



**THE COURTS-MARTIAL APPEAL RULES 1954,  
AMENDMENT NO. 1**

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DAVID BEATTIE, Governor-General

**ORDER IN COUNCIL**

At the Government Buildings at Wellington this 7th day of November  
1983

Present:

THE RIGHT HON. D. MACINTYRE PRESIDING IN COUNCIL

PURSUANT to section 26 of the Courts-Martial Appeals Act 1953 and the Judicature Act 1908, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and 2 other members of the Rules Committee constituted under the Judicature Amendment Act 1930 (at least 1 of those members being a Judge of the High Court), hereby makes the following rules.

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**RULES**

**1. Title and commencement**—(1) These rules may be cited as the Courts-Martial Appeal Rules 1954, Amendment No. 1, and shall be read together with and deemed part of the Courts-Martial Appeal Rules 1954\* (hereinafter referred to as the principal rules).

(2) These rules shall come into force on the 1st day of December 1983.

**2. Interpretation**—Rule 2 (1) of the principal rules is hereby amended by inserting, after the definition of the term “exhibits”, the following definition:

“ ‘Judge Advocate General’ means the Judge Advocate General of the Armed Forces appointed under section 203 of the Armed Forces Discipline Act 1971.”.

**3. Time for applying for leave to appeal**—The principal rules are hereby amended by revoking rule 4, and substituting the following rule:

“4. The period within which an application for leave to appeal must, under section 7 (1) of the Act, be lodged shall be as follows:

- “(a) In the case of a conviction by a court-martial held outside New Zealand, 35 days commencing with the day after the day on which the finding of the court-martial was announced:
- “(b) In the case of a conviction by a court-martial held in New Zealand, 21 days commencing with the day after the day on which the finding of the court-martial was announced.”

**4. Courts-martial proceedings**—Rule 11 of the principal rules is hereby amended—

- (a) By omitting from subclause (1) the words “the Judge Advocate of the Fleet or”;
- (b) By omitting from subclause (2) the words “Judge Advocate of the Fleet or to the Judge Advocate General, as the case may be”, and substituting the words “Judge Advocate General”.

**5. Two new rules substituted in principal rules**—The principal rules are hereby amended by revoking rule 21, and substituting the following rules:

“21. **Order for compensation**—(1) Where the Court makes an order for compensation under section 86 of the Armed Forces Discipline Act 1971, the operation of the order shall be suspended in accordance with subclause (2) of this rule unless the appellant consents in writing to the operation of the order not being suspended.

“(2) Where the consent referred to in subclause (1) of this rule has not been given, the operation of the order shall be suspended until the expiry of the period prescribed under section 10 (1) of the Act within which an application for a certificate to appeal to the Court of Appeal must be made, and, if application is made in respect of the conviction upon which the order was made, until after the certificate is refused or, if the certificate is granted, until after the appeal is determined or abandoned.

“(3) Any person in whose favour or against whom an order for compensation has been made by a court-martial or a reviewing authority and, with the leave of the Court, any other person shall, on the final hearing by the Court of an appeal against any such order, be entitled to have any representations that he may make considered by the Court before the order is quashed or varied under section 19 (2) of the Act.

“21A. **Order for restitution**—(1) Where the Court makes an order for restitution under section 87 (with or without compensation under subsection (3) of that section) of the Armed Forces Discipline Act 1971, the operation of the order shall be suspended in accordance with subclause (3) of this rule unless the Court states in writing that, in its opinion, the right to possession of the property is not in dispute.

“(2) The property that is subject to any such order shall, unless it is in the custody of the Registrar, be caused to be kept in safe custody while the operation of the order is suspended; and the Court or a Judge may give directions to ensure the safe custody of the property and its production when required.

“(3) Where no statement of a kind referred to in subclause (1) of this rule is made, the operation of the order shall be suspended until the expiry

of the period prescribed under section 10 (1) of the Act within which an application for a certificate to appeal to the Court of Appeal must be made, and, if application is made in respect of the conviction upon which the order was made, until after the certificate is refused or, if the certificate is granted, until after the appeal is determined or abandoned.

“(4) Any person in whose favour or against whom an order for restitution has been made by a court-martial or a reviewing authority or in whom any property has been re-vested on a conviction by virtue of section 26 (1) of the Sale of Goods Act 1908 and, with the leave of the Court, any other person shall, on the final hearing by the Court of an appeal against the order, be entitled to have any representations that he may make considered by the Court before the order is quashed or varied under section 19 (2) of the Act.”

**6. Form 1 in the First Schedule to principal rules amended—**Form 1 in the First Schedule to the principal rules is hereby amended by omitting the words “Date when conviction pronounced or finding promulgated”, and substituting the words “Date when finding announced”.

**7. Second Schedule to principal rules amended—**The Second Schedule to the principal rules is hereby amended by revoking the items relating to circumstances (4) and (5), and substituting the following item:

“(4) Appellant confined in service penal Commandant of the service penal establishment establishment.”

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 Courts-Martial Appeal Rules 1954. All the amendments are consequential upon changes to the Courts-Martial Appeals Act 1953 made by the Armed Forces Discipline Act 1971.

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Issued under the authority of the Regulations Act 1936.  
Date of notification in *Gazette*: 10 November 1983.  
These rules are administered in the Ministry of Defence.