



**THE AIR FORCE RULES OF PROCEDURE 1951, AMENDMENT  
NO. 2**

ARTHUR PORRITT, Governor-General

**ORDER IN COUNCIL**

At the Government House at Wellington this 15th day of December  
1969

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Royal New Zealand Air Force 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. Title and commencement**—(1) These rules may be cited as the Air Force Rules of Procedure 1951, Amendment No. 2, and shall be read together with and deemed part of the Air Force 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. Withdrawal of charge sheets and charges**—The principal rules are hereby amended by inserting after rule 48, the following rule:

“48A. A court may with the concurrence of the convening officer (which may be signified by the prosecutor) allow the prosecutor to withdraw all or any of the charges specified in a charge sheet at any time before the accused is arraigned on it.”

**3. Procedure where no witnesses to facts (except accused) called for defence and where witness called for defence**—The principal rules are hereby further amended by revoking rules 56 and 57 and substituting the following rule:

“56. (1) At the close of the evidence for the prosecution the accused shall be told by the court that he may, if he wishes, give evidence as a witness, but that if he gives evidence he will subject himself to cross-examination.

“(2) The accused shall then be asked whether he intends to give evidence or call any witnesses.

“(3) If the accused states that he wishes to give evidence or to call any witnesses the procedure shall be as follows:

“(a) The accused, his counsel, or the defending officer, as the case may be, may make an opening address stating the substance of the defence and the nature and general effect of the evidence to be adduced.

“(b) The evidence for the defence shall then be taken and that evidence may be as to the facts of the case or as to the accused’s character, or as to both the facts of the case and as to his character:

“(c) The prosecutor may then make a final address for the purpose of summing up the whole case:

“(d) The accused, his counsel, or the defending officer, as the case may be, may then make a closing address in the accused’s defence.

“(4) If the accused states that he does not wish to give evidence or call any witnesses the procedure shall be as follows:

“(a) The prosecutor may make a final address for the purpose of summing up the whole case:

“(b) The accused, his counsel, or the defending officer, as the case may be, may then make a closing address in the accused’s defence.

“(5) No accused person shall be entitled to make an unsworn statement of fact at his trial.

“(6) Nothing in this rule shall restrict the operation of subclause (6) of rule 73 of these rules.”

#### **4. Evidence given by accused or by accused’s wife or husband—**

(1) Rule 73 of the principal rules is hereby amended by revoking subclause (2) and substituting the following subclause:

“(2) Where the accused refrains from giving evidence as a witness, no person other than the accused, his counsel, or the defending officer, as the case may be, or the Judge Advocate of the court shall comment on that fact.

“(2A) Where the accused refrains from calling his wife or her husband as the case may be, as a witness, no comment adverse to the accused shall be made.”

(2) The said rule 73 is hereby further amended by adding the following subclause:

“(6) Any accused person at his trial, or his counsel or the defending officer, as the case may be, may admit any fact alleged against the accused so as to dispense with proof of the fact.”

P. J. BROOKS,  
Clerk of the Executive Council.

## 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 Air Force Rules of Procedure 1951.

Rule 2 inserts in the principal rules a new rule 48A providing for the withdrawal of charges at court-martial proceedings.

Rule 3 revokes rules 56 and 57 of the principal rules which prescribe the procedure to be followed where no witnesses as to the facts (other than the accused) are called for the defence and also the procedure to be followed where witnesses are called for the defence, and substitutes a single new rule in replacement.

Rule 4 amends rule 73 of the principal rules so as to enable certain persons to comment on the failure of the accused to give evidence before a court-martial.

The rule also adds to rule 73 a new provision whereby any fact alleged against the accused need not be proved if the fact is admitted by the accused or by his Counsel or defending officer.

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Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 18 December 1969.

These rules are administered in the Ministry of Defence.