



NEW ZEALAND  
LAW SOCIETY

NZLS EST 1869

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# Military Justice Legislation Bill

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*2/3/2018*

## Submission on the Military Justice Legislation Amendment Bill

1 The New Zealand Law Society welcomes the opportunity to comment on the Military Justice Legislation Amendment Bill (Bill). The Bill amends the Armed Forces Discipline Act 1971, the Court Martial Act 2007 and the Court Martial Appeals Act 1953.

2 The Explanatory Note to the Bill states:

*“The principal purpose of this Bill is to update the military justice system and to align it with the criminal justice system in certain respects, including by enhancing victims’ rights”.*

3 The Regulatory Impact Statement notes that the principal objective of the 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”*.

4 The Law Society supports this objective and the provisions in the Bill to achieve it.

5 This submission focuses on changes to Part 10 of the Armed Forces Discipline Act 1971 which contains special provisions for dealing with mentally impaired persons.

6 The amendments in clauses 13 – 18, if enacted, would mean that the provisions of Part 10 correspond to the equivalent provisions in the Criminal Procedure (Mentally Impaired Persons) Act 2003, currently in force.<sup>1</sup>

7 However, the Criminal Procedure (Mentally Impaired Persons) Act 2003 is the subject of proposed amendments contained in the Courts Matter Bill which is before the Justice Select Committee.

8 At present both the Criminal Procedure (Mentally Impaired Persons) Act 2003 and the Armed Forces Discipline Act 1971 state that a court may not make a finding as to whether a defendant is unfit to stand trial unless the court is satisfied on the balance of probabilities that the evidence against the defendant is sufficient to establish that the defendant caused the act or omission that forms the basis of the offence with which the defendant is charged.<sup>2</sup>

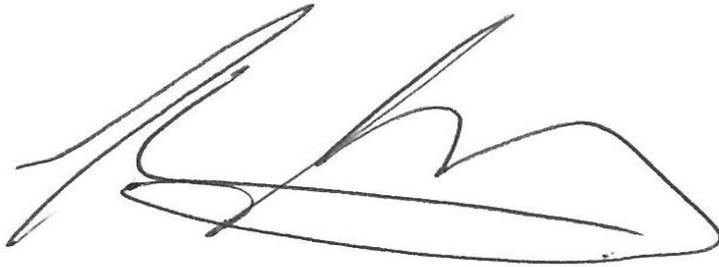
9 The Court Matters Bill proposes to amend the Criminal Procedure (Mentally Impaired Persons) Act 2003 so that the “fitness” inquiry is held before the “involvement” inquiry; only defendants who are found to be “unfit” will proceed to an “involvement” inquiry. (Section 9 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 is to be repealed and a new section 8A inserted.)

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<sup>1</sup> Sections 7, 9, 14, Criminal Procedure (Mentally Impaired Persons) Act 2003.

<sup>2</sup> Section 9, Criminal Procedure (Mentally Impaired Persons) Act 2003 and Section 188(2) of the Armed Forces Discipline Act 1971.

- 10 If the sequence of determinations in the Court Matters Bill is adopted, there will be a divergence between the ordinary criminal justice process and the military justice system in this important respect. There are no features of the military justice system that would support that divergence.
- 11 The Law Society submits that the opportunity should be taken to align the Court Matters Bill and the Military Justice Legislation Amendment Bill at this stage, by incorporating the proposed section 8A as set out in clause 108 of the Court Matters Bill into the Military Justice Legislation Amendment Bill and by repealing section 188(2) of the Armed Forces Discipline Act 1971. That step would promote the purpose of the Bill by aligning it with the criminal justice system.
- 12 The Law Society does not seek to be heard, but is happy to discuss the submission with officials advising the Committee if that would be of assistance.

A handwritten signature in black ink, appearing to be 'Kathryn Beck', written in a cursive style.

Kathryn Beck  
**President**  
2 March 2018