

Departmental Disclosure Statement

Armed Forces Discipline Legislation Amendment Bill
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The departmental disclosure statement for a Government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the New Zealand Defence Force.

The New Zealand Defence Force certify that, to the best of their knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

3 December 2025.

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Part One: General Policy Statement

This Bill is an omnibus Bill that amends more than 1 Act and is introduced under Standing Order 267(1)(a) because the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. That single broad policy is to make the military justice system easier to navigate and administer, to better enable command to focus on operational outputs.

The military justice system applies to uniformed Armed Forces personnel within the New Zealand Defence Force. It is a unique system that runs parallel to, but does not replace, the civilian justice system. It is established under the Armed Forces Discipline Act 1971, the Court Martial Act 2007 and the Court Martial Appeals Act 1953. Unlike the civilian justice system, the military justice system applies to Armed Forces personnel everywhere in the world.

Strong military discipline is central to ensuring the New Zealand Defence Force's operational effectiveness. Military discipline's primary purpose is to create a cohesive and effective fighting force. It enables a military to function as a unit, adhering to rules, regulations, and orders to achieve specific goals. This discipline, which encompasses both external enforcement of rules and internal self-control, is essential for successful missions and maintaining order within the ranks.

Consistent with this, a wide range of behaviour is an offence in the military context—ranging from very minor offending (such as being late for duty) to very serious offending (such as assisting the enemy). Offences against the ordinary civilian law of New Zealand are also offences within the military justice system (such as assault, sexual violence, or misuse of drugs). Most charges are prosecuted at summary trial and only the most serious offences are referred to the Director of Military Prosecutions for trial by the Court Martial.

The military justice system currently works well for mid-level offending. However, the summary trial system has proved to be too complex and time-consuming for low-level offending. The current system also does not respond well to serious, complex or sensitive offending—including sexual violence offending. In addition, the search powers contained in the Armed Forces Discipline Act 1971 are out of date and hamper the effective investigation of offending. Other aspects of the military justice system require updating to reflect developments that have taken place within the civilian criminal justice system and the broader legal environment.

The changes in the Bill are designed to address these concerns and ensure that the military justice system is fair, efficient, and transparent and—

- supports the maintenance of military discipline within the New Zealand Defence Force:
- is portable, expeditious, and as simple as possible—and capable of functioning in a range of different operational environments:
- is fair to both victims and the accused and continues to protect the rights recognised in the New Zealand Bill of Rights Act 1990.

The key substantive changes made by the Bill are as follows:

- creation of a new minor disciplinary sanction system, which will provide a faster, more efficient, and more transparent way of dealing with very low-level offending (such as being late for duty):
- transfer of responsibility for serious, complex, or sensitive offending out of the chain of command to the Director of Military Prosecutions:
- extension of the right to elect trial by the Court Martial to all offences except for a subset that will be identified in Defence Force Orders:
- updating the existing search power under section 95 of the Armed Forces Discipline Act 1971, together with the creation of new powers to search defence areas and carry out drug testing:
- establishment of a new search warrant framework providing judicial oversight of searches of electronic devices and providing new powers for a Judge to authorise the New Zealand Defence Force Joint Military Police Unit to search areas outside of a defence area owned, occupied, or used by a member of the Armed Forces, or to request documents from third parties:
- better alignment of bail provisions with those that apply in the civilian criminal justice system under the Bail Act 2000:
- provision for the Director of Military Prosecutions to appeal against certain summary trial decisions, in line with the appeal rights available to prosecutors in the civilian criminal justice system under the Criminal Procedure Act 2011:
- updating of powers to address disruptive behaviour and contempt of court to better align with the Contempt of Court Act 2019:
- application of the special procedures in Part 2 of the Security Information in Proceedings Act 2022 to certain proceedings in the Court Martial and Court Martial Appeal Court.

The main legislative changes are amendments to the Armed Forces Discipline Act 1971 and the Court Martial Act 2007. Amendments are also made to the Court Martial Appeals Act 1953, the Search and Surveillance Act 2012, the Crimes Act 1961, the Security Information in Proceedings Act 2022, Te Ture mō Te Reo Māori 2016/Māori Language Act 2016, and the New Zealand Sign Language Act 2006.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p><i>Summary Report on Military Justice: Review of the summary trial system</i>, Ministry of Defence, June 2019 https://www.defence.govt.nz/assets/publications/Summary-Report-on-Military-Justice.pdf</p> <p><i>Assessment of the New Zealand Defence Force Prosecution Function 2021</i>, Crown Law, 2021 https://crownlaw.govt.nz/assets/Uploads/Reports/Review-of-NZDF-prosecution-function-Final-report-May-2021.PDF</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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The Summary Report on Military Justice (June 2019) analysed whether the summary trial process meets internationally accepted human rights standards and made recommendations to enhance the fairness of the system and bring it closer to some of its overseas counterparts.

Compliance with the International Covenant on Civil and Political Rights has been considered as part of engagement with the Ministry of Justice regarding the issues in the Bill that implicate rights enshrined in the New Zealand Bill of Rights Act 1990.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

NZDF has taken steps to check that the Bill is consistent with the Treaty of Waitangi, including through policy analysis that examined rates of detention of Māori members of the Armed Forces under the current provisions of the AFDA.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or report, will be accessible on the Ministry's website at <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/compliance-reports>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>Offences and penalties</p> <p>Clauses 42-43 create a regime to deal with very low-level offending under a Minor Disciplinary Sanction System. The penalties available under the Minor Disciplinary Sanction System are set out in Schedule 2 to the Bill (inserting Schedule 5A) and will consist of a reprimand, extra work and drill, extra duty not exceeding 2 hours a day, and a caution. The sanctions of extra work and drill and extra duty may be imposed for a period not exceeding 21 days.</p> <p>Clause 28 (inserting new s 99C) applies existing civilian criminal offence provisions and the corresponding penalties in the Search and Surveillance Act 2012 to:</p> <ul style="list-style-type: none"> • failure to comply with a production order; • making a false application for a production order; and • disclosing information obtained through a production order. <p>Clauses 13 and 101 amend the existing offence relating to proceedings of military tribunals and courts of inquiry and create new offences for publication of certain Court Martial trial information, failure to comply with a takedown order, and disclosure of deliberations of members of the Court Martial.</p> <p>Without creating an offence and consistent with the existing procedure in AFDA s 150F, clauses 99 and 153 set out a mechanism to bring a civilian who fails to comply with a summons or order to attend as a witness before a military tribunal or court before a civilian District Court.</p> <p>Consistent with the Contempt of Court Act 2019, without creating offences, clauses 99, 101, 128, 129 and 153 introduce penalties for:</p> <ul style="list-style-type: none"> • failure by a military member to attend Court Martial; • military members who investigate or research a case; • non-compliance with a summons or order to attend court as a witness; and • disruptive behaviour during court proceedings. <p>Clauses 28 (inserting s 99C) and 101 (inserting ss 150I, 150J, and 150K) will apply offences under the Search and Surveillance Act 2012 and the Contempt of Court Act 2019 both to persons subject to AFDA and civilians. Where a civilian commits one of these offences, the procedural and substantive protections (including as to bail, sentencing, parole, and appeals) will be those set out in existing legislation (such as the Criminal Procedure Act 2011).</p> <p>Clause 69 prevents Disciplinary Officers from imposing detention on a member of the Armed Forces who was under the age of 18 at the time the offence was committed.</p> <p>Jurisdiction of the courts</p> <p>Clauses 147 -152 create rights of appeal of a suppression order, a ruling in accordance with s 9(1) of the Contempt of Court Act 2019, the application of the Security Information in Proceedings Act 2022 to a Court Martial Proceeding and a finding of guilty of disruptive behaviour to the Court Martial Appeal Court and Court of Appeal, with second appeals (with leave) to the Court of Appeal and Supreme Court respectively.</p> <p>Clauses 82 and 87- 90 amend appeal rights to the Summary Appeal Court and amend the powers of the Summary Appeal Court on appeal.</p> <p>Clauses 133 -135 amend the Court Martial Act 2007 provisions relating to bail.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
The Ministry of Justice was consulted during the policy development and drafting process. Its feedback has been taken into account in the design of the offences and penalties regime and the amended rights of appeal in the Bill.	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
Clause 43 (inserting s 102N) creates a requirement for the Chief of Defence Force to issue Defence Force Orders requiring the creation of a register of alleged offences that are dealt with through the Minor Disciplinary Sanction System.	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO
<p>Most changes proposed by the Bill do not engage the Privacy Act 2020.</p> <p>Clause 43 (inserting s 102N) establishes a requirement to make Defence Force Orders providing for the keeping and maintenance of a register of alleged offences dealt with through the Minor Disciplinary Sanction System. The broad parameters setting out what information is to be held, the purpose for which it is held, and who can access it are recorded in s 102N. More detailed privacy considerations associated with the register will be addressed when Defence Force Orders are prepared to give effect to clause 43.</p>	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
The Ministry of Justice, Ministry of Defence, Oranga Tamariki, Crown Law, the Department of Prime Minister and Cabinet (National Security) and the Judge Advocate-General / Chief Judge of the Court Martial were consulted during the policy development process. The Ministry of Justice has also been consulted during the drafting process.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
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Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	YES
Clause 28 (inserting s 99F) provides for the creation of a procedure in Defence Force Orders to deal with materials that are seized or produced pursuant to a production order or as part of a search under AFDA. Clause 27 (inserting s 98K) empowers the Chief of Defence Force to repair, replace, or pay compensation for economic loss resulting from a search of premises.	

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
Clauses 9-10 amend the protections against double jeopardy to clarify and strengthen their application in the military justice context.	

Significant decision-making powers

<p>4.6. Does this Bill create or amend a decision-making power to make a determination about a person’s rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</p>	<p>YES</p>
<p>In addition to the new offence and penalty provisions described at 3.4, the Bill amends the following decision-making powers that could have a significant impact on a person’s rights, obligations or interests:</p> <p>Clauses 27- 28 establish a new search warrant framework empowering Court Martial Judges to authorise NZDF Military Police to: search electronic devices; search areas outside of a Defence Area that is owned, occupied, or used by a member of the Armed Forces; or to issue production orders requiring documents from third parties.</p> <p>Clause 28 (inserting ss 99I - 99N) creates new powers to require persons subject to the AFDA to submit to drug or alcohol testing where there are reasonable grounds to believe the person has committed a drug or alcohol offence.</p> <p>Clause 31 amends AFDA and clause 133 amends the Court Martial Act 2007 to empower the Judge Advocate General and Court Martial Judges respectively to grant bail if: the person is entitled to bail as of right, the person is 17 or 18 years old and has not previously been sentenced to imprisonment, and in every other case unless there is just cause for continued detention.</p> <p>Clause 48 amends the circumstances in which an officer is empowered to act as a Disciplinary Officer. Clauses 56 and 60 - 71 set out the procedural steps that must be followed in respect of charges that proceed through the summary trial process and any punishment that is imposed. Clause 77 requires Disciplinary Officers to decide whether to publish a summary trial decision.</p> <p>Clauses 42 (inserting s 102D), 73 and 82 amend the powers of the Director of Military Prosecutions when charges are referred, and empower the Director to appeal punishments and discharges of persons found guilty by Disciplinary Officers, and appeal to the Summary Appeal Court on questions of law.</p> <p>Clause 88 empowers the Summary Appeal Court to substitute a finding of guilty and impose or substitute any punishment that would have been available to the Disciplinary Officer.</p> <p>Clause 101 (inserting s 150F) empowers Disciplinary Officers and Courts of Inquiry to exclude persons who wilfully disrupt proceedings. Clause 101 (inserting ss 150G and 150H) empowers the Summary Appeal Court, Court Martial, and Court Martial Appeal Court to exclude persons who wilfully disrupt proceedings, order that the person be held until the court rises for the day, and cite a person for disruptive behaviour. Clause 101 (inserting s 150J) empowers the Court Martial to order that any person take down or disable public access to publication of certain Court Martial trial information.</p>	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>Clauses 27 (inserting s 98D), 28 (inserting s 99F), 42-43 (inserting ss 102A-102N), 56 (inserting s 116A), 76 (inserting s 117ZJA), 77 (inserting s 117ZS), and 140 (inserting s 68A of the Court Martial Act 2007) empower or require the Chief of Defence Force to issue Defence Force Orders to give effect to various matters, including to:</p> <ul style="list-style-type: none"> • prescribe procedures and specify requirements relating to searches; • specify offences under AFDA which may be referred for disposal under the Minor Disciplinary Sanction System and specify procedures and requirements that must be followed when disposing of an allegation under the Minor Disciplinary Sanction System; • specify offences under AFDA which must, due to their seriousness, complexity or sensitivity, be referred to the Director of Military Prosecutions; • limit the offences under AFDA in respect of which an accused has a right to elect trial in the Court Martial; • prescribe the procedure for requirements relating to drug or alcohol testing; • appoint support persons for persons under 18 years of age during proceedings before the Court Martial; • prescribe requirements relating to the publication of summary trial decisions. <p>The power for the Chief of Defence Force to issue Defence Force Orders is consistent with his functions and powers under ss 25 and 27 Defence Act 1990, and his existing power under s 206 AFDA.</p> <p>Defence Force Orders have the status of secondary legislation (see s 27A Defence Act 1990). They are published internally within the NZDF and are subject to disallowance under the Legislation Act 2019.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
<p>The following clauses take a different approach to that recommended in the Legislative Design Advisory Committee Guidelines:</p> <ul style="list-style-type: none"> • Clause 24 regarding the thresholds for the authorisation of a search by a Commanding Officer or Officer in Charge of a Defence Area (see Guideline 21.3). • Clause 24 regarding the recording and conduct of a search authorised by a Commanding Officer or Officer in Charge of a Defence Area (see Guideline 21.4). • Clauses 7-8 regarding the limitation periods to apply to offences under the AFDA (see Guideline 27.1). <p>This reflects the <i>sui generis</i> nature of the military justice system and the principle of command authority within the Armed Forces.</p>	