to give the order to land or to alight on water referred to in Article 30, paragraph 1, or to take other measures to safeguard its own interests, and, in either case, to allow the aircraft time for compliance, before resorting to an attack against the aircraft.
3. If a medical aircraft, either by agreement or in the circumstances mentioned in paragraph 2, lands or alights on water in the territory of a neutral or other State not Party to the conflict, whether ordered to do so or for other reasons, the aircraft shall be subject to inspection for the purposes of determining whether it is in fact a medical aircraft. The inspection shall be commenced without delay and shall be conducted expeditiously. The inspecting Party shall not require the wounded and sick of the Party operating the aircraft to be removed from it unless their removal is essential for the inspection. The inspecting Party shall in any event ensure that the condition of the wounded and sick is not adversely affected by the inspection or the removal. If the inspection discloses that the aircraft is in fact a medical aircraft, the aircraft with its occupants, other than those who must be detained in accordance with the rules of international law applicable in armed conflict, shall be allowed to resume its flight, and reasonable facilities shall be given for the continuation of the flight. If the inspection discloses that the aircraft is not a medical aircraft, it shall be seized and the occupants treated in accordance with paragraph 4.
4. The wounded, sick and shipwrecked disembarked, otherwise than temporarily, from a medical aircraft with the consent of the local authorities in the territory of a neutral or other State not a Party to the conflict shall, unless agreed otherwise between that State and the Parties to the conflict, be detained by that State where so required by the rules of international law applicable in armed conflict, in such a manner that they cannot again take part in the hostilities. The cost of hospital treatment and internment shall be borne by the State to which those persons belong.
5. Neutral or other States not Parties to the conflict shall apply any conditions and restrictions on the passage of medical aircraft over, or on the landing of medical aircraft in, their territory equally to all Parties to the conflict.

*Section III—Missing and Dead Persons***Article 32 - General principle**

In the implementation of this Section, the activities of the High Contracting Parties, of the Parties to the conflict and of the international humanitarian organizations mentioned in the Conventions and in this Protocol shall be prompted mainly by the right of families to know the fate of their relatives.

Article 33 - Missing persons

1. As soon as circumstances permit, and at the latest from the end of active hostilities, each Party to the conflict shall search for the persons who have been reported missing by an adverse Party. Such adverse Party shall transmit all relevant information concerning such persons in order to facilitate such searches.
2. In order to facilitate the gathering of information pursuant to the preceding paragraph, each Party to the conflict shall, with respect to persons who would not receive more favourable consideration under the Conventions and this Protocol:
 - (a) record the information specified in Article 138 of the Fourth Convention in respect of such persons who have been detained, imprisoned or otherwise held in captivity for more than two weeks as a result of hostilities or occupation, or who have died during any period of detention;
 - (b) to the fullest extent possible, facilitate and, if need be, carry out the search for and the recording of information concerning such persons if they have died in other circumstances as a result of hostilities or occupation.
3. Information concerning persons reported missing pursuant to paragraph 1 and requests for such information shall be transmitted either directly or through the Protecting Power or the Central Tracing Agency of the International Committee of the Red Cross or national Red Cross (Red Crescent, Red Lion and Sun) Societies. Where the information is not transmitted through the International Committee of the Red Cross and its Central Tracing Agency, each Party to the conflict shall ensure that such information is also supplied to the Central Tracing Agency.
4. The Parties to the conflict shall endeavour to agree on arrangements for teams to search for, identify and recover the dead from battlefield areas, including arrangements, if appropriate, for such teams to be accompanied by personnel of the adverse Party while carrying out these missions in areas controlled by the adverse Party. Personnel of such teams shall be respected and protected while exclusively carrying out these duties.

Article 34 - Remains of deceased

1. The remains of persons who have died for reasons related to occupation or in detention resulting from occupation or hostilities and those of persons not nationals of the country in which they have died as a result of hostilities shall be respected, and the gravesites of all such persons shall be respected, maintained and marked as provided for in Article 130 of the Fourth Convention, where their remains or gravesites would not receive more favourable considerations under the Conventions and this Protocol.
2. As soon as circumstances and the relations between the adverse Parties permit, the High Contracting Parties in whose territories graves and, as the case may be,

other locations of the remains of persons who have died as a result of hostilities or during occupation or in detention are situated, shall conclude agreements in order:

- (a) to facilitate access to the gravesites by relatives of the deceased and by representatives of official graves registration services and to regulate the practical arrangements for such access;
 - (b) to protect and maintain such gravesites permanently;
 - (c) to facilitate the return of the remains of the deceased and of personal effects to the home country upon its request or, unless that country objects, upon the request of the next of kin.
3. In the absence of the agreements provided for in paragraph 2(b) or (c) and if the home country of such deceased is not willing to arrange at its expense for the maintenance of such gravesites, the High Contracting Party in whose territory the gravesites are situated may offer to facilitate the return of the remains of the deceased to the home country. Where such an offer has not been accepted the High Contracting Party may, after the expiry of five years from the date of the offer and upon due notice to the home country, adopt the arrangements laid down in its own laws relating to cemeteries and graves.
 4. A High Contracting Party in whose territory the gravesites referred to in this Article are situated shall be permitted to exhume the remains only:
 - (a) in accordance with paragraphs (2)(c) and 3, or
 - (b) where exhumation is a matter of overriding public necessity, including cases of medical and investigative necessity, in which case the High Contracting Party shall at all times respect the remains, and shall give notice to the home country of its intention to exhume the remains together with details of the intended place of reinterment.

Part III

Methods and Means of Warfare, Combatant and Prisoner-of-War Status

Section I—Methods and Means of Warfare

Article 35 - Basic rules

1. In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited.
2. It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.
3. It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.

Article 36 - New weapons

In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.

Article 37 - Prohibition of perfidy

1. It is prohibited to kill, injure or capture an adversary by resort to perfidy. Acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence, shall constitute perfidy. The following acts are examples of perfidy:
 - (a) the feigning of an intent to negotiate under a flag of truce or of a surrender;
 - (b) the feigning of an incapacitation by wounds or sickness;
 - (c) the feigning of civilian, non-combatant status; and
 - (d) the feigning of protected status by the use of signs, emblems or uniforms of the United Nations or of neutral or other States not Parties to the conflict.
2. Ruses of war are not prohibited. Such ruses are acts which are intended to mislead an adversary or to induce him to act recklessly but which infringe no rule of international law applicable in armed conflict and which are not perfidious because they do not invite the confidence of an adversary with respect to protection under that law. The following are examples of such ruses: the use of camouflage, decoys, mock operations and misinformation.

Article 38 - Recognized emblems

1. It is prohibited to make improper use of the distinctive emblem of the red cross, red crescent or red lion and sun or of other emblems, signs or signals provided for by the Conventions or by this Protocol. It is also prohibited to misuse deliberately in an armed conflict other internationally recognised protective emblems, signs or signals, including the flag of truce, and the protective emblem of cultural property.
2. It is prohibited to make use of the distinctive emblem of the United Nations, except as authorised by that Organisations.

Article 39 - Emblems of nationality

1. It is prohibited to make use in an armed conflict of the flags or military emblems, insignia or uniforms of neutral or other States not Parties to the conflict.
2. It is prohibited to make use of the flags or military emblems, insignia or uniforms of adverse Parties while engaging in attacks or in order to shield, favour, protect or impede military operations.
3. Nothing in this Article or in Article 37, paragraph 1(d), shall affect the existing generally recognised rules of international law applicable to espionage or to the use of flags in the conduct of armed conflict at sea.

Article 40 - Quarter

1. It is prohibited to order that there shall be no survivors, to threaten an adversary therewith or to conduct hostilities on this basis.

Article 41 - Safeguard of an enemy *hors de combat*

1. A person who is recognised or who, in the circumstances, should be recognised to be *hors de combat* shall not be made the object of attack.
2. A person is *hors de combat* if:

- (a) he is in the power of an adverse Party;
- (b) he clearly expresses an intention to surrender; or
- (c) he has been rendered unconscious or is otherwise incapacitated by wounds or sickness, and therefore is incapable of defending himself;

provided that in any of these cases he abstains from any hostile act and does not attempt to escape.

3. When persons entitled to protection as prisoners of war have fallen into the power of an adverse Party under unusual conditions of combat which prevent their evacuation as provided for in Part III, Section I, of the Third Convention, they shall be released and all feasible precautions shall be taken to ensure their safety.

Article 42 - Occupants of aircraft

1. No person parachuting from an aircraft in distress shall be made the object of attack during his descent.
2. Upon reaching the ground in territory controlled by an adverse Party, a person who has parachuted from an aircraft in distress shall be given an opportunity to surrender before being made the object of attack, unless it is apparent that he is engaging in a hostile act.
3. Airborne troops are not protected by this Article.

Section II—Combatant and Prisoner-of-War Status

Article 43 - Armed forces

1. The armed forces of a Party to a conflict consist of all organised armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognised by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, *inter alia*, shall enforce compliance with the rules of international law applicable in armed conflict.
2. Members of the armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of the Third Convention) are combatants, that is to say, they have the right to participate directly in hostilities.
3. Whenever a Party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other Parties to the conflict.

Article 44 - Combatants and prisoners of war

1. Any combatant, as defined in Article 43, who falls into the power of an adverse Party shall be a prisoner of war.
2. While all combatants are obliged to comply with the rules of international law applicable in armed conflicts, violations of these rules shall not deprive a combatant of his right to be a combatant or, if he falls into the power of an adverse Party, of his right to be a prisoner of war, except as provided in paragraphs 3 and 4.
3. In order to promote the protection of the civilian population from the effects of hostilities, combatants are obliged to distinguish themselves from the civilian

population while they are engaged in an attack or in a military operation preparatory to an attack. Recognising, however, that there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly:

- (a) during each military engagement, and
 - (b) during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate. Acts which comply with the requirements of this paragraph shall not be considered as perfidious within the meaning of Article 37, paragraph 1(c).
4. A combatant who falls into the power of an adverse Party while failing to meet the requirements set forth in the second sentence of paragraph 3 shall forfeit his right to be a prisoner of war, but he shall, nevertheless, be given protections equivalent in all respects to those accorded to prisoners of war by the Third Convention and by this Protocol. This protection includes protections equivalent to those accorded to prisoners of war by the Third Convention in the case where such a person is tried and punished for any offences he has committed.
 5. Any combatant who falls into the power of an adverse Party while not engaged in an attack or in a military operation preparatory to an attack shall not forfeit his rights to be a combatant and a prisoner of war by virtue of his prior activities.
 6. This Article is without prejudice to the right of any person to be a prisoner of war pursuant to Article 4 of the Third Convention.
 7. This Article is not intended to change the generally accepted practice of States with respect to the wearing of the uniform by combatants assigned to the regular, uniformed armed units of a Party to the conflict.
 8. In addition to the categories of persons mentioned in Article 13 of the First and Second Conventions, all members of the armed forces of a Party to the conflict, as defined in Article 43 of this Protocol, shall be entitled to protection under those Conventions if they are wounded or sick or, in the case of the Second Convention, shipwrecked at sea or in other waters.

Article 45 - Protection of persons who have taken part in hostilities

1. A person who takes part in hostilities and falls into the power of an adverse Party and shall be presumed to be a prisoner of war, and therefore shall be protected by the Third Convention, if he claims the status of prisoner of war, or if he appears to be entitled to such status, or if the Party on which he depends claims such status on his behalf by notification to the detaining Power or to the Protecting Power. Should any doubt arise as to whether any such person is entitled to the status of prisoner of war, he shall continue to have such status and, therefore, to be protected by the Third Convention and this Protocol until such time as his status has been determined by a competent tribunal.
2. If a person who has fallen into the power of an adverse Party is not held as a prisoner of war and is to be tried by that Party for an offence arising out of the hostilities, he shall have the right to assert his entitlement to prisoner-of-war status before a judicial tribunal and to have that question adjudicated. Whenever possible under the applicable procedure, this adjudication shall occur before the trial for the offence. The representatives of the Protecting Power shall be entitled to attend

the proceedings in which that question is adjudicated, unless, exceptionally, the proceedings are held *in camera* in the interest of State security. In such a case the detaining Power shall advise the Protecting Power accordingly.

3. Any person who has taken part in hostilities, who is not entitled to prisoner-of-war status and who does not benefit from more favourable treatment in accordance with the Fourth Convention shall have the right at all times to the protection of Article 75 of this Protocol. In occupied territory, any such person, unless he is held as a spy, shall be entitled, notwithstanding Article 5 of the Fourth Convention, to his rights of communication under that Convention.

Article 46 - Spies

1. Notwithstanding any other provision of the Conventions or of this Protocol, any member of the armed forces of a Party to the conflict who falls into the power of an adverse Party while engaging in espionage shall not have the right to the status of prisoner of war and may be treated as a spy.
2. A member of the armed forces of a Party to the conflict who, on behalf of that Party and in territory controlled by an adverse Party, gathers or attempts to gather information shall not be considered as engaging in espionage if, while so acting, he is in the uniform of his armed forces.
3. A member of the armed forces of a Party to the conflict who is a resident of territory occupied by an adverse Party and who, on behalf of the Party on which he depends, gathers or attempts to gather information of military value within that territory shall not be considered as engaging in espionage unless he does so through an act of false pretences or deliberately in a clandestine manner. Moreover, such a resident shall not lose his right to the status of prisoner of war and may not be treated as a spy unless he is captured while engaging in espionage.
4. A member of the armed forces of a Party to the conflict who is not a resident of territory occupied by an adverse Party and who has engaged in espionage in that territory shall not lose his right to the status of prisoner of war and may not be treated as a spy unless he is captured before he has rejoined the armed forces to which he belongs.

Article 47 - Mercenaries

1. A mercenary shall not have the right to be a combatant or a prisoner of war.
2. A mercenary is any person who:
 - (a) is specially recruited locally or abroad in order to fight in an armed conflict;
 - (b) does, in fact, take a direct part in the hostilities;
 - (c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;
 - (d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;
 - (e) is not a member of the armed forces of a Party to the conflict; and
 - (f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

Part IV

Civilian Population

Section I—General Protection Against Effects of Hostilities

Chapter I - Basic Rule and Field of Application

Article 48 - Basic rule

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

Article 49 - Definition of attacks and scope of application

1. Attacks means acts of violence against the adversary, whether in offence or in defence.
2. The provisions of this Protocol with respect to attacks apply to all attacks in whatever territory conducted, including the national territory belonging to a Party to the conflict but under the control of an adverse Party.
3. The provisions of this Section apply to any land, air or sea warfare which may affect the civilian population, individual civilians or civilian objects on land. They further apply to all attacks from the sea or from the air against objectives on land but do not otherwise affect the rules of international law applicable in armed conflict at sea or in the air.
4. The provisions of this Section are additional to the rules concerning humanitarian protection contained in the Fourth Convention, particularly in Part II thereof, and in other international agreements binding upon the High Contracting Parties, as well as to other rules of international law relating to the protection of civilians and civilian objects on land, at sea or in the air against the effects of hostilities.

Chapter II - Civilians and Civilian Population

Article 50 - Definition of civilians and civilian population

1. A civilian is any person who does not belong to one of the categories of persons referred to in Article 4A(1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.
2. The civilian population comprises all persons who are civilians.
3. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.

Article 51 - Protection of the civilian population

1. The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, which are additional to other applicable rules of international law, shall be observed in all circumstances.

2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.
3. Civilians shall enjoy the protection afforded by this Section, unless and for such time as they take a direct part in hostilities.
4. Indiscriminate attacks are prohibited. Indiscriminate attacks are:
 - (a) those which are not directed at a specific military objective;
 - (b) those which employ a method or means of combat which cannot be directed at a specific military objective; or
 - (c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol;
 and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.
5. Among others, the following types of attacks are to be considered as indiscriminate:
 - (a) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and
 - (b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.
6. Attacks against the civilian population or civilians by way of reprisals are prohibited.
7. The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.
8. Any violation of these prohibitions shall not release the Parties to the conflict from their legal obligation with respect to the civilian population and civilians, including the obligation to take the precautionary measures provided for in Article 57.

Chapter III - Civilian Objects

Article 52 - General protection of civilian object

1. Civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives as defined in paragraph 2.
2. Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

3. In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.

Article 53 - Protection of cultural objects and of places of worship

Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and of other relevant international instruments, it is prohibited:

- (a) to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples;
- (b) to use such objects in support of the military effort;
- (c) to make such objects the object of reprisals.

Article 54 - Protection of objects indispensable to the survival of the civilian population

1. Starvation of civilians as a method of warfare is prohibited.
2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.
3. The prohibitions in paragraph 2 shall not apply to such of the objects covered by it as are used by an adverse Party:
 - (a) as sustenance solely for the members of its armed forces; or
 - (b) if not as sustenance, then in direct support of military action, provided, however, that in no event shall actions against these objects be taken which may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement.
4. These objects shall not be made the object of reprisals.
5. In recognition of the vital requirements of any Party to the conflict in the defence of its national territory against invasion, derogation from the prohibitions contained in paragraph 2 may be made by a Party to the conflict within such territory under its own control where required by imperative military necessity.

Article 55 - Protection of the natural environment

1. Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.
2. Attacks against the natural environment by way of reprisals are prohibited.

Article 56 - Protection of works and installations containing dangerous forces

1. Works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made the object or attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population. Other military objectives located at or in the vicinity of these works or installations shall not be made the object of attack if such attack may cause the release of dangerous forces from the works or installations and consequent severe losses among the civilian population.
2. The special protection against attack provided by paragraph 1 shall cease:
 - (a) for a dam or a dyke only if it is used for other than its normal function and in regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support;
 - (b) for a nuclear electrical generating station only if it provides electric power in regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support;
 - (c) for other military objectives located at or in the vicinity of these works or installations only if they are used in regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support.
3. In all cases, the civilian population and individual civilians shall remain entitled to all the protection accorded them by international law, including the protection of the precautionary measures provided for in Article 57. If the protection ceases and any of the works, installations or military objectives mentioned in paragraph 1 is attacked, all practical precautions shall be taken to avoid the release of the dangerous forces.
4. It is prohibited to make any of the works, installations or military objectives mentioned paragraph 1 the object of reprisals.
5. The Parties to the conflict shall endeavour to avoid locating any military objectives in the vicinity of the works or installations mentioned in paragraph 1. Nevertheless, installations erected for the sole purpose of defending the protected works or installations from attack are permissible and shall not themselves be made the object of attack, provided that they are not used in hostilities except for defensive actions necessary to respond to attacks against the protected works or installations and that their armament is limited to weapons capable only of repelling hostile action against the protected works or installations.
6. The High Contracting Parties and the Parties to the conflict are urged to conclude further agreements among themselves to provide additional protection for objects containing dangerous forces.
7. In order to facilitate the identification of the objects protected by this Article, the Parties to the conflict may mark them with a special sign consisting of a group of three bright orange circles placed on the same axis, as specified in Article 16 of Annex I to this Protocol. The absence of such marking in no way relieves any Party to the conflict of its obligations under this Article.

*Chapter IV - Precautionary Measures***Article 57 - Precautions in attack**

1. In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.
2. With respect to attacks, the following precautions shall be taken:
 - (a) those who plan or decide upon an attack shall:
 - (i) do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives within the meaning of paragraph 2 of Article 52 and that it is not prohibited by the provisions of this Protocol to attack them;
 - (ii) take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimising, incidental loss of civilian life, injury to civilians and damage to civilian objects;
 - (iii) refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;
 - (b) an attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;
 - (c) effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit.
3. When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected shall be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects.
4. In the conduct of military operations at sea or in the air, each Party to the conflict shall, in conformity with its rights and duties under the rules of international law applicable in armed conflict, take all reasonable precautions to avoid losses of civilian lives and damage to civilian objects.
5. No provision of this Article may be construed as authorizing any attacks against the civilian population, civilians or civilian objects.

Article 58 - Precautions against the effects of attacks

The Parties to the conflict shall, to the maximum extent feasible:

- (a) without prejudice to Article 49, of the Fourth Convention, endeavour to remove the civilian population, individual civilians and civilian objects under their control from the vicinity of military objectives;
- (b) avoid locating military objectives within or near densely populated areas;

- (c) take the other necessary precautions to protect the civilian population, individual civilians and civilian objects under their control against the dangers resulting from military operations.

Chapter V - Localities and Zones Under Special Protection

Article 59 - Non-defended localities

1. It is prohibited for the Parties to the conflict to attack, by any means whatsoever, non-defended localities.
2. The appropriate authorities of a Party to the conflict may declare as a non-defended locality any inhabited place near or in a zone where armed forces are in contact which is open for occupation by an adverse Party. Such a locality shall fulfil the following conditions:
 - (a) all combatants, as well as mobile weapons and mobile military equipment must have been evacuated;
 - (b) no hostile use shall be made of fixed military installations or establishments;
 - (c) no acts of hostility shall be committed by the authorities or by the population; and
 - (d) no activities in support of military operations shall be undertaken.
3. The presence, in this locality, of persons specially protected under the Conventions and this Protocol, and of police forces retained for the sole purpose of maintaining law and order, is not contrary to the conditions laid down in paragraph 2.
4. The declaration made under paragraph 2 shall be addressed to the adverse Party and shall define and describe, as precisely as possible, the limits of the nondefended locality. The Party to the conflict to which the declaration is addressed shall acknowledge its receipt and shall treat the locality as a non-defended locality unless the conditions laid down in paragraph 2 are not in fact fulfilled, in which event it shall immediately so inform the Party making the declaration. Even if the conditions laid down in paragraph 2 are not fulfilled, the locality shall continue to enjoy the protection provided by the other provisions of this Protocol and the other rules of international law applicable in armed conflict.
5. The Parties to the conflict may agree on the establishment of non-defended localities even if such localities do not fulfil the conditions laid down in paragraph 2. The agreement should define and describe, as precisely as possible, the limits of the non-defended locality; if necessary, it may lay down the methods of supervision.
6. The Party which is in control of a locality governed by such an agreement shall mark it, so far as possible, by such signs as may be agreed upon with the other Party, which shall be displayed where they are clearly visible, especially on its perimeter and limits and on highways.
7. A locality loses its status as a non-defended locality when it ceases to fulfil the conditions laid down in paragraph 2 or in the agreement referred to in paragraph 5. In such an eventuality, the locality shall continue to enjoy the protection provided by the other provisions of this Protocol and the other rules of international law applicable in armed conflict.

Article 60 - Demilitarized zones

1. It is prohibited for the Parties to the conflict to extend their military operations to zones on which they have conferred by agreement the status of demilitarized zone, if such extension is contrary to the terms of this agreement.
2. The agreement shall be an express agreement, may be concluded verbally or in writing, either directly or through a Protecting Power or any impartial humanitarian organization, and may consist of reciprocal and concordant declarations. The agreement may be concluded in peacetime, as well as after the outbreak of hostilities, and should define and describe, as precisely as possible, the limits of the demilitarized zone and, if necessary, lay down the methods of supervision.
3. The subject of such an agreement shall normally be any zone which fulfils the following conditions:
 - (a) all combatants, as well as mobile weapons and mobile military equipment, must have been evacuated;
 - (b) no hostile use shall be made of fixed military installations or establishments;
 - (c) no acts of hostility shall be committed by the authorities or by the population; and
 - (d) any activity linked to the military effort must have ceased.

The Parties to the conflict shall agree upon the interpretation to be given to the condition laid down in sub-paragraph (d) and upon persons to be admitted to the demilitarized zone other than those mentioned in paragraph 4.

4. The presence, in this zone, of persons specially protected under the Conventions and this Protocol, and of police forces retained for the sole purpose of maintaining law and order, is not contrary to the conditions laid down in paragraph 3.
5. The Party which is in control of such a zone shall mark it, so far as possible, by such signs as may be agreed upon with the other Party, which shall be displayed where they are clearly visible, especially on its perimeter and limits and on highways.
6. If the fighting draws near to a demilitarized zone, and if the Parties to the conflict have so agreed, none of them may use the zone for purposes related to the conduct of military operations or unilaterally revoke its status.
7. If one of the Parties to the conflict commits a material breach of the provisions of paragraphs 3 or 6, the other Party shall be released from its obligations under the agreement conferring upon the zone the status of demilitarized zone. In such an eventuality, the zone loses its status but shall continue to enjoy the protection provided by the other provisions of this Protocol and the other rules of international law applicable in armed conflict.

*Chapter VI - Civil Defence***Article 61 - Definitions and scope**

For the purposes of this Protocol:

- (a) **civil defence** means the performance of some or all of the undermentioned humanitarian tasks intended to protect the civilian population against the dangers, and to help it to recover from the immediate effects, of hostilities or

disasters and also to provide the conditions necessary for its survival. These tasks are:

- (i) warning;
 - (ii) evacuation;
 - (iii) management of shelters;
 - (iv) management of blackout measures;
 - (v) rescue;
 - (vi) medical services, including first aid, and religious assistance;
 - (vii) fire-fighting;
 - (viii) detection and marking of danger areas;
 - (ix) decontamination and similar protective measures;
 - (x) provision of emergency accommodation and supplies;
 - (xi) emergency assistance in the restoration and maintenance of order in distressed areas;
 - (xii) emergency repair of indispensable public utilities;
 - (xiii) emergency disposal of the dead;
 - (xiv) assistance in the preservation of objects essential for survival;
 - (xv) complementary activities necessary to carry out any of the tasks mentioned above, including, but not limited to, planning and organization;
- (b) **civil defence organizations** means those establishments and other units which are organized or authorized by the competent authorities of a Party to the conflict to perform any of the tasks mentioned under sub-paragraph (a), and which are assigned and devoted exclusively to such tasks;
- (c) **personnel** of civil defence organizations means those persons assigned by a Party to the conflict exclusively to the performance of the tasks mentioned under sub-paragraph (a), including personnel assigned by the competent authority of that Party exclusively to the administration of these organizations;
- (d) **matériel** of civil defence organizations means equipment, supplies and transports used by these organizations for the performance of the tasks mentioned under sub-paragraph (a).

Article 62- General protection

1. Civilian civil defence organizations and their personnel shall be respected and protected, subject to the provisions of this Protocol, particularly the provisions of this Section. They shall be entitled to perform their civil defence tasks except in case of imperative military necessity.
2. The provisions of paragraph 1 shall also apply to civilians who, although not members of civilian civil defence organizations, respond to an appeal from the competent authorities and perform civil defence tasks under their control.

3. Buildings and *matériel* used for civil defence purposes and shelters provided for the civilian population are covered by Article 52. Objects used for civil defence purposes may not be destroyed or diverted from their proper use except by the Party to which they belong.

Article 63 - Civil defence in occupied territories

1. In occupied territories, civilian civil defence organizations shall receive from the authorities the facilities necessary for the performance of their tasks. In no circumstances shall their personnel be compelled to perform activities which would interfere with the proper performance of these tasks. The Occupying Power shall not change the structure or personnel of such organizations in any way which might jeopardize the efficient performance of their mission. These organizations shall not be required to give priority to the nationals or interests of that Power.
2. The Occupying Power shall not compel, coerce or induce civilian civil defence organizations to perform their tasks in any manner prejudicial to the interests of the civilian population.
3. The Occupying Power may disarm civil defence personnel for reasons of security.
4. The Occupying Power shall neither divert from their proper use nor requisition buildings or *matériel* belonging to or used by civil defence organizations if such diversion or requisition would be harmful to the civilian population.
5. Provided that the general rule in paragraph 4 continues to be observed, the Occupying Power may requisition or divert these resources, subject to the following particular conditions:
 - (a) that the buildings or *matériel* are necessary for other needs of the civilian population; and
 - (b) that the requisition or diversion continues only while such necessity exists.
6. The Occupying Power shall neither divert nor requisition shelters provided for the use of the civilian population or needed by such population.

Article 64 - Civilian civil defence organizations of neutral or other States not Parties to the conflict and international co-ordinating organizations

1. Articles 62, 63, 65 and 66 shall also apply to the personnel and *matériel* of civilian civil defence organizations of neutral or other States not Parties to the conflict which perform civil defence tasks mentioned in Article 61 in the territory of a Party to the conflict, with the consent and under the control of that Party. Notification of such assistance shall be given as soon as possible to any adverse Party concerned. In no circumstances shall this activity be deemed to be an interference in the conflict. This activity should, however, be performed with due regard to the security interests of the Parties to the conflict concerned.
2. The Parties to the conflict receiving the assistance referred to in paragraph 1 and the High Contracting Parties granting it should facilitate international coordination of such civil defence actions when appropriate. In such cases the relevant international organizations are covered by the provisions of this Chapter.
3. In occupied territories, the Occupying Power may only exclude or restrict the activities of civilian civil defence organizations of neutral or other States not Parties to the conflict and of international coordinating organizations if it can ensure the

adequate performance of civil defence tasks from its own resources or those of the occupied territory.

Article 65 - Cessation of protection

1. The protection to which civilian civil defence organizations, their personnel, buildings, shelters and *matériel* are entitled shall not cease unless they commit or are used to commit, outside their proper tasks, acts harmful to the enemy. Protection may, however, cease only after a warning has been given setting, whenever appropriate, a reasonable time limit, and after such warning has remained unheeded.
2. The following shall not be considered as acts harmful to the enemy:
 - (a) that civil defence tasks are carried out under the direction or control of military authorities;
 - (b) that civilian civil defence personnel co-operate with military personnel in the performance of civil defence tasks, or that some military personnel are attached to civilian civil defence organizations;
 - (c) that the performance of civil defence tasks may incidentally benefit military victims, particularly those who are *hors de combat*.
3. It shall also not be considered as an act harmful to the enemy that civilian civil defence personnel bear light individual weapons for the purpose of maintaining order or for self-defence. However, in areas where land fighting is taking place or is likely to take place, the Parties to the conflict shall undertake the appropriate measures to limit these weapons to handguns, such as pistols or revolvers, in order to assist in distinguishing between civil defence personnel and combatants. Although civil defence personnel bear other light individual weapons in such areas, they shall nevertheless be respected and protected as soon as they have been recognised as such.
4. The formation of civilian civil defence organizations along military lines, and compulsory service in them, shall also not deprive them of the protection conferred by this Chapter.

Article 66 - Identification

1. Each Party to the conflict shall endeavour to ensure that its civil defence organizations, their personnel, buildings and *matériel*, are identifiable while they are exclusively devoted to the performance of civil defence tasks. Shelters provided for the civilian population should be similarly identifiable.
2. Each Party to the conflict shall also endeavour to adopt and implement methods and procedures which will make it possible to recognize civilian shelters as well as civil defence personnel, buildings and *matériel* on which the international distinctive sign of civil defence is displayed.
3. In occupied territories and in areas where fighting is taking place or is likely to take place, civilian civil defence personnel should be recognizable by the international distinctive sign of civil defence and by an identity card certifying their status.
4. The international distinctive sign of civil defence is an equilateral blue triangle on an orange ground when used for the protection of civil defence organizations, their personnel, buildings and *matériel* and for civilian shelters.

5. In addition to the distinctive sign, Parties to the conflict may agree upon the use of distinctive signals for civil defence identification purposes.
6. The application of the provisions of paragraphs 1 to 4 is governed by Chapter V of Annex I to this Protocol.
7. In time of peace, the sign described in paragraph 4 may, with the consent of the competent national authorities, be use for civil defence identification purposes.
8. The High Contracting Parties and the Parties to the conflict shall take the measures necessary to supervise the display of the international distinctive sign of civil defence and to prevent and repress any misuse thereof.
9. The identification of civil defence medical and religious personnel, medical units and medical transports is also governed by Article 18.

Article 67 - Members of the armed forces and military units assigned to civil defence organizations

1. Members of the armed forces and military units assigned to civil defence organizations shall be respected and protected, provided that:
 - (a) such personnel and such units are permanently assigned and exclusively devoted to the performance of any of the tasks mentioned in Article 61;
 - (b) if so assigned, such personnel do not perform any other military duties during the conflict;
 - (c) such personnel are clearly distinguishable from the other members of the armed forces by prominently displaying the international distinctive sign of civil defence, which shall be as large as appropriate, and such personnel are provided with the identity card referred to in Chapter V of Annex I to this Protocol certifying their status;
 - (d) such personnel and such units are equipped only with light individual weapons for the purpose of maintaining order or for self-defence. The provisions of Article 65, paragraph 3 shall also apply in this case;
 - (e) such personnel do not participate directly in hostilities, and do not commit, or are not used to commit, outside their civil defence tasks, acts harmful to the adverse Party;
 - (f) such personnel and such units perform their civil defence tasks only within the national territory of their Party.

The non-observance of the conditions stated in (e) above by any member of the armed forces who is bound by the conditions prescribed in (a) and (b) above is prohibited.

2. Military personnel serving within civil defence organizations shall, if they fall into the power of an adverse Party, be prisoners of war. In occupied territory they may, but only in the interest of the civilian population of that territory, be employed on civil defence tasks in so far as the need arises, provided however that, if such work is dangerous, they volunteer for such tasks.
3. The buildings and major items of equipment and transports of military units assigned to civil defence organizations shall be clearly marked with the

international distinctive sign of civil defence. This distinctive sign shall be as large as appropriate.

4. The *matériel* and buildings of military units permanently assigned to civil defence organizations and exclusively devoted to the performance of civil defence tasks shall, if they fall into the hands of an adverse Party, remain subject to the laws of war. They may not be diverted from their civil defence purpose so long as they are required for the performance of civil defence tasks, except in case of imperative military necessity, unless previous arrangements have been made for adequate provision for the needs of the civilian population.

Section II—Relief in Favour of the Civilian Population

Article 68 - Field of application

The provisions of this Section apply to the civilian population as defined in this Protocol and are supplementary to Articles 23, 55, 59, 60, 61 and 62 and other relevant provisions of the Fourth Convention.

Article 69 - Basic needs in occupied territories

1. In addition to the duties specified in Article 55 of the Fourth Convention concerning food and medical supplies, the Occupying Power shall, to the fullest extent of the means available to it and without any adverse distinction, also ensure the provision of clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population of the occupied territory and objects necessary for religious worship.
2. Relief actions for the benefit of the civilian population of occupied territories are governed by Articles 59, 60, 61, 62, 108, 109, 110 and 111, of the Fourth Convention, and by Article 71 of this Protocol, and shall be implemented without delay.

Article 70 - Relief actions

1. If the civilian population of any territory under the control of a Party to the conflict, other than occupied territory, is not adequately provided with the supplies mentioned in Article 69, relief actions which are humanitarian and impartial in character and conducted without any adverse distinction shall be undertaken, subject to the agreement of the Parties concerned in such relief actions. Offers of such relief shall not be regarded as interference in the armed conflict or as unfriendly acts. In the distribution of relief consignments, priority shall be given to those persons, such as children, expectant mothers, maternity cases and nursing mothers, who, under the Fourth Convention or under this Protocol, are to be accorded privileged treatment or special protection.
2. The Parties to the conflict and each High Contracting Party shall allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel provided in accordance with this Section, even if such assistance is destined for the civilian population of the adverse Party.
3. The Parties to the conflict and each High Contracting Party which allow the passage of relief consignments, equipment and personnel in accordance with paragraph 2:
 - (a) shall have the right to prescribe the technical arrangements, including search, under which such passage is permitted;

- (b) may make such permission conditional on the distribution of this assistance being made under the local supervision of a Protecting Power;
 - (c) shall, in no way whatsoever, divert relief consignments from the purposes for which they are intended nor delay their forwarding, except in cases of urgent necessity in the interest of the civilian population concerned.
4. The Parties to the conflict shall protect relief consignments and facilitate their rapid distribution.
 5. The Parties to the conflict and each High Contracting Party concerned shall encourage and facilitate effective international co-ordination of the relief actions referred to in paragraph 1.

Article 71 - Personnel participating in relief actions

1. Where necessary, relief personnel may form part of the assistance provided in any relief action, in particular for the transportation and distribution of relief consignments; the participation of such personnel shall be subject to the approval of the Party in whose territory they will carry out their duties.
2. Such personnel shall be respected and protected.
3. Each Party in receipt of relief consignments shall, to the fullest extent practicable, assist the relief personnel referred to in paragraph 1 in carrying out their relief mission. Only in case of imperative military necessity may the activities of the relief personnel be limited or their movements temporarily restricted.
4. Under no circumstances may relief personnel exceed the terms of their mission under this Protocol. In particular they shall take account of the security requirements of the Party in whose territory they are carrying out their duties. The mission of any of the personnel who do not respect these conditions may be terminated.

Section III—Treatment of Persons in the Power of A Party to the Conflict

Chapter I - Field of Application and Protection of Persons and Objects

Article 72 - Field of application

The provisions of this Section are additional to the rules concerning humanitarian protection of civilians and civilian objects in the power of a Party to the conflict contained in the Fourth Convention, particularly Parts I and III thereof, as well as to other applicable rules of international law relating to the protection of fundamental human rights during international armed conflict.

Article 73 - Refugees and stateless persons

Persons who, before the beginning of hostilities, were considered as stateless persons or refugees under the relevant international instruments accepted by the Parties concerned or under the national legislation of the State of refuge or State of residence shall be protected persons within the meaning of Parts I and III of the Fourth Convention, in all circumstances and without any adverse distinction.

Article 74 - Reunion of dispersed families

The High Contracting Parties and the Parties to the conflict shall facilitate in every possible way the reunion of families dispersed as a result of armed conflicts and shall encourage in particular the work of the humanitarian organizations engaged in this task in accordance with the provisions of the Conventions and of this Protocol and in conformity with their respective security regulations.

Article 75 - Fundamental guarantees

1. In so far as they are affected by a situation referred to in Article 1 of this Protocol, persons who are in the power of a Party to the conflict and who do not benefit from more favourable treatment under the Conventions or under this Protocol shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided by this Article without any adverse distinction based upon race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria. Each Party shall respect the person, honour, convictions and religious practices of all such persons.
2. The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:
 - (a) violence to the life, health, or physical or mental well-being of persons, in particular:
 - (i) murder;
 - (ii) torture of all kinds, whether physical or mental;
 - (iii) corporal punishment; and
 - (iv) mutilation;
 - (b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;
 - (c) the taking of hostages;
 - (d) collective punishments; and
 - (e) threats to commit any of the foregoing acts.
3. Any person arrested, detained or interned for actions related to the armed conflict shall be informed promptly, in a language he understands, of the reasons why these measures have been taken. Except in cases of arrest or detention for penal offences, such persons shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.
4. No sentence may be passed and no penalty may be executed on a person found guilty of a penal offence related to the armed conflict except pursuant to a conviction pronounced by an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure, which include the following:
 - (a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;

- (b) no one shall be convicted of an offence except on the basis of individual penal responsibility;
 - (c) no one shall be accused or convicted of a criminal offence on account of any act or omission which did not constitute a criminal offence under the national or international law to which he was subject at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;
 - (d) anyone charged with an offence is presumed innocent until proved guilty according to law;
 - (e) anyone charged with an offence shall have the right to be tried in his presence;
 - (f) no one shall be compelled to testify against himself or to confess guilt;
 - (g) anyone charged with an offence shall have the right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (h) no one shall be prosecuted or punished by the same Party for an offence in respect of which a final judgement acquitting or convicting that person has been previously pronounced under the same law and, judicial procedure;
 - (i) anyone prosecuted for an offence shall have the right to have the judgement pronounced publicly; and
 - (j) a convicted person shall be advised on conviction of his judicial and other remedies and of the time limits within which they may be exercised.
5. Women whose liberty has been restricted for reasons related to the armed conflict shall be held in quarters separated from men's quarters. They shall be under the immediate supervision of women. Nevertheless, in cases where families are detained or interned, they shall, whenever possible, be held in the same place and accommodated as family units.
6. Persons who are arrested, detained or interned for reasons relating to the armed conflict shall enjoy the protection provided by this Article until their final release, repatriation or re-establishment, even after the end of the armed conflict.
7. In order to avoid any doubt concerning the prosecution and trial of persons accused of war crimes or crimes against humanity, the following principles shall apply:
- (a) persons who are accused of such crimes should be submitted for the purpose of prosecution and trial in accordance with the applicable rules of international law; and
 - (b) any such persons who do not benefit from more favourable treatment under the Conventions or this Protocol shall be accorded the treatment provided by this Article, whether or not the crimes of which they are accused constitute grave breaches of the Conventions or of this Protocol.

8. No provision of this Article may be construed as limiting or infringing any other more favourable provision granting greater protection, under any applicable rules of international law, to persons covered by paragraph 1.

Chapter II - Measures in Favour of Women and Children

Article 76 - Protection of women

1. Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault.
2. Pregnant women and mothers having dependent infants who are arrested, detained or interned for reasons related to the armed conflict, shall have their cases considered with the utmost priority.
3. To the maximum extent feasible, the Parties to the conflict shall endeavour to avoid the pronouncement of the death penalty on pregnant women or mothers having dependent infants, for an offence related to the armed conflict. The death penalty for such offences shall not be executed on such women.

Article 77 - Protection of children

1. Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.
2. The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest.
3. If, in exceptional cases, despite the provisions of paragraph 2, children who have not attained the age of fifteen years take a direct part in hostilities and fall into the power of an adverse Party, they shall continue to benefit from the special protection accorded by this Article, whether or not they are prisoners of war.
4. If arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units as provided in Article 75, paragraph 5.
5. The death penalty for an offence related to the armed conflict shall not be executed on persons who had not attained the age of eighteen years at the time the offence was committed.

Article 78 - Evacuation of children

1. No Party to the conflict shall arrange for the evacuation of children, other than its own nationals, to a foreign country except for a temporary evacuation where compelling reasons of the health or medical treatment of the children or, except in occupied territory, their safety, so require. Where the parents or legal guardians can be found, their written consent to such evacuation is required. If these persons cannot be found, the written consent to such evacuation of the persons who by law or custom are primarily responsible for the care of the children is required. Any such evacuation shall be supervised by the Protecting Power in agreement with the Parties concerned, namely, the Party arranging for the evacuation, the

Party receiving the children and any Parties whose nationals are being evacuated. In each case, all Parties to the conflict shall take all feasible precautions to avoid endangering the evacuation.

2. Whenever an evacuation occurs pursuant to paragraph 1, each child's education, including his religious and moral education as his parents desire, shall be provided while he is away with the greatest possible continuity.
3. With a view to facilitating the return to their families and country of children evacuated pursuant to this Article, the authorities of the Party arranging for the evacuation and, as appropriate, the authorities of the receiving country shall establish for each child a card with photographs, which they shall send to the Central Tracing Agency of the International Committee of the Red Cross. Each card shall bear, whenever possible, and whenever it involves no risk of harm to the child, the following information:
 - (a) surname(s) of the child;
 - (b) the child's first name(s);
 - (c) the child's sex;
 - (d) the place and date of birth (or, if that date is not known, the approximate age);
 - (e) the father's full name;
 - (f) the mother's full name and her maiden name;
 - (g) the child's next-of-kin;
 - (h) the child's nationality;
 - (i) the child's native language, and any other languages he speaks;
 - (j) the address of the child's family;
 - (k) any identification number for the child;
 - (l) the child's state of health;
 - (m) the child's blood group;
 - (n) any distinguishing features;
 - (o) the date on which and the place where the child was found;
 - (p) the date on which and the place from which the child left the country;
 - (q) the child's religion, if any;
 - (r) the child's present address in the receiving country;
 - (s) should the child die before his return, the date, place and circumstances of death and place of interment.

Chapter III - Journalists

Article 79 - Measures for protection for journalists

1. Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of Article 50, paragraph 1.

2. They shall be protected as such under the Conventions and this Protocol, provided that they take no action adversely affecting their status as civilians, and without prejudice to the right of war correspondents accredited to the armed forces to the status provided for in Article 4A(4) of the Third Convention.
3. They may obtain an identity card similar to the model in Annex II of this Protocol. This card, which shall be issued by the government of the State of which the journalist is a national or in whose territory he resides or in which the news medium employing him is located, shall attest to his status as a journalist.

Part V

Execution of the Conventions and of this Protocol

Section 1—General Provisions

Article 80 - Measures for execution

1. The High Contracting Parties and the Parties to the conflict shall without delay take all necessary measures for the execution of their obligations under the Conventions and this Protocol.
2. The High Contracting Parties and the Parties to the conflict shall give orders and instructions to ensure observance of the Conventions and this Protocol, and shall supervise their execution.

Article 81 - Activities of the Red Cross and other humanitarian organizations

1. The Parties to the conflict shall grant to the International Committee of the Red Cross all facilities within their power so as to enable it to carry out the humanitarian functions assigned to it by the Conventions and this Protocol in order to ensure protection and assistance to the victims of conflicts; the International Committee of the Red Cross may also carry out any other humanitarian activities in favour of these victims, subject to the consent of the Parties to the conflict concerned.
2. The Parties to the conflict shall grant to their respective Red Cross (Red Crescent, Red Lion and Sun) organizations the facilities necessary for carrying out their humanitarian activities in favour of the victims of the conflict, in accordance with the provisions of the Conventions and this Protocol and the fundamental principles of the Red Cross as formulated by the International Conferences of the Red Cross.
3. The High Contracting Parties and the Parties to the conflict shall facilitate in every possible way the assistance with Red Cross (Red Crescent, Red Lion and Sun) organizations and the League of Red Cross Societies extend to the victims of conflicts in accordance with the provisions of the Conventions and this Protocol and with the fundamental principles of the Red Cross as formulated by the International Conferences of the Red Cross.
4. The High Contracting Parties and the Parties to the conflict shall, as far as possible, make facilities similar to those mentioned in paragraphs 2 and 3 available to the other humanitarian organizations referred to in the Conventions and this Protocol which are duly authorized by the respective Parties to the conflict and which perform their humanitarian activities in accordance with the provisions of the Conventions and this Protocol.

Article 82 - Legal advisers in armed forces

The High Contracting Parties at all times, and the Parties to the conflict in time of armed conflict, shall ensure that legal advisers are available, when necessary, to advise military commanders at the appropriate level on the application of the Conventions and this Protocol and on the appropriate instruction to be given to the armed forces on this subject.

Article 83 - Dissemination

1. The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate the Conventions and this Protocol as widely as possible in their respective countries and, in particular, to include the study thereof in their programmes of military instruction and to encourage the study thereof by the civilian population, so that those instruments may become known to the armed forces and to the civilian population.
2. Any military or civilian authorities who, in time of armed conflict, assume responsibilities in respect of the application of the Conventions and this Protocol shall be fully acquainted with the text thereof.

Article 84 - Rules of application

The High Contracting Parties shall communicate to one another, as soon as possible, through the depositary and, as appropriate, through the Protecting Powers, their official translations of this Protocol, as well as the laws and regulations which they may adopt to ensure its application.

*Section II—Repression of Breaches of the Conventions and of this Protocol***Article 85 - Repression of breaches of this Protocol**

1. The provisions of the Conventions relating to the repression of breaches and grave breaches, supplemented by this Section, shall apply to the repression of breaches and grave breaches of this Protocol.
2. Acts described as grave breaches in the Conventions are grave breaches of this Protocol if committed against persons in the power of an adverse Party protected by Articles 44, 45 and 73 of this Protocol, or against the wounded, sick and shipwrecked of the adverse Party who are protected by this Protocol, or against those medical or religious personnel, medical units or medical transports which are under the control of the adverse Party and are protected by this Protocol.
3. In addition to the grave breaches defined in Article 11, the following acts shall be regarded as grave breaches of this Protocol, when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health:
 - (a) making the civilian population or individual civilians the object of attack;
 - (b) launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2(a)(iii);
 - (c) launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2(a)(iii);

- (d) making non-defended localities and demilitarized zones the object of attack;
 - (e) making a person the object of attack in the knowledge that he is *hors de combat*;
 - (f) the perfidious use, in violation of Article 37, of the distinctive emblem of the red cross, red crescent or red lion and sun of other protective signs recognized by the Conventions or this Protocol.
4. In addition to the grave breaches defined in the preceding paragraphs and in the Conventions, the following shall be regarded as grave breaches of this Protocol, when committed wilfully and in violation of the Conventions or the Protocol:
- (a) the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention;
 - (b) unjustifiable delay in repatriation of prisoners of war or civilians;
 - (c) practices of *apartheid* and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;
 - (d) making the clearly-recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organization, the object of attack, causing as a result extensive destruction thereof, where there is no evidence of the violation by the adverse Party of Article 53, subparagraph (b), and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives;
 - (e) depriving a person protected by the Conventions or referred to in paragraph 2 of this Article of the rights of fair and regular trial.
5. Without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes.

Article 86 - Failure to act

1. The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol which result from a failure to act when under a duty to do so.
2. The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at that time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.

Article 87 - Duty of commanders

1. The High Contracting Parties and the Parties to the conflict shall require military commanders, with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to

suppress and to report to competent authorities breaches of the Conventions and of this Protocol.

2. In order to prevent and suppress breaches, High Contracting Parties and Parties to the conflict shall require that, commensurate with their level of responsibility, commanders ensure that members of the armed forces under their command are aware of their obligations under the Conventions and this Protocol.
3. The High Contracting Parties and Parties to the conflict shall require any commander who is aware that subordinates or other persons under his control are going to commit or have committed a breach of the Conventions or of this Protocol, to initiate such steps as necessary to prevent such violations of the Conventions or this Protocol, and, where appropriate, to initiate disciplinary or penal action against violators thereof.

Article 88 - Mutual assistance in criminal matters

1. The High Contracting Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of grave breaches of the Conventions or of this Protocol.
2. Subject to the rights and obligations established in the Conventions and in Article 85, paragraph 1, of this Protocol, and when circumstances permit, the High Contracting Parties shall co-operate in the matter of extradition. They shall give due consideration to the request of the State in whose territory the alleged offence has occurred.
3. The law of the High Contracting Party requested shall apply in all cases. The provisions of the preceding paragraphs shall not, however, affect the obligations arising from the provisions of any other treaty of a bilateral or multilateral nature which governs or will govern the whole or part of the subject of mutual assistance in criminal matters.

Article 89 - Co-operation

In situations of serious violations of the Conventions or of this Protocol, the High Contracting Parties undertake to act, jointly or individually, in cooperation with the United Nations and in conformity with the United Nations Charter.

Article 90 - International Fact-Finding Commission

1.
 - (a) An International Fact-Finding Commission (hereinafter referred to as **the Commission**) consisting of fifteen members of high moral standing and acknowledged impartiality shall be established.
 - (b) When not less than twenty High Contracting Parties have agreed to accept the competence of the Commission pursuant to paragraph 2, the depositary shall then, and at intervals of five years thereafter, convene a meeting of representatives of those High Contracting Parties for the purpose of electing the members of the Commission. At the meeting, the representatives shall elect the members of the Commission by secret ballot from a list of persons to which each of those High Contracting Parties may nominate one person.
 - (c) The members of the Commission shall serve in their personal capacity and shall hold office until the election of new members at the ensuing meeting.

- (d) At the election, the High Contracting Parties, shall ensure that the persons to be elected to the Commission individually possess the qualifications required and that, in the Commission as a whole, equitable geographical representation is assured.
- (e) In the case of a casual vacancy, the Commission itself shall fill the vacancy, having due regard to the provisions of the preceding subparagraphs.
- (f) The depositary shall make available to the Commission the necessary administrative facilities for the performance of its functions.

2.

- (a) The High Contracting Parties may at the time of signing, ratifying or acceding to the Protocol, or at any other subsequent time, declare that they recognize *ipso facto* and without special agreement, in relation to any other High Contracting Party accepting the same obligation, the competence of the Commission to enquire into allegations by such other Party, as authorized by this Article.
- (b) The declarations referred to above shall be deposited with the depositary, which shall transmit copies thereof to the High Contracting Parties.
- (c) The Commission shall be competent to:
 - (i) enquire into any facts alleged to be a grave breach as defined in the Conventions and this Protocol or other serious violation of the Conventions or of this Protocol;
 - (ii) facilitate, through its good offices, the restoration of an attitude of respect for the Conventions and this Protocol.
- (d) In other situations, the Commission shall institute an enquiry at the request of a Party to the conflict only with the consent of the other Party or Parties concerned.
- (e) Subject to the foregoing provisions of this paragraph, the provisions of Article 52 of the First Convention, Article 53 of the Second Convention, Article 132 of the Third Convention and Article 149 of the Fourth Convention shall continue to apply to any alleged violation of the Conventions and shall extend to any alleged violation of this Protocol.

3.

- (a) Unless otherwise agreed by the Parties concerned, all enquiries shall be undertaken by a Chamber consisting of seven members appointed as follows:-
 - (i) five members of the Commission, not nationals of any Party to the conflict, appointed by the President of the Commission on the basis of equitable representation of the geographical areas, after consultation with the Parties to the conflict;
 - (ii) two *ad hoc* members, not nationals of any Party to the conflict, one to be appointed by each side.
- (b) Upon receipt of the request for an enquiry, the President of the Commission shall specify an appropriate time limit for setting up a Chamber. If any *ad hoc* member has not been appointed within the time limit, the President shall

immediately appoint such additional member or members of the Commission as may be necessary to complete the membership of the Chamber.

4.
 - (a) The Chamber set up under paragraph 3 to undertake an enquiry shall invite the Parties to the conflict to assist it and to present evidence. The Chamber may also seek such other evidence as it deems appropriate and may carry out an investigation of the situation *in loco*.
 - (b) All evidence shall be fully disclosed to the Parties, which shall have the right to comment on it to the Commission.
 - (c) Each Party shall have the right to challenge such evidence.

5.
 - (a) The Commission shall submit to the Parties a report on the findings of fact of the Chamber, with such recommendations as it may deem appropriate.
 - (b) If the Chamber is unable to secure sufficient evidence for factual and impartial findings, the Commission shall state the reasons for that inability.
 - (c) The Commission shall not report its findings publicly, unless all the Parties to the conflict have requested the Commission to do so.

6. The Commission shall establish its own rules, including rules for the presidency of the Commission and the presidency of the Chamber. Those rules shall ensure that the functions of the President of the Commission are exercised at all times and that, in the case of an enquiry, they are exercised by a person who is not a national of a Party to the conflict.

7. The administrative expenses of the Commission shall be met by contributions from the High Contracting Parties which made declarations under paragraph 2, and by voluntary contributions. The Party or Parties to the conflict requesting an enquiry shall advance the necessary funds for expenses incurred by a Chamber and shall be reimbursed by the Party or Parties against which the allegations are made to the extent of fifty percent of the costs of the Chamber. Where there are counter-allegations before the Chamber each side shall advance fifty percent of the necessary funds.

Article 91 - Responsibility

A Party to the conflict which violates the provisions of the Conventions or of this Protocol shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

Part VI

Final Provisions

Article 92 - Signature

This Protocol shall be open for signature by the Parties to the Conventions six months after the signing of the Final Act and will remain open for a period of twelve months.

Article 93 - Ratification

This Protocol shall be ratified as soon as possible. The instruments of ratification shall be deposited with the Swiss Federal Council, depositary of the Conventions.

Article 94 - Accession

This Protocol shall be open for accession by an Party to the Conventions which has not signed it. The instruments of accession shall be deposited with the depositary.

Article 95 - Entry into force

1. This Protocol shall enter into force six months after two instruments of ratification or accession have been deposited.
2. For each Party to the Conventions thereafter ratifying or acceding to this Protocol, it shall enter into force six months after the deposit by such Party of its instrument of ratification or accession.

Article 96 - Treaty relations upon entry into force of this Protocol

1. When the Parties to the Conventions are also Parties to this Protocol, the Conventions shall apply as supplemented by this Protocol.
2. When one of the Parties to the conflict is not bound by this Protocol, the Parties to the Protocol shall remain bound by it in their mutual relations. They shall furthermore be bound by this Protocol in relation to each of the Parties which are not bound by it, if the latter accepts and applies the provisions thereof.
3. The authority representing a people engaged against a High Contracting Party in an armed conflict of the type referred to in Article 1, paragraph 4, may undertake to apply the Conventions and this Protocol in relation to that conflict by means of a unilateral declaration addressed to the depositary. Such declaration shall, upon its receipt by the depositary, have in relation to that conflict the following effects:
 - (a) the Conventions and this Protocol are brought into force for the said authority as a Party to the conflict with immediate effect;
 - (b) the said authority assumes the same rights and obligations as those which have been assumed by a High Contracting Party to the Conventions and this Protocol; and
 - (c) the Conventions and this Protocol are equally binding upon all parties to the conflict.

Article 97 - Amendment

1. Any High Contracting Party may propose amendments to this Protocol. The text of any proposed amendment shall be communicated to the depositary, which shall decide, after consultation with all the High Contracting Parties and the International Committee of the Red Cross, whether a conference should be convened to consider the proposed amendment.
2. The depositary shall invite to that conference all the High Contracting Parties as well as the Parties to the Conventions, whether or not they are signatories of this Protocol.

Article 98 - Revision of Annex I

1. Not later than four years after the entry into force of this Protocol and thereafter at intervals of not less than four years, the International Committee of the Red Cross shall consult the High Contracting Parties concerning Annex I to this Protocol and, if it considers it necessary, may propose a meeting of technical experts to review Annex I and to propose such amendments to it as may appear to be desirable. Unless, within six months of the communication of a proposal for such a meeting to the High Contracting Parties, one-third of them object, the International Committee of the Red Cross shall convene the meeting, inviting also observers of appropriate international organizations. Such a meeting shall also be convened by the International Committee of the Red Cross at any time at the request of one-third of the High Contracting Parties.
2. The depositary shall convene a conference of the High Contracting Parties and the Parties to the Conventions to consider amendments proposed by the meeting of technical experts if, after that meeting, the International Committee of the Red Cross or one-third of the High Contracting Parties so request.
3. Amendments to Annex I may be adopted at such a conference by a two-thirds majority of the High Contracting Parties present and voting.
4. The depositary shall communicate any amendment so adopted to the High Contracting Parties and to the Parties to the Conventions. The amendment shall be considered to have been accepted at the end of a period of one year after it has been so communicated, unless within that period a declaration of non-acceptance of the amendment has been communicated to the depositary by not less than one-third of the High Contracting Parties.
5. An amendment considered to have been accepted in accordance with paragraph 4 shall enter into force three months after its acceptance for all High Contracting Parties other than those which have made a declaration of non-acceptance in accordance with that paragraph. Any Party making such a declaration may at any time withdraw it and the amendment shall then enter into force for that Party three months thereafter.
6. The depositary shall notify the High Contracting Parties and the Parties to the Conventions of the entry into force of any amendment, of the Parties bound thereby, of the date of its entry into force in relation to each Party, of declarations of non-acceptance made in accordance with paragraph 4, and of withdrawals of such declarations.

Article 99 - Denunciation

1. In case a High Contracting Party should denounce this Protocol, the denunciation shall only take effect one year after receipt of the instrument of denunciation. If, however, on the expiry of that year the denouncing Party is engaged in one of the situations referred to in Article 1, the denunciation shall not take effect before the end of the armed conflict or occupation and not, in any case, before operations connected with the final release, repatriation or re-establishment of the persons protected by the Conventions or this Protocol have been terminated.
2. The denunciation shall be notified in writing to the depositary, which shall transmit it to all the High Contracting Parties.
3. The denunciation shall have effect only in respect of the denouncing Party.

4. Any denunciation under paragraph 1 shall not affect the obligations already incurred, by reason of the armed conflict, under this Protocol by such denouncing Party in respect of any act committed before this denunciation becomes effective.

Article 100 - Notifications

The depositary shall inform the High Contracting Parties as well as the Parties to the Conventions, whether or not they are signatories of this Protocol, of:

- (a) signatures affixed to this Protocol and the deposit of instruments of ratification and accession under Articles 93 and 94;
- (b) the date of entry into force of this Protocol under Article 95;
- (c) communications and declarations received under Articles 84, 90 and 97;
- (d) declarations received under Article 96, paragraph 3, which shall be communicated by the quickest methods; and
- (e) denunciations under Article 99.

Article 101 - Registration

1. After its entry into force, this Protocol shall be transmitted by the depositary to the Secretariat of the United Nations for registration and publication, in accordance with Article 102 of the Charter of the United Nations.
2. The depositary shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to this Protocol.

Article 102 - Authentic texts

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian, and Spanish texts are equally authentic, shall be deposited with the depositary, which shall transmit certified true copies thereof to all the Parties to the Conventions. [Here follow the Annexes.]

SCHEDULE 6**Protocol II****Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)****Preamble**

The High Contracting Parties,

Recalling that the humanitarian principles enshrined in Article 3 common to the Geneva Conventions of 12 August 1949, constitute the foundation of respect for the human person in cases of armed conflict not of an international character,

Recalling furthermore that international instruments relating to human rights offer a basic protection to the human person,

Emphasizing the need to ensure a better protection for the victims of those armed conflicts,

Recalling that, in cases not covered by the law in force, the human person remains under the protection of the principles of humanity and the dictates of the public conscience,

Have agreed on the following:

Part I**Scope of this Protocol****Article 1 - Material field of application**

1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.
2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

Article 2 - Personal field of application

1. This Protocol shall be applied without any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria (hereinafter referred to as **adverse distinction**) to all persons affected by an armed conflict as defined in Article 1.
2. At the end of the armed conflict, all the persons who have been deprived of their liberty or whose liberty has been restricted for reasons related to such conflict, as

well as those deprived of their liberty or whose liberty is restricted after the conflict for the same reasons, shall enjoy the protection of Articles 5 and 6 until the end of such deprivation or restriction of liberty.

Article 3 - Non-intervention

1. Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.
2. Nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs.

Part II

Humane Treatment

Article 4 - Fundamental guarantees

1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.
2. Without prejudice to the generality of the foregoing, the following acts against the person referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:
 - (a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
 - (b) collective punishments;
 - (c) taking of hostages;
 - (d) acts of terrorism;
 - (e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
 - (f) slavery and the slave trade in all their forms;
 - (g) pillage;
 - (h) threats to commit any of the foregoing acts.
3. Children shall be provided with the care and aid they require, and in particular:
 - (a) they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care;
 - (b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated;

- (c) children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities;
- (d) the special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of sub-paragraph (c) and are captured;
- (e) measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and wellbeing.

Article 5 - Persons whose liberty has been restricted

1. In addition to the provisions of Article 4, the following provisions shall be respected as a minimum with regard to persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained:
 - (a) the wounded and the sick shall be treated in accordance with Article 7;
 - (b) the persons referred to in this paragraph shall, to the same extent as the local civilian population, be provided with food and drinking water and be afforded safeguards as regards health and hygiene and protection against the rigours of the climate and the dangers of the armed conflict;
 - (c) they shall be allowed to receive individual or collective relief;
 - (d) they shall be allowed to practice their religion and, if requested and appropriate, to receive spiritual assistance from persons, such as chaplains, performing religious functions;
 - (e) they shall, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population.
2. Those who are responsible for the internment or detention of the persons referred to in paragraph 1 shall also, within the limits of their capabilities, respect the following provisions relating to such persons:
 - (a) except when men and women of a family are accommodated together, women shall be held in quarters separated from those of men and shall be under the immediate supervision of women;
 - (b) they shall be allowed to send and receive letters and cards, the number of which may be limited by competent authority if it deems necessary;
 - (c) places of internment and detention shall not be located close to the combat zone. The persons referred to in paragraph 1 shall be evacuated when the places where they are interned or detained become particularly exposed to danger arising out of the armed conflict, if their evacuation can be carried out under adequate conditions of safety;
 - (d) they shall have the benefit of medical examinations;
 - (e) their physical or mental health and integrity shall not be endangered by any unjustified act or omission. Accordingly, it is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the

state of health of the person concerned, and which is not consistent with the generally accepted medical standards applied to free persons under similar medical circumstances.

3. Persons who are not covered by paragraph 1 but whose liberty has been restricted in any way whatsoever for reasons related to the armed conflict shall be treated humanely in accordance with Article 4 and with paragraphs 1(a), (c) and (d), and 2(b) of this Article.
4. If it is decided to release persons deprived of their liberty, necessary measures to ensure their safety shall be taken by those so deciding.

Article 6 - Penal prosecutions

1. This Article applies to the prosecution and punishment of criminal offences related to the armed conflict.
2. No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality. In particular:
 - (a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;
 - (b) no one shall be convicted of an offence except on the basis of individual penal responsibility;
 - (c) no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under the law, at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;
 - (d) anyone charged with an offence is presumed innocent until proved guilty according to law;
 - (e) anyone charged with an offence shall have the right to be tried in his presence;
 - (f) no one shall be compelled to testify against himself or to confess guilt.
3. A convicted person shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.
4. The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence and shall not be carried out on pregnant women or mothers of young children.
5. At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.

Part III

Wounded, Sick and Shipwrecked

Article 7 - Protection and care

1. All the wounded, sick and shipwrecked, whether or not they have taken part in the armed conflict, shall be respected and protected.
2. In all circumstances they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones.

Article 8 - Search

Whenever circumstances permit, and particularly after an engagement, all possible measures shall be taken, without delay, to search for and collect the wounded, sick and shipwrecked, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead, prevent their being despoiled, and decently dispose of them.

Article 9 - Protection of medical and religious personnel

1. Medical and religious personnel shall be respected and protected and shall be granted all available help for the performance of their duties. They shall not be compelled to carry out tasks which are not compatible with their humanitarian mission.
2. In the performance of their duties medical personnel may not be required to give priority to any person except on medical grounds.

Article 10 - General protection of medical duties

1. Under no circumstances shall any person be punished for having carried out medical activities compatible with medical ethics, regardless of the person benefiting therefrom.
2. Persons engaged in medical activities shall neither be compelled to perform acts or to carry out work contrary to, nor be compelled to refrain from acts required by, the rules of medical ethics or other rules designed for the benefit of the wounded and sick, or this Protocol.
3. The professional obligations of persons engaged in medical activities regarding information which they may acquire concerning the wounded and sick under their care shall, subject to national law, be respected.
4. Subject to national law, no person engaged in medical activities may be penalized in any way for refusing or failing to give information concerning the wounded and sick who are, or who have been, under his care.

Article 11 - Protection of medical units and transports

1. Medical units and transports shall be respected and protected at all times and shall not be the object of attack.
2. The protection to which medical units and transports are entitled shall not cease unless they are used to commit hostile acts, outside their humanitarian function. Protection may, however, cease only after a warning has been given setting,

whenever appropriate, a reasonable time-limit, and after such warning has remained unheeded.

Article 12 - The distinctive emblem

Under the direction of the competent authority concerned, the distinctive emblem of the red cross, red crescent or red lion and sun on a white ground shall be displayed by medical and religious personnel and medical units, and on medical transports. It shall be respected in all circumstances. It shall not be used improperly.

Part IV

Civilian Population

Article 13 - Protection of the civilian population

1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.
2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.
3. Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities.

Article 14 - Protection of objects indispensable to the survival of the civilian population

Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.

Article 15 - Protection of works and installations containing dangerous forces

Works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population.

Article 16 - Protection of cultural objects and of places of worship

Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, it is prohibited to commit any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort.

Article 17 - Prohibition of forced movement of civilians

1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.
2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

Article 18 - Relief societies and relief actions

1. Relief societies located in the territory of the High Contracting Party, such as Red Cross (Red Crescent, Red Lion and Sun) organizations, may offer their services for the performance of their traditional functions in relation to the victims of the armed conflict. The civilian population may, even on its own initiative, offer to collect and care for the wounded, sick and shipwrecked.
2. If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned.

Part V

Final Provisions

Article 19 - Dissemination

This Protocol shall be disseminated as widely as possible.

Article 20 - Signature

This Protocol shall be open for signature by the Parties to the Conventions six months after the signing of the Final Act and will remain open for a period of twelve months.

Article 21 - Ratification

This Protocol shall be ratified as soon as possible. The instruments of ratification shall be deposited with the Swiss Federal Council, depositary of the Conventions.

Article 22 - Accession

This Protocol shall be open for accession by any Party to the Conventions which has not signed it. The instruments of accession shall be deposited with the depositary.

Article 23 - Entry into force

1. This Protocol shall enter into force six months after two instruments of ratification or accession have been deposited.
2. For each Party to the Conventions thereafter ratifying or acceding to this Protocol, it shall enter into force six months after the deposit by such Party of its instrument of ratification or accession.

Article 24 - Amendment

1. Any High Contracting Party may propose amendments to this Protocol. The text of any proposed amendment shall be communicated to the depositary which shall decide, after consultation with all the High Contracting Parties and the International Committee of the Red Cross, whether a conference should be convened to consider the proposed amendment.
2. The depositary shall invite to that conference all the High Contracting Parties as well as the Parties to the Conventions, whether or not they are signatories of this Protocol.

Article 25 - Denunciation

1. In case a High Contracting Party should denounce this Protocol, the denunciation shall only take effect six months after receipt of the instrument of denunciation. If, however, on the expiry of six months, the denouncing Party is engaged in the situation referred to in Article 1, the denunciation shall not take effect before the end of the armed conflict. Persons who have been deprived of liberty, or whose liberty has been restricted, for reasons related to the conflict shall nevertheless continue to benefit from the provisions of this Protocol until their final release.
2. The denunciation shall be notified in writing to the depositary, which shall transmit it to all the High Contracting Parties.

Article 26 - Notifications

The depositary shall inform the High Contracting Parties as well as the Parties to the Conventions, whether or not they are signatories of this Protocol, of:

- (a) signatures affixed to this Protocol and the deposit of instruments of ratification and accession under Articles 21 and 22;
- (b) the date of entry into force of this Protocol under Article 23; and
- (c) communications and declarations received under Article 24.

Article 27 - Registration

1. After its entry into force, this Protocol shall be transmitted by the depositary to the Secretariat of the United Nations for registration and publication, in accordance with Article 102 of the Charter of the United Nations.
2. The depositary shall also inform the Secretariat of the United Nations of all ratifications and accessions received by it with respect to this Protocol.

Article 28 - Authentic texts

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts, are equally authentic shall be deposited with the depositary, which shall transmit certified true copies thereof to all the Parties to the Conventions.

SECTION 2

NEW ZEALAND'S DECLARATIONS ON RATIFICATION OF THE ADDITIONAL PROTOCOLS

WHEREAS the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) was opened for signature at Berne on 12 December 1977;

AND WHEREAS the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Victims of Non-International Armed Conflicts (Protocol II) was opened for signature at Berne on 12 December 1977;

AND WHEREAS pursuant to Article 92 of Protocol I and Article 20 of Protocol II the Protocols were signed by New Zealand, subject to ratification, on 27 November 1978;

AND WHEREAS pursuant to Article 93 of Protocol I and Article 21 of Protocol II the Protocols are open for ratification by signatory states;

NOW THEREFORE the Government of New Zealand having considered the two Protocols, **HEREBY RATIFIES** the same and undertakes faithfully to observe all their provisions and to carry out the stipulations therein contained;

AND DECLARES that this ratification shall not extend to the Cook Islands, Niue and Tokelau;

AND FURTHER DECLARES as follows:

- 1 It is the understanding of the Government of New Zealand that in relation to Article 44 of Protocol I,³ the situation described in the second sentence of paragraph 3 can exist only in occupied territory or in armed conflicts covered by paragraph 4 of Article 1.⁴ The Government of New Zealand will interpret the word **deployment**⁵ in paragraph 3(b) of the Article as meaning any movement towards a place from which an attack is to be launched. It will interpret the words **visible to the adversary**⁶ in the same paragraph as including visible with the aid of any form of surveillance, electronic or otherwise, available to help keep a member of the armed forces of the adversary under observation.
- 2 In relation to Articles 51 to 58 inclusive, it is the understanding of the Government of New Zealand that military commanders and others responsible for planning,
- 3 This article defines the status of a combatant in an armed conflict and, in order to protect the civilian population, requires combatants to distinguish themselves from civilians while engaged in an attack or in a military operation preparatory to an attack. In order to accommodate the problem of resistance movements in occupied territories and liberation movements engaged in armed conflict against colonial powers (considered to be international armed conflicts under Article 1(4)), the above requirements are relaxed in certain circumstances.
- 4 Since the article does not specifically define situations where this less stringent standard is applicable and in order to ensure that combatants resort to this practice in as few cases as possible, New Zealand has declared that the situation envisaged in the article can exist only in occupied territory or in armed conflicts covered by Article 1(4).
- 5 It was necessary for New Zealand to express its understanding of the term **deployment** since it was not defined in the Protocol due to differences of interpretation of the term at the diplomatic conference which adopted the Protocols. (Other interpretations were that the term included only a final movement to a firing position or merely a split second before an attack.) New Zealand's interpretation, shared by a number of other States, extends the time during which arms must be carried openly as far as possible and thereby offers the greatest protection to civilians.
- 6 It was necessary for New Zealand to express its understanding of this phrase as the meaning of the word **visible** was subject to disagreement at the diplomatic conference and consequently left undefined. New Zealand's interpretation, shared by a number of other delegations at the conferences, offers the greatest protection to civilians since it extends as far as possible the range from which combatants must be seen to be carrying arms openly.

deciding upon, or executing attacks necessarily have to reach decisions on the basis of their assessment of the information from all sources which is reasonably available to them at the relevant time.

- 3 In relation to paragraph 5(b) of Article 51 and to paragraph 2(a)(iii) of Article 57, the Government of New Zealand understands that the military advantage anticipated from an attack is intended to refer to the advantage anticipated from the attack considered as a whole and not only from isolated or particular parts of that attack and that the term **military advantage** involves a variety of considerations, including the security of attacking forces. It is further the understanding of the Government of New Zealand that the term **concrete and direct military advantage anticipated**, used in Articles 51 and 57, means a *bona fide* expectation that the attack will make a relevant and proportional contribution to the objective of the military attack involved.
- 4 In relation to Article 52, it is the understanding of the Government of New Zealand that a specific area of land may be a military objective if, because of its location or other reasons specified in the Article, its total or partial destruction, capture or neutralisation in the circumstances ruling at the time offers a definite military advantage. The Government of New Zealand further understands that the first sentence of paragraph 2 of the Article is not intended to, and nor does it deal with, the question of incidental or collateral damage resulting from an attack directed against a military objective.
- 5 The Government of New Zealand declares that it recognises *ipso facto* and without special agreement, in relation to any other High Contracting Party accepting the same obligation, the competence of the International Fact-Finding Commission to enquire, as authorised by Article 90, into allegations by such other Party that it has been the victim of violations amounting to a grave breach or other serious violation of the Geneva Conventions of 1949 or of Protocol I.

IN WITNESS WHEREOF I have signed this Instrument of Ratification and have affixed hereto the seal of the Minister of Foreign Affairs of New Zealand .

DATED at Wellington this 23rd day of December 1987.

Minister of Foreign Affairs

SECTION 3**RATIFICATIONS OF AND ACCESSIONS TO THE GENEVA CONVENTIONS AND THE ADDITIONAL PROTOCOLS**

1. A State may express its consent to be bound by a treaty by:
 - a. Signing and then ratifying it;
 - b. Acceding to it (if the State did not sign the treaty); or
 - c. Making a declaration of succession (in the case of a newly independent State which was previously bound by the treaty as a territory of another State).
2. Once a State has taken one of three steps mentioned above, it becomes a State Party to the treaty.
3. The updated list of States Parties to the Geneva Conventions and the Additional Protocols is available from the website of the International Committee of the Red Cross at <http://www.icrc.org>. If Internet access is not available, the local legal officer should be consulted for advice.

OATHS AND DECLARATIONS ACT 1957

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SECTION 1**OATHS AND DECLARATIONS ACT 1957**

Public Act 1957 No 88

Date of assent 24 October 1957

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An Act to consolidate and amend certain enactments of the Parliament of New Zealand relating to oaths, affirmations, and declarations

1 Short Title and commencement

- (1) This Act may be cited as the Oaths and Declarations Act 1957.
- (2) This Act shall come into force on the 1st day of April 1958.

2 Interpretation

In this Act, unless the context otherwise requires,—

Commonwealth means the British Commonwealth of Nations; and includes every territory for whose international relations the Government of any Commonwealth country is responsible; and also includes the Republic of Ireland as if that country were a member of the British Commonwealth of Nations

Commonwealth representative means any Ambassador, High Commissioner, Commissioner, Minister, Counsellor, Chargé d’Affaires, Head of Mission, Consular Officer, Proconsul, Trade Commissioner, or Tourist Commissioner of a Commonwealth country (including New Zealand); and includes any person lawfully acting for any such officer; and also includes any diplomatic secretary on the staff of any such Ambassador, High Commissioner, Commissioner, Minister, Counsellor, Chargé d’Affaires, or Head of Mission

Oath means an oath administered or taken for any purpose, whether in judicial proceedings or otherwise

Person acting judicially means any person having in New Zealand by law or by consent of parties authority to hear, receive, and examine evidence

Proceeding includes any action, trial, inquiry, cause, or matter, whether civil or criminal or otherwise, in any Court or before any person acting judicially.

PART 1

Oaths, affirmations, and declarations in general

Oaths and affirmations

3 Form in which oath may be administered

An oath may be administered and taken in any of the manners following:

- (a) The person taking the oath may, while holding in his hand a copy of the Bible, New Testament, or Old Testament, repeat the words of the oath as prescribed or allowed by law; or
- (b) The person administering the oath may repeat the appropriate form of adjuration commencing with the words “You swear by Almighty God that,” or words to the like effect, and concluding with the words of the oath as prescribed or allowed by law, and the person taking the oath shall thereupon, while holding in his hand a copy of the Bible, New Testament, or Old Testament, indicate his assent to the oath so administered by uttering the words “I do”, or other words to the like effect; or
- (c) The oath may be administered and taken in any manner which the person taking it may declare to be binding on him.

4 Right to make affirmation instead of oath

- (1) Every person shall be entitled as of right to make his affirmation, instead of taking an oath, in all places and for all purposes where an oath is required by law, and every such affirmation shall be of the same force and effect as an oath.
- (2) Every such affirmation shall be as follows: “I, A B, solemnly, sincerely, and truly declare and affirm,” and shall then proceed with the words of the oath prescribed by law, omitting any words of imprecation or calling to witness.
- (3) Every affirmation in writing shall begin, “I, AB, of , solemnly and sincerely affirm”; and the form instead of jurat shall be, “Affirmed at this day of 19 before me.”

4A Oaths and affirmations in Maori

- (1) If a te reo Maori equivalent of any of the oaths or affirmations set out in this Act is prescribed by regulations made under section 30A, using that te reo Maori equivalent has the same effect as using the oath or affirmation set out in this Act.
- (2) This section applies despite anything in section 4 or in any of sections 16 to 21.

5 Oath not affected by absence of religious belief

Where an oath has been duly administered and taken, the fact that the person to whom the same was administered had at the time of taking the oath no religious belief shall not for any purpose affect the validity of the oath.

6 Unlawful administration of oaths

- (1) No person shall administer, or cause or allow to be administered, or cause or allow to be received, any oath, affidavit, or affirmation relating to any matter or thing in respect of which that person has not jurisdiction or cognisance by some law in force for the time being.

- (2) Every person who wilfully acts in contravention of subsection (1) of this section commits an offence, and is liable on summary conviction to a fine not exceeding \$100.
- (3) Nothing in this section shall extend to any oath, affidavit, or affirmation before any Justice of the Peace or Community Magistrate relating to the preservation of the peace or the prosecution, trial, or punishment of offences, or relating to any proceedings before the House of Representatives or before any Committee thereof, or to any oath, affidavit, or affirmation for the purpose of legal proceedings in any other country or required by the laws of any other country to give validity to any instrument in writing designed to be used in that country.

Declarations

7 Persons may make declarations

Any person may voluntarily make any declaration in the manner provided in section 9 or section 11 of this Act.

8 Manner of making declarations

Where by any law in force in New Zealand (whether made before or after the commencement of this Act) any person is authorised or required to make a declaration or a statutory declaration, that declaration shall be made and subscribed in the manner prescribed by section 9 or section 11 of this Act, as the case may require.

9 Declarations made in New Zealand

- (1) A declaration made in New Zealand must be in the form in Schedule 1, and must be made before—
 - (a) a person enrolled as a barrister and solicitor of the High Court; or
 - (b) a Justice of the Peace; or
 - (c) a notary public; or
 - (ca) the Registrar or a Deputy Registrar of the Supreme Court; or
 - (d) the Registrar or a Deputy Registrar of the Court of Appeal; or
 - (e) a Registrar or Deputy Registrar of the High Court or a District Court; or
 - (f) some other person authorised by law to administer an oath; or
 - (g) a member of Parliament; or
 - (h) a person who—
 - (i) is a fellow of the body (incorporated under the Incorporated Societies Act 1908) that, immediately before the commencement of the Oaths and Declarations Amendment Act 2001, was called the New Zealand Institute of Legal Executives; and
 - (ii) is acting in the employment of the holder of a practising certificate as a barrister and solicitor of the High Court; or

- (i) an employee of the New Zealand Transport Agency, authorised for that purpose (by name, or as the holder for the time being of a specified office or title) by the Minister of Justice by notice in the Gazette; or
 - (ia) an employee of Public Trust constituted under the Public Trust Act 2001, authorised for that purpose (by name, or as the holder for the time being of a specified office or title) by the Minister of Justice by notice in the Gazette; or.
 - (j) an officer in the service of the Crown, or of a local authority within the meaning of the Local Government Act 2002, authorised for that purpose (by name, or as the holder for the time being of a specified office or title) by the Minister of Justice by notice in the Gazette
- (2) Despite subsection (1), if a te reo Maori equivalent of the declaration prescribed in Schedule 1 is prescribed by regulations made under section 30A, using that te reo Maori equivalent has the same effect as using the declaration prescribed in Schedule 1.

Oaths, affirmations, and declarations made outside New Zealand

10 Commonwealth representatives may administer oaths

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

Affidavit includes any affirmation, acknowledgment, examination, or attestation or protestation of honour

Oath includes an affirmation

Swear includes affirm and protest.

- (2) Every Commonwealth representative exercising his functions in any place outside New Zealand may, in that place, administer any oath and take any affidavit, and also do any notarial act which any notary public can do within New Zealand; and every oath, affidavit, and notarial act administered, sworn, or done by or before any such representative shall be as effectual as if duly administered, sworn, or done by or before any lawful authority in New Zealand.
- (3) Any document purporting to have affixed, impressed, or subscribed thereon or thereto the seal or signature of any person authorised by this section to administer an oath in testimony of any oath, affidavit, or act being administered, taken, or done by or before him shall be admitted in evidence without proof of the seal or signature being the seal or signature of that person, or of the official character of that person.

11 Declarations made outside New Zealand

- (1) A declaration made in a Commonwealth country other than New Zealand shall be made before a Judge, a Commissioner of Oaths, a notary public, a Justice of the Peace, or any person authorised by the law of that country to administer an oath there for the purpose of a judicial proceeding, or before a Commonwealth representative, or before a solicitor of the High Court of New Zealand.
- (2) A declaration made in a country other than a Commonwealth country shall be made before a Commonwealth representative, or before a Judge, or before a notary public, or before a solicitor of the High Court of New Zealand.

- (3) Any document purporting to have affixed, impressed, or subscribed thereon or thereto the seal or signature of any person authorised by this section to take a declaration shall be admitted in evidence without proof of the seal or signature being the seal or signature of that person or of the official or other character of that person.

12 Oaths and declarations of members of the Armed Forces outside New Zealand

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

Affidavit includes an affirmation and a statutory or other declaration

Allied force includes any force which is cooperating with any New Zealand armed force; and also includes any United Nations force

Member, in relation to any naval, military, or air force, includes any person who by the law of the country to which the force belongs is subject to the naval, military, or air force law thereof

Oath includes an affirmation and a declaration; and also includes, as well as evidentiary oaths, any promissory oath, including, in particular, any oath of allegiance (whether required for the purposes of the Citizenship Act 1977 or of any other enactment or for any other purpose)

Swear includes affirm and declare.

- (2) Any officer of any of the armed forces of any Commonwealth country or of any allied force who holds a rank not below that of Lieutenant-Commander, Major, or Squadron Leader, or an equivalent rank, or who holds an appointment as a Legal Staff Officer may, while serving outside New Zealand, administer oaths to, and take affidavits from, any member of any of the said forces, and every oath or affidavit administered by or sworn before any such officer as aforesaid shall be as effectual as if duly administered by or sworn before any lawful authority in New Zealand:

Provided that an officer of an allied force shall not be entitled under this subsection to administer any promissory oath.

- (3) An officer who administers an oath or takes an affidavit by virtue of the powers conferred by this section shall state, in the jurat or attestation to the document in respect of which the power is being exercised or after his signature, the date on which the oath or affidavit is administered or sworn, and the name and rank of the officer, and (if his rank is below that of Lieutenant-Commander, Major, or Squadron Leader, or an equivalent rank) the fact that he is a Legal Staff Officer; and it shall not be necessary to state the place where the oath or affidavit is administered or sworn.
- (4) Any document purporting to have subscribed thereto the signature of any officer in testimony of any oath or affidavit being administered by or sworn before him (whether before or after the commencement of this Act) shall be admitted in evidence without proof of the rank or appointment of the officer and without proof that the signature is the signature of the officer or that the officer was, on the date on which the oath or affidavit was administered or sworn, serving outside New Zealand.

PART 2

Oaths and affirmations in judicial proceedings

13 Witnesses under 12 may make declarations

- (1) A witness under the age of 12 years who is required, under section 77(2) of the Evidence Act 2006, to make a promise to tell the truth, must, before being examined make the promise:

“I promise to speak the truth, the whole truth, and nothing but the truth”

- (1A) That promise has the same force and effect as if the witness had taken an oath.

- (2) Despite subsection (1), if a te reo Maori equivalent of the declaration set out in subsection (1) is prescribed by regulations made under section 30A, using that te reo Maori equivalent has the same effect as using the declaration set out in subsection (1).

14 Who may administer oaths

All Courts and all persons acting judicially are hereby empowered to administer an oath to all such witnesses as are lawfully called or voluntarily come before them respectively or to take the affirmation of any such witness instead of an oath.

15 Mode of administration if not objected to

In all judicial proceedings the person administering the oath shall, unless the person about to take the oath voluntarily objects thereto, administer the oath in the form and manner set out in paragraph (b) of section 3 of this Act, but no oath shall be deemed illegal or invalid by reason of any breach of the provisions of this section.

16 Witness may be sworn in Scots form

Every witness in any civil or criminal proceeding, or in any inquiry or examination before any Court or person acting judicially, shall be entitled, if he so wishes, instead of taking the oath usually administered to witnesses, to have an oath administered to him in the form following, that is to say: The person administering the oath shall hold up his hand, and say to the witness, “Witness, hold up your hand, and repeat after me,—”

“I swear by Almighty God, as I shall answer to God at the great day of judgment, that I will speak the truth, the whole truth, and nothing but the truth.”

PART 3

Promissory oaths and affirmations

17 Oath of Allegiance

The oath in this Act referred to as the Oath of Allegiance shall be in the form following, that is to say:

I, , swear that I will be faithful and bear true allegiance to Her [or His] Majesty [*Specify the name of the reigning Sovereign, as thus: Queen Elizabeth the Second*], Her [or His] heirs and successors, according to law. So help me God.

18 Judicial Oath

The oath in this Act referred to as the Judicial Oath shall be in the form following, that is to say:

I, , swear that I will well and truly serve Her [or His] Majesty [*specify as above*], Her [or His] heirs and successors, according to law, in the office of ; and I will do right to all manner of people after the laws and usages of New Zealand without fear or favour, affection or ill will. So help me God.

19 Executive Councillor's Oath

(1) The oath in this Act referred to as the Executive Councillor's Oath shall be in the form following, that is to say:

I, , being chosen and admitted of the Executive Council of New Zealand, swear that I will to the best of my judgment, at all times, when thereto required, freely give my counsel and advice to the Governor-General for the time being, for the good management of the affairs of New Zealand. That I will not directly nor indirectly reveal such matters as shall be debated in Council and committed to my secrecy, but that I will in all things be a true and faithful Councillor. So help me God.

20 Parliamentary Undersecretary's Oath

The oath in this Act referred to as the Parliamentary Undersecretary's Oath shall be in the form following, that is to say:

I, , swear that I will well and truly serve Her [or His] Majesty [*Specify as above*], Her [or His] heirs and successors, according to law, in the office of Parliamentary Undersecretary. So help me God.

21 Official Oath

The oath in this Act referred to as the Official Oath shall be in the form following, that is to say:

I, , swear that I will well and truly serve Her [or His] Majesty [*Specify as above*], Her [or His] heirs and successors, according to law, in the office of So help me God.

*Persons to make and administer oaths***22 By whom Oath of Allegiance and Judicial Oath to be taken**

- (1) The Oath of Allegiance and the Judicial Oath shall be taken by each of the officers named in Schedule 2 to this Act as soon as may be after his acceptance of office.
- (2) The oaths to be taken under this section shall be administered by the following persons in such manner as the person administering the oath sees fit to adopt:
 - (a) In the case of the Chief Justice, the Judges of the High Court, the Masters of the High Court, the Judges of the Arbitration Court,, by a Judge of the High Court:
 - (aa) in the case of a Judge of the Employment Court, by a Judge of the High Court or a Judge of the Employment Court:
 - (aaa) in the case of a Judge of the Court Martial, by the Judge Advocate General or a Judge of the High Court:
 - (b) In the case of a Judge of the Maori Land Court, by a Judge of the High Court or a Judge of the Maori Land Court:
 - (c) In the case of any other officer referred to in Schedule 2, by a Judge of the High Court or a District Court Judge.

23 By whom Oath of Allegiance and Executive Councillor's Oath to be taken

- (1) The Oath of Allegiance and the Executive Councillor's Oath shall be taken by every person appointed to the Executive Council of New Zealand as soon as may be after his acceptance of office.
- (2) The oaths to be taken under this section shall be administered by the Clerk of the Executive Council, or officer for the time being acting as Clerk of the Executive Council, in the presence of the Governor-General, or otherwise as the Governor-General directs, at a meeting of the Executive Council.

24 By whom Parliamentary Undersecretary's Oath to be taken

- (1) The Parliamentary Undersecretary's Oath shall be taken by every person appointed to the office of Parliamentary Undersecretary as soon as may be after his acceptance of office.
- (2) The Parliamentary Undersecretary's Oath shall be administered by a member of the Executive Council or the Clerk of the Executive Council.

25 *Repealed**General provisions***26 Effect of neglecting to take oath**

- (1) If any officer mentioned in this Act or in Schedule 2 or Schedule 3 to this Act declines or neglects, when any oath required to be taken by him under this Act is duly tendered, to take that oath, he shall if he has already entered on his office vacate the same, and if he has not entered on the same be disqualified from entering on the same; but no person shall be compelled in respect of the same appointment to the same office to take any oath more than once.

- (2) Where any person who is a Justice of the Peace by virtue of his holding any office and has taken the Oath of Allegiance and the Judicial Oath is reelected to that office at the next succeeding election, it shall not be necessary for him to take those oaths on any such reelection.

27 Oath of Allegiance not to be taken except under this Act and other specified Acts

No person shall be required or authorised to take the Oath of Allegiance, or any oath substituted for that oath, or to make any affirmation or declaration to the same effect as that oath, other than the persons required to take that oath by this Act or the Acts mentioned in Schedule 4 to this Act.

28 Declarations instead of oaths in certain cases

- (1) Where in any case not provided for by this Act or included within the savings provisions in section 29 of this Act any person would by virtue of any law now in force be required to take any oath on or as a condition of his accepting any employment or office, or being admitted to any rights or privileges, a declaration shall be substituted for that oath in such form as the person who would have administered the oath thinks fit, but so that the declaration shall be to the like effect in all respects as the oath for which it is substituted.
- (2) The making of any such declaration shall in all respects have the same effect as the taking of the oath for which the same is substituted would have had if this Act had not been passed.
- (3) If any person required by this Act to make a declaration instead of an oath declines or neglects to make that declaration, he shall be subject to the same penalties and disabilities (if any) as he would have been subject to for declining or neglecting to take the oath for which the declaration provided by this Act is substituted.

29 Saving as to certain oaths

Nothing in this Part of this Act shall affect—

- (a) Any oath required or authorised to be taken by the Governor-General by any letters patent or by any other authority:
- (b) Any oath required to be taken under any of the enactments specified in Schedule 4 to this Act:
- (c) Any oath required or authorised by any law in force in New Zealand for the purpose of attesting any fact or verifying any account or document:
- (d) Any oath required to be taken by any juror, witness, or other person in pursuance of any law, rule, usage, or custom as preliminary to or in the course of any civil, criminal, naval, military, air force, or other trial, inquest, or proceedings of a judicial nature, including any arbitration or as preliminary to or in the course of any proceedings before a Committee of the House of Representatives, or before any Commission of Inquiry or Commissioner or other special tribunal appointed by the Governor-General or the Governor-General in Council.

30 Saving as to persons already holding offices

No person appointed to or holding any office or place or admitted to any rights or privileges before the commencement of this Act, who has taken the oath (if any) which under the law previously in force he was required to take, shall be required by virtue of this Act to take any oath or make any declaration in respect of that appointment, office, place, or admission.

30A Regulations

The Governor-General may, by Order in Council, make regulations prescribing to reo Maori equivalents for any or all of the following:

- (a) the affirmation set out in section 4(2):
- (b) the affirmation set out in section 4(3):
- (c) the declaration set out in section 13(1):
- (d) the oath set out in section 16:
- (e) the oath set out in section 17:
- (f) the oath set out in section 18:
- (g) the oath set out in section 19:
- (h) the oath set out in section 20:
- (i) the oath set out in section 21:
- (j) the declaration prescribed in Schedule 1.

PART 4**Repeals****31 Certain United Kingdom Acts to cease to have effect as part of the law of New Zealand**

- (1) As from the commencement of this Act the Acts of the Parliament of England or of the United Kingdom specified in Schedule 5 to this Act shall cease to have effect as part of the law of New Zealand.
- (2) It is hereby declared that the provisions of sections 20 and 21 of the Acts Interpretation Act 1924 shall apply with respect to the Acts specified in Schedule 5 to this Act as if the lastmentioned Acts were Acts of the Parliament of New Zealand.
- (3) Nothing in this Act shall be deemed to affect the validity of any declaration duly made out of New Zealand before the commencement of this Act in the manner prescribed by the Act of the Parliament of the United Kingdom intituled the Statutory Declarations Act 1835, and every such declaration which, if this Act had not been passed, would be received in evidence in any judicial proceedings shall be received in evidence in those proceedings as if this Act had not been passed.

32 Repeals and savings

- (1) The enactments specified in Schedule 6 to this Act are hereby repealed.
- (2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of any provision by this Act shall not affect any document made or any thing whatsoever done under the provision so repealed or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done.

SCHEDULE 1

Section 9

Form of declaration

I, AB, of [*Insert place of abode and occupation*], solemnly and sincerely declare that [*insert facts*].

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Declared at this day of 19

JS, Justice of the Peace.

[*Or other person authorised to take a statutory declaration.*]

SCHEDULE 2**Persons required to take the Oath of Allegiance and the Judicial Oath**

- The Chief Justice
- The Judges of the High Court
- The Judges of the Court Martial
- The appointed Judges of the Court Martial Appeal Court (other than retired High Court Judges)
- The Judges of the Employment Court
- The Judge of the Compensation Court
- District Court Judges
- The Judges of the Maori Land Court
- Masters of the High Court

- Justices of the Peace
- Community Magistrates
- Coroners
- Sheriffs
- Referees of the Disputes Tribunals established under the Disputes Tribunals Act 1988

SCHEDULE 3

Repealed

SCHEDULE 4

Sections 27, 28

Other Acts requiring an Oath of Allegiance

- 1964 No 135—The Education Act 1964
- 1977 No 61—The Citizenship Act 1977
- 1982 No 123—The Law Practitioners Act 1982
- 1958 No 109—The Police Act 1958, reprinted 1990, RS Vol 26, p 669.
- 1990 No 28—The Defence Act 1990
- 1986 No 114—The Constitution Act 1986

SCHEDULE 5

Omitted from this manual

SCHEDULE 6

Omitted from this manual

SECTION 2

OFFICERS AUTHORISED TO TAKE STATUTORY DECLARATIONS

The following officers were authorised to take statutory declarations, pursuant to section 9 of the Oaths and Declarations Act 1957, by the Minister of Justice in the *New Zealand Gazette*, on 9 February 2017 at notice number 2017-go452.

Headquarters New Zealand Defence Force

Chief of Staff

New Zealand Defence Force Military Police

Commanding Officer

Joint Operational Health Group

Commanding Officer

Headquarters Joint Forces New Zealand

Chief of Staff (J01)

JS01 Director, Coordination (J03)

JS02 Deputy Director, Coordination (J031)

JS03 Security (J032)

Commanding Officer, New Zealand Defence Support Unit, South East Asia

ROYAL NEW ZEALAND NAVY

HMNZ Ships

Commanding Officer, HMNZS *Te Mana*

Commanding Officer, HMNZS *Te Kaha*

Commanding Officer, HMNZS *Canterbury*

Commanding Officer, HMNZS *Endeavour*

Commanding Officer, HMNZS *Wellington*

Commanding Officer, HMNZS *Otago*

Commanding Officer, HMNZS *Manawanui*

Commanding Officer, HMNZS *Pukaki*

Commanding Officer, HMNZS *Rotoiti*

Commanding Officer, HMNZS *Taupo*

Commanding Officer, HMNZS *Hawea*

Executive Officer, HMNZS *Te Mana*

Executive Officer, HMNZS *Te Kaha*

Executive Officer, HMNZS *Canterbury*

Executive Officer, HMNZS *Endeavour*

Executive Officer, HMNZS *Wellington*

Executive Officer, HMNZS *Otago*

Executive Officer, HMNZS *Manawanui*

Naval Staff, Wellington

Chief of Navy

Deputy Chief of Navy

Naval Support Command, Auckland

Base Commander and Commanding Officer, HMNZS *Philomel*

Shore Establishments

Commanding Officer, HMNZS *Wakefield*
 Commanding Officer, HMNZS *Ngapona*
 Commanding Officer, HMNZS *Olphert*
 Commanding Officer, HMNZS *Pegasus*
 Commanding Officer, HMNZS *Toroa*
 Commanding Officer, Littoral Warfare Unit

NEW ZEALAND ARMY**Army General Staff, Wellington**

Chief of Army
 Deputy Chief of Army

Headquarters 1 (New Zealand) Brigade

Chief of Staff

Southern Region Support Centre

Officer Commanding SRSC

Headquarters Training and Doctrine Group

Chief of Staff

Wellington Regional Support Centre

Officer Commanding WRSC

2nd Combat Service Support Battalion

Commanding Officer
 Adjutant

3rd Combat Service Support Battalion

Commanding Officer
 Adjutant

1st Battalion, Royal New Zealand Infantry Regiment

Commanding Officer
 Adjutant

2nd/1st Battalion, Royal New Zealand Infantry Regiment

Commanding Officer
 Adjutant

2nd/4th Battalion, Royal New Zealand Infantry Regiment

Executive Officer

3rd/6th Battalion, Royal New Zealand Infantry Regiment

Executive Officer

5th/7th Battalion, Royal New Zealand Infantry Regiment

Executive Officer

2nd Engineer Regiment

Commanding Office
Adjutant

1st New Zealand Military Intelligence Company

Office Commanding

1st New Zealand Special Air Service Regiment

Commanding Officer
Adjutant

ROYAL NEW ZEALAND AIR FORCE**Air Staff**

Chief of Air Force
Deputy Chief of Air Force
Chief of Staff Training and Support

RNZAF Base Auckland

Base Commander

RNZAF Base Ohakea

Base Commander

RNZAF Base Woodbourne

Base Commander

RNZAF Museum

Director RNZAF Museum

SECTION 3

GUIDANCE NOTES FOR OFFICERS BEFORE WHOM DOCUMENTS ARE EXECUTED OR DECLARATIONS MADE

Introduction

1. Officers may from time to time be approached by members of the Armed Forces to witness documents of one sort or another. Their ability to do so, the form the document must take and the procedure to be followed will all vary according to the type of document, the appointment held by the officer, and whether the document is executed (witnessed) inside or outside New Zealand.

Declarations Made in New Zealand

Persons authorised to take statutory declarations

2. All legal officers (who are admitted as barristers and solicitors of the High Court) are authorised to take statutory declarations, as are justices of the peace and other persons designated by section 9(1) of the Oaths and Declarations Act 1957.
3. However, if a legal officer or justice of the peace is not available, a member of the NZDF who is authorised to take statutory declarations in Section 2 of this chapter may take the statutory declaration.

Procedure to be followed in taking a declaration

4. A person's authority to take a declaration must be shown on the face of the declaration. The holder of a designated office who is authorised and who takes a statutory declaration must show after his or her signature that designated office, eg

Maritime Component Commander (an officer authorised to take statutory declarations)
5. The signature of the declarant (person making the statutory declaration) does not have to be written in the presence of the officer taking the declaration, but as a matter of practice it should normally be done in this manner. The officer taking the declaration should check it has been signed (if this has not been done in his or her presence) and that any handwritten changes to the text have been initialled. The officer taking the declaration should then say to the declarant the following form of words:

Do you solemnly and sincerely declare that this (pointing to the person's signature) is your name and handwriting and that you have read the contents of his document and that the contents are true?
6. The declarant should reply "yes" or "I do" or words to this effect.
7. Once this has been done, the officer must sign his or her name and indicate his or her authorised designation. The declarant and the officer taking the declaration must initial the bottom right hand page of every other page when there is more than one page.

Form of a statutory declaration

8. A statutory declaration must be in the form prescribed in Schedule 1 to the Oaths and Declarations Act 1957 (see p 8-14 of this volume).

Declarations Made Outside New Zealand

Persons authorised to take statutory declarations

9. The following officers may take statutory declarations and affidavits from members of the Armed Forces serving outside New Zealand:
- (a) NZDF or Commonwealth officers of or above the rank of major (equivalent).
 - (b) Officers of or above the rank of major (equivalent) of any United Nations force or any force cooperating with any New Zealand force.
 - (c) Any officer holding appointment as a legal staff officer.

Procedure to be following in taking a declaration

10. The officer taking the declaration must state his or her name and rank (or the fact that he or she is a legal staff officer) after his or her signature. It is not necessary for the officer to state the place where the declaration is taken.

Form of a statutory declaration taken outside New Zealand

11. No particular form is required (compared with the form required for a declaration taken in New Zealand), however the form specified in paragraph 8 of this section should be followed if possible.

Affidavits Made by Members of the Armed Forces Outside New Zealand

What is an affidavit?

12. An affidavit is a written statement by a person (called the deponent). The affidavit is signed and sworn to or affirmed by the deponent. The person taking the deponent's oath or affirmation must be a person legally authorised to do so (see paragraph 9 above).

Form of an affidavit

13. The affidavit must commence with the words:
- I, AB, of [*insert place of abode and occupation*], swear/affirm that [*insert fact*].
14. Immediately after the statement, a certain form of words known as the **jurat** must appear. The form is as follows:
- | | | |
|---|---|--------------------------------|
| Sworn [<i>or affirmed</i>] at [<i>place</i>] |) | |
| this [<i>date</i>] day of [<i>month and year</i>] |) | AB |
| before me— |) | [<i>deponent signs here</i>] |
| CD | | |
| [<i>authorised officer's name and rank or designation if a legal staff officer</i>] | | |

Procedure to be followed when taking oath or affirmation of deponent

15. If the deponent wishes to swear to the truth of the contents of his or her affidavit, the authorised officer must ensure the deponent takes a Bible (or New Testament or Old Testament) in his or her right hand and answers to the following question “yes” or “I do”:

Do you swear by Almighty God that this [*indicating deponent’s signature*] is your signature and that the contents of this affidavit are true and correct?
16. If the deponent wishes to affirm the truth of the contents of his or her affidavit, no religious text is required and the question should be as follows:

Do you solemnly, sincerely and truly declare and affirm that this is your signature and that the contents of your affirmation are true and correct?
17. Prior to being asked either of these questions, the deponent should have signed the affidavit and initialled the bottom right hand page of every other page when there is more than one page.

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VISITING FORCES ACT 2004

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SECTION 1**VISITING FORCES ACT 2004**

Public Act 2004 No 59

Date of assent 1 July 2004

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The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Visiting Forces Act 2004.

PART 1**Preliminary provisions****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
- (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

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

applicable agreement, in relation to a visiting force, means a 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)

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

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; 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

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 Zealand¹; and
- (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
 - (iii) is wholly or mainly maintained by the member; or
 - (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

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—
 - (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

Registrar has the same meaning as in section 2 of the Births, Deaths, and Marriages Registration Act 1995²

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, 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

1 To be **ordinarily resident in New Zealand**, the person must be habitually and normally resident in New Zealand, apart from temporary or occasional absences of long or short duration. Residence must be adopted voluntarily and for settled purposes: *R v Barnet London Borough Council, ex parte Shah* [1983] 2 AC 309, 342 (HL); adopted in *Yan v Minister of Internal Affairs* [1997] 3 NZLR 450, 457 and *Punter v Secretary for Justice* [2004] 2 NZLR 28, 47 (CA) per Glazebrook J.

2 **Registrar** is defined under section 2 of the Births, Deaths, and Marriages Registration Act 1995 as including every Registrar appointed under that Act, the Registrar-General of Births, Deaths, and Marriages, and every Deputy Registrar-General.

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.

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**

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:
- (c) the administration of the visiting force.

8 Criminal and disciplinary jurisdiction

- (1) To the extent permitted by an 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.
- (2) In the absence of an applicable agreement covering the matter, the service authorities of a visiting force have the primary right to exercise all criminal and

disciplinary jurisdiction conferred on them by the law of the sending State in respect of any act or omission that—

- (a) is alleged to have been committed by a member of the visiting force, a member of its civilian component, or a dependant; and
 - (b) if proved, would constitute an offence—
 - (i) solely against the property or security of the sending State; or
 - (ii) solely against the person or property of any other members of the visiting force, its civilian component, or dependants; or
 - (iii) that arises out of an act or omission done in the performance of official duty.
- (3) In the absence of an applicable agreement covering the matter, New Zealand courts have the primary right to exercise jurisdiction in respect of any act or omission that—
- (a) is alleged to have been committed by a member of the visiting force, a member of its civilian component, or a dependant; and
 - (b) is not covered by subsection (2); and
 - (c) if proved, would constitute an offence against New Zealand law.
- (4) 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—
- (a) arrest, identify, detain, or search a member of the visiting force, a member of its civilian component, or a dependant; or
 - (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).
- (5) Section 99 of the Armed Forces Discipline Act 1971, with the necessary modifications, applies to property, articles, and things referred to in subsection (4)(c) that—
- (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.
- (6) This section is subject to section 9.

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.

- (2) The service authorities of a visiting force must not exercise a power referred to in section 8(4)(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.
- (3) The service authorities of a visiting force must not exercise a power referred to in section 8(4)(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.
- (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.

10 Criminal proceedings in New Zealand against members of visiting forces

- (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.
- (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) The arrest of a member of a visiting force, a member of its civilian component, or a dependant is subject to section 11.

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.
- (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,—
 - (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.
- (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.

Proceedings before service tribunal of visiting force

12 Application of provisions of Armed Forces Discipline Act 1971

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):
- (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).

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

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.

Imprisonment

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

- (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 9 of the Armed Forces Discipline Act 1971.
- (2) Part 9 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
 - (b) the prisoner were a service prisoner or service detainee (as the case may require).

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

The following may not be called into question in any proceedings before a New Zealand court:

- (a) the proceedings of a service tribunal of a visiting force:
- (b) any sentence passed or order made by the service tribunal:
- (c) any investigation carried out by the service authorities of the visiting force that is relevant to the service tribunal's proceedings:
- (d) the exercise, by the service authorities, of any power referred to in section 8(4) that is relevant to the service tribunal's proceedings.

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.

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

- (1) If an enactment³ 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.
- (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.
- (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.
- (4) Subsection (3) does not limit any privileges or immunities enjoyed by the sending State under applicable international law.⁴
- (5) Without limiting subsections (1) to (4), the Governor-General may, by Order in Council,⁵—
 - (a) exempt a visiting force from all or any of the provisions of any enactment; or

3 **Enactment** means the whole or a portion of an Act or statutory regulations: s 29 of the Interpretation Act 1999.

4 For example, under customary international law no New Zealand authority may board a foreign warship (other than an enemy) without the permission of that ship's commanding officer.

5 No Order in Council has yet been made under this section.

- (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.

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

- (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.⁶
- (2) This section is for the avoidance of doubt.

Death of members of visiting forces

19 Inquiries relating to members of visiting forces

- (1) If a death has been reported to a coroner under section 15(2)(a) or section 16(2)(b) of the Coroners Act 2006⁷ 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:
- (a) if the coroner has not opened an inquiry into the death, he or she must not open an inquiry into the death:
 - (b) if an inquiry has been opened but is not then completed, the coroner must adjourn the inquiry.
- (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.
- (3) The Attorney-General may direct that a coroner or any other authority open or proceed with an inquest or other inquiry⁸ 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—

⁶ Section 3 of the New Zealand Bill of Rights Act 1990 applies to the legislative, executive and judicial branches of the New Zealand Government and any person or body in the performance of any public function, power, or duty conferred or imposed on that person or body by or pursuant to law.

⁷ Section 14(2) of the Coroners Act 2006 provides that certain deaths must be reported to the New Zealand Police. For example, any person (including a member of a visiting force) who finds a body, or learns of a death which occurred in New Zealand or on board a foreign warship or military aircraft within New Zealand's territorial limits, the cause of which appears to be unknown, suicide, or unnatural or violent, must report that death to the Police: ss 13 and 14 of the Coroners Act and section 17(1) of the Visiting Forces Act. Legal advice should be taken as to whether or not there is an obligation to report a death in case of doubt.

⁸ This could include a court of inquiry assembled pursuant to AFDA s 200A.

- (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):
 - (b) the provisions of the Coroners Act 2006, except section 25 (which relates to viewing, touching, or remaining with or near the body).
- (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).
- (6) If a death has been reported to a coroner under section 15(2)(a) or section 16(2)(b) of the Coroners Act 2006 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:
- (a) if the coroner has not opened an inquiry into the death, he or she must not open an inquiry into the death until the criminal or disciplinary proceedings against the person have been finally concluded:
 - (b) if an inquiry has been opened but is not then completed, the coroner must adjourn the inquiry until the criminal or disciplinary proceedings against the person have been finally concluded.
- (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; or
 - (b) providing information to a Registrar for the purpose of registering the death; or
 - (c) authorising the release of the body.

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 inquiry⁹ opened or proceeded with in accordance with section 19.
- (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 must not be asked any question the answer to which may prejudice the security or defence of New Zealand or the sending State.
- (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.
- (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.

Claims

21 Claims against visiting forces

- (1) This section applies to any cause of action that arises in New Zealand in respect of—
 - (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—
 - (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.
- (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.
- (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) 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
 - (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.
- (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.

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—
 - (a) any force, person, or property; or
 - (b) any matter or thing for the purposes of any of sections 13, 15, 16, or 21.
- (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.

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.

24 Act not in force in Tokelau

This Act is not in force in Tokelau.

25 Repeals and revocations

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

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.
- (2) Every status of forces agreement to which this section applies is an applicable agreement under this Act.

SCHEDULE 1

s 25(2)

Revocations

Armed Forces Equivalent Ranks Order 1983 (SR 1983/233)

Visiting Forces (Australian Naval Forces) Order 1978 (SR 1978/164)

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)

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)

Visiting Forces (Tongan Forces) Order 1983 (SR 1983/7)

SCHEDULE 2

Omitted from this manual

SECTION 2

ATTACHMENT AND DISPOSAL ORDERS, AND OTHER INSTRUMENTS

UNITED KINGDOM

Order Made by the Army Board under section 6(2)(b) of the Visiting Forces Act 1939 (NZ)¹⁰

Pursuant to section 6(2)(b) of the Visiting Forces Act 1939, the Army Board hereby places at the disposal of the service authorities of the United Kingdom every member of the military forces of Her Majesty raised in the Dominion of New Zealand who is posted for duty with, serving on the strength of, or is on loan or attached to the military forces of Her Majesty raised in the United Kingdom.

Signed for and on behalf of the Army Board this 29th day of July, 1957.

L.W. Thornton, Brigadier, Adjutant-General

F.B. Dwyer, Army Secretary

An Order of the Army Council Made on 1 October 1957 under section 4(2)(i) of the Visiting Forces (British Commonwealth) Act 1933 (UK)

Whereas under Section 4 of the Visiting Forces (British Commonwealth) Act, 1933, the Army Council may attach temporarily to a home force any member of the military forces of Her Majesty raised in the Dominion of New Zealand who is placed at their disposal for the purpose by the service authority of the said Dominion.

And whereas by an order made on the twenty-ninth day of July, 1957, the Army Board of the Dominion of New Zealand placed at the disposal of the Service Authorities of the United Kingdom every member of the military forces of Her Majesty raised in the Dominion of New Zealand to whom this order applies.

1. The Army Council hereby attach to the military forces of Her Majesty raised in the United Kingdom every member of the military forces of Her Majesty raised in the Dominion of New Zealand to whom this order applies.
2. This order applies to every member of the military forces of Her Majesty raised in the Dominion of New Zealand who is posted for duty with, serving on the strength of, or is on loan or attached to the military forces of Her Majesty raised in the United Kingdom.

Signed on behalf of the Army Council ,

N.C.D. Brownjohn, General

W.H. Stratton, Lieutenant General

E.W. Playfair, P.U.S.

Dated this First day of October 1957.

¹⁰ This order continues in force pursuant to section 102(6) of the Defence Act 1990 and section 21 of the Interpretation Act 1999.

An Order of the Army Council Made under section 2(6) of the Visiting Forces Act 1952 (UK)

WHEREAS a request has been made by the Government of New Zealand for the issue of general Orders in pursuance of the powers conferred by section 2(6) of the Visiting Forces Act, 1952, for the purpose of enabling the service courts and service authorities of that country to exercise more effectively within the United Kingdom or on board any of Her Majesty's ships or aircraft their jurisdiction in relation to members of the New Zealand Forces, being members of a visiting force of that country.

NOW, THEREFORE, the Army Council in pursuance of the said section do by this Order authorise any member of the military forces of Her Majesty raised in and serving in the United Kingdom to arrest any member of the New Zealand forces, being a member of a visiting force of that country, who is alleged to be guilty of an offence punishable under the law of that country, and to hand over such a member to the Senior New Zealand Army Liaison Officer.

The Order of the Army Council made under section 2(6) of the Visiting Forces Act, 1952, dated the 18th day of June, 1954, is hereby cancelled.

Signed on behalf of the Army Council,

C.G.G. Nicholson, General A.G.

W.P. Oliver, Lt. Gen. V.C.I.G.S.

E.W. Playfair, P.U.S.

Dated this 6th day of July, 1956

An Order Made by the Army Council under section 4(2)(ii) of the Visiting Forces (British Commonwealth) Act 1933 (UK)

The Defence Council, in exercise of the powers conferred on them by section 4(2)(ii) of the Visiting Forces (British Commonwealth) Act 1933, (as amended by the Defence (Transfer of Functions) (No. 1) Order 1964) and subsection (1) and (3) of section 1 of the Defence (Transfer of Functions) Act 1964, and of all other powers them enabling, hereby place at the disposal of the Service Authorities of the Dominion of New Zealand for the purpose of being attached temporarily by those authorities to the naval, military or air forces of Her Majesty raised in the said Dominion, or any part of such forces, every member of the naval, military or air forces of Her Majesty raised in the United Kingdom who is pursuant to being posted, appointed or drafted for duty serving in any ship, or with any formation, unit, detachment or establishment in New Zealand or elsewhere which is part of the naval, military or air forces of Her Majesty raised in the said Dominion; And the Defence Council do hereby revoke the Order of the Army Council made on 15th November 1955 and the Order of the Air Council made on 28th January 1943 .

Dated the 6th day of April 1966

DCO 20/1976

Ministry of Defence**Defence Council Order 20/1976¹¹****Attachment Order under Visiting Forces Act 1939 (NZ)**

WHEREAS under section 6(2)(a) of the Visiting Forces Act 1939 the New Zealand Naval Board, Army Board or Air Board, as the case may be, may attach temporarily to a home force any member of the naval, military or air forces of Her Majesty raised in the United Kingdom who is placed at their disposal for that purpose by the service authorities of the United Kingdom.

AND WHEREAS section 89(4), (5) and (6) of the Defence Act 1971 provides that every reference to the New Zealand Naval Board, Army Board and Air Board in any Act shall, unless the context otherwise requires, be read as a reference to the New Zealand Defence Council.

AND WHEREAS, by an order made on the sixth day of April 1966, the Defence Council of the United Kingdom placed at the disposal of the service authorities of the Dominion of New Zealand for the purpose of being attached temporarily by those authorities to the naval, military or air forces of Her Majesty raised in the said Dominion every member of the naval, military or air forces of Her Majesty raised in the United Kingdom who is, pursuant to being posted, appointed or drafted for duty, serving in any ship, or with any formation, unit, detachment or establishment in New Zealand or elsewhere which is part of the naval, military or air forces of Her Majesty raised in New Zealand.

NOW, THEREFORE, the New Zealand Defence Council hereby attach temporarily to the naval, military or air forces of Her Majesty raised in New Zealand or any part of such forces every member of the naval, military or air forces of Her Majesty raised in the United Kingdom who is placed at their disposal as a result of the order made on the sixth day of April 1966 by the Defence Council of the United Kingdom

Dated at Wellington on this 28th day of July 1976.

By Order of the Defence Council,

J.F. ROBERTSON
Secretary of Defence

An Order Made under section 4(5) of the Visiting Forces (British Commonwealth) Act 1933 (UK)

The Army Council hereby order and declare that for the purposes of section 4 of the Visiting Forces (British Commonwealth) Act, 1933, the military forces of His Majesty raised in the United Kingdom do serve together and act in combination wheresoever serving with the naval, military and air forces of His Majesty raised in the Commonwealth of Australia and in the Dominion of New Zealand.

Dated 2nd November, 1946

¹¹ This Defence Council Order continues in force as if it were a DFO, pursuant to section 102(6) of the Defence Act 1990 and section 21 of the Interpretation Act 1999.

An Order Made under section 4(5) of the Visiting Forces (British Commonwealth) Act 1933 (UK)

The Air Council hereby order and declare that for the purpose of section 4 of the Visiting Forces (British Commonwealth) Act, 1933, the air force of His Majesty raised in the United Kingdom do serve together and act in combination wheresoever serving with the naval, military and air forces of His Majesty raised in the Commonwealth of Australia and in the Dominion of New Zealand.

Dated 31st October, 1946

Intentionally Blank