

# Regulatory Impact Statement

Armed Forces Law Reform Bill

## Agency Disclosure Statement

- 1 This Regulatory Impact Statement (RIS) has been prepared by the New Zealand Defence Force.
- 2 The Defence Force has conducted an analysis of options to further reduce unwarranted inconsistencies between the military and civilian criminal justice systems as well as address other flaws in existing military law, resulting in a number of measures which are intended to be included in the Armed Forces Law Reform Bill. This RIS focuses on only one of those measures, since the other measures are exempt from the requirement to conduct a regulatory impact assessment, for example because they merely fix typographical errors, reconcile inconsistencies, repeal redundant provisions, or have only minor impacts.
- 3 The issue mentioned in this RIS has been identified by practitioners in the six years since the coming into force of major reforms to the military justice system in 2009. Measures to address this issue are being progressed as part of a package to further improve the quality of military justice legislation.



**M.K.N. HILL**

Lieutenant Colonel

Deputy Director of Legal Services – Personnel Law, New Zealand Defence Force

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## Executive summary

- 1 There is a gap between the protection of victims' rights under military law and what is provided for in Part 3 of the Victims' Rights Act 2002. It is proposed that the Armed Forces Discipline Act 1971 be better aligned with the relevant law protecting victims.

## Status quo and problem definition

- 2 If a person is accused or convicted of certain serious offences of a sexual nature or involving violence (referred to as a "specified offence"), Part 3 of the Victims' Rights Act 2002 confers a number of rights on the victim or victims to be kept informed and to be consulted in respect of decisions such as bail.
- 3 While it is not common, there is potential for specified offences to be dealt with by the military justice system. One of the rights, namely to be consulted on the accused's release on bail, is already incorporated into military law under section 101A(4)(a) of the Armed Forces Discipline Act by reference to sections 29 and 30 of the Victims' Rights Act via section 8(4) of the Bail Act 2000. However, the remaining rights in Part 3 do not apply under military law, in particular the right of victims to be notified of certain matters.
- 4 This means that the rights of the victim of an offence may not be provided for in the military justice system as well as they are in the civilian context.

## Objectives

- 5 The Government's principal objective in progressing the Armed Forces Law Reform Bill is to ensure that military law is as closely aligned to the ordinary criminal law as can be achieved, without sacrificing the vital elements which differentiate the military justice system. This is particularly so in respect of the need to protect victims' rights. A secondary objective is to improve the overall quality of the relevant legislation.

## Options and impact analysis

- 6 While it is not that common for a person subject to military law to be tried in the Court Martial for a specified offence, it does happen from time to time. As the law stands, the victim of such an offence is not entitled to the same rights as the victim of an equivalent offence tried in the ordinary criminal courts. There is no logical reason for this differentiation and it is untenable. There is difficulty in drawing an exact equivalence with systems in the Victims' Rights Act 2002 which were specifically designed for the civilian context, but that difficulty is not insurmountable.

## Consultation

- 7 The Ministry of Justice, the Chief Judge of the Court Martial and the New Zealand Law Society were provided with a consultation paper describing all of the measures proposed and the reasons for them. Victim Support Inc was provided with a consultation paper describing the measures proposed relating to the enhancement of victims' rights.



- 8 The Ministry of Justice, the Chief Judge of the Court Martial and the Law Society are supportive of the measures proposed for inclusion in the Bill. The Chief Judge proposed some additional aspects which were considered as part of the analysis.
- 9 Victim Support Inc did not make a submission as part of the consultation process.
- 10 The proposed reforms were reviewed by the Crown Law Office. Crown Law saw no significant issues with what is proposed and viewed some of the amendments as desirable from the perspective of consistency with the New Zealand Bill of Rights Act 1990.

## **Conclusions and recommendations**

- 11 It is recommended that the Armed Forces Discipline Act 1971 be amended to more closely align with Part 3 of the Victims' Rights Act 2002.

## **Implementation plan**

- 12 The proposal outlined above will be included in the Armed Forces Law Reform Bill. In his bid to the Cabinet Legislation Committee, the Minister of Defence indicated that the Bill should be introduced in early September 2016 with a view to enactment in April 2017. It is intended that the Bill come into force three months after it receives the Royal assent. This will allow sufficient time for any necessary administrative changes to be made within the NZDF.

## **Monitoring, evaluation and review**

- 13 The Directorate of Legal Services of the New Zealand Defence Force will continue to monitor, evaluate and review the operation and effectiveness of the reforms proposed in the Bill on an on-going basis, as part of its continuing monitoring, evaluation and review of the military justice system.