

**Version  
as at 28 October 2021**



## **Armed Forces Discipline Act 1971**

|                |                  |
|----------------|------------------|
| Public Act     | 1971 No 53       |
| Date of assent | 12 November 1971 |
| Commencement   | see section 1(2) |

### **Contents**

|   | Page |
|---|------|
| Title   | 15   |
| 1 Short Title and commencement                                      | 15   |
| 2 Interpretation  | 16   |
| 3 Special provisions relating to the interpretation, etc, of Part 2 | 28   |
| 4 Extraterritorial operation of this Act                            | 29   |
| 5 Active service  | 29   |
| 5A Transitional, savings, and related provisions                    | 30   |
| 5B Act binds the Crown  | 30   |

### **Part 1 Jurisdiction**

|   |    |
|---|----|
| 6 Persons in the Navy, the Army, and the Air Force  | 30 |
| 7 Provisions of Act may be modified, etc, in relation to certain classes of persons <i>[Repealed]</i> | 33 |
| 8 Members of the Armed Forces attached to forces of another country remain subject to this Act        | 33 |
| 9 Members of other forces attached to Armed Forces under section 23A of Defence Act 1990              | 33 |

---

#### **Note**

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

**This Act is administered by the Ministry of Defence.**

|    |   |    |
|----|---|----|
| 10 | Volunteers  | 34 |
| 11 | Trainees  | 34 |
| 12 | Prisoners of war  | 35 |
| 13 | Spies, etc  | 35 |
| 14 | Commanding officer in relation to prisoners of war and spies                                      | 36 |
| 15 | Application of Act to passengers in HM ships, aircraft, and vehicles                              | 36 |
| 16 | Certain civilians closely associated with Armed Forces subject to this Act                        | 36 |
| 17 | Certain persons sentenced under this Act to remain subject to this Act                            | 38 |
| 18 | Trial and punishment of person who has ceased to be subject to this Act                           | 39 |
| 19 | Status and rank of person deemed to be subject to this Act when imprisoned or detained            | 40 |
| 20 | Limitation of time within which charges may be dealt with summarily or tried under this Act       | 41 |
| 21 | Person may not be tried under this Act and under the civil law in respect of same act or omission | 43 |
| 22 | Persons cannot be tried under this Act for offences already disposed of                           | 45 |

## Part 2 Offences

### *Offences involving treachery, cowardice, and looting*

|    |  |    |
|----|--|----|
| 23 | Aiding the enemy                             | 45 |
| 24 | Communication with the enemy                 | 47 |
| 25 | Unauthorised disclosure of information       | 47 |
| 26 | Spying in ships or establishments abroad     | 48 |
| 27 | Seduction from duty or allegiance            | 48 |
| 28 | Cowardly behaviour                           | 48 |
| 29 | Offence to create alarm or despondency       | 49 |
| 30 | Offences in relation to capture by the enemy | 49 |
| 31 | Looting                                      | 50 |

### *Offences involving mutiny*

|    |                                      |    |
|----|--------------------------------------|----|
| 32 | Mutiny                               | 50 |
| 33 | Failure to suppress or report mutiny | 50 |

### *Offences involving guard duty, violence, and insubordination*

|    |  |    |
|----|--|----|
| 34 | Offences by or in relation to a person on guard duty or on watch | 51 |
| 35 | Violence to a superior officer                                   | 52 |
| 36 | Insubordinate behaviour  | 52 |
| 37 | Obstruction of provost officers                                  | 52 |
| 38 | Disobeying a lawful command                                      | 53 |

|     |  |    |
|-----|--|----|
| 39  | Failure to comply with written orders  | 53 |
| 40  | Failure to comply with directions given by the captain of a ship or aircraft | 53 |
| 41  | Ill-treatment of person of lower rank  | 54 |
| 42  | Cruel or disgraceful conduct   | 54 |
| 43  | Fighting or causing a disturbance  | 54 |
|     | <i>Offences relating to arrest and escape from custody</i>                   |    |
| 44  | Resisting arrest   | 54 |
| 45  | Escape from custody  | 55 |
| 45A | Failure to answer bail   | 55 |
| 46  | Permitting the escape of prisoners   | 55 |
|     | <i>Desertion, absence, and malingering</i>                                   |    |
| 47  | Desertion  | 56 |
| 48  | Absence without leave  | 57 |
| 49  | Avoidance of duty  | 57 |
| 50  | Malingering  | 57 |
|     | <i>Offences involving alcohol and drugs</i>                                  |    |
| 51  | Drunkenness and being under the influence of drugs                           | 57 |
| 52  | Being in possession of alcohol in a ship, establishment, camp, or base       | 58 |
|     | <i>False statements, documents, and corruption</i>                           |    |
| 53  | False statements on appointment or enlistment                                | 58 |
| 54  | Official corruption  | 59 |
| 55  | Falsification of service documents   | 59 |
| 56  | False statement in order to obtain benefit                                   | 60 |
|     | <i>Offences relating to property</i>   |    |
| 57  | Stealing service property or property of comrade                             | 60 |
| 58  | Receiving service property or property of comrade                            | 61 |
| 59  | Unlawful possession of service property or property of comrade               | 61 |
| 60  | Conversion of vehicles, etc  | 61 |
| 61  | Destruction of or damage to service property or property of comrade          | 62 |
| 62  | Loss of service property   | 62 |
| 63  | Improper disposal of decorations and issued property                         | 63 |
|     | <i>Offences involving ships, aircraft, vehicles, etc</i>                     |    |
| 64  | Losing or hazarding a ship, aircraft, or armoured fighting vehicle           | 63 |
| 65  | Dangerous acts or omissions  | 63 |
| 66  | Inaccurate certification   | 64 |
| 67  | Offences in relation to the driving of vehicles                              | 64 |

*Offences relating to judicial proceedings, etc*

|    |   |    |
|----|---|----|
| 68 | False accusation  | 65 |
| 69 | Delay or denial of justice  | 65 |
| 70 | Offences relating to proceedings of military tribunal or court of inquiry | 66 |
| 71 | False evidence  | 67 |

*Miscellaneous offences*

|    |   |    |
|----|---|----|
| 72 | Endangering the health of members of the Armed Forces | 67 |
| 73 | Conduct prejudicial to service discipline             | 68 |
| 74 | Offences against the civil law of New Zealand         | 69 |

*Parties, accessories, and attempts*

|    |  |    |
|----|--|----|
| 75 | Parties to the commission of offences against this Act | 70 |
| 76 | Attempts to commit offences against this Act           | 71 |
| 77 | Accessories after the fact                             | 72 |

**Part 3****Jurisdiction of Court Martial and punishment of offenders**

|     |  |    |
|-----|--|----|
| 78  | Jurisdiction of Court Martial  | 72 |
| 79  | Court Martial to pass 1 sentence only  | 73 |
| 80  | Discretion of Court Martial as to punishment   | 73 |
| 81  | Consent of Governor-General required before sentence of death can be carried out <i>[Repealed]</i> | 73 |
| 81A | Effect of period spent in custody before being sentenced   | 74 |
| 82  | Dismissal from service and reduction in rank   | 74 |
| 83  | Maximum term of detention  | 75 |
| 84  | Reduction in rank and forfeiture and stay of seniority of service                                  | 75 |
| 85  | Punishment by fine   | 76 |
| 86  | Compensation for loss of or damage to property   | 76 |
| 87  | Restitution of property  | 77 |
| 87A | Suspension of compensation and restitution orders made by Court Martial, etc                       | 79 |

**Part 4****Arrest and search**

|     |   |    |
|-----|---|----|
| 88  | Arrest without warrant  | 80 |
| 89  | Arrest under warrant  | 81 |
| 89A | Arrest of members of visiting forces                              | 81 |
| 90  | Arrest of spies, etc, abroad                                      | 82 |
| 91  | Arrest of person unlawfully at large                              | 82 |
| 92  | Arrest of deserters and absentees                                 | 83 |
| 92A | Arrest of deserters from other armed forces                       | 83 |
| 93  | Detention in civil custody of arrested persons                    | 84 |
| 93A | Detention in service custody of person charged by civil authority | 84 |
| 93B | Detention in service custody of members of visiting force         | 85 |

|      |  |    |
|------|--|----|
| 93C  | Police not to deliver custody of arrested person without consent of Minister of Justice in certain cases               | 86 |
| 94   | Reasonable force may be used to arrest or search   | 86 |
| 95   | Search in connection with suspected offence  | 86 |
| 96   | Searches to prevent smuggling, etc   | 87 |
| 97   | Customary powers of search not affected  | 88 |
| 98   | Search of person in service custody, etc   | 88 |
| 99   | Disposal of property taken in search   | 88 |
| 100  | Duty of persons arresting  | 89 |
| 101  | Delay in dealing with person after arrest  | 89 |
| 101A | Judge Advocate General may grant bail pending trial  | 90 |
| 101B | Issue of warrant to arrest person absconding or breaching bail condition   | 91 |
| 101C | Person arrested under warrant for absconding or breaching bail condition must be brought before Judge Advocate General | 92 |
| 101D | Restrictions in relation to midshipmen, officer cadets, and chaplains  | 92 |

#### **Part 4A**

##### **Director of Military Prosecutions**

|      |   |    |
|------|---|----|
| 101E | Appointment of Director of Military Prosecutions  | 93 |
| 101F | Functions and duties of Director of Military Prosecutions   | 93 |
| 101G | Power of Director of Military Prosecutions to direct investigation  | 94 |
| 101H | Power of Director of Military Prosecutions to stay proceedings  | 94 |
| 101I | Director of Military Prosecutions to perform functions and duties, and exercise powers, independently of ministerial control and of command | 94 |
| 101J | Director of Military Prosecutions must report annually to Attorney-General on performance of functions and duties, and exercise of powers   | 94 |
| 101K | Director of Military Prosecutions must act under general supervision of Solicitor-General   | 95 |
| 101L | Delegation of functions, duties, or powers of Director of Military Prosecutions   | 95 |

#### **Part 5**

##### **Investigation and summary trial of charges**

###### **Subpart 1—General provisions**

|      |  |    |
|------|--|----|
| 102  | Investigation of charges   | 96 |
| 102A | Commanding officer must determine whether offence is specified offence | 96 |
| 103  | Disposal of charges by commanding officers                             | 97 |
| 104  | Disposal of charges by superior commanders                             | 97 |
| 105  | Disposal of charges by detachment commanders                           | 97 |
| 106  | Disposal of charges by subordinate commanders                          | 98 |