



**THE ARMY RULES OF PROCEDURE 1951,  
AMENDMENT NO. 1**

C. W. M. NORRIE, Governor-General  
ORDER IN COUNCIL

At the Government Buildings at Wellington this 9th day of November  
1954

Present:

THE HON. C. M. BOWDEN PRESIDING IN COUNCIL

PURSUANT to the New Zealand Army Act 1950, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following rules of procedure.

**RULES OF PROCEDURE**

1. (1) These rules may be cited as the Army Rules of Procedure 1951, Amendment No. 1, and shall be read together with and deemed part of the Army Rules of Procedure 1951\* (hereinafter referred to as the principal rules).

(2) These rules shall come into force on the date of their notification in the *Gazette*.

2. Rule 5 of the principal rules is hereby amended by omitting from subclause (2) the word "should", and substituting the word "would".

3. (1) Rule 7 of the principal rules is hereby amended by inserting, after subclause (2), the following subclause:

"(2A) Where the case is adjourned for the purpose of having the evidence reduced to writing in accordance with subclause (2) (c) of this rule, the commanding officer shall order either a summary of evidence to be taken in accordance with subclauses (3), (4), (5), (6), (7), and (8) of this rule or an abstract of evidence to be prepared in accordance with subclause (8A) of this rule:

"Provided that the commanding officer shall order a summary of evidence to be taken if—

"(a) The maximum punishment for the offence with which the accused is charged is death; or

"(b) The accused has in writing so required; or

"(c) In his opinion, the nature of the evidence or the interests of justice render this course desirable."

\*Statutory Regulations 1951, Serial number 1951/256, page 968.

(2) Rule 7 of the principal rules is hereby further amended by omitting from subclause (8) the words "Subject to the provisions of rule 72 hereof".

(3) Rule 7 of the principal rules is hereby further amended by adding to subclause (8) the following proviso:

"Provided that, if that person can be compelled to attend, the accused may demand that he shall attend for cross-examination."

(4) Rule 7 of the principal rules is hereby further amended by inserting, after subclause (8), the following subclause:

"(8A) The abstract of evidence shall consist of the statements or precis of statements of witnesses who gave evidence before the commanding officer and such other witnesses as may be necessary to prove the charge."

(5) Rule 7 of the principal rules is hereby further amended by omitting from subclause (9) the words "and (8)", and substituting the words "(8), and (8A)".

(6) Rule 105 of the principal rules is hereby amended by omitting the words "and (8)", and substituting the words "(8), and (8A)".

4. The principal rules are hereby amended by inserting, after rule 12, the following heading and rule:

*" Holding Accused in Close Arrest*

"12A. An officer or soldier shall not be held in close arrest for more than ninety consecutive days without a Court-martial being convened and assembled for his trial, unless the general or other officer authorized to convene a Court-martial for the trial of the officer or soldier directs in writing that the officer or soldier shall not be released from close arrest."

5. (1) Rule 49 of the principal rules is hereby amended by revoking subclause (1), and substituting the following subclause:

"(1) At any time during the trial, if it appears to the Court that there is in the charge sheet—

"(a) A mistake in the name or description of the accused; or

"(b) A mistake which is attributable to a clerical error or omission,—  
the Court may amend the charge sheet so as to correct the mistake."

(2) Rule 49 of the principal rules is hereby further amended by omitting from subclause (2) the words "it has begun to examine the witnesses", and substituting the words "the Court is closed for the consideration of its finding on the charge".

6. (1) Rule 89 of the principal rules is hereby amended by inserting, after subclause (2), the following subclauses:

"(2A) In addition to the evidence contained in the statement referred to in subclause (2) of this rule, it shall be the duty of the prosecutor, wherever possible, to call as a witness an officer to give to the Court any information in the possession of the military authorities relating to the accused's circumstances which may be relevant to the question of the punishment to be awarded.

“(2B) The circumstances referred to in subclause (2A) of this rule may include particulars of offences which the accused committed in civil life and which do not appear in the statement referred to in subclause (2) of this rule, provided—

“(a) Evidence of them is given in accordance with section 119 of the Army Act; or

“(b) The accused has admitted, after the purpose for which that admission will be used has been explained to him, that he has been found guilty of or has pleaded guilty to the offences.”

(2) Rule 89 of the principal rules is hereby further amended by revoking subclause (6).

7. Rule 125 of the principal rules is hereby amended by adding the following subclause as subclause (2) thereof:

“(2) Where a report is required, and a Court composed partly of members belonging to the Naval Forces or the Air Force, pursuant to section 137 (2) of the Army Act, fails to reach agreement, the representative of each service concerned may make a separate report which shall be included in the proceedings.”

T. J. SHERRARD,  
Clerk of the Executive Council.

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#### EXPLANATORY NOTE

[This note is not part of the rules, but is intended to indicate their general effect.]

These rules make miscellaneous amendments to the Army Rules of Procedure 1951.

Rule 2 corrects a clerical error in rule 5 of the principal rules.

Rule 3 enables an abstract of evidence to be taken on a charge against a soldier, but a formal summary of evidence must be taken in any case where the maximum punishment for the offence charged is death, or the accused requires a summary of evidence to be taken, or the commanding officer considers that the nature of the evidence or the interests of justice render this course necessary. Under the present rules a summary of evidence must always be taken where the accused is a soldier and an abstract may be taken only where the accused is an officer.

Rule 4 provides that an accused person must not be held in close arrest for more than ninety days without a Court-martial being convened and assembled for his trial unless the officer authorized to convene the Court directs that he be held in close arrest.

Rule 5: Subclause (1) enables a Court-martial to amend a charge sheet so as to correct a clerical error or omission. The present rule enables an amendment to be made only to correct a mistake in the name or description of the accused.

The effect of subclause (2) is that a Court-martial may refer any proposed amendment in the charge sheet to the convening officer at any time before the Court is closed for the considering of its finding. Under the present rule it may do this only before it has begun to examine the witnesses.

Rule 6 provides that where any person is convicted by Court-martial the prosecutor must wherever possible adduce any evidence, in addition to that shown in the service records of the accused, which may be relevant to the question of punishment.

Rule 7 provides that where a joint service Court of Inquiry is convened and the members fail to reach agreement, the naval, army, and air force officers comprising the Court may make separate reports.

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Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 11 November 1954.

These regulations are administered in the Army Department.