

**1978/179**

## THE ARMY RULES OF PROCEDURE 1951, AMENDMENT NO. 3

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KEITH HOLYOAKE, Governor-General

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### ORDER IN COUNCIL

At the Government House at Wellington this 26th day of June 1978

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL 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.

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### RULES OF PROCEDURE

**1. Title and commencement**—(1) These rules may be cited as the Army Rules of Procedure 1951, Amendment No. 3, 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 day after the date of their notification in the *Gazette*.

**2. Findings on alternative charges where accused pleads guilty to one of two or more alternative charges**—(1) Rule 53 of the principal rules is hereby amended by revoking subclause (1), and substituting the following subclauses:

“(1) Where the accused pleads guilty to any charge and there are in the same charge sheet any further charge or charges (not being alternative charges) to which the accused pleads not guilty the Court, after complying with rule 52 (2) hereof, shall proceed to try the accused with respect to each of those further charges and, after the findings on those charges, shall proceed with the charge on which a plea of guilty has been recorded.

“(1A) Where the accused pleads guilty to the first of two or more alternative charges in the same charge sheet, the Court shall record a finding of guilty on that charge and shall make no finding on the remaining alternative charges.

\*S.R. 1951/256  
Amendment No. 1: S.R. 1954/202  
Amendment No. 2: S.R. 1969/259

“(1B) Where the accused pleads guilty to one of two or more alternative charges in the same charge sheet (not being the first of those charges), the Court shall proceed as if the accused had pleaded not guilty to all of the charges, unless the prosecutor with the leave of the Court withdraws the alternative charges that are placed on the charge sheet before the charge to which the accused has pleaded guilty, in which case the Court shall record a finding of guilty on the charge to which the accused has pleaded guilty and shall make no finding on the alternative charges that are placed on the charge sheet after that charge.”

(2) Rule 17 of the principal rules is hereby amended by inserting in subclause (6), before the word “If”, the words “Subject to subclauses (1A) and (1B) of rule 53 hereof,”.

**3. Form of finding of Court**—(1) Rule 86 of the principal rules is hereby amended by revoking subclause (1), and substituting the following subclauses:

“(1) The finding on every charge upon which the accused is arraigned shall be recorded, except where the accused is arraigned upon alternative charges in which case the Court shall proceed either as in subclause (1A) or subclause (1B) of rule 53 hereof, or as in subclause (1A) of this rule, whichever is applicable. Except as mentioned in these rules, the finding shall simply be recorded as one of ‘guilty’, or of ‘not guilty’, or of ‘not guilty and honourably acquitted’.

“(1A) Where an accused has pleaded not guilty to each of two or more alternative charges and the Court records a finding of guilty on any one of those charges, the Court shall—

“(a) Find the accused not guilty of each alternative charge that is placed on the charge sheet before the charge on which the finding of guilty is recorded; and

“(b) Record no finding in respect of each alternative charge that is placed on the charge sheet after the charge on which the finding of guilty is recorded.”

(2) Rule 86 of the principal rules is hereby further amended by inserting in subclause (6), before the word “Where”, the words “Subject to subclauses (1) and (1A) of this rule,”.

P. G. MILLEN,  
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 amend the principal rules to provide that where a finding of guilty is recorded against an accused person in respect of one of any alternative charges, the Court shall find him not guilty of any alternative charges that precede it, and shall make no finding in respect of any alternative charges that follow it.

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Issued under the authority of the Regulations Act 1936.  
Date of notification in *Gazette*: 29 June 1978.  
These rules are administered in the Ministry of Defence.