



Headquarters  
New Zealand Defence Force  
Defence House  
Private Bag 39997  
Wellington Mail Centre  
Lower Hutt 5045  
New Zealand

OIA-2026-5649

27<sup>th</sup> March 2026

[REDACTED]  
[REDACTED]

Dear [REDACTED]

I refer to your email of 2 February 2026 requesting, under the Official Information Act 1982 (OIA), the following:

*I see on a recent OIA result for briefings from August 2025 that MINDEF was provided a briefing to MINDEF:*

*Additional Policy Approvals for the Draft Armed Forces Discipline Amendment Bill 13/08/2025 NZDF 2025-222*

*Could I please have a copy of that briefing and any other briefings that have been prepared for the Bill?*

The requested document is at Enclosure 1. Further information relevant to this briefing is publically available on the New Zealand Defence Force website<sup>1</sup>. Other briefings prepared for the Bill are also enclosed. Where indicated, information is withheld in accordance with the following sections of the OIA: section 9(2)(a) to protect the privacy; section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials; section 9(2)(g)(i) to maintain the effective conduct of public affairs through free and frank expression of opinions; section 9(2)(h) to maintain legal professional privilege; and, section 9(2)(k) to avoid the malicious or inappropriate use of NZDF staff information.

In addition, below is an extract of relevant information concerning the Draft Armed Forces Discipline Amendment Bill from a briefing on legislative priorities sent to the Minister of Defence on 13 November 2025. Other information contained in that briefing is not relevant to your request and is withheld in accordance with section 9(2)(f)(iv) of the OIA.

**Extracts from briefing to the Minister of Defence 13 November 2025:**

- *The Armed Forces Discipline Legislation Amendment Bill would primarily amend the Armed Forces Discipline Act 1971 to improve the efficiency of the military justice system. It seeks to free up resources for commanders to focus on operational outputs and to*

<sup>1</sup> [www.nzdf.mil.nz/assets/Uploads/DocumentLibrary/Modernisation-of-Military-Justice-System-Armed-Forces-Discipline-Amendment-Bill.pdf](http://www.nzdf.mil.nz/assets/Uploads/DocumentLibrary/Modernisation-of-Military-Justice-System-Armed-Forces-Discipline-Amendment-Bill.pdf)

streamline the pathway to Court Martial for serious, complex or sensitive cases. It also introduces search powers broadly similar to those in the civilian justice system.

- If the Armed Forces Discipline Legislation Amendment Bill is not passed, these inefficiencies will remain. The Bill is fully drafted and ready for submission to Cabinet Legislation Committee. It is not expected to be contentious.
- All that said, maintaining the status quo for a longer period is an option, if not our recommended approach. The Ministry has considered alternative prioritisation options which we would be happy to discuss with you.

## **ARMED FORCES DISCIPLINE LEGISLATION AMENDMENT BILL**

### **Driver and Outcomes**

2. The current military justice system is complex and inefficient in critical areas and not fully aligned to the requirements of a modern justice system.

The Armed Forces Discipline Legislation Amendment Bill would primarily amend the Armed Forces Discipline Act 1971. It is driven by the need to improve efficiency of the military justice system to free up resources for commanders to focus on operational outputs, and to make the pathway to Court Martial for serious, complex or sensitive cases more streamlined and independent. It would also implement recommendations of independent reviews into the military justice system. The Bill would deliver the following main outcomes:

- 2.1. A new infringement system to deal with minor disciplinary offending, to free up time and resources currently required to deal with these offences;
- 2.2. A simpler, more independent, and more efficient process for serious, complex or sensitive offences being laid in the Court Martial;
- 2.3. Modernised search powers in light of technological changes; and
- 2.4. Increased protections for members of the Armed Forces under 18 years.

### **Factors for Consideration**

3. The amendments in the Armed Forces Discipline Legislation Amendment Bill are unlikely to be controversial. The scope of jurisdiction of the Armed Forces Discipline Act 1971 remains the same (i.e. members of the Armed Forces and certain civilians in narrow and clearly defined circumstances). Search powers will be modernised. A new search power will allow a judge of the Court Martial to issue a warrant to obtain documents held by a third party to investigate offending by members of the Armed Forces.

Search powers are inherently of high public interest, but we note that the new warranted search power broadly mirrors that which exists in the civilian justice system.

4. The Bill will also introduce a simpler, more independent and more efficient process for serious, complex or sensitive offences being laid in the Court Martial, by removing this process from the chain of command and placing all decision-making directly under the Director of Military Prosecutions.

5. The Bill is fully drafted and is undergoing final reviews. Should you decide to do so, the Bill could be circulated for Ministerial consultation in order to be available for you to lodge at LEG on 11 December 2025.

***Risks of not proceeding this Parliamentary term***

*6. If the Armed Forces Discipline Legislation Amendment Bill is not passed this Parliamentary term, the inefficiencies within the military justice system will persist, with an adverse effect on the ability to maximise the focus of resources on operational outputs.*

You have the right, under section 28(3) of the OIA, to ask an Ombudsman to review this response to your request. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.

Please note that responses to official information requests are proactively released where possible. This response to your request will be published shortly on the NZDF website, with your personal information removed.

Yours sincerely

**GA Motley**  
Brigadier  
Chief of Staff HQNZDF

**Enclosures:**

1. Additional Policy Approvals for the Draft Armed Forces Discipline Amendment Bill
2. Briefing on Draft Armed Forces discipline Amendment Bill, 2024
3. Papers for Legislation Committee and Further Policy Permissions, November 2025



Headquarters  
New Zealand Defence Force  
Defence House  
Wellington 6011

NTM 2025-222

13 August 2025

Minister of Defence

## **ADDITIONAL POLICY APPROVALS FOR THE DRAFT ARMED FORCES DISCIPLINE AMENDMENT BILL**

### **Purpose**

1. The purpose of this Note is to seek your approval for four minor policy decisions that have been identified through the drafting process of the draft Armed Forces Discipline Amendment Bill (draft Bill). The New Zealand Defence Force (NZDF) is seeking Ministerial approval by 31 August 2025 to enable to draft the Bill to progress as planned.

### **Executive Summary**

2. The draft Bill will modernise aspects of the NZDF military justice system to enhance its efficiency and better enable the NZDF to focus time and resources on delivering core operational outputs. As part of this modernisation, the draft Bill provides for new and greater search powers to allow for more effective searching for evidence of offending by members of the Armed Forces.

3. The changes in the draft Bill will also bolster fundamental aspects of transparency and fairness in the military justice system. The changes will also more closely align the military justice system with New Zealand's civilian criminal justice system and enhance consistency with the New Zealand Bill of Rights Act 1990.

### **Background**

4. Approval to progress the key policy and technical changes to the military justice system in the draft Bill was originally received from the previous Government on 20 September 2022. Copies of the Cabinet Paper seeking policy approval and the corresponding Minute of Decision (ERS-22-MIN-0048) granting this approval are enclosed. That decision authorises you, as Minister of Defence, to make minor decisions in relation to the Bill within the overall framework approved by Cabinet (Minute of Decision at [24]). On 15 February 2024, you agreed that the key policy and technical changes to the military justice should continue.

### **Proposed Timeline**

5. Initial drafting instructions were provided to the Parliamentary Counsel Office (PCO) in July 2023. Work on the draft Bill is now significantly progressed.

6. The NZDF is currently reviewing the third draft of the Bill, which has a priority category of 5 (to proceed to select committee by the end of 2025). The updated timeline for this Bill provided in response to the request for reassessment of bills for the 2025 Legislation Programme has the final draft completed by 24 October 2025. This will allow time for

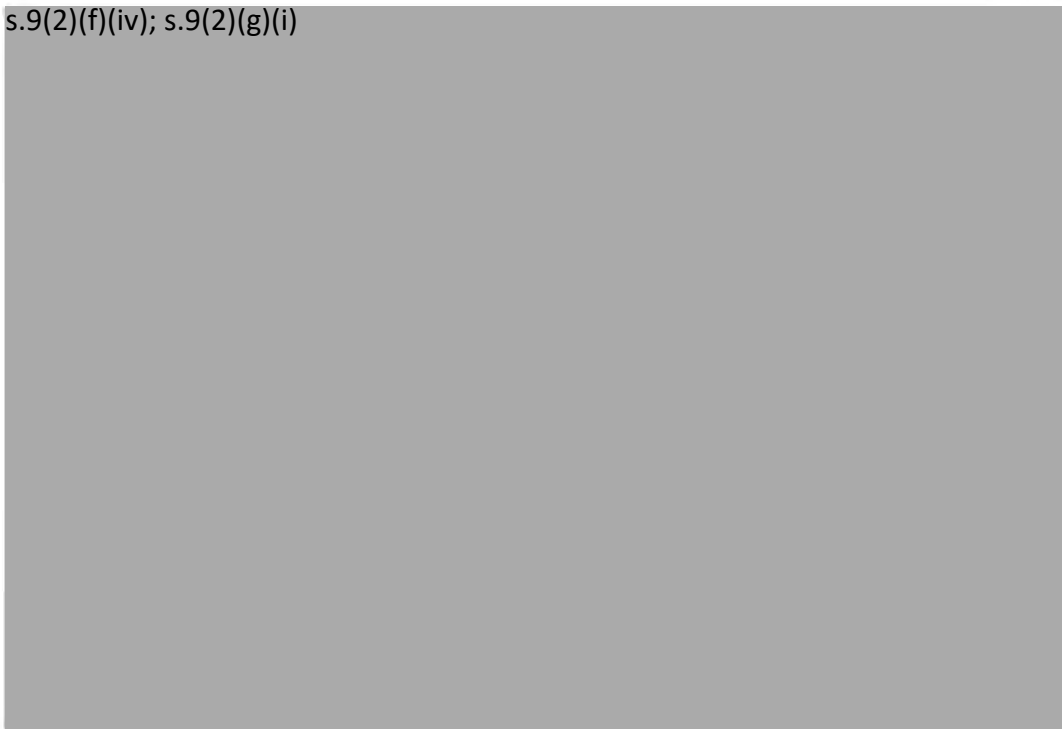
vetting by the Ministry of Justice and for your consideration prior to introduction, which is proposed for 10 or 11 November 2025.

### **Matters requiring policy decision**

7. Through the drafting process, the NZDF has identified four issues that require further policy determination. These are minor and fall within the authorisation Cabinet provided for the Minister of Defence to determine:

- a. **The NZDF seeks your approval to restrict the manner of search that can be conducted on a person in service custody.** Cabinet agreed to update existing search powers as well as providing for an ability to obtain a search warrant (Minute of Decision at [13] to [16]). The current provision, s 98 of the Armed Forces Discipline Act 1971 (AFDA), is broad and does not provide the protective restrictions that exist in the Search and Surveillance Act 2012 (SSA). The NZDF proposes to restrict search in this context to a rub-down search and exclude the power to conduct a strip-search, or to conduct an internal search of any part of the body of any person, except for, with the person's consent, searching the person's mouth. This would better align powers to search those in service custody with the SSA.
- b. **The NZDF seeks your approval to exclude the requirement for a warrant in relation to NZDF issued electronic devices and to exclude the requirement for explicit authorisation** for searches of material that is accessible from, but not stored on, an electronic device or such other device that contains data:
  - (1) The Bill proposes requiring a warrant to search personal electronic devices due to the sensitive and extensive nature of material on such devices "owned or used" by a person subject to the Act (Minute of Decision [at 13.3.3]). The approach to this proposed by the NZDF has shifted to recognise the different privacy interests that attach to personal electronic devices, compared with NZDF-issued electronic devices. The proposal is that NZDF devices will instead be able to be searched under warrantless search powers.
  - (2) The Minute of Decision [at 13.3.2] referred to a requirement for "explicit authorisation" to "search, retrieve, and copy material that is accessible from but not stored in an electronic device or such other device that contains data". This change is sought to align with the way in which the SSA defines a "computer device", and the Court of Appeal's interpretation that this allows searches of data that is stored in "the cloud" and accessed through the device. The NZDF proposes to adopt definitions of "computer device" and "remote access search" to align with the SSA.
- c. Preservation orders. To ensure consistency with the SSA, and the Budapest Convention and Related Matters Legislation Amendment Bill, **the NZDF seeks your approval to include provision in the AFDA for preservation orders** to be made for evidence obtained under AFDA production orders. As the production order power is not tied to a search warrant power in the AFDA this will require specific provision to be made under the AFDA.

d. s.9(2)(f)(iv); s.9(2)(g)(i)



**Next Steps**

8. Subject to your decisions on the above, the NZDF will continue to finalise the draft Bill in conjunction with PCO with a view to having the Bill introduced to Parliament in November 2025.

**Recommendations**

9. It is recommended that you:

- a. **Note** the proposed timeframes for finalisation and introduction of the draft Bill. YES/NO
- b. **Agree** that a warrant is not required to search, retrieve, and copy material from NZDF issued devices, and that "explicit authorisation" is not required in relation to material that is accessible from, but not stored on, an electronic device or such other device that contains data. YES/NO
- c. **Agree** that searches of a person in service custody are restricted to rub-down searches, except for, with the person's consent, searching the person's mouth. YES/NO
- d. **Agree** that provision be included in the AFDA for preservation orders to be made for evidence obtained under an AFDA production order. YES/NO
- e. s.9(2)(f)(iv); s.9(2)(g)(i) YES/NO



**T DAVIES**  
Air Marshal

Chief of Defence Force

**Hon Judith Collins KC MP**  
Minister of Defence

**Enclosures:**

1. Cabinet Paper Seeking Agreement for Modernisation of the Military Justice System (ERS-22-SUB-0048)
2. ERS Minute of Decision (ERS-22-MIN-0048)



Headquarters  
New Zealand Defence Force  
Defence House  
Wellington 6011

NTM 2024-06

14 February 2024

Minister of Defence

## **DRAFT ARMED FORCES DISCIPLINE AMENDMENT BILL**

### **Purpose**

1. The purpose of this Note is to seek your approval for key policy and technical changes, to the military justice system, to continue to be progressed through the draft Armed Forces Discipline Amendment Bill ("draft Bill").

### **Context**

2. The draft Bill is one of three regulatory projects being undertaken by the New Zealand Defence Force (NZDF) and the Ministry of Defence (MOD) as part of ongoing work to modernise and improve the legislation governing Defence activities and personnel. The NZDF and MOD each lead different legislative projects but work together and consult each other on key aspects of each project.

3. The Armed Forces Discipline Act 1971 (AFDA) is administered by MOD, but the draft Bill to amend the Act is being led by the NZDF as they are able to leverage their knowledge and experience of applying the Act. The NZDF lead on this is consistent with the approach taken in 2007 when the Act was last substantially updated. Officials are available to discuss the prioritisation of the regulatory reform projects should you wish to do so.

### **Executive Summary**

4. The AFDA regulates the military justice system, which is applicable to service personnel. The AFDA runs parallel to, but does not replace, the civilian justice system.

5. The draft Bill will modernise aspects of the NZDF military justice system to enhance its efficiency and allow the NZDF time and resources to be more focused on delivering core operational outputs. The draft Bill also provides for new and greater search powers to allow for more effective searches for evidence of offending by members of the Armed Forces.

6. The changes in the draft Bill will bolster fundamental aspects of transparency and fairness in the military justice system. The changes will also more closely align the military justice system with New Zealand's civilian criminal justice system and enhance consistency with the New Zealand Bill of Rights Act 1990.

7. The draft Bill received policy approval from the previous Government on 20 September 2022 (ERS-22-MIN-0048 refers). Drafting instructions were provided to the Parliamentary Counsel Office in July 2023. Work on the draft Bill has significantly

progressed, with the NZDF now reviewing the first draft, which it received in November 2023.

8. The draft Bill provides for:
- a. changes to the way that both minor and serious/complex/sensitive offending is managed;
  - b. an extension of the right to elect trial before the Court Martial;
  - c. the adoption of greater protections for young persons under 18;
  - d. a new regime for the use of national security information in Court Martial proceedings; and
  - e. a new power authorising drug testing of members of the Armed Forces for disciplinary purposes.

9. It is assessed that these changes will realise efficiency gains and make the system more transparent and fair. The financial impacts of implementing the changes can be managed within NZDF baseline.

10. The draft Bill also provides an opportunity to progress a number of technical amendments to address inefficiencies and anachronisms in the current legislation.

#### **Armed Forces Discipline Amendment Bill – background and objectives**

11. The draft Bill's objective is to modernise aspects of the military justice system to make it more efficient, fair and transparent.

##### *The military justice system*

12. The military justice system applies to the NZDF's uniformed Armed Forces personnel ('members of the Armed Forces').<sup>1</sup> It runs parallel to, but does not replace, the civilian justice system.

13. The military justice system is designed to:

- a. maintain military discipline;
- b. operate consistently in all operating environments, both domestic and overseas; and
- c. be expeditious, fair, efficient and simple.

14. A wide range of behaviours are offences in the military context - ranging from minor discipline breaches (such as being late for parade or avoiding duty) to very serious offending (such serious sexual offending). 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).

15. At present, the decision to charge a member of the Armed Forces with an offence is reserved for his or her Commanding Officer. Most charges are dealt with by summary trial and only the most serious offences are referred to the Director of Military Prosecutions for trial by the Court Martial. A summary trial is not a trial by a court; it is a process run by officers in the chain of command. Summary trials are conducted without the formality of a court and without lawyers, however the presumption of innocence and criminal standard of

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<sup>1</sup> In certain circumstances it can apply to civilians and members of foreign forces.

proof still apply. While summary trials are not as resource or time intensive as a Court Martial, they do involve a significant amount of time and resources for operational units.

*Impetus and objectives for change – to make the system more efficient and fair*

16. The Ministry of Defence conducted an independent review of the summary trial system in 2019.<sup>2</sup> The review made a number of recommendations regarding the summary trial system, directed at making it more efficient, fairer and more transparent. Several other independent reviews have raised similar issues.<sup>3</sup>

s.9(2)(f)(iv); s.9(2)(g)(i)



#### What the Bill will cover – key policy changes

##### *Changes to implement the Ministry's recommendations*

19. The NZDF accepted the bulk of the Ministry's recommendations for legislative change in whole or part. To achieve this, the draft Bill includes the following changes:

- a. **Additional safeguards on the use of detention** as a punishment at summary trial by prohibiting detention from being imposed in addition to a fine, or on young persons under the age of 18.
- b. **A new Minor Infringement Sanction system** (see Annex A) which would form the lowest tier of the military justice system and improve the system by making it more efficient. The Minor Infringement Sanction System would:
  - 19.b.1 apply to minor infringements of specified "purely disciplinary" offences (such as being late for parade); and

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<sup>2</sup> Ministry of Defence, *Summary Report on Military Justice – Review of the summary trial system*, June 2019.

<sup>3</sup> Ministry of Defence, *Independent Review of the New Zealand Defence Force's Progress against its Action Plan for Operation Respect*, June 2020; Crown Law Office, *Assessment of the New Zealand Defence Force. Prosecution Function*, July 2020; Frances Joychild QC, *Report to Chief of Air Force: Inquiry into Historic Sexual Abuse, Workplace Sexual Harassment and Bullying related to Robert Roper and Contemporary New Zealand Defence Force Systems and Processes for Handling Such Complaints*, July 2017.

- 19.b.2 allow a Commanding Officer (or delegate) to impose sanctions of extra work/drill or extra duties without the burden of a summary trial.
- c. ***Transfer responsibility for serious/complex/sensitive offending out of the chain of command from the Commanding Officer to the Director of Military Prosecutions*** acting with the investigative support of the Provost Marshal. This would ensure that this offending is dealt with independently and provide more scope for the victim's wishes to be taken into account when deciding whether to prosecute.
- d. ***Extend the right to elect trial by the Court Martial*** to all but specified "purely disciplinary" offences.
- e. ***Create new powers to search for evidence of offending*** (see Annex B) to augment the current Commanding Officer power to authorise a search of persons or places under their command, namely:
  - 19.e.1 A new power for the Officer in Charge of a Defence Area to authorise searches of persons, vehicles or places within a Defence Area; and
  - 19.e.2 A new power for NZDF Military Police to search areas outside of a Defence Area or electronic data with a search warrant issued by a Judge of the Court Martial.
- f. ***Increase protection for young people under the age of 18*** by allowing the young person to be accompanied by a support person during summary trial and restorative conferences. This will be supplemented by the development of specific NZDF guidance for Commanding Officers and disciplinary officers when disciplining a person under the age of 18. This protection recognises that a person may join the Armed Forces at age 17.

#### Other policy changes

- 20. The draft Bill also includes the following additional policy changes:
  - a. ***Authorise a Superior Commander to exercise the powers of a Commanding Officer*** to charge an accused, authorise a search, or refer serious/complex/sensitive offending to the Director of Military Prosecutions. This will ensure that a Superior Commander can step in where a Commanding Officer is unable or unwilling to act.
  - b. ***A new regime to address the use of National Security Information in Court Martial proceedings.*** It is proposed that this regime should be consistent with the equivalent regime under the Security Information in Proceedings Act 2022, for criminal proceedings in the civil courts, and include the use of a Special Advocate to represent the interests of the accused.
  - c. ***A new statutory power for the NZDF to drug-test members of the Armed Forces for the purposes of maintaining discipline.*** The NZDF currently has no express power to drug test personnel for reasons other than safety, even though the misuse of drugs is a disciplinary offence. The proposed new drug-testing regime would permit drug-testing where there are reasonable grounds to believe a drug-related offence has been committed.

### **What the draft Bill covers – technical amendments**

21. In addition to these policy changes, the NZDF and the Judge Advocate General identified a number of technical legislative changes which have been included in the draft Bill (see Annex C). These amendments address inefficiencies and anachronisms in the current legislation. In many cases the amendments will more closely align the legislation with the ordinary criminal justice system. The changes are not expected to be controversial and the draft Bill provides a useful opportunity to rectify these issues and bring the military justice system up to date.

### **Anticipated impact of the proposed changes**

22. It is assessed that the changes in the draft Bill will enhance the efficiency of the military justice system, allowing more NZDF time and resources to be focused on delivering core operational outputs. The creation of the Minor Infringement Sanction system is expected to result in a significant decrease in the number of summary trials for minor disciplinary offences. The processes for dealing with serious/complex/sensitive offending will also be more streamlined.

23. Fairness, transparency, and consistency with the New Zealand Bill of Rights Act 1990 will be enhanced by the changes in the draft Bill and the military justice system will be more closely aligned with New Zealand's civilian criminal justice system.

24. The new and greater search powers in the draft Bill are also expected to allow for more robust detection and investigation of offending.

25. The expansion of the right to elect trial by the Court Martial may see a limited increase in the volume of trials in the Court Martial. It is difficult to predict how significant this may be, but overseas experience suggests that less than 1% of offenders elect a trial in the Court Martial.

26. The financial implications of implementing the changes can be managed within existing NZDF baseline.

### **Consultation**

27. The Ministry of Defence, Ministry of Justice, Oranga Tamariki, Crown Law and the Department of Prime Minister and Cabinet (National Security Group) were consulted during the preparation of the policy proposals contained in the draft Bill. The Judge Advocate General/Chief Judge of the Court Martial was also consulted.

### **Next steps**

s.9(2)(f)(iv); s.9(2)(g)(i)

30. In addition, the NZDF will need to develop Defence Force Orders and implement appropriate training, particularly to support the new Minor Infringement Sanction System. Due to the need to develop Defence Force Orders and implement appropriate training it is proposed that the draft Bill should enter into force 12 months after it has received Royal assent.

**Recommendations**

31. It is recommended that you:

- a. **Note** that the Military Justice Amendment Bill is part of a programme of three regulatory reform projects to improve legislation covering the Defence sector.

NOTED

- b. **Note** that in the absence of direction to the contrary, work will continue on the draft Bill.

NOTED

- c. **Agree** that the key policy and technical changes to the military justice system continue to be progressed.

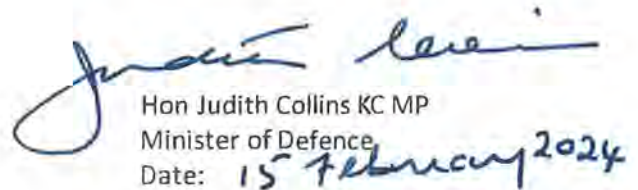
YES/NO

- d. **Direct** officials to submit a bid for inclusion of the Military Justice Amendment Bill in the 2024 legislation programme, with a Category 3 priority.

YES/NO



KR SHORT  
Air Marshal  
Chief of Defence Force



Hon Judith Collins KC MP  
Minister of Defence  
Date: 15 February 2024

**Annexes:**

- A. Key elements of the Minor Infringement Sanction System
- B. Scope of proposed new search powers
- C. Technical amendments to be made to legislation

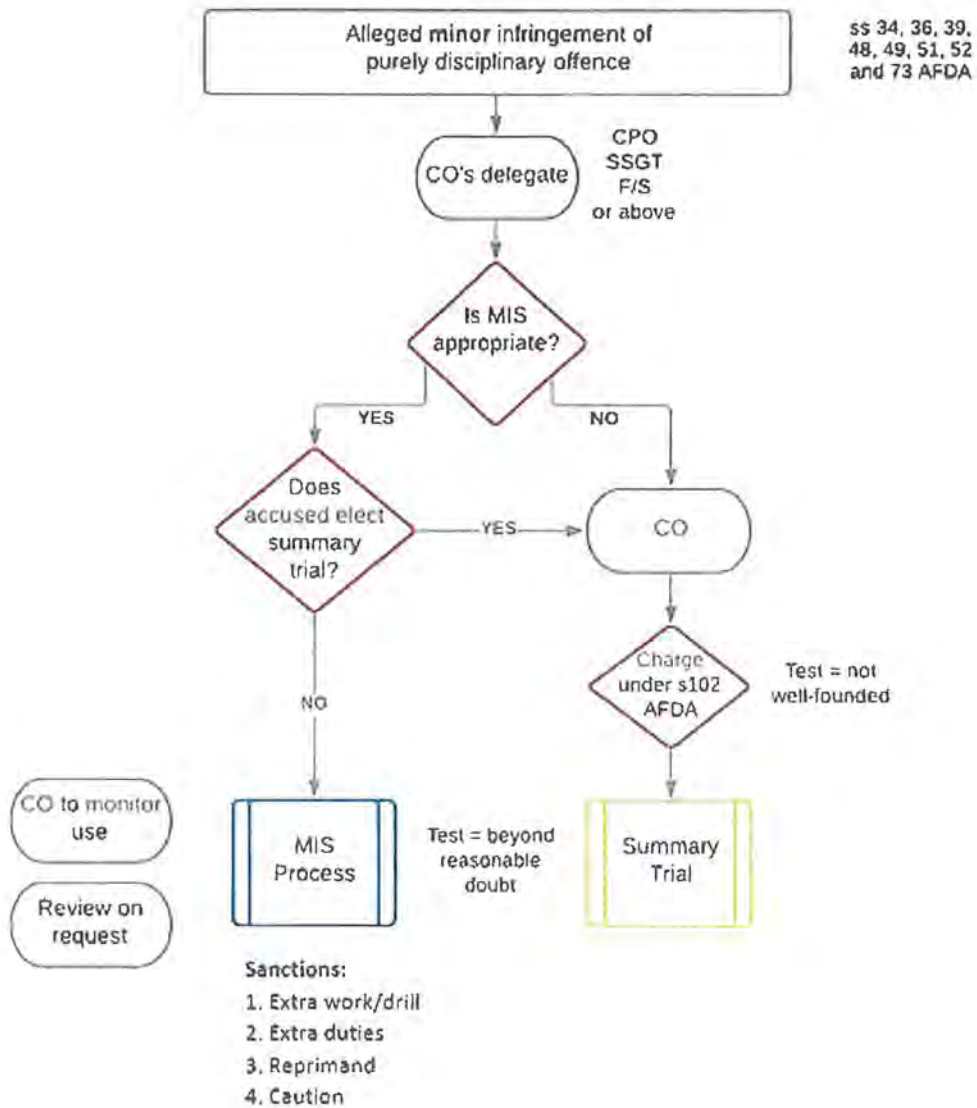
**KEY ELEMENTS OF  
NEW MINOR INFRINGEMENT SANCTION (MIS) SYSTEM  
(to be set out in Defence Force Orders)**

- 1 Applies only to minor infringements of “purely disciplinary” offences specified by the Chief of Defence Force. These are anticipated to be: s 34(2) (asleep on guard duty); s 36 (insubordinate behaviour); s 39 (failure to comply with written orders); s 48 (absent without leave); s 49 (avoidance of duty); s 51 (drunkenness); s 52 (possession of alcohol on base) and s 73 of the AFDA (conduct prejudicial to service discipline).
- 2 Allows for sanctions of caution, reprimand, extra work/drill or extra duty to be imposed on an administrative basis without recording a charge under s 102 of the AFDA or a summary trial.
- 3 Exercised under Commanding Officer’s command authority. The Commanding Officer may delegate authority in writing to Chief Petty Officer (Navy)/Staff Sergeant (Army)/Flight Sergeant (Air Force) or above. The MIS decision maker must be 2 ranks higher than the offender.
- 4 Applies to all Armed Forces personnel up to, and including, the rank of Lieutenant (Navy)/Captain (Army)/Flight Lieutenant (Air Force). However, consistent with Schedule 4 of the AFDA, senior Non-Commissioned Officers and officers may not receive a sanction of extra work/drill or extra duty.
- 5 Factors to be considered when deciding whether the MIS system is appropriate in a particular case will include:
  - 5.1 Rank, age and level of responsibility of the individual.
  - 5.2 Nature of the conduct.
  - 5.3 Context in which the conduct occurred and its impact on unit discipline, efficiency or operational effectiveness.
  - 5.4 Extent of adverse impact on other individuals.
  - 5.5 Individual’s previous conduct.

Safeguards:

- 5.6 Individual sanctioned may elect to have the issue dealt with by charge and summary trial.
- 5.7 Individual sanctioned may ask an independent officer (such as the Inspector General (Defence) (IGD) or Judge Advocate General (JAG)/Chief Judge of the Court Martial) to review the MIS decision at any time after it has been imposed.

- 5.8 Authority to impose MIS by delegation only – not as an automatic privilege of rank.
- 5.9 MIS decisions and supporting reasons to be recorded in writing.
- 5.10 Record to be retained in a unit register for 24 months.
- 5.11 Commanding Officer must review the unit register on a regular basis (at least every 3 months). An independent officer (such as the IGD or JAG/Chief Judge of the Court Martial) may review the register on request.



SCOPE OF PROPOSED NEW POWERS TO SEARCH FOR EVIDENCE OF OFFENDING  
(to be set out in legislation)

Table A: Commanding Officer (CO) power

Type of search	Scope of Power	Exercised By	Authorised By	Threshold
<i>Person subject to AFDA under CO command</i>	<i>Temporarily detain, search, and seize anything (including electronic device)</i>  <i>(personal searches to be conducted in accordance with ss 125(3) and 126(4) Search and Surveillance Act 2012)</i>	<ul style="list-style-type: none"> <li>• Unit Investigator</li> <li>• NZDF Joint Military Police</li> </ul>	<ul style="list-style-type: none"> <li>• Commanding Officer</li> <li>• Superior Commander</li> </ul>	<p><i>"Reasonable grounds to suspect":</i></p> <ul style="list-style-type: none"> <li>• <i>offence has been committed under AFDA; and</i></li> <li>• <i>the search will find evidential material in respect of the offence</i></li> </ul>
<i>Vehicle or premises within limits of CO command</i>	<i>Enter, search, and seize anything (including electronic device)</i>	<ul style="list-style-type: none"> <li>• Unit Investigator</li> <li>• NZDF Joint Military Police</li> </ul>	<ul style="list-style-type: none"> <li>• Commanding Officer</li> <li>• Superior Commander</li> </ul>	<p><i>"Reasonable grounds to suspect":</i></p> <ul style="list-style-type: none"> <li>• <i>offence has been committed under AFDA; and</i></li> <li>• <i>the search will find evidential material in respect of the offence</i></li> </ul>

Table B: Defence Area power

<i>Type of search</i>	<i>Scope of Power</i>	<i>Exercised By</i>	<i>Authorised By</i>	<i>Threshold</i>
<b>Person subject to AFDA within, entering or leaving a Defence Area</b>	<p>Temporarily detain, search, and seize anything (including electronic device)</p> <p>(personal searches to be conducted in accordance with ss 125(3) and 126(4) Search and Surveillance Act 2012)</p>	<ul style="list-style-type: none"> <li>NZDF Joint Military Police (or person authorised by Provost Marshal)</li> </ul>	<ul style="list-style-type: none"> <li>Officer in Charge of Defence Area</li> </ul>	<p>"Reasonable grounds to believe":</p> <ul style="list-style-type: none"> <li>offence has been committed under AFDA; and</li> <li>the search will find evidential material in respect of that offence</li> </ul>
<b>Vehicle or premises within a Defence Area</b>	<p>Enter, search, and seize anything (including electronic device)</p>	<ul style="list-style-type: none"> <li>NZDF Joint Military Police (or person authorised by Provost Marshal)</li> </ul>	<ul style="list-style-type: none"> <li>Officer in Charge of Defence Area</li> </ul>	<p>"Reasonable grounds to believe"</p> <ul style="list-style-type: none"> <li>offence has been committed under AFDA; and</li> <li>the search will find evidential material in respect of that offence</li> </ul>

Table C: "sensitive" search powers (to be exercised in accordance with Part 4, Subpart 4, Search and Surveillance Act 2012)<sup>4</sup>

Type of search	Scope of Power	Exercised By	Authorised By	Threshold
<i>Vehicles or premises outside a Defence Area owned, used or occupied by person subject to AFDA</i>	<i>Enter, search, and seize anything (including any electronic device)</i>	<ul style="list-style-type: none"> <li>NZDF Joint Military Police (or person authorised by Provost Marshal)</li> </ul>	<ul style="list-style-type: none"> <li>Court Martial Warrant (issued in accordance with Part 4, Subpart 3 Search and Surveillance Act 2012)</li> </ul>	<ul style="list-style-type: none"> <li>"Reasonable grounds to suspect" offence committed under AFDA; AND</li> <li>"Reasonable grounds to believe" the search will find evidential material in respect of the offence</li> </ul>
<i>Electronic device in the custody of NZDF Joint Military Police owned or used by person subject to AFDA</i>	<i>Search, retrieve, and copy material:</i> <ul style="list-style-type: none"> <li>stored on device; and</li> <li>accessible from, but not stored on device, only with express authorisation.</li> </ul>	<ul style="list-style-type: none"> <li>NZDF Joint Military Police (or person authorised by Provost Marshal)</li> </ul>	<ul style="list-style-type: none"> <li>Court Martial Warrant (issued in accordance with Part 4, Subpart 3 Search and Surveillance Act 2012)</li> </ul>	<ul style="list-style-type: none"> <li>Reasonable grounds to suspect" offence committed under AFDA; AND</li> <li>"Reasonable grounds to believe" the search will find evidential material in respect of the offence</li> </ul>
<i>Documents held by third party</i>	<i>Obtain, retain, copy, or reproduce documents</i>	<ul style="list-style-type: none"> <li>NZDF Joint Military Police (or person authorised by Provost Marshal)</li> </ul>	<ul style="list-style-type: none"> <li>Court Martial Production Order (issued in accordance with Part 3(2) Search and Surveillance Act 2012)</li> </ul>	<ul style="list-style-type: none"> <li>"Reasonable grounds to suspect" offence committed under AFDA; AND</li> <li>"Reasonable grounds to believe" document contains evidence relating to the commission of that offence</li> </ul>

<sup>4</sup> Sections 118, 119 and 120 Search and Surveillance Act 2012 with respect to individuals subject to the AFDA only.

**TECHNICAL AMENDMENTS  
(to be made to legislation)**

- a. Clarify the actions that the Director of Military Prosecutions (DMP) may take when exercising their prosecutorial authority, including referral of offending to civilian authorities if the DMP considers it is better addressed in the ordinary criminal justice system. Although this power is implicit in the DMP's prosecutorial authority it is not currently provided for in the AFDA.
- b. Clarify that under ss 108(2) and 111 of the AFDA a Disciplinary Officer must refer a charge to the DMP if it raises particularly complex questions of fact or law that are not suitable for disposal at summary trial. This will ensure that complex charges are not dealt with at summary trial, where the accused does not have the benefit of legal representation.
- c. Specify the suppression orders that may be made by a Disciplinary Officer at summary trial or the Summary Appeal Court, with reference to those available under Part 5, Subpart 3, of the Criminal Procedure Act 2011. At present, s 145 of the AFDA simply provides that Part 5, Subpart 3, of the Criminal Procedure Act 2011 applies "to the extent applicable and with all necessary modifications". This has been difficult to apply in practice.
- d. Enable the Summary Appeal Court to increase punishment on appeal by the DMP, if it considers the punishment imposed at summary trial was manifestly inadequate. This would align the Summary Appeal Court's powers with those of civilian courts.
- e. Enable the Summary Appeal Court to substitute a finding of guilty for a different offence if it allows an appeal against finding on the original offence. To do so, the Summary Appeal Court would have to be satisfied that the factual basis for the finding on the original offence also provides a factual basis for the different offence. This would align the Summary Appeal Court's powers with those of civilian courts.
- f. Enable the Summary Appeal Court to direct a re-trial in the summary jurisdiction in the event that the Court finds the disciplinary officer's decision to dismiss a charge or make a finding of not guilty is unreasonable or misapplied the applicable legal test. This would align the Summary Appeal Court's powers with those of civilian courts.
- g. Provide clear legal authority for the publication of summary trial decisions, by amending Part 5 of the AFDA to provide that:
  - i. A Disciplinary Officer may direct publication of any finding or decision made under sections 117E, 117Q, 117S and 117T of the AFDA if they consider that publication is appropriate for the proper discipline of, and administration of justice within, the Armed Forces.
  - ii. The Disciplinary Officer's power to direct publication is subject to any limitations or restrictions that may be imposed by, or in accordance with, orders of the Chief of Defence Force issued under 206(1)(h) AFDA.

- h. Align bail provisions with the Bail Act 2000 by reversing the current presumption under s 101A(2) of the AFDA and s 49(2) of the Court Martial Act (CMA) that an offender is not entitled to bail as of right.
- i. Align the military justice system with the ordinary New Zealand criminal justice system and delete the procedure in s 22(1)(c) of the AFDA and s 64 of the CMA for other offences to be taken into account by the Court Martial in passing sentence. This was an oversight at the time of the 2007 reforms and there is no record of the procedure having been used.
- j. Update contempt provisions in ss 70 and 150E to 150G of the AFDA and ss 31 and 32 of the CMA to align with those in the Contempt of the Court Act 2019. This will include the creation of a new citation procedure to deal with disruptive behaviour before the Court Martial, Summary Appeal Court and Court Martial Appeal Court.
- k. Remove the anachronistic role of “defender” in s 68(b) of the CMA from trials before the Court Martial. This role is no longer appropriate and has not been used in the past 30 years. All accused in the Court Martial are offered access to free legal representation.
- l. Provide for Te Reo Māori and New Zealand Sign Language to be used in Summary Trials and the Court Martial.
- m. Appoint the Provost Marshal and the Warrant Officer of the Defence Force to the Armed Forces Discipline Committee.
- n. Specify under s 200N of the AFDA that, before a Court of Inquiry can adopt a finding adverse to any individual, it must be satisfied that the individual is aware of the matters on which the proposed finding is based and has had an opportunity to respond to them. This will align s 200N with s 14(3) of the Inquiries Act 2013.
- o. Clarify the time limits within which a charge must be recorded under the AFDA, by reference to the type and seriousness of the offence. The current provision in s 20 of the AFDA is confusing and is out of step with the ordinary civilian criminal law. It is proposed to replace s 20 of the AFDA with two new provisions:
  - i. One that clearly specifies the time limits within which a charge must be laid by reference to the type and seriousness of offence.
  - ii. One that specifies that a person no longer subject to the AFDA cannot be charged with an AFDA offence (other than a civilian offence or a loyalty offence) more than 6 months after they have ceased to be under the jurisdiction of the AFDA.
- p. Align the military justice system with s 143 Criminal Procedure Act 2011 and amends 117Q AFDA and Part 2, Subpart 4, of the CMA to clarify that, where the commission of an offence includes the commission of another offence, the accused may be convicted of the included offence if it is proved – even if all of the elements of the first offence have not been proved.
- q. Allow a Judge to decline to state in public all or any of the facts, reasons or other considerations that have been taken into account in determining sentence if any of

- the grounds in s 39(1) of the CMA apply – i.e., national security, interests of justice, or protection of the victim.
- r. Repeal s 66(3) and (4) of the CMA and permit a sentence of dismissal to take effect immediately on conviction, or at the conclusion of any accompanying sentence of detention or imprisonment, subject to a right of reinstatement as of the date of dismissal if the sentence is overturned on appeal. The superannuation consequences that originally justified s 66(4) of the CMA no longer apply.
  - s. Align s 177 of the AFDA with s 100 of the Sentencing Act 2002 to allow for commencement of sentences of detention or imprisonment to be deferred by up to two months on humanitarian grounds.
  - t. Delete anachronistic reference in s 9(1)(b) of the Crimes Act 1961 to the jurisdiction of the Court Martial or officers of the NZDF to try common law offences. There are no common law offences to which this would apply.
  - u. Delete anachronistic provision in s 30(2)(h) of the CMA for Judge’s direction to military members that a finding of guilt is contrary to law. This was an oversight at the time of the 2007 reforms.
  - v. Delete anachronistic elaboration of duties of Judge at trial in s 30(2), (3) and (4) of the CMA. This was an oversight at the time of the 2007 reforms.
  - w. Remedy anomalies in the conditions disqualifying a person from sitting as a military member of the Court Martial specified in s 23 of the CMA by:
    - i. Extending the exclusion in s 23(a) to include the time between the commission of the alleged offence and the date of trial.
    - ii. Extending the exclusion in s 23(b) to include any person acting as defence counsel or a witness for the defence.
    - iii. Extending the exclusions in ss 23(d) and 23(e) to include the situation where the person has previously served as a disciplinary officer or military member in respect of *any* charge against the accused.
    - iv. Deleting the anachronistic reference to “judge advocate” in s 23(e).
    - v. Aligning s 23(g) with s 16(3)(b) of the Juries Act 1980.
    - vi. Inserting a new exclusion for any person who is qualified as a lawyer or a member of the NZDF Joint Military Police Unit.
  - x. Amend s 150 of the AFDA to authorise the process for access to Court Martial documents to be set out in the Rules of Procedure, as is the case with the District Court.
  - y. Clarify confusion about the meaning of “investigation” under s 102 and Part 5 of the AFDA. At present “investigation” is used in the AFDA to mean both the process of gathering evidence in relation to offending and the summary trial process. This causes significant confusion in practice. It is proposed to amend the provisions of the AFDA to consistently use “investigate/investigation” to mean the process of gathering evidence in relation to a charge and “dispose/disposal” to mean the process of hearing and determining a charge.

- z. Repeal anachronistic reference in s 13(c) of the AFDA to sentences against spies being "carried out". This reference was relevant only to the imposition of the death penalty, which no longer exists.
- aa. Repeal the provision in s 101F(c) and (e) of the AFDA and s 44(4)(d) of the CMA for DMP to lay multiple charge sheets before the Court Martial. This is unnecessary and has the potential to be unwieldy and inefficient if it is used.
- bb. Correct out of date reference in s 44(4)(k) of the CMA to "discovery" rather than "disclosure".
- cc. Clarify that under s 44(4) of the CMA an objection by the accused to the legal basis of a charge is a question of law that may be heard by Judge.



Headquarters  
New Zealand Defence Force  
Defence House  
Private Bag 39997  
Wellington Mail Centre  
Lower Hutt 5045  
NEW ZEALAND

NTM 2025-312

14 November 2025

Minister of Defence

## **ARMED FORCES DISCIPLINE LEGISLATION AMENDMENT BILL – PAPERS FOR LEGISLATION COMMITTEE AND FURTHER POLICY PERMISSIONS**

### **Purpose**

1. This Note requests you commence Ministerial Consultation on the draft Armed Forces Discipline Legislation Amendment Bill ('the draft Bill') and approve the enclosed papers being lodged for the Cabinet Legislation Committee on 11 December 2025. You are also requested to approve two minor policy decisions identified during the drafting and vetting processes.

### **Executive Summary**

2. The draft Bill will enhance the efficiency of the military justice system in key areas and therefore better enable the New Zealand Defence Force (NZDF) to focus its time and resources on delivering core operational outputs. As part of this modernisation, the draft Bill provides for a more streamlined and independent pathway to Court Martial for serious or complex offending.

3. The changes in the draft Bill also bolster fundamental aspects of transparency and fairness in the military justice system. The changes will also more closely align the military justice system with New Zealand's civilian criminal justice system, including by providing modernised search powers, and enhancing consistency with the New Zealand Bill of Rights Act 1990.

### **Background**

4. Approval to progress the key policy and technical changes to the military justice system in the draft Bill was originally received from the previous Government on 20 September 2022. On 15 February 2024, you agreed that the key policy and technical changes to the military justice system should continue. On 26 August 2025, you approved minor changes to the policy approvals for this Bill.


5. It is not expected that the changes in the draft Bill will be controversial.

### **Proposed Timeline**

6. The proposed 2025 timeline for the draft Bill is as follows:

Ministerial Consultation	17 November – 1 December
Lodgement	4 December
Pre-brief at Defence Officials' Meeting	10 December
LEG Committee	11 December
Cabinet	15 December
Introduction to the House	16 December

s.9(2)(f)(iv), s.9(2)(g)(i)

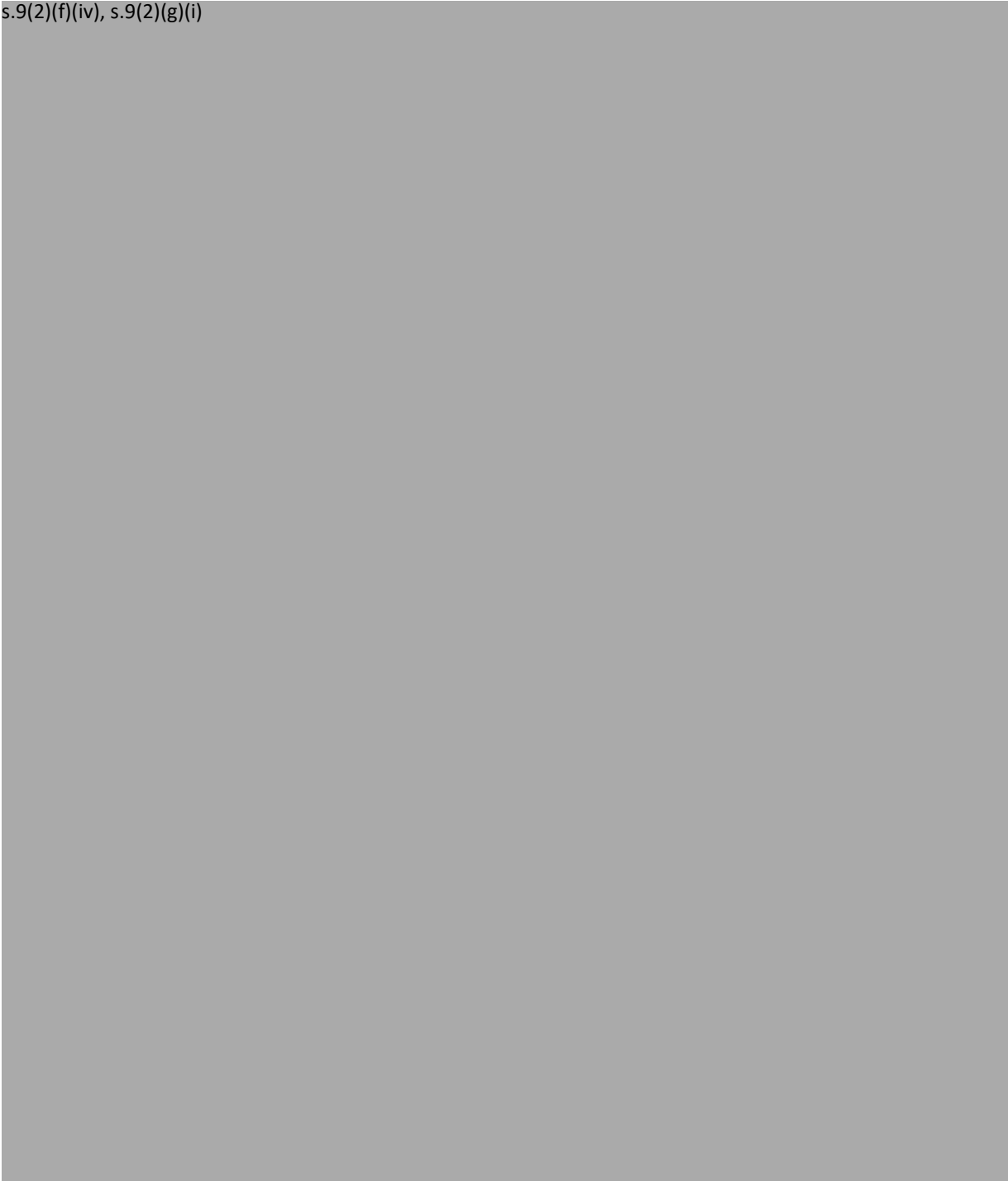


### **Additional Policy Decisions**

8. Through the drafting and vetting processes, the NZDF has identified two issues that require further policy determination. These are minor and fall within the authorisation Cabinet provided for the Minister of Defence to determine.

#### **(a) Not proceeding with specifying steps a Court of Inquiry is required to take before making an adverse finding**

s.9(2)(f)(iv), s.9(2)(g)(i)



s.9(2)(f)(iv), s.9(2)(g)(i)

**Recommendations**

19. It is recommended that the Minister:
- a. **Agree** to commence Ministerial Consultation on the draft paper for Legislation Committee and the draft Bill. **YES/NO**
  - b. **Agree** to take the draft Bill to Cabinet Legislation Committee on 11 December 2025, seeking approval for its introduction on 16 December 2025. **YES/NO**
  - c. **Agree** not to proceed with an amendment specifying steps a Court of Inquiry is required to take before making a finding adverse to an individual, on the basis that existing rights are sufficient. **YES/NO**
  - d. **Agree** to an amendment, for command search powers and searches of Defence Areas, naval ships, or military aircraft by Officers in Charge, to be limited to situations where the offence suspected or believed to have been committed is an imprisonable offence. **YES/NO**



**T DAVIES**

Air Marshal  
Chief of Defence Force

**Hon Judith Collins KC MP**  
Minister of Defence

**Enclosures:**

- 1. Draft Armed Forces Discipline Legislation Amendment Bill
- 2. Cabinet Paper Seeking Approval for Introduction of the Armed Forces Discipline Legislation Amendment Bill
- 3. Draft Disclosure Statement - Armed Forces Discipline Legislation Amendment Bill

Office of the Minister of Defence  
Cabinet Legislation Committee

## **ARMED FORCES DISCIPLINE LEGISLATION AMENDMENT BILL – APPROVAL FOR INTRODUCTION**

### **Proposal**

1. This paper seeks approval to introduce the Armed Forces Discipline Legislation Amendment Bill (the Bill) on 16 December 2025.

### **Policy**

2. The Bill comprises amendments to the Armed Forces Discipline Act 1971 (AFDA), Court Martial Act 2007, and Court Martial Appeals Act 1953. The amendments modernise the military justice system of the New Zealand Defence Force [ERS-22-MIN-0048 and ERS-22-SUB-0048 refers].
3. The Bill includes nine substantive policy changes:
  - 3.1 **Creating a Minor Disciplinary Sanction (MDS) System** to address very low-level offending more efficiently without the need to record a formal disciplinary charge.
  - 3.2 **Transferring responsibility to investigate and prosecute serious, complex or sensitive offending, including sexual offending, out of the chain of command** to the Director of Military Prosecutions.
  - 3.3 **Extending the right to elect trial by Court Martial** to all but a subset of the most low-level offences.
  - 3.4 **Updating existing search powers** under s 95 AFDA and creating new powers to search Defence Areas and carry out drug testing.
  - 3.5 **Establishing a new search warrant framework subject to judicial oversight** of searches of electronic devices and providing new powers for a judge to authorise the NZDF Military Police Unit to search areas outside of a Defence Area that are owned, occupied, or used by a member of the Armed Forces, or to issue production orders requiring documents from third parties.
  - 3.6 **Aligning bail provisions** more closely with the Bail Act 2000.
  - 3.7 **Amending appeal powers** so the Director of Military Prosecutions can appeal 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.
  - 3.8 **Updating powers to address contempt of court and disruptive behaviour** for closer alignment with the Contempt of Court Act 2019.

- 3.9 **Implementing a new scheme to address the use of National Security Information in Court Martial proceedings** that applies the special procedures in Part 2 of the Security of Information in Proceedings Act 2022.
4. The Bill also includes additional proposals that are minor or technical in nature and which largely clarify and update existing provisions. For example, the Bill increases protections for persons under the age of 18; imposes additional safeguards on the use of detention; clarifies suppression orders and authorises publication of summary trial decisions; and creates new powers for the Summary Appeal Court to substitute findings, increase punishments, and direct re-trials.
5. The Minister made minor policy decisions in relation to the Bill as authorised by Cabinet [ERS-22-MIN-0048 paragraph 24]. Those decisions were consistent with the objectives of the Bill and the overall framework approved by Cabinet. They included:
- 5.1 Restricting the manner of search that can be conducted on persons in Service custody;
  - 5.2 Not requiring a warrant to search NZDF-issued electronic devices and not requiring explicit authorisation to search material accessible from, but not stored on, an electronic device or other device containing data;
  - 5.3 Making provision for preservation orders to be made for evidence obtained under a production order;
  - 5.4 Not proceeding with technical changes to authorise a process for access to Court Martial documents; and
  - 5.5 Not proceeding with an amendment specifying steps a Court of Inquiry is required to take before making a finding adverse to an individual on the basis that the amendment is unnecessary.
  - 5.6 Limiting the updated search powers, namely (1) command search powers and (2) searches of Defence Areas, naval ships, or military aircraft by Officers in Charge, to situations where the offence suspected or believed to have been committed is an imprisonable offence.

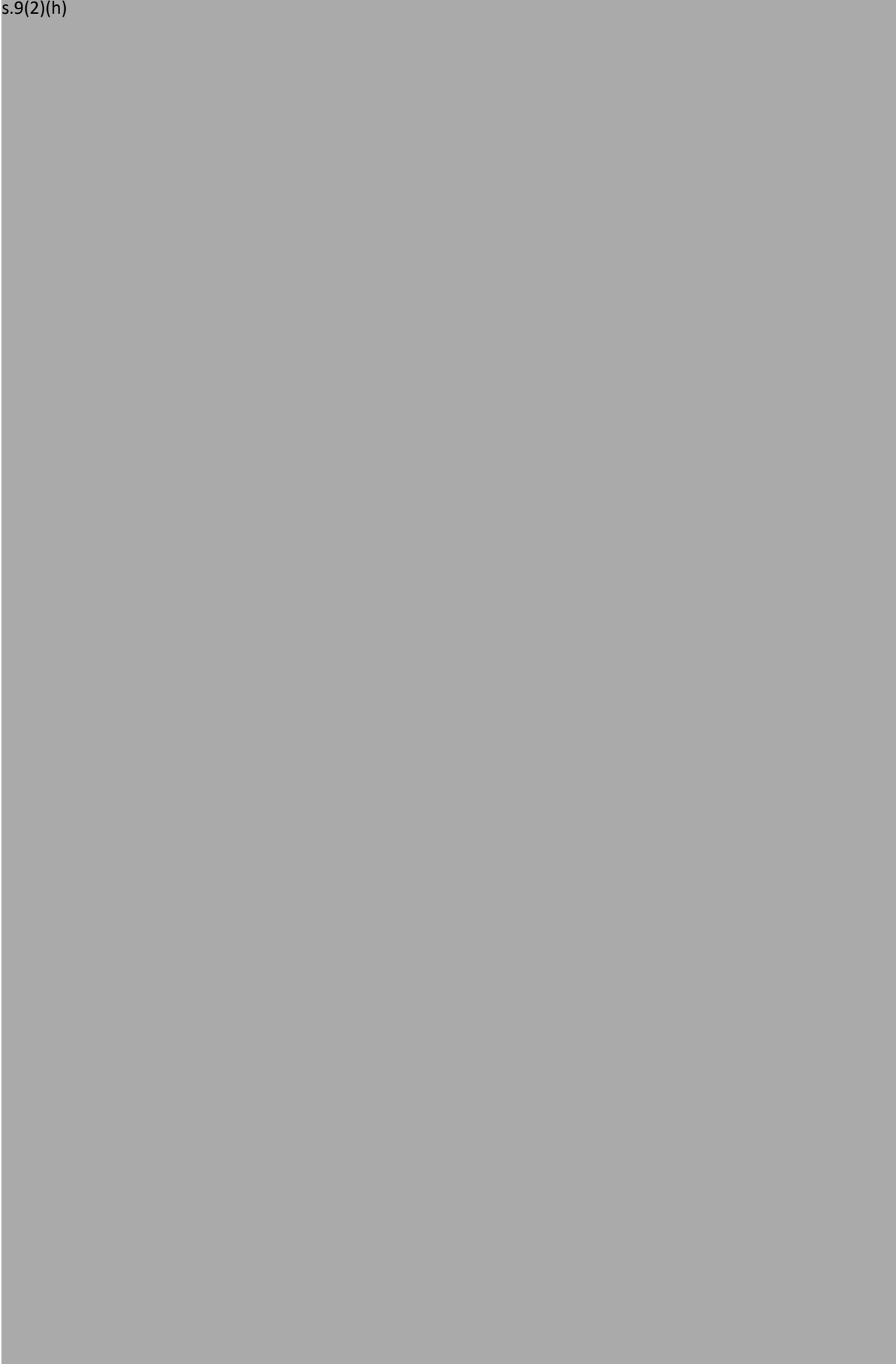
### Impact analysis

5. No Regulatory Impact Statement has been prepared. Treasury determined the Bill is exempt because a RIS would substantively duplicate the analysis in the Ministry of Defence's Summary Report on Military Justice of June 2019. A number of minor amendments in the Bill would also be exempt because they are suitable for inclusion in a revision Bill or they repeal or remove redundant legislative provisions.

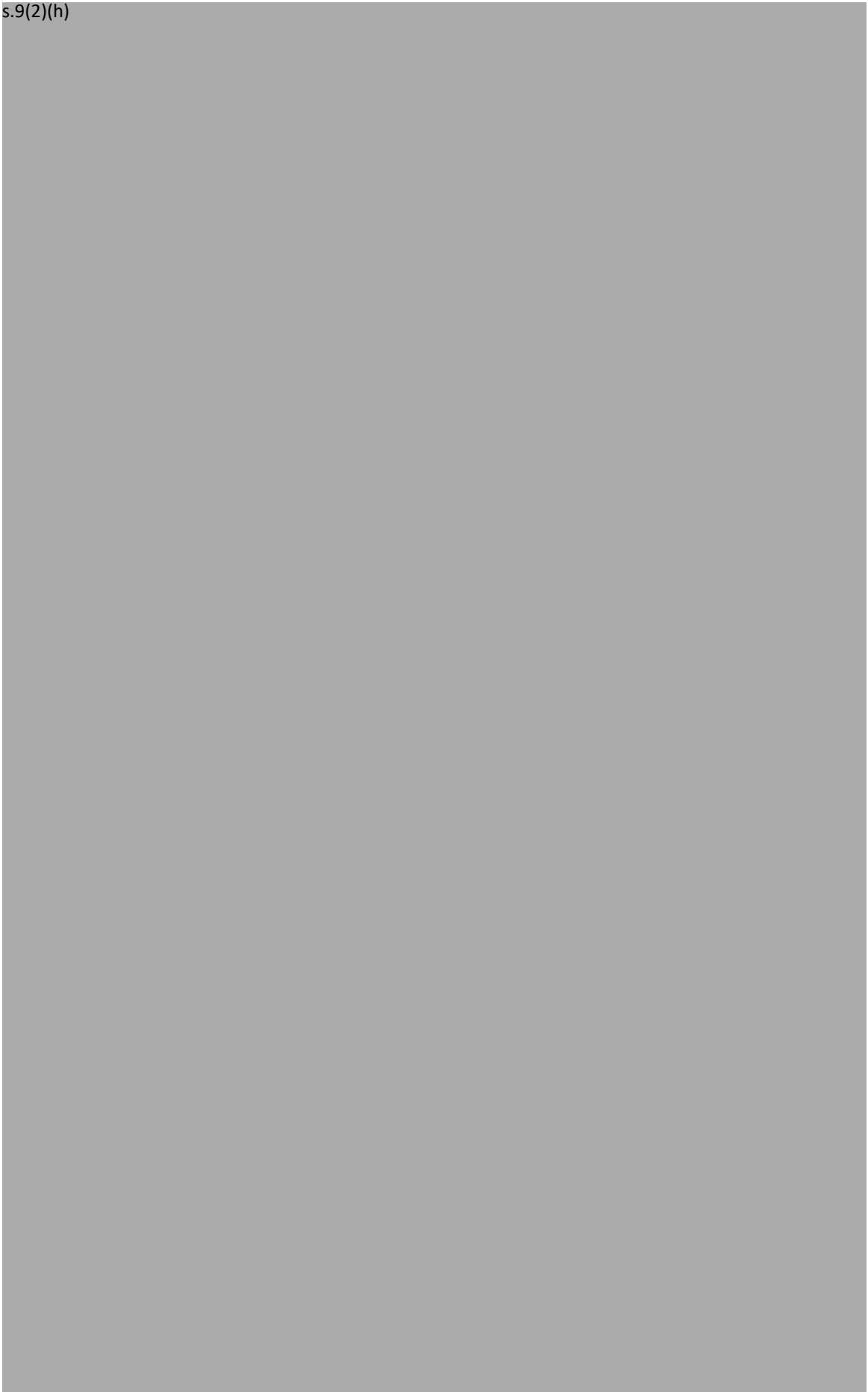
### Compliance

s.9(2)(h)

s.9(2)(h)



s.9(2)(h)



s.9(2)(h)

### **Consultation**

11. The following agencies were consulted on this paper: Ministry of Justice, Ministry of Defence, Te Puni Kōkiri.

### **Binding on the Crown**

12. The Cabinet External Relations and Security Committee agreed that the Bill is binding on the Crown [ERS-22-MIN-0048 refers].

### **Creating new agencies or amending law relating to existing agencies**

13. The Bill does not create any new agencies.
14. The Bill amends the functions of certain personnel and entities within the Armed Forces military justice system (including the Director of Military Prosecutions, the Provost Marshal, Disciplinary Officers, the Summary Appeal Court, the Court Martial and the Court Martial Appeals Court). The explanatory note sets out the main changes to these functions which are necessary to give effect to the Bill's proposals.

### **Allocation of decision-making powers**

15. The Bill includes amendments to the Court Martial Act 2007 and the Court Martial Appeals Act 1953, largely to empower judges of the Court Martial and Court Martial Appeal Court to authorise search warrants and deal with contempt and other forms of disruptive behaviour in court proceedings.

### **Associated regulations**

16. Regulations will be required to amend the Armed Forces Discipline Rules of Procedure 2008 and potentially the Armed Forces Discipline Regulations 2008 to give effect to the Bill. A commencement of one year after the Bill receives Royal Assent is proposed to allow for these regulations to be prepared.

### **Other instruments**

17. The Bill makes provision for certain matters to be specified further in Defence Force Orders (DFOs). The power for the Chief of Defence Force to issue DFOs for this purpose is consistent with his functions and powers under s 25 and 27 Defence Act 1990, and his existing power under s 206 Armed Forces Discipline Act 1971. DFOs have the status of secondary legislation, are published internally by the NZDF and are subject to disallowance under the Legislation Act 2019.

### **Definition of Minister/department**

18. The Bill does not contain definitions of Minister or Department.

### Commencement of legislation

19. The Bill is expected to come into force one year after it receives Royal Assent to enable the NZDF to develop the necessary Regulations and DFOs to give effect to the provisions of the Bill.

### Parliamentary stages


20. I propose this Bill be introduced and progressed through its First Reading on a date to be determined in 2026 and for the Bill to be passed by a date to be determined in 2026.
21. I propose that the Bill be referred to the Foreign Affairs, Defence and Trade Select Committee for consideration.

### Proactive release

22. I propose to proactively release this paper, the policy paper, and related minutes following introduction of the Bill, subject to any appropriate redactions.

### Recommendations

I recommend that the Cabinet Legislation Committee:

1. s.9(2)(f)(iv), s.9(2)(g)(i)  

2. **note** that the objective of the Bill is to modernise aspects of the military justice system within NZDF to make it fairer, more efficient, more transparent, and to advance the NZDF's action plan under Operation Respect, NZDF's campaign to eliminate inappropriate and harmful sexual behaviours in the Armed Forces;
3. **approve** the Armed Forces Discipline Legislation Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
4. **agree** that the Bill be introduced on 16 December 2025;
5. **agree** that the Government propose that the Bill be:
  - 5.1 Referred to the Foreign Affairs, Defence and Trade committee for consideration;
  - 5.2 Enacted by a date to be determined in 2026.

Authorised for lodgement

Hon Judith Collins

**MINISTER OF DEFENCE**