

Reprint
as at 1 July 2009

**Armed Forces Discipline Rules of
Procedure 1983**

(SR 1983/236)

Armed Forces Discipline Rules of Procedure 1983: revoked, on 1 July 2009,
by rule 164 of the Armed Forces Discipline Rules of Procedure 2008 (SR
2008/237).

PURSUANT to section 180 of the Armed Forces Discipline Act 1971, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following rules.

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

These rules are administered in the Ministry of Defence.

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Part 1

Preliminary provisions

1 Title and commencement

- (1) These rules may be cited as the Armed Forces Discipline Rules of Procedure 1983.
- (2) These rules shall come into force on the 1st day of December 1983.

2 Interpretation

- (1) In these rules, unless the context otherwise requires,—
The Act means the Armed Forces Discipline Act 1971
Abstract of evidence means an abstract of evidence prepared in accordance with rule 31 or rule 49 of these rules; and includes any additions to any such abstract made under either of those rules
Allegation means an allegation that any person who is subject to the Act has committed an offence against the Act
Charge means an allegation that is recorded in writing in the form of a charge in accordance with these rules

Convening a new court includes dissolving the existing court-martial

Defender means any serviceman who undertakes the defence of an accused at a court-martial

Executive officer, in relation to the Navy, means the executive officer of the ship or establishment to which the accused belongs

Junior officer means an officer who holds a rank below that of lieutenant-commander in the Navy or major in the Army or squadron leader in the Air Force

Member, in relation to a court-martial, includes the president

Month means a calendar month

Officer of the day, in relation to the Navy, means the officer of the day in the ship or establishment to which the accused belongs; and includes the officer of the watch in that ship or establishment

Subordinate commander, in relation to the Army or the Air Force, means any officer to whom all or any of the powers to investigate and deal summarily with charges have been delegated pursuant to section 115 of the Act

Summary of evidence means a summary of evidence prepared in accordance with rule 48 of these rules; and includes any additions to any such summary made under that rule.

- (2) Except as provided in subclause (3) of this rule, every period of time stipulated in any of these rules in respect of any matter shall be reckoned—
- (a) In New Zealand, exclusive of any Sunday, and of Good Friday, Christmas Day, Waitangi Day, and Anzac Day:
 - (b) Elsewhere than in New Zealand, exclusive of any Sunday, and of Good Friday and Christmas Day.
- (3) For the purpose of any sentence that may be imposed or is imposed under the Act, every period of time shall be reckoned inclusive of those days.

3 Application of rules

- (1) These rules apply, so far as they relate to charges,—
- (a) Whenever it is alleged that any person subject to the Act has committed an offence against the Act:

- (b) Whether the alleged offence is said to have been committed within New Zealand or overseas:
- (c) Whether the charge is to be investigated and disposed of within New Zealand or overseas.
- (2) These rules apply, so far as they relate to courts of inquiry,—
 - (a) Whether the subject-matter of the inquiry is within New Zealand or overseas:
 - (b) Whether the court is to conduct its inquiry within New Zealand or overseas.

4 Matters not covered by rules

Where, in respect of any case, any matter arises that is not expressly provided for in these rules, every person concerned shall adopt the course that seems to him best calculated to do justice.

5 Forms

- (1) The Chief of Defence Force may from time to time prescribe forms for any of the purposes of these rules.
- (2) If the Chief of Defence Force prescribes a form for a particular purpose, that form shall be used in every case to which it is applicable.
- (3) Notwithstanding subclause (2) of this rule, no omission or deviation from any such prescribed form shall in itself render invalid any charge, proceeding, finding, sentence, or other matter to which the form relates, unless the omission or deviation is such as to prejudice or be likely to prejudice the rights of the accused.

6 Drawing of charge

A commanding officer who is required by section 103 of the Act to cause an allegation to be recorded in the form of a charge shall ensure that the charge is drawn in accordance with the following provisions:

- (a) Each charge shall state one offence only:
- (b) Offences may be charged in the alternative; but, in such a case, each such offence shall, except as provided by section 73(3) of the Act, be stated in a separate charge,

and the charges shall be set out in descending order of gravity:

- (c) Each charge shall be set out in 2 parts, namely:
 - (i) A statement of the offence; and
 - (ii) A statement of the particulars of every act or omission constituting the offence:
- (d) If the offence is a civil one, the statement of the offence shall be in words sufficient to give the accused notice of the offence: or, if the offence is not a civil one, it shall be in a form prescribed by the Chief of Defence Force:
- (e) The statement of the particulars shall set out—
 - (i) Sufficient details of the alleged offence to give the accused reasonable information concerning every act or omission to be proved against him as constituting the offence:
 - (ii) Where the alleged offence is one that renders the accused if convicted, liable to a greater or lesser penalty according to the particular circumstances in which the offence was committed, the particular circumstances (if any) that it is alleged render the accused liable to the higher penalty:
 - (iii) Where it is intended to seek an order for compensation or restitution if the accused is found guilty or is convicted, sufficient matters that, if proved, would justify the making of such an order.

7 Construction of charge

- (1) In the construction of a charge sheet or charge there shall be presumed in favour of supporting it every proposition that may reasonably be presumed to be impliedly included, though not expressed therein.
- (2) In respect of a charge, the statement of the offence and the statement of the particulars of every act or omission constituting the offence shall be read and construed together.

Part 2
**General provisions relating to summary
disposal of charges**

8 Officer disqualified if personally interested

- (1) Except as provided in subclause (3) of this rule, no officer shall investigate or dispose of a charge in which he is personally interested; and, in particular, he shall not investigate or dispose of a charge—
 - (a) That alleges an offence against the officer himself or any member of his family; or
 - (b) That alleges an offence by any member of his family; or
 - (c) In respect of which the officer or any member of his family is the sole witness to any material ingredient.
- (2) In such a case, the officer shall instead apply to higher authority for the accused to be transferred within his unit or attached to another unit so that the charge can be investigated and disposed of or tried summarily by another officer.
- (3) If the higher authority informs the officer that, owing to the exigencies of the service, there would be undue delay in transferring the accused within his unit or in attaching him to another unit, the officer may proceed to investigate and dispose of the charge or try the charge summarily (assuming he is otherwise empowered to do so) notwithstanding his personal interest in the case.
- (4) If the officer does so proceed, he shall—
 - (a) Ensure that details of his personal interest are entered in the record of proceedings; and
 - (b) Attach to the record of proceedings a precis of the oral evidence.

9 Taking of evidence on oath

- (1) In any proceeding before an officer of the day or an officer exercising summary powers, the evidence shall not be given on oath unless the accused so demands.
- (2) Where the accused does so demand, the officer shall, except in a case to which subclause (4) of this rule applies, swear each witness who is to give evidence orally before him, and any

interpreter, in the form and manner prescribed by the Chief of Defence Force.

- (3) Except in a case to which subclause (4) of this rule applies, the evidence that is given orally at the taking of a summary of evidence shall be given on oath; and for that purpose the officer taking the summary shall swear each witness who is to give oral evidence, and any interpreter, in the form and manner prescribed by the Chief of Defence Force.
- (4) Where a child is called as a witness in any proceeding before an officer of the day or an officer exercising summary powers before whom the evidence is to be given on oath or before an officer taking a summary of evidence, and that child does not, in the opinion of the officer, understand the nature of an oath, his evidence may be received though not given on oath if, in the opinion of that officer, the child has sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.

10 Amendment of charge

- (1) An officer of the day or an officer exercising summary powers may, where an accused is brought before him on a charge, amend that charge, substitute for it a different charge, or add a new charge, if he considers that it is in the interests of justice to do so.
- (2) Where the officer exercises his powers under subclause (1) of this rule after he has investigated the original charge, that investigation shall be deemed for the purposes of these rules to constitute an investigation of the amended, substituted, or additional charge unless the accused requires a new investigation to be conducted.
- (3) If the amended, substituted, or additional charge differs substantially from the original charge, the officer shall explain the amended, substituted, or additional charge to the accused, advise him of his right to seek an adjournment to consider the charge, and, if requested by the accused to do so, adjourn the proceeding for that purpose.

11 Admission in evidence of written statements instead of oral evidence

- (1) Subject to subclause (2) of this rule, in any proceeding before an officer of the day or an officer exercising summary powers, a written statement of any person's evidence shall, with the consent of the accused and (where applicable) the prosecutor, be admissible in evidence instead of calling that person to give his evidence orally, but only to the same extent and for the same purpose as that evidence would have been admissible in that proceeding if given orally by the maker of the statement.
- (2) Notwithstanding that a written statement of evidence is admissible before an officer of the day or an officer exercising summary powers, that officer may, if the maker of the statement can be compelled to give evidence before him, require that person to attend and give his evidence orally.
- (3) The accused and (where applicable) the prosecutor shall each be given a copy of any written statement that the other party proposes to tender in evidence, together with a copy of every exhibit (if any) referred to in the statement or such information as is sufficient to enable the recipient to inspect the exhibit or a copy of it.
- (4) Any document or object accompanying a written statement tendered as evidence and referred to in the statement as an exhibit shall be treated as if it had been produced as an exhibit and identified in evidence by the maker of the statement.

12 Generally, rules of evidence to be same as for courts-martial

- (1) Subject to these rules, the rules of evidence to be followed in proceedings before an officer of the day, an officer exercising summary powers, or an officer preparing a summary of evidence or an abstract of evidence shall be the same as those that are followed in court martial proceedings.
- (2) Without limiting subclause (1) of this rule, where any evidence of identity is given against an accused and the accused disputes that evidence, the officer exercising summary powers shall bear in mind the need for caution before finding the accused guilty in reliance on the correctness of any such identi-

fication and, in particular, the possibility that the witness may be mistaken.

13 Different procedures for summary disposal of charges in the Navy and in the Army and the Air Force

- (1) Where an allegation has been recorded in the form of a charge and the accused has a commanding officer—
 - (a) In the Navy, the charge shall be investigated and disposed of in accordance with Parts 3 to 6 of these rules; or
 - (b) In the Army or the Air Force, the charge shall be investigated and disposed of in accordance with Parts 7 to 9 of these rules.
- (2) Where the accused is subject to the Act by virtue of section 12 or section 13 of the Act, the following provisions shall apply:
 - (a) If the accused holds a rank in an armed force, the same procedure for the investigation and disposal of the charge shall be followed, with any necessary modifications, as would be followed if the accused held the corresponding rank in the Armed Forces of New Zealand:
 - (b) In any other case, the same procedure for the investigation and disposal of the charge shall be followed, with any necessary modifications, as would be followed if the accused were a rating of able rank or a private or a leading aircraftman, as the case may be.

Part 3

**Preliminary provisions relating to
summary disposal of charges in the Navy**

14 Assistance to accused

- (1) Subject to subclause (2) of this rule, where an accused is brought before an officer of the day or an officer exercising summary powers in accordance with these rules, that officer shall, unless the accused states in writing that he does not require such assistance, ensure that an officer or rating is assigned to assist the accused in the preparation and presenta-

tion of his case and, where necessary, to act on behalf of the accused.

- (2) If the officer before whom the accused is brought is of the opinion that the services of an officer or rating cannot reasonably be made available to the accused, having regard to the exigencies of the service or the strength or location of the unit or establishment to which the accused belongs, no such officer or rating shall be assigned.
- (3) The officer or rating assigned to assist the accused may be changed at any time if the accused so requests, or if it becomes necessary to do so having regard to the exigencies of the service.

15 Assignment of prosecutor

- (1) Subject to subclause (2) of this rule, where an accused is brought before an officer of the day, an executive officer, a commanding officer, or a superior commander in accordance with these rules, that officer shall ensure that an officer or rating is assigned to assemble the evidence in support of the charge and to prosecute the case in support of the charge.
- (2) No rating shall be assigned as prosecutor where the accused is an officer.
- (3) The officer or rating assigned as prosecutor may be changed at any time if it becomes necessary or desirable to do so

Part 4

**Summary disposal of charges against
accused below rank of warrant officer in
the Navy**

*A. By officer of the day where accused is below
rank of chief petty officer*

16 Formal investigation of charge by officer of the day

- (1) Where an allegation has been recorded in the form of a charge and the accused is below the rank of chief petty officer, he shall, unless the charge is to be or has been investigated by an officer to whom powers have been delegated under section 115 of the Act or a detachment commander in accordance with

rule 19 of these rules, be brought before the officer of the day who shall investigate the charge in accordance with the succeeding provisions of this rule.

- (2) The officer of the day shall—
 - (a) Ensure that the accused is correctly described in the record of proceedings, and then read the charge to him:
 - (b) Ask the accused if he understands the charge, and, where necessary, explain the charge to him:
 - (c) Inform the accused of the purpose of the investigation in the following terms:

“I am investigating the charge to decide whether or not it should proceed. If, after I have heard the evidence, I consider that the charge should proceed, I will forward it to higher authority to be disposed of. You may cross-examine any witnesses who give evidence orally in support of the charge. You will also have an opportunity to put forward evidence in reply after the evidence in support of the charge has been heard.

The evidence will not be given on oath unless you so demand in which case all witnesses who give evidence orally (including yourself if you give evidence) will be sworn. Do you wish the evidence to be given on oath?”:
 - (d) Call upon the prosecutor to adduce the oral evidence in support of the charge, give the accused an opportunity to cross-examine each witness and the prosecutor an opportunity to re-examine each witness, and shall himself put such questions to each witness as he considers necessary:
 - (e) Call upon the prosecutor to produce any written statement that the officer has decided to admit in evidence in support of the charge in accordance with rule 11 of these rules, and to read the statement aloud to the accused.
- (3) When the officer of the day has heard the evidence in support of the charge, he shall determine whether or not a prima facie case has been made out.
- (4) If he is not satisfied that a prima facie case has been made out, he shall, unless he considers that there is a probability of further evidence in support of the charge becoming available within a reasonable time, dismiss the charge.

- (5) If he is satisfied that there is a probability of such evidence becoming so available, he shall ensure that that evidence is sought expeditiously and, if it is obtained, he shall investigate it in accordance with the foregoing provisions of this rule, determine whether or not a prima facie case has been made out, and proceed accordingly.
- (6) If he is satisfied that a prima facie case has been made out, he shall tell the accused what options are open to him and caution him in the following terms:

“I have now heard the evidence in support of the charge. You are not required to put forward any evidence in reply but if you wish to do so before I decide whether the charge should proceed, now is the time.

“If you give evidence yourself, you may be cross-examined by the prosecutor and may also be questioned by me. Moreover, your evidence may be recorded in writing and given in evidence if there are any further proceedings.

Whether or not you give evidence, you may call witnesses and ask that evidence be admitted in the form of a written statement. You may question any witnesses you call, and then they may be cross-examined by the prosecutor, re-examined by yourself, and questioned by me.”

- (7) After telling the accused what options are open to him and cautioning him, the officer of the day shall ascertain which option the accused wishes to exercise.
- (8) Where the accused decides to put forward evidence in reply, the officer of the day shall—
- (a) Call upon the accused to adduce the oral evidence in reply:
 - (b) Give the prosecutor an opportunity to cross-examine and the accused an opportunity to re-examine each witness who gives evidence orally, and shall himself put such questions to each such witness as he considers necessary:
 - (c) Call upon the accused to produce any written statement that the officer has decided to admit in evidence on behalf of the accused in accordance with rule 11 of these rules, and to read the statement aloud to the prosecutor.

- (9) The officer of the day may call or recall any witness if he considers that it is in the interests of justice to do so; and the prosecutor and the accused may put such questions to the witness as the officer of the day may allow as proper.

17 Officer to determine how charge should be disposed of

- (1) When the officer of the day has investigated the charge in accordance with rule 16 of these rules, he shall determine whether or not it should proceed.
- (2) If he is satisfied that the charge should not proceed, he shall dismiss it.
- (3) If he is satisfied that the charge should proceed, he shall consider whether, in his opinion, the executive officer has sufficient powers of punishment and is otherwise empowered to try summarily the offence with which the accused is charged.
- (4) If he considers that the executive officer has insufficient powers of punishment or is not so empowered to try the offence summarily, he shall remand the accused to his commanding officer.
- (5) If he considers that the executive officer has sufficient powers of punishment and is empowered to try the offence summarily, he shall remand the accused to the executive officer to be tried summarily in accordance with rule 18 of these rules.

*B. By executive officer where accused below
rank of chief petty officer*

18 Summary trial of charge

- (1) Where an accused who is below the rank of chief petty officer has been remanded to the executive officer to be tried summarily in accordance with this rule, the executive officer shall—
- (a) Inform the accused that he is going to try the charge summarily;
- (b) Ensure that the accused is correctly described in the record of proceedings, and then read the charge to him;
- (c) Ask the accused whether he pleads guilty or not guilty to the charge.
- (2) If the accused pleads guilty to the charge, the executive officer shall—

- (a) Satisfy himself that the accused understands the nature of the charge:
 - (b) Satisfy himself that the accused has made his plea voluntarily and understands the consequences of his plea:
 - (c) If he is so satisfied, enter the plea on the record of proceedings, record a finding of guilty on the charge, and inform the accused of that finding:
 - (d) Subject to subclauses (4) and (20) of this rule, proceed in accordance with subclauses (16) and (17) of this rule.
- (3) If the accused refuses to plead, or pleads unintelligibly, or if the executive officer is not satisfied of any of the matters referred to in paragraph (a) or paragraph (b) of subclause (2) of this rule, the executive officer shall proceed in accordance with the succeeding provisions of this rule as if the accused had pleaded not guilty.
- (4) If there is more than one charge, and the accused pleads guilty to one or more but not all of the charges, the executive officer shall, after proceeding in accordance with subclause (2) of this rule in respect of each charge to which the accused pleads guilty,—
 - (a) Proceed in accordance with the succeeding provisions of this rule to try each charge to which the accused pleads not guilty; and
 - (b) When he has recorded a finding in respect of each of those charges, proceed in accordance with subclauses (16) and (17) of this rule in so far as it is necessary to do so.
- (5) If the accused pleads not guilty to the charge, the executive officer shall—
 - (a) Enter the plea on the record of proceedings:
 - (b) Ask the accused if he has had sufficient time to prepare his defence and, where necessary, adjourn the proceeding to provide sufficient time for the accused to prepare his defence.
- (6) When the case is ready to proceed, the executive officer shall ask the accused whether he requires the oral evidence to be given on oath, and shall then call upon the prosecutor—
 - (a) To outline the case in support of the charge:

- (b) To call each witness in support of the charge who is to give evidence orally to give his evidence in the presence of the accused:
 - (c) To produce any written statement that the executive officer has decided to admit in evidence in support of the charge in accordance with rule 11 of these rules, and to read the statement aloud to the accused.
- (7) The executive officer shall give the accused an opportunity to cross-examine each witness who gives evidence orally in support of the charge and the prosecutor an opportunity to re-examine each such witness, and shall himself put such questions to each such witness as he considers necessary to ensure that he fully understands the witness's evidence.
- (8) When the executive officer has heard the evidence in support of the charge, he shall determine whether or not a prima facie case has been made out.
- (9) If he is not satisfied that a prima facie case has been made out, he shall find the accused not guilty on the charge, record the finding, and inform the accused.
- (10) If he is satisfied that a prima facie case has been made out, he shall tell the accused what options are open to him and caution him in the following terms:
- “I have now heard the evidence in support of the charge. You are not required to put forward any evidence in reply but if you wish to do so, now is the time.
- “If you give evidence yourself you may be cross-examined by the prosecutor and may also be questioned by me.
- Whether or not you give evidence, you may call witnesses and ask that evidence be admitted in the form of a written statement. You may examine any witnesses you call and then they may be cross-examined by the prosecutor, re-examined by yourself, and questioned by me.”
- (11) After telling the accused what options are open to him and cautioning him, the executive officer shall call upon the accused—
- (a) To tell the executive officer whether or not he wishes to put forward evidence in reply and, if so, what form the evidence will take:
 - (b) To outline the case on behalf of the accused:

- (c) To call each witness on behalf of the accused who is to give evidence orally (including the accused if he wishes to give evidence) to give his evidence in the presence of the accused:
 - (d) To produce any written statement that the executive officer has decided to admit in evidence on behalf of the accused in accordance with rule 11 of these rules, and to read the statement aloud to the prosecutor.
- (12) Where the accused puts forward evidence in reply, the executive officer shall give the prosecutor an opportunity to cross-examine each witness who gives evidence orally and the accused an opportunity to reexamine each witness, and shall himself put such questions to each such witness as he considers necessary to ensure that he fully understands the witness's evidence.
- (13) Where the accused puts forward evidence in reply, the prosecutor may, at the conclusion of the evidence on behalf of the accused, with the leave of the executive officer, call or recall any witness to give evidence on any matter raised by the accused in his defence that the prosecutor could not properly have put before the executive officer before the accused disclosed his defence or that the prosecutor could not reasonably have foreseen.
- (14) The executive officer may, at any time before he determines whether he finds the accused guilty or not guilty, call or recall any witness if he considers that it is in the interests of justice to do so; and the prosecutor and the accused may put such questions to the witness as the executive officer may allow as proper.
- (15) When the executive officer has received all the evidence, he shall determine whether he finds the accused guilty or not guilty on the charge, record the finding, and inform the accused.
- (16) If the accused pleads guilty to the charge and the executive officer accepts that plea, the prosecutor shall inform the executive officer of the facts that are relevant to the charge; and, if the executive officer considers that it is in the interests of justice to do so, he may also hear all or any part of the evidence.

- (17) If the executive officer records a finding of guilty on the charge, he shall examine the accused's conduct sheets, and—
- (a) Obtain from the prosecutor a report on the accused's record and general conduct in the service, details of any period during which the accused was held in custody awaiting trial, and details of any information in the possession of the service authorities relating to the accused's circumstances that may be relevant in considering punishment:
 - (b) If the accused so wishes, hear the accused and any witness on behalf of the accused in mitigation of punishment:
 - (c) Subject to subclauses (18) and (18A) of this rule, impose any one or more of the punishments that he is authorised to impose and considers just, or discharge the accused without imposing any punishment:
 - (d) Record the details of any forfeitures incurred by or under the Act, and any cancellation of the whole or any part thereof, and inform the accused.
- (18) Where the executive officer finds the accused guilty in accordance with this rule, he may, if he considers that he has insufficient powers of punishment, remand the accused to his commanding officer for punishment instead of imposing any punishment or punishments himself.
- (18A) Where the executive officer decides to remand an accused found guilty on any charge to a commanding officer under subclause (18) of this rule, the executive officer shall also,—
- (a) Where the accused has been found guilty on any other charge arising from the same incident or series of incidents, remand the accused to the commanding officer on all such other charges:
 - (b) Where any other accused is found guilty on any charge arising from the same incident or series of incidents, remand that accused to the commanding officer on all such charges.
- (19) If the accused pleads not guilty to the charge, he may at any time before the executive officer records his finding on the charge, withdraw his plea of not guilty and substitute a plea of guilty, in which case the executive officer shall, so far as

is necessary, proceed as if the accused had originally pleaded guilty.

- (20) If the accused pleads guilty to the charge and the executive officer accepts the plea, the executive officer may, if at any time during the proceeding it appears to him that he should not have accepted the plea, amend the record and substitute a plea of not guilty, in which case he shall proceed, so far as is necessary, as if the accused had originally pleaded not guilty.

Regulation 18(17)(a) was amended, as from 16 June 1988, by regulation 2(1)(a) Armed Forces Discipline Rules of Procedure 1983, Amendment No 1 (SR 1988/100) by inserting the words “details of any . . . custody awaiting trial”.

Regulation 18(17)(c) was amended, as from 16 June 1988, by regulation 2(1)(b) Armed Forces Discipline Rules of Procedure 1983, Amendment No 1 (SR 1988/100) by substituting the expression “subclauses (18) and (18A)” for the expression “subclause (18)”.

Regulation 18(18A) was inserted by regulation 2(2) Armed Forces Discipline Rules of Procedure 1983, Amendment No 1 (SR 1988/100).

C. By officer with delegated powers (other than executive officer) or detachment commander

19 Investigation of charge

- (1) Where an allegation has been recorded in the form of a charge and the accused—
- (a) Is below the rank of chief petty officer and may be tried summarily by an officer to whom powers have been delegated under section 115 of the Act (other than an executive officer); or
 - (b) Is below the rank of warrant officer and has a detachment commander,—
- he shall be brought before that officer or commander, and that officer or commander shall investigate the charge in accordance with the succeeding provisions of this rule.
- (2) The officer or commander shall—
- (a) Ensure that the accused is correctly described in the record of proceedings, and then read the charge to him:
 - (b) Ask the accused if he understands the charge, and, where necessary, explain the charge to him:
 - (c) Inform the accused of the purpose of the investigation in the following terms.

- “I am investigating the charge to decide whether or not it should proceed, and, if it should, whether it should be tried summarily by me or forwarded to your commanding officer. You may question any witnesses who give evidence orally in support of the charge. You will also have an opportunity to put forward evidence in reply after the evidence in support of the charge has been heard. The evidence will not be given on oath unless you so demand, in which case all witnesses who give evidence orally (including yourself if you give evidence) will be sworn. Do you wish the evidence to be given on oath?”:
- (d) Hear the oral evidence in support of the charge, put such questions as he considers necessary to each witness, and give the accused an opportunity to question each witness:
 - (e) Read any written statement that the officer or commander has decided to admit in evidence in support of the charge in accordance with rule 11 of these rules, read the statement aloud to the accused, and satisfy himself that the accused understands the statement.
- (3) When the officer or commander has heard the evidence in support of the charge, he shall determine whether or not a prima facie case has been made out.
 - (4) If he is not satisfied that a prima facie case has been made out, he shall, unless he considers that there is a probability of further evidence in support of the charge becoming available within a reasonable time, dismiss the charge.
 - (5) If he is satisfied that there is a probability of such evidence becoming so available, he shall ensure that that evidence is sought expeditiously and, if it is obtained, he shall investigate it in accordance with the preceding provisions of this rule, determine whether or not a prima facie case has been made out, and proceed accordingly.
 - (6) If he is satisfied that a prima facie case has been made out, he shall tell the accused what options are open to him and caution him in the following terms:

“I have now heard the evidence in support of the charge. You are not required to put forward any evidence in reply but if you wish to do so before I decide whether the charge should proceed, now is the time.

“If you give evidence yourself, you may be questioned by me. Moreover, your evidence may be recorded in writing and given in evidence if there are any further proceedings.

Whether or not you give evidence, you may call witnesses and ask that evidence be admitted in the form of a written statement. You may question any witnesses you call, and they may also be questioned by me”.

- (7) After telling the accused what options are open to him and cautioning him, the officer or commander shall ascertain which option the accused wishes to exercise.
- (8) Where the accused decides to put forward evidence in reply, the officer or commander shall—
 - (a) Hear the oral evidence on behalf of the accused, give the accused an opportunity to question each witness, and himself put such questions to each witness (including the accused if he gives evidence) as he considers necessary;
 - (b) Read aloud any written statement that the accused wishes to have admitted in evidence and that the officer or commander has decided to so admit in accordance with rule 11 of these rules.
- (9) The officer or commander may call or recall any witness if he considers that it is in the interests of justice to do so; and the accused may put such questions to the witness as the officer or commander may allow as proper.

20 Officer or commander to determine how charge should be disposed of

- (1) When the officer or commander has investigated the charge in accordance with rule 19 of these rules, he shall determine whether or not it should proceed.
- (2) If he is satisfied that the charge should not proceed, he shall dismiss it.
- (3) If he is satisfied that the charge should proceed, he shall consider whether, in his opinion, he has sufficient powers of pun-

ishment and whether he is otherwise empowered to try summarily the offence with which the accused is charged.

- (4) If he considers that he has insufficient powers of punishment or if he is not so empowered to try the offence summarily, he shall remand the accused to his commanding officer.
- (4A) Where—
- (a) An accused has been charged with some other person or persons in respect of offences arising from the same incident or series of incidents and the officer or commander is required, pursuant to subclause (4) of this rule, to remand any other such person to a commanding officer in respect of any one or more of the charges; or
- (b) An accused has been charged with more than one offence arising from the same incident or series of incidents and the officer or commander is required, pursuant to subclause (4) of this rule, to remand any other such person to a commanding officer in respect of any one or more of the charges,—
- the officer or commander shall remand the accused to the commanding officer on all such charges.
- (5) If he considers that he has sufficient powers of punishment and he is empowered to try the offence summarily, he shall try the charge summarily in accordance with rule 21 of these rules.

Regulation 20(4A) was inserted, as from 16 June 1988, by regulation 3 Armed Forces Discipline Rules of Procedure 1983, Amendment No 1 (SR 1988/100).

21 Summary trial of charge

- (1) Where the officer or commander is to try the charge summarily in accordance with this rule, he shall inform the accused that he is going to do so, tell the accused what options are open to him and caution him in the following terms:

“I have decided that the charge should proceed and that I should try it summarily. You are not required to put forward any evidence in reply but if you wish to do so, now is the time.

“If you give evidence yourself, you may be questioned by me.

Whether or not you give evidence, you may call any witnesses who have not already given evidence before me and ask that evidence be admitted in the form of a written statement. You may question any witnesses you call, and then they may also be questioned by me”.

- (2) After telling the accused what options are open to him and cautioning him, the officer or commander shall ascertain which option the accused wishes to exercise.
- (3) Where the accused decides to put forward evidence in reply, the officer or commander shall proceed in accordance with subclauses (8) and (9) of rule 19 of these rules.
- (4) After the officer or commander has ascertained which option the accused wishes to exercise and, where necessary, has proceeded in accordance with subclauses (8) and (9) of rule 19 of these rules, he shall—
 - (a) If he is satisfied on the evidence before him that the accused is guilty of the offence charged, record a finding of guilty, and inform the accused of that finding:
 - (b) If he is not so satisfied, record a finding of not guilty, and inform the accused of that finding.
- (5) If the officer or commander records a finding of guilty, he shall examine the accused's conduct sheets, and—
 - (a) If the accused so wishes, hear the accused and any witness on behalf of the accused in mitigation of punishment:
 - (aa) Ascertain details of any period during which the accused was held in custody awaiting trial:
 - (b) Subject to subclauses (6) and (7) of this rule, impose any one or more of the punishments that he is authorised to impose and considers just, or discharge the accused without imposing any punishment:
 - (c) If he is a detachment commander, whether or not he imposes any punishment, make such order for compensation or restitution as he is authorised to make and considers just, or make no such order:
 - (d) Record the details of any forfeitures incurred by or under the Act, and any cancellation of the whole or any part thereof, and inform the accused.
- (6) Where an officer to whom powers have been delegated under section 115 of the Act finds the accused guilty in accordance with this rule, he may, if he considers that he has insufficient powers of punishment, remand the accused to his commanding officer for punishment instead of imposing any punishment or punishments himself.

- (7) Where an officer to whom powers have been delegated under section 115 of the Act decides to remand an accused found guilty on any charge to a commanding officer in accordance with subclause (6) of this rule, the officer shall also,—
- (a) Where the accused has been found guilty on any other charge arising from the same incident or series of incidents, remand the accused to the commanding officer on all such other charges:
- (b) Where any other accused is found guilty on any charge arising from the same incident or series of incidents, remand that other accused to the commanding officer on all such charges.

Regulation 21(5)(aa) was inserted, as from 16 June 1988, by regulation 4(1) Armed Forces Discipline Rules of Procedure 1983, Amendment No 1 (SR 1988/100).

Regulation 21(5)(b) was amended, as from 16 June 1988, by regulation 4(2) Armed Forces Discipline Rules of Procedure 1983, Amendment No 1 (SR 1988/100) by substituting the expression “subclauses (6) and (7)” for the expression “subclause (6)”.

Regulation 21(7) was inserted, as from 16 June 1988, by regulation 4(3) Armed Forces Discipline Rules of Procedure 1983, Amendment No 1 (SR 1988/100).

*D. By executive officer where accused of rank of
chief petty officer*

22 Formal investigation and disposal of charge

- (1) Where an allegation has been recorded in the form of a charge and the accused is of the rank of chief petty officer, the executive officer shall, unless the charge is to be or has been investigated by a detachment commander in accordance with rule 19 of these rules, investigate the charge in the same manner as an officer of the day; and the provisions of rule 16 of these rules, so far as they are applicable and with any necessary modifications, shall apply to the investigation by the executive officer.
- (2) When the executive officer has investigated the charge, he shall determine whether or not it should proceed.
- (3) If he is satisfied that the charge should not proceed, he shall dismiss it.
- (4) If he is satisfied that the charge should proceed, he shall remand the accused to his commanding officer.

E. By commanding officer

23 Procedure where accused remanded for punishment

Where an accused is remanded to his commanding officer for punishment in accordance with subclause (18) or subclause (18A) of these rules, the accused shall be brought before his commanding officer who shall—

- (a) Inform the accused that he is going to consider what punishment or order is appropriate for the charge of which the accused has been found guilty:
- (b) Call upon the officer who remanded the accused to inform him of the facts that the officer found to be relevant to the charge:
- (c) Examine the accused's conduct sheets:
- (ca) Ascertain details of any period during which the accused was held in custody awaiting trial:
- (d) If the accused so wishes, hear the accused and any witness on behalf of the accused in mitigation of punishment:
- (e) Impose any one or more of the punishments that he is authorised to impose and considers just, or discharge the accused without imposing any punishment:
- (f) Whether or not he imposes any punishment, make such order for compensation or restitution as he is authorised to make and considers just, or make no such order.

Regulation 23 was amended, as from 16 June 1988, by regulation 5(1) Armed Forces Discipline Rules of Procedure 1983, Amendment No 1 (SR 1988/100) by substituting the expression "subclause (18) or subclause (18A)" for the expression "rule 18(18) or rule 21(6)".

Regulation 23(ca) was inserted, as from 16 June 1988, by regulation 5(2) Armed Forces Discipline Rules of Procedure 1983, Amendment No 1 (SR 1988/100).

24 Commanding officer to determine whether to investigate or try summarily

- (1) Where—
 - (a) An officer of the day has remanded an accused to his commanding officer in accordance with rule 17(4) of these rules; or
 - (b) An officer to whom powers have been delegated under section 115 of the Act or a detachment commander has remanded an accused to his commanding officer in ac-

cordance with rule 20(4) or rule 20(4A) of these rules,
or

- (c) An executive officer has remanded an accused to his commanding officer in accordance with rule 22(4) of these rules,—

the accused shall be brought before the commanding officer who shall determine in accordance with the succeeding provisions of this rule whether he should investigate the charge with a view to trial by court-martial or try the charge summarily.

- (2) The commanding officer shall consider whether, in his opinion, he has sufficient powers of punishment and whether he is otherwise empowered to try summarily the offence with which the accused is charged.
- (3) If he considers that he has insufficient powers of punishment, or if he is not so empowered to try the offence summarily, he shall investigate the charge in accordance with rule 25(1) of these rules.
- (4) If he considers that he has sufficient powers of punishment and he is so empowered to try the offence summarily, he shall consider whether he is required to give the accused the right to elect trial by court-martial.
- (5) If he considers that he is not required to give the accused the right to elect trial by court-martial, he shall try the charge summarily in accordance with rule 26 of these rules.
- (6) If he considers that he is required to give the accused the right to elect trial by court-martial, he shall advise the accused in the following terms:

“Because of the seriousness of the matter and the degree of punishment that it may be appropriate to impose on you if you are found guilty, you have the right at this stage to elect to be tried by court-martial instead of being tried summarily by me.

“If you elect to be tried by court-martial, I will investigate the charge to determine whether or not it should proceed and, if I consider that it should, I shall remand you for trial by court-martial.

“If you elect to be tried summarily by me I shall proceed to try the charge myself.

Do you wish to be tried by court-martial or do you wish to be tried summarily by me?”

- (7) If the accused elects trial by court-martial, the commanding officer shall record that election and advise the accused that he is entitled to withdraw it at any time within the next 24 hours, or subsequently by leave of the commanding officer, if he has not been remanded for trial by court-martial, or of the convening officer if he has been so remanded.
- (8) If the accused does not withdraw his election, the commanding officer shall investigate the charge in accordance with rule 25(1) of these rules.
- (9) If the accused elects to be tried summarily, whether originally or by withdrawing his election to be tried by court-martial, the commanding officer shall record that election and try the charge summarily in accordance with rule 26 of these rules.

Regulation 24(1)(b) was amended, as from 16 June 1988, by regulation 6 Armed Forces Discipline Rules of Procedure 1983, Amendment No 1 (SR 1988/100) by inserting the expression “or rule 20(4A)”.

25 Formal investigation and disposal of charge

- (1) Where the commanding officer is to investigate the charge in accordance with this subclause with a view to trial by court-martial, he shall investigate the charge in the same manner as an officer of the day; and the provisions of rule 16 of these rules, so far as they are applicable and with any necessary modifications, shall apply to the investigation by the commanding officer.
- (2) When the commanding officer has investigated the charge in accordance with subclause (1) of this rule, he shall determine whether or not it should proceed.
- (3) If he is satisfied that the charge should not proceed, he shall dismiss it.
- (4) If he is satisfied that the charge should proceed, he shall, subject to subclause (5) of this rule, remand the accused for trial by court-martial in accordance with rule 32 of these rules.
- (5) Where the accused has not previously been given the right to elect trial by court-martial and the commanding officer now considers that he has sufficient powers of punishment and is otherwise empowered to try summarily the offence with which the accused is charged, he may, after informing the accused and subject (where necessary) to giving the accused the right

to elect trial by court-martial, proceed to try the charge summarily in accordance with rule 26 of these rules.

26 Summary trial of charge

- (1) Where the commanding officer is to try the charge summarily in accordance with this rule, he shall, subject to subclauses (2) and (3) of this rule, do so in the same manner as an executive officer; and the provisions of rule 18 of these rules, so far as they are applicable and with any necessary modifications, shall apply to the summary trial by the commanding officer.
- (2) Where the commanding officer has decided in accordance with rule 25(5) of these rules to try the charge summarily, he shall, if the accused pleads not guilty to the charge, instead of calling upon the prosecutor to outline the case in support of the charge and to adduce the evidence in support of the charge, ask the accused whether he wishes any of the witnesses who gave evidence in support of the charge at the investigation to be recalled for cross-examination.
- (3) If the accused does wish any such witness to be recalled, that witness shall be recalled accordingly and may be cross-examined by the accused and re-examined by the prosecutor, and may also be questioned by the commanding officer if he considers it necessary to ensure that he fully understands the matters arising out of the questioning, by the accused and the prosecutor.
- (4) Where the commanding officer records a finding of guilty, whether or not he imposes any punishment, he may make such order for compensation or restitution as he is authorised to make and considers just, or make no such order.

Part 5
**Summary disposal of charge against
accused of rank of warrant officer or
above in the Navy**

A. By commanding officer

27 Formal investigation and disposal of charge

- (1) Where an allegation has been recorded in the form of a charge and the accused is of or above the rank of warrant officer, his commanding officer shall investigate the charge in the same manner as an officer of the day; and the provisions of rule 16 of these rules, so far as they are applicable and with any necessary modifications, shall apply to the investigation by the commanding officer.
- (2) When the commanding officer has investigated the charge in accordance with subclause (1) of this rule, he shall determine whether or not it should proceed.
- (3) If he is satisfied that the charge should not proceed, he shall dismiss it.
- (4) If he is satisfied that the charge should proceed, he shall—
 - (a) Remand the accused for trial by court-martial in accordance with rule 32 of these rules, where the accused is of or above the rank of lieutenant commander or is a chaplain; or
 - (b) Proceed in accordance with the succeeding provisions of this rule, where the accused is a warrant officer or junior officer.
- (5) Having determined that the charge against an accused who is a warrant officer or junior officer should proceed, the commanding officer shall consider whether, in his opinion, the accused's superior commander has sufficient powers of punishment and is otherwise empowered to try summarily the offence with which the accused is charged.
- (6) If he considers that the superior commander has insufficient powers of punishment or is not so empowered to try the offence summarily, he shall remand the accused for trial by court-martial in accordance with rule 32 of these rules.

- (7) If he considers that the superior commander has sufficient powers of punishment and is so empowered to try the offence summarily, he shall remand the accused to the superior commander.

*B. By superior commander where accused is
warrant officer or junior officer*

28 Superior commander to determine whether to investigate or try summarily

- (1) Where a commanding officer has remanded an accused to his superior commander in accordance with rule 27 of these rules, the accused shall be brought before the superior commander who shall determine whether he should investigate the charge with a view to trial by court-martial or try the charge summarily in the same manner as a commanding officer where an accused below the rank of warrant officer has been remanded to him; and, subject to the succeeding provisions of this rule, the provisions of rule 24 of these rules, so far as they are applicable and with any necessary modifications, shall apply.
- (2) Where the superior commander is to investigate the charge with a view to trial by court-martial, he shall do so in accordance with rule 29(1) of these rules.
- (3) Where the superior commander is to try the charge summarily, he shall do so in accordance with rule 30 of these rules.

29 Formal investigation and disposal of charge

- (1) Where the superior commander is to investigate the charge in accordance with this subclause, he shall do so in the same manner as an officer of the day, and the provisions of rule 16 of these rules, so far as they are applicable and with any necessary modifications, shall apply to the investigation by the superior commander.
- (2) When the superior commander has investigated the charge in accordance with subclause (1) of this rule, he shall determine whether or not it should proceed.
- (3) If he is satisfied that the charge should not proceed, he shall dismiss it.

- (4) If he is satisfied that the charge should proceed, he shall, subject to subclause (5) of this rule, remand the accused for trial by court-martial in accordance with rule 32 of these rules.
- (5) Where the accused has not previously been given the right to elect trial by court-martial and the superior commander now considers that he has sufficient powers of punishment and is otherwise empowered to try summarily the offence with which the accused is charged, he may, after informing the accused and subject (where necessary) to giving the accused the right to elect trial by court-martial, proceed to try the charge summarily in accordance with rule 30 of these rules.

30 Summary trial of charge

- (1) Where the superior commander is to try the charge summarily in accordance with this rule, he shall, subject to subclauses (2) and (3) of this rule, do so in the same manner as an executive officer; and the provisions of rule 18 of these rules, so far as they are applicable and with any necessary modifications, shall apply to the summary trial by the superior commander.
- (2) Where the superior commander has decided in accordance with rule 29(5) of these rules to try the charge summarily, he shall, if the accused pleads not guilty to the charge, instead of calling upon the prosecutor to outline the case in support of the charge and to adduce the evidence in support of the charge, ask the accused whether he wishes any of the witnesses who gave evidence in support of the charge at the investigation to be recalled for cross-examination.
- (3) If the accused does wish any such witness to be recalled, that witness shall be recalled accordingly and may be cross-examined by the accused and re-examined by the prosecutor, and may also be questioned by the superior commander if he considers it necessary to ensure that he fully understands the matters arising out of the questioning by the accused and the prosecutor.
- (4) Where the superior commander records a finding of guilty, whether or not he imposes any punishment, he may make such order for compensation or restitution as he is authorised to make and considers just, or make no such order.

Part 6
Abstract of evidence, and remand for trial
by court-martial, in the Navy

31 Abstract of evidence

- (1) Where the evidence is to be committed to writing in the form of an abstract of evidence, the commanding officer or (as the case may be) the superior commander, or an officer appointed by that officer or commander, shall prepare the abstract in the form prescribed by the Chief of Defence Force and in accordance with the succeeding provisions of this rule.
- (2) The accused shall not be present during the making of the abstract, except while he is being cautioned or is himself giving evidence.
- (3) The officer making the abstract need not swear a witness before obtaining a written statement from him for inclusion in the abstract; but if a witness has already made a sworn written statement that is available for inclusion in the abstract, that statement may be so included if it is signed by the witness.
- (4) The officer making the abstract shall obtain a signed statement in narrative form from each witness whose evidence he considers relevant in support of the charge, but where he considers that a written statement is not readily procurable from a witness, he may include in the abstract, instead of such a statement, a precis of the evidence to be given by that witness.
- (5) When the evidence in support of the charge has been committed to writing, the officer making the abstract shall hand a copy of the abstract of evidence in support of the charge to the accused, tell the accused what options are open to him, and caution him in the following terms:

“This is a copy of the abstract of evidence in support of the charge. You should read it and, after you have done so, you may either put forward evidence in reply or reserve your defence.

“If you give evidence yourself, your evidence will be recorded in writing and may be given in evidence if there are any further proceedings.

Whether or not you give evidence, you may submit to me any signed statements of witnesses that you wish to have included in the abstract.”

- (6) After telling the accused what options are open to him and cautioning him, the officer making the abstract shall ascertain which option the accused wishes to exercise.
- (7) Where the accused decides to put forward evidence in reply, the officer making the abstract shall—
 - (a) Where the accused wishes to give evidence himself, take or cause to be taken down in writing in narrative form the accused's evidence, and, at the conclusion of his evidence, read the written record of his evidence over to him, make any necessary corrections, and request the accused to sign it (but he shall not be required to sign it if he does not wish to do so);
 - (b) Where the accused wishes to submit any signed statements in narrative form for inclusion in the abstract; receive those statements from the accused and include them in the abstract.
- (8) When the officer making the abstract has completed it, he shall certify on it that he has complied with this rule.
- (9) The commanding officer or (as the case may be) the superior commander may, at any time before the convening officer issues a convening order, order that the abstract be reopened to enable any additional evidence in support of the charge to be committed to writing in accordance with subclauses (1) to (4) of this rule.
- (10) In any case to which subclause (9) of this rule applies, the officer making the abstract shall, at the conclusion thereof,—
 - (a) Hand the accused a copy of the additional evidence, and again tell the accused what options are open to him and caution him, in accordance with subclause (5) of this rule; and
 - (b) So far as is necessary, proceed in accordance with subclauses (6) to (8) of this rule.

32 Remand of accused for trial by court-martial

Where the accused is to be remanded for trial by court-martial in accordance with this rule, the commanding officer or the superior commander, as the case may be, shall—

- (a) Adjourn the proceeding to enable the evidence to be committed to writing in the form of an abstract of evidence in accordance with rule 31 of these rules:
- (b) In the light of that evidence, reconsider the terms of the charge to ensure that the charge adequately discloses the exact nature of the offence alleged:
- (c) Cause a charge sheet to be prepared:
- (d) Remand the accused for trial by court-martial on the charge contained in the charge sheet:
- (e) Cause the accused to be handed the form prescribed by the Chief of Defence Force giving notice of the requirements of rule 61 of these rules relating to alibi evidence:
- (f) Cause the accused to be handed the form prescribed by the Chief of Defence Force for the purpose of ascertaining how the accused wishes to conduct his defence, and ensure that an officer explains the accused's rights to him:
- (g) If he is himself a convening officer (but subject to rule 57(1) of these rules), convene a court-martial in accordance with rule 58 of these rules to try the offence, or, if he is not a convening officer, forward an application to convene a court martial in the form prescribed by the Chief of Defence Force to the convening officer without unnecessary delay.

32A Remand of accused for trial by court-martial on connected charges

Where—

- (a) An accused has been charged with some other person or persons in respect of offences arising from the same incident or series of incidents and at least one of those charges is to be remanded for trial by court-martial; or
- (b) An accused has been charged with offences arising from the same incident or series of incidents and at least one of those charges is to be remanded for trial by court-martial,—

the accused shall be remanded for trial by court-martial in accordance with rule 32 of these rules on all such charges.

Regulation 32A was inserted, as from 16 June 1988, by regulation 7 Armed Forces Discipline Rules of Procedure 1983, Amendment No 1 (SR 1988/100).

Part 7
**Summary disposal of charge against
accused below rank of warrant officer in
the Army or the Air Force**

A. By subordinate commander

33 Investigation of charge

- (1) Where an allegation has been recorded in the form of a charge and the accused is below the rank of warrant officer and has a subordinate commander who is empowered to investigate and dispose of the charge, he shall be brought before his subordinate commander who shall investigate the charge in accordance with the succeeding provisions of this rule.
- (2) The subordinate commander shall—
 - (a) Ensure that the accused is correctly described in the record of proceedings, and then read the charge to him:
 - (b) Ask the accused if he understands the charge, and, where necessary, explain the charge to him:
 - (c) Inform the accused of the purpose of the investigation in the following terms:

“I am investigating the charge to decide whether or not it should proceed, and, if it should, whether it should be dealt with summarily by me or forwarded to your commanding officer (or detachment commander). You may question any witnesses who give evidence orally in support of the charge. You will also have an opportunity to put forward evidence in reply after the evidence in support of the charge has been heard.

The evidence will not be given on oath unless you so demand, in which case all witnesses who give evidence orally (including yourself if you give evidence) will be sworn. Do you wish the evidence to be given on oath?”:
 - (d) Hear the oral evidence in support of the charge, put such questions to each witness as he considers necessary, and give the accused an opportunity to question each witness:

- (e) Read any written statement that he has decided to admit in evidence in support of the charge in accordance with rule 11 of these rules, read the statement aloud to the accused, and satisfy himself that the accused understands the statement.
- (3) When the subordinate commander has heard the evidence in support of the charge, he shall determine whether or not a prima facie case has been made out.
- (4) If he is not satisfied that a prima facie case has been made out, he shall, unless he considers that there is a probability of further evidence in support of the charge becoming available within a reasonable time, dismiss the charge.
- (5) If he is satisfied that there is a probability of such evidence becoming so available, he shall ensure that that evidence is sought expeditiously and, if it is obtained, he shall investigate it in accordance with the preceding provisions of this rule, determine whether or not a prima facie case has been made out, and proceed accordingly.
- (6) If he is satisfied that a prima facie case has been made out, he shall tell the accused what options are open to him and caution him in the following terms:
- “I have now heard the evidence in support of the charge. You are not required to put forward any evidence in reply but if you wish to do so now is the time.
- “If you give evidence yourself, you may be questioned by me. Moreover, your evidence may be recorded in writing and given in evidence if there are any further proceedings.
- Whether or not you give evidence, you may call witnesses and ask that evidence be admitted in the form of a written statement. You may question any witnesses you call, and they may also be questioned by me.”
- (7) After telling the accused what options are open to him and cautioning him, the subordinate commander shall ascertain which option the accused wishes to exercise.
- (8) Where the accused decides to put forward evidence in reply, the subordinate commander shall—
- (a) Hear the oral evidence on behalf of the accused, give the accused an opportunity to question each witness, and

himself put such questions to each witness (including the accused if he gives evidence) as he considers necessary:

- (b) Read aloud any written statement that the accused wishes to have admitted in evidence and that the subordinate commander has decided to so admit in accordance with rule 11 of these rules.
- (9) The subordinate commander may call or recall any witness if he considers that it is in the interests of justice to do so; and the accused may put such questions to the witness as the subordinate commander may allow as proper.

34 Subordinate commander to determine how charge should be disposed of

- (1) When the subordinate commander has investigated the charge in accordance with rule 33 of these rules, he shall determine whether or not it should proceed.
- (2) If he is satisfied that the charge should not proceed, he shall dismiss it.
- (3) If he is satisfied that the charge should proceed, he shall—
 - (a) Subject to subclause (7) of this rule, remand the accused to his commanding officer without recording a finding, where the accused is of the rank of staff sergeant in the Army or flight sergeant in the Air Force; or
 - (b) Proceed in accordance with the succeeding provisions of this rule, where the accused is of a rank below those specified in paragraph (a) of this subclause.
- (4) Having determined that the charge against an accused who is of a rank below those specified in subclause (3)(a) of this rule should proceed, the subordinate commander shall consider whether, in his opinion, he has sufficient powers of punishment and whether he is otherwise empowered to deal summarily with the offence with which the accused is charged.
- (5) If he considers that he has insufficient powers of punishment or if he is not so empowered to deal summarily with the offence, he shall, subject to subclause (7) of this rule, remand the accused to his commanding officer without recording a finding.
- (5A) Where—

- (a) An accused has been charged with some other person or persons in respect of offences arising from the same incident or series of incidents and the subordinate commander must, pursuant to subclause (5) of this rule, remand any other such person to a commanding officer in respect of any one or more of the charges; or
- (b) An accused has been charged with more than one offence arising from the same incident or series of incidents and the subordinate commander must, pursuant to subclause (5) of this rule, remand the accused to a commanding officer in respect of any one or more of those charges,—

the subordinate officer shall, subject to subclause (7) of this rule, remand the accused to the commanding officer on all such charges.

- (6) If he considers that he has sufficient powers of punishment and he is empowered to deal summarily with the offence, he shall deal summarily with the charge in accordance with rule 35 of these rules.
- (7) Where the accused has a detachment commander who is empowered to investigate and dispose of the charge, the subordinate commander shall, in any case to which subclause (3)(a) or subclause (5) or subclause (5A) of this rule applies, remand the accused to his detachment commander instead of to his commanding officer.

Regulation 34(5A) was inserted, as from 16 June 1988, by regulation 8(1) Armed Forces Discipline Rules of Procedure 1983, Amendment No 1 (SR 1988/100).

Regulation 34(7) was amended, as from 16 June 1988, by regulation 8(2) Armed Forces Discipline Rules of Procedure 1983, Amendment No 1 (SR 1988/100) by inserting the expression “or subclause (5A)”.

35 Dealing summarily with charge

Where the subordinate commander is to deal summarily with the charge in accordance with this rule, he shall—

- (a) If he is satisfied on the evidence before him that the accused is guilty of the offence charged, record a finding of guilty, and inform the accused of that finding:

- (aa) Ascertain details of any period during which the accused was held in custody prior to the charge being dealt with summarily:
- (b) Examine the accused's conduct sheets:
- (c) If the accused so wishes, hear the accused and any witness on behalf of the accused in mitigation of punishment:
- (d) Impose any one or more of the punishments that he is authorised to impose and considers just, or discharge the accused without imposing any punishment:
- (e) Record the details of any forfeitures incurred by or under the Act, and any cancellation of the whole or any part thereof, and inform the accused.

Regulation 35(aa) was inserted, as from 16 June 1988, by regulation 9 Armed Forces Discipline Rules of Procedure 1983, Amendment No 1 (SR 1988/100).

B. By detachment commander

36 Investigation and disposal of charge

Where—

- (a) A subordinate commander has remanded an accused to his detachment commander in accordance with rule 34(7) of these rules; or
- (b) An allegation has been recorded in the form of a charge and the accused is below the rank of warrant officer and has a detachment commander who is empowered to investigate and dispose of the charge, but no subordinate commander who is so empowered,—

the accused shall be brought before his detachment commander who shall investigate and dispose of the charge in the same manner as a commanding officer; and the provisions of rules 37 to 39, 47 to 50, and 56, subclauses (1)(a) and (2)(a) of rule 125, and rule 164, of these rules, so far as they are applicable and with any necessary modifications, shall apply to the investigation and disposal by the detachment commander.

C. By commanding officer

37 Investigation of charge

(1) Where—

- (a) A subordinate commander has remanded an accused to his commanding officer in accordance with rule 34 of these rules; or
 - (b) An allegation has been recorded in the form of a charge and the accused is below the rank of warrant officer, and has no subordinate commander or detachment commander who is empowered to investigate and dispose of the charge,—
the accused shall be brought before his commanding officer who shall investigate the charge in accordance with the succeeding provisions of this rule.
- (2) Subject to subclauses (3) and (4) of this rule, the commanding officer shall investigate the charge in the same manner as a subordinate commander; and the provisions of rule 33 of these rules, so far as they are applicable and with any necessary modifications, shall apply to the investigation by the commanding officer.
- (3) If at any time during the course of his investigation of the charge the commanding officer considers that, on the evidence so far put forward,—
- (a) He will, in all probability, determine that the charge should proceed and that he should remand the accused for trial by court-martial; or
 - (b) The evidence relevant to the charge involves or is likely to involve complex issues of fact or law or both, and that the investigation of the charge would be materially assisted by having the evidence committed to writing,—
he may adjourn the proceeding to enable the evidence (including the evidence already put forward) to be committed to writing in accordance with rule 47 of these rules; and, if he does so, he shall inform the accused of the purpose of the adjournment.
- (4) After the evidence has been committed to writing in any case to which subclause (3) of this rule applies the commanding officer, in order to complete his investigation, shall—
- (a) Read the evidence that has been committed to writing:
 - (b) Cause the accused to be brought before him again and inform the accused that he has read the evidence that has been committed to writing:

- (c) Give the accused an opportunity to call any witnesses on his behalf including himself who have not already given evidence before the commanding officer or the officer appointed to commit the evidence to writing:
- (d) Where the accused calls any such witnesses, hear the evidence of each witness, give the accused an opportunity to question each witness, and himself put such questions to each witness as he considers necessary:
- (e) Inform the accused whether he requires any other person to attend to give evidence before him (whether or not the evidence of that person has already been committed to writing):
- (f) Where he does so require, arrange for that person to attend as a witness, hear the witness's evidence, put such questions to the witness as he considers necessary, and give the accused an opportunity to question the witness.

38 Commanding officer to determine how charge should be disposed of

- (1) When the commanding officer has investigated the charge in accordance with rule 37 of these rules, he shall determine whether or not it should proceed.
- (2) If he is satisfied that the charge should not proceed, he shall dismiss it.
- (3) If he is satisfied that the charge should proceed, he shall consider whether, in his opinion, he has sufficient powers of punishment and whether he is otherwise empowered to deal summarily with the offence with which the accused is charged.
- (4) If he considers that he has insufficient powers of punishment or he is not so empowered to deal summarily with the offence, he shall remand the accused for trial by court-martial in accordance with rule 50 of these rules, without recording a finding.
- (5) If he considers that he has sufficient powers of punishment and he is so empowered to deal summarily with the offence, he shall consider whether he is required to give the accused the right to elect trial by court-martial.

- (6) If he considers that he is not required to give the accused the right to elect trial by court-martial, he shall deal summarily with the charge in accordance with rule 39 of these rules.
- (7) If he considers that he is required to give the accused the right to elect trial by court-martial, he shall advise the accused in the following terms:

I have decided that the charge should proceed. Because of the seriousness of the matter and the degree of punishment that it may be appropriate to impose on you if you are found guilty, you have the right at this stage to elect to be tried by court-martial instead of being dealt with summarily by me. Do you wish to be tried by court-martial or do you wish to be dealt with summarily by me?"

- (8) If the accused elects trial by court-martial, the commanding officer shall record that election and advise the accused that he is entitled to withdraw it at any time within the next 24 hours, or subsequently by leave of the convening officer.
- (9) If the accused does not withdraw his election within the next 24 hours, the commanding officer shall remand the accused for trial by court-martial in accordance with rule 50 of these rules, without recording a finding.
- (10) If the accused elects to be dealt with summarily, whether originally or by withdrawing his election to be tried by court-martial, the commanding officer shall record that election and deal summarily with the charge in accordance with rule 39 of these rules.

39 Commanding officer to deal summarily with charge

- (1) Where the commanding officer is to deal summarily with the charge in accordance with this rule, he shall do so in the same manner as a subordinate commander; and the provisions of rule 35 of these rules, so far as they are applicable and with any necessary modifications, shall apply to the disposal by the commanding officer.
- (2) Where the commanding officer records a finding of guilty, whether or not he imposes any punishment, he may make such order for compensation or restitution as he is authorised to make and considers just, or make no such order.

Part 8
**Summary disposal of charge against
accused of rank of warrant officer or
above in the Army or the Air Force**

A. By detachment commander

40 Investigation and disposal of charge

Where an allegation has been recorded in the form of a charge and the accused is of the rank of warrant officer or above and has a detachment commander who is empowered to investigate and dispose of the charge, he shall be brought before his detachment commander who shall investigate and dispose of the charge in the same manner as a commanding officer; and the provisions of rules 41 to 43, 47 to 50, and 56, subclauses (1)(a) and (2)(a) of rule 125, and rule 164, of these rules, so far as they are applicable and with any necessary modifications, shall apply to the investigation and disposal by the detachment commander.

B. By commanding officer

41 Investigation of charge

- (1) Where an allegation has been recorded in the form of a charge and the accused is of the rank of warrant officer or above and either has no detachment commander or, if he has, his detachment commander is not empowered to investigate and dispose of the charge, he shall be brought before his commanding officer who shall investigate the charge in accordance with the succeeding provisions of this rule.
- (2) Subject to subclauses (3) and (4) of this rule, the commanding officer shall investigate the charge in the same manner as a subordinate commander; and the provisions of rule 33 of these rules, so far as they are applicable and with any necessary modifications, shall apply to the investigation by the commanding officer.
- (3) If at any time during the course of his investigation of the charge, the commanding officer considers that, on the evidence so far put forward,—

- (a) He will, in all probability, determine that the charge should proceed; or
 - (b) The evidence relevant to the charge involves or is likely to involve complex issues of fact or law or both, and that the investigation of the charge would be materially assisted by having the evidence committed to writing,—
he may adjourn the proceeding to enable the evidence (including the evidence already put forward) to be committed to writing in accordance with rule 47 of these rules; and, if he does so, he shall inform the accused of the purpose of the adjournment.
- (4) After the evidence has been committed to writing in any case to which subclause (3) of this rule applies, the commanding officer shall complete his investigation of the charge in the same manner as a commanding officer where the accused is below the rank of warrant officer and the evidence has been committed to writing; and the provisions of rule 37(4) of these rules, so far as they are applicable and with any necessary modifications, shall apply to the investigation by the commanding officer.

42 Commanding officer to consider how charge should be disposed of

- (1) When the commanding officer has investigated the charge in accordance with rule 41 of these rules, he shall determine whether or not it should proceed.
- (2) If he is satisfied that the charge should not proceed, he shall dismiss it.
- (3) If he is satisfied that the charge should proceed, he shall—
 - (a) Remand the accused for trial by court-martial in accordance with rule 50 of these rules without recording a finding, where the accused is of or above the rank of major in the Army or squadron leader in the Air Force or is a chaplain; or
 - (b) Proceed in accordance with the succeeding provisions of this rule, where the accused is a warrant officer or junior officer.
- (4) Having determined that the charge against an accused who is a warrant officer or junior officer should proceed, the command-

ing officer shall consider whether or not his superior commander is empowered to deal summarily with the offence with which the accused is charged.

- (5) If the superior commander is empowered to deal summarily with the offence, the commanding officer shall remand the accused to his superior commander in accordance with rule 43 of these rules, without recording a finding.
- (6) If the superior commander is not empowered to deal summarily with the offence, the commanding officer shall remand the accused for trial by court-martial in accordance with rule 50 of these rules, without recording a finding.

43 Remand of accused to superior commander

Where the accused is to be remanded to his superior commander in accordance with this rule, the commanding officer shall—

- (a) Ascertain whether all the evidence in support of the charge has been committed to writing and, if it has not, adjourn the proceeding to enable the evidence to be committed to writing in accordance with rule 47 of these rules:
- (b) In the light of that evidence, reconsider the terms of the charge to ensure that the charge adequately discloses the exact nature of the offence alleged:
- (c) Remand the accused to his superior commander:
- (d) Give to the accused a copy of the charge and the summary of evidence or the abstract of evidence not less than 48 hours before the accused is to appear before the superior commander.

*C. By superior commander where accused is
warrant officer or junior officer*

44 Investigation of charge

- (1) Where a commanding officer or a detachment commander has remanded an accused to his superior commander in accordance with rule 43 of these rules, the accused shall be brought before the superior commander who shall, subject to subclause (2) of this rule, investigate the charge in the same manner as a

subordinate commander, and the provisions of rule 33 of these rules, so far as they are applicable and with any necessary modifications, shall apply to the investigation by the superior commander.

- (2) Where the superior commander has decided to admit the summary of evidence or the abstract of evidence, or any part of the summary or abstract, in evidence in support of the charge or on behalf of the accused in accordance with rule 11 of these rules, it shall not be necessary for him to read the summary or the abstract, or the part thereof, aloud unless the accused so requests.

45 Superior commander to determine how charge should be disposed of

- (1) When the superior commander has investigated the charge in accordance with rule 44 of these rules, he shall determine whether or not it should proceed.
- (2) If he is satisfied that the charge should not proceed, he shall dismiss it.
- (3) If he is satisfied that the charge should proceed, he shall consider whether, in his opinion, he has sufficient powers of punishment and whether he is otherwise empowered to deal summarily with the offence with which the accused is charged.
- (4) If he considers that he has insufficient powers of punishment or he is not so empowered to deal summarily with the offence, he shall remand the accused for trial by court-martial in accordance with rule 50 of these rules without recording a finding.
- (5) If he considers that he has sufficient powers of punishment and he is so empowered to deal summarily with the offence, he shall consider whether he is required to give the accused the right to elect trial by court-martial.
- (6) If he considers that he is not required to give the accused the right to elect trial by court-martial, he shall deal summarily with the charge in accordance with rule 46 of these rules.
- (7) If he considers that he is required to give the accused the right to elect trial by court-martial, he shall advise the accused in the following terms:

Because of the seriousness of the matter and the degree of punishment that it may be appropriate to impose on you if you are found guilty, you have the right at this stage to elect to be tried by court-martial instead of being dealt with summarily by me. Do you wish to be tried by court-martial or do you wish to be dealt with summarily by me?"

- (8) If the accused elects trial by court-martial, the superior commander shall record that election in the record of proceedings, and advise the accused that he is entitled to withdraw it at any time within the next 24 hours, or subsequently by leave of the convening officer.
- (9) If the accused does not withdraw his election within the next 24 hours the superior commander shall remand the accused for trial by court martial in accordance with rule 50 of these rules, without recording a finding.
- (10) If the accused elects to be dealt with summarily by the superior commander, whether originally or by withdrawing his election to be tried by court-martial, the superior commander shall record that election and deal summarily with the charge in accordance with rule 46 of these rules.

46 Dealing summarily with charge

- (1) Where the superior commander is to deal summarily with the charge in accordance with this rule, he shall do so in the same manner as a subordinate commander; and the provisions of rule 35 of these rules, so far as they are applicable and with any necessary modifications, shall apply to the disposal by the superior commander.
- (2) Where the superior commander records a finding of guilty, whether or not he imposes any punishment, he may make such order for compensation or restitution as he is authorised to make and considers just, or make no such order.

Part 9
Summaries and abstracts of evidence and
remand for trial by court-martial in the
Army and the Air Force

47 Committal of evidence to writing

- (1) Subject to subclause (2) of this rule, where the evidence is to be committed to writing in accordance with this rule, it shall be committed in the form of—
 - (a) A summary of evidence to be prepared in accordance with rule 48 of these rules; or
 - (b) An abstract of evidence to be prepared in accordance with rule 49 of these rules.
- (2) Where the evidence is to be committed to writing, the commanding officer shall require a summary of evidence to be prepared in every case where—
 - (a) The maximum penalty for the offence with which the accused is charged is death; or
 - (b) The accused so requires, or
 - (c) In the opinion of the commanding officer, the interests of justice so require.

48 Summary of evidence

- (1) Where the evidence is to be committed to writing in the form of a summary of evidence, the commanding officer or an officer appointed by him shall prepare the summary in the form prescribed by the Chief of Defence Force, and in accordance with the succeeding provisions of this rule.
- (2) The officer taking the summary shall take down or cause to be taken down in writing in narrative form the evidence that he considers to be relevant in support of the charge and any evidence put forward by the accused, except that every question put to a witness by the officer or the accused after the conclusion of his evidence in chief, and the answers given to those questions, shall be recorded verbatim.
- (3) Except where a witness's evidence is to be admitted in the form of a written statement in accordance with subclause (4) of this rule, the officer taking the summary shall—

- (a) Hear each witness give evidence orally on oath (but subject, in the case of a child, to rule 9(4) of these rules):
 - (b) When each witness has finished giving his evidence, read over to the witness the written record of his evidence and make any necessary corrections:
 - (c) After the written record of a witness's evidence has been read over to him and any corrections made, require the witness (except in the case of the accused) to sign it, and (in the case of the accused) request the accused to sign the written record of his evidence.
- (4) Where, in respect of any witness other than the accused, the officer taking the summary is satisfied—
- (a) That the witness cannot be compelled to attend before him, or
 - (b) That owing to the exigencies of the service or on other grounds (including the expense and loss of time involved), the attendance of any witness cannot be readily procured and certifies this in writing; or
 - (c) That the accused consents in writing to a written statement of that witness's evidence being included in the summary of evidence (which consent shall be included in the summary of evidence) and the officer taking the summary does not require the witness to attend to give evidence orally,—
- a written statement of that witness's evidence purporting to be signed by that witness may be included in the summary of evidence and, if it is, shall be read aloud to the accused if the accused so requests.
- (5) In every case to which subclause (4)(b) of this rule applies, the officer taking the summary shall arrange for the attendance of a witness in support of the charge to enable the accused to question that witness if the accused so requests and the witness can be compelled to attend.
- (6) The officer taking the summary shall—
- (a) Ascertain whether the evidence of any of the witnesses in support of the charge is admissible in evidence in the form of a written statement in accordance with subclause (4) of this rule:

- (b) Hear each of the other witnesses in support of the charge give his evidence in the presence of the accused, put such questions to each such witness as he considers necessary, and give the accused an opportunity to question each such witness:
 - (c) Receive any written statement that is admissible in evidence in support of the charge:
 - (d) Give the accused an opportunity to question any witness in support of the charge whose attendance has been arranged pursuant to subclause (5) of this rule.
- (7) When the evidence in support of the charge has been committed to writing, the officer taking the summary shall tell the accused what options are open to him and caution him in the following terms:
- “I have committed to writing the evidence in support of the charge. You may now either put forward evidence in reply or reserve your defence.
- “If you give evidence yourself, your evidence will be recorded in writing and may be given in evidence if there are any further proceedings. Moreover, you may be questioned by me to elicit the facts and circumstances surrounding the charge or to remove any ambiguity in what you say.
- Whether or not you give evidence, you may call witnesses and ask that evidence be admitted in the form of a written statement. You may question any witnesses you call, and they may also be questioned by me.”
- (8) After telling the accused what options are open to him and cautioning him, the officer taking the summary shall ascertain which option the accused wishes to exercise; and, where the accused wishes to put forward evidence in the form of a written statement, the officer shall determine whether or not any such statement is admissible in evidence in accordance with subclause (4) of this rule.
 - (9) Where the accused decides to put forward evidence in reply, the officer taking the summary shall—
 - (a) Where the accused wishes to give evidence himself, hear the accused, and, at the conclusion of his evidence, put such questions to the accused as he considers neces-

- sary to elicit the facts and circumstances surrounding the charge and to remove any ambiguity in what the accused has said, but shall not cross-examine the accused:
- (b) Where the accused wishes to call witnesses, hear each witness in the presence of the accused, give the accused an opportunity to question the witness, and himself put such questions to the witness as he considers necessary:
 - (c) Receive in evidence any written statement that the accused wishes to have admitted and that he has decided to so admit.
- (10) When the officer taking the summary has completed it, he shall certify on it that he has complied with this rule.
- (11) The commanding officer may, at any time before the convening officer issues a convening order or (as the case may be) the accused is dealt with summarily, order that the summary be reopened to enable any additional evidence in support of the charge to be committed to writing in accordance with sub-clauses (1) to (6) of this rule.
- (12) In any case to which subclause (11) of this rule applies, the officer taking the summary shall, at the conclusion thereof,—
- (a) Again tell the accused what options are open to him and caution him in accordance with subclause (7) of this rule; and
 - (b) So far as is necessary, proceed in accordance with sub-clauses (8) to (10) of this rule.

49 Abstract of evidence

- (1) Where the evidence is to be committed to writing in the form of an abstract of evidence, the commanding officer or an officer appointed by him shall prepare the abstract in the form prescribed by the Chief of Defence Force, and in accordance with the succeeding provisions of this rule.
- (2) The accused shall not be present during the making of the abstract, except while he is being cautioned or is himself giving evidence.
- (3) The officer making the abstract need not swear a witness before obtaining a written statement from him for inclusion in the abstract; but if a witness has already made a sworn writ-

ten statement that is available for inclusion in the abstract, that statement may be so included if it is signed by the witness.

- (4) The officer making the abstract shall obtain a signed statement in narrative form from each witness whose evidence he considers relevant in support of the charge, but where he considers that a written statement is not readily procurable from a witness, he may include in the abstract, instead of such a statement, a precis of the evidence to be given by that witness.
- (5) When the evidence in support of the charge has been committed to writing, the officer making the abstract shall hand a copy of the abstract of evidence in support of the charge to the accused, tell the accused what options are open to him, and caution him in the following terms:

“This is a copy of the abstract of evidence in support of the charge. You should read it and, after you have done so, you may either put forward evidence in reply or reserve your defence.

“If you give evidence yourself, your evidence will be recorded in writing and may be given in evidence if there are any further proceedings.

Whether or not you give evidence, you may submit to me any signed statements of witnesses that you wish to have included in the abstract.”

- (6) After telling the accused what options are open to him and cautioning him, the officer making the abstract shall ascertain which option the accused wishes to exercise.
- (7) Where the accused decides to put forward evidence in reply, the officer making the abstract shall—
 - (a) Where the accused wishes to give evidence himself, take or cause to be taken down in writing in narrative form the accused’s evidence, and, at the conclusion of his evidence, read the written record of his evidence over to him, make any necessary corrections, and request the accused to sign it (but he shall not be required to sign it if he does not wish to do so):
 - (b) Where the accused wishes to submit any signed statements in narrative form for inclusion in the abstract, receive those statements from the accused and include them in the abstract.

- (8) When the officer making the abstract has completed it, he shall certify on it that he has complied with this rule.
- (9) The commanding officer may, at any time before the convening officer issues a convening order or (as the case may be) the accused is dealt with summarily, order that the abstract be reopened to enable any additional evidence in support of the charge to be committed to writing in accordance with subclauses (1) to (4) of this rule.
- (10) In any case to which subclause (9) of this rule applies, the officer making the abstract shall, at the conclusion thereof,—
 - (a) Hand the accused a copy of the additional evidence, and again tell the accused what options are open to him and caution him, in accordance with subclause (5) of this rule; and
 - (b) So far as is necessary, proceed in accordance with subclauses (6) to (8) of this rule.

50 Remand of accused for trial by court-martial

Where the accused is to be remanded for trial by court-martial in accordance with this rule, the commanding officer or the superior commander, as the case may be, shall—

- (a) Ascertain whether all the evidence in support of the charge has been committed to writing and, if it has not, adjourn the proceeding to enable the evidence to be committed to writing in accordance with rule 47 of these rules:
- (b) In the light of that evidence, reconsider the terms of the charge to ensure that the charge adequately discloses the exact nature of the offence alleged:
- (c) Cause a charge sheet to be prepared:
- (d) Remand the accused for trial by court-martial on the charge contained in the charge sheet:
- (e) Cause the accused to be handed the form prescribed by the Chief of Defence Force giving notice of the requirements of rule 61 of these rules relating to alibi evidence:
- (f) Cause the accused to be handed the form prescribed by the Chief of Defence Force for the purpose of ascertaining how the accused wishes to conduct his defence, and

ensure that an officer explains the accused's rights to him:

- (g) If he is himself a convening officer (but subject to rule 57(1) of these rules), convene a court-martial in accordance with rule 58 of these rules to try the offence, or, if he is not a convening officer, forward an application to convene a court-martial in the form prescribed by the Chief of Defence Force to the convening officer without unnecessary delay.

50A Remand of accused for trial by court-martial on connected charges

Where—

- (a) An accused has been charged with some other person or persons in respect of offences arising from the same incident or series of incidents, and at least one of those charges is to be remanded for trial by court-martial; or
- (b) An accused has been charged with offences arising from the same incident or series of incidents, and at least one of those charges is to be remanded for trial by court-martial,—

the accused shall be remanded for trial by court-martial in accordance with rule 50 of these rules on all such charges.

Regulation 50A was inserted, as from 16 June 1988, by regulation 10 Armed Forces Discipline Rules of Procedure 1983, Amendment No 1 (SR 1988/100).

Part 10
**Matters preliminary or incidental to trial
by court-martial**

Charge sheet and charge

51 Form of charge sheet

- (1) The layout of every charge sheet shall follow the appropriate form prescribed by the Chief of Defence Force.
- (2) The heading to every charge sheet shall be in the appropriate form prescribed by the Chief of Defence Force, and shall—
 - (a) State the full name of the accused, and his number, rank, and unit or other description; and

- (b) Show that he is subject to the Act or is otherwise liable to be tried by court-martial.

52 Error in heading to charge sheet

- (1) A charge sheet shall not be rendered invalid merely because of an error in the heading, whether or not that error is corrected.
- (2) Where a court-martial discovers such an error, it may correct it.

53 Charge sheet may contain more than one charge

- (1) A charge sheet shall contain the whole of the issue or issues to be tried at one time.
- (2) A charge sheet may contain one charge or several charges.

54 Drawing of charge

Every charge shall be drawn in accordance with rule 6 of these rules.

55 Charges against more than one person

- (1) Any number of accused may be charged in the same charge sheet with offences alleged to have been committed by them separately if the facts on which the charges are founded are so connected that it is in the interests of justice that the accused be tried together.
- (2) Any number of accused may be charged in the same charge sheet with an offence alleged to have been committed by them jointly.
- (3) In any case to which subclause (2) of this rule applies, any one or more of the accused may be charged in the same charge sheet with any other offence alleged to have been committed by him or them, either jointly or separately, if the facts on which the charges are founded are so connected that it is in the interests of justice that the charges be included in the same charge sheet.

*Application for convening of court-martial***56 Application for convening of court-martial**

When a superior commander who is not himself a convening officer, or a commanding officer, applies to a convening officer for the convening of a court-martial, he shall forward with the application the following documents:

- (a) The charge sheet:
- (b) The summary of evidence or the abstract of evidence:
- (c) A list of witnesses in support of the charge:
- (d) A list of witnesses on behalf of the accused:
- (e) A list of exhibits:
- (f) A statement of particulars of the accused's service:
- (g) The accused's application (if any) for legal aid and the services of a defender:
- (h) A certificate by a medical officer relating to the accused's state of health.

57 Convening officer to satisfy himself that trial of charge is justified

- (1) Before convening a court-martial, a convening officer shall, unless he considers it impracticable to do so, seek legal advice in respect of, and in every case shall satisfy himself on, the following questions:
 - (a) Whether or not the charge upon which the accused has been remanded for trial by court-martial discloses an offence against the Act:
 - (b) Whether or not the evidence contained in the summary of evidence or the abstract of evidence is sufficient to justify the holding of a trial on the charge or on any other charge.
- (2) In considering those questions, the convening officer may direct that further evidence be sought on any matter.
- (3) If the convening officer is not satisfied on either or both of those questions, he shall refer the charge back to the officer who made the application, in accordance with section 108 of the Act.

58 Duties of convening officer if charge to proceed

- (1) If the convening officer is satisfied that the charge, or any other charge in substitution for or addition to that charge, should go to trial, he shall proceed as follows:
- (a) He shall issue a convening order in the form prescribed by the Chief of Defence Force:
 - (b) He shall direct upon what charge or charges he is satisfied the accused should be tried, and shall ensure that the accused has been remanded or is remanded for trial on that charge or those charges by the appropriate officer:
 - (c) Where 2 or more charges are contained in the charge sheet and he considers that they should be set out in different charge sheets he shall direct accordingly, and shall specify the order in which the charges are to be tried:
 - (d) Where 2 or more persons are accused, he shall direct whether they are to be tried jointly or separately:
 - (e) He shall appoint by name the president and the other members of the court-martial, and shall also appoint or cause to be appointed such number of waiting members as he considers expedient, either by name or by detailing an officer to appoint officers under his command of a specified rank:
 - (f) He shall, on behalf of the Judge Advocate General, appoint a judge advocate from the panel appointed by the Judge Advocate General or, where no member of that panel can be appointed, he shall seek the approval of the Judge Advocate General to the appointment of some other suitably qualified person to be the judge advocate:
 - (g) He shall appoint an officer who is subject to the Act, or counsel to prosecute the charge; and, where he appoints counsel, he may also appoint such an officer to assist counsel:
 - (h) He shall either fix the place where the trial is to be held, and the date on which and the time at which the trial is to commence, or authorise some other officer to determine those matters:
 - (i) He shall send to the president of the court-martial—

- (i) The convening order; and
 - (ii) The charge sheet; but where there is more than one charge sheet, the second and any subsequent charge sheet shall be sent in such a manner as to ensure that the contents of the second and any subsequent charge sheet do not come to the knowledge of the members of the court-martial or the waiting members until formally laid before the court-martial by the president in accordance with rule 81(3) of these rules; and
 - (iii) Where there is more than one charge sheet, sufficient copies of the second and any subsequent charge sheet to enable the president to give a copy of every such charge sheet to each of the other members when the charge sheet is formally laid before the court-martial, and all such copies shall be sent in the same manner as the originals:
- (j) He shall send to each of the other members of the court-martial, and to each of the waiting members, a copy of—
- (i) The convening order; and
 - (ii) The charge sheet, or, if there is more than one charge sheet, the charge sheet that is to be dealt with first:
- (k) He shall send to the prosecutor—
- (i) A copy of the convening order; and
 - (ii) A copy of each charge sheet; and
 - (iii) The original and 2 copies of the summary of evidence or the abstract of evidence, one copy being suitably marked to show any passages that the convening officer considers to be inadmissible and the other having such passages expurgated:
- (l) He shall send to the judge advocate a copy of—
- (i) The convening order, and
 - (ii) Each charge sheet; and
 - (iii) The summary of evidence or the abstract of evidence, suitably marked to show any passages that

the convening officer considers to be inadmissible:

- (m) He shall arrange, in accordance with rule 12 of these rules, for the attendance at the court-martial of every witness to be called for the prosecution, and every witness requested by the accused under rule 60 of these rules:
 - (n) He shall make appropriate arrangements for the recording of evidence at the court-martial, and, in particular, shall make available to the court-martial persons whom it may appoint in accordance with rule 78(1) of these rules to act as shorthand writers, typists, or recording machine operators.
- (2) In addition to the duties imposed on him by subclause (1) of this rule, the convening officer shall take all necessary steps to ensure that the accused is given sufficient time to prepare his defence in accordance with rule 60 of these rules.

Navigation reports

59 Navigation reports

- (1) Where the issue or one of the issues to be tried before a court-martial relates to the navigation of one of Her Majesty's New Zealand ships, the convening officer shall, unless he considers it impracticable to do so, appoint one or more navigation officers or other competent officers to prepare a navigation report in the form prescribed by the Chief of Defence Force.
- (2) The convening officer shall deliver to the officer or officers who is or are to prepare the report all relevant documents, including such of the following documents as are available:
 - (a) The ship's log book:
 - (b) The captain's night order book:
 - (c) The navigational data book:
 - (d) The marine engineering department master log:
 - (e) The main engine rough register:
 - (f) The boilers and auxiliary rough register:
 - (g) Every chart and the sailing directions by which the ship was navigated:
 - (h) The most recent table of compass deviations:

- (i) The gyro-compass log:
 - (j) The navigating officer's notebook and workbook:
 - (k) The wheel order and engine room telegraph log:
 - (l) The record of working of main engines:
 - (m) The officer of the watch's notebook.
- (3) The officer or officers appointed to prepare the navigation report shall complete it and deliver it to the convening officer as soon as practicable.
- (4) The convening officer shall—
- (a) Send to the prosecutor the original of the navigation report; and
 - (b) Send to the judge advocate a copy of the navigation report; and
 - (c) Send to the accused, a reasonable time before the commencement of the trial, a copy of the navigation report.
- (5) Where the accused did not, in the opinion of the court-martial, receive the navigation report a reasonable time before the commencement of the trial, the court-martial shall, when the navigation report has been received in evidence, advise the accused that he may apply for an adjournment of the proceeding, or a postponement of any cross-examination arising out of the navigation report, to enable him to consider it properly.
- (6) If the accused makes such an application, the court-martial may grant an adjournment or a postponement if it thinks it is in the interests of justice to do so.

Rights and obligations of accused

60 Accused to be allowed sufficient opportunity to prepare his defence

- (1) Following his remand for trial by court-martial, the accused shall be afforded sufficient opportunity to prepare his defence.
- (2) So far as is practicable, he shall be allowed free communication with his assisting officer (if one has been appointed), and with his defender or counsel, and his witnesses.
- (3) A defender or counsel shall be appointed to defend the accused, unless the accused states in writing that he does not wish such an appointment to be made.

- (4) If a defender is appointed, he shall have the same rights and be subject to the same obligations under these rules as counsel.
- (5) As soon as practicable after he has been remanded for trial by courtmartial, and in no case less than 72 hours before the trial, the accused shall be given—
 - (a) A copy of the convening order; and
 - (b) A copy of each charge sheet; and
 - (c) A copy of the summary of evidence or the abstract of evidence, suitably marked to show any passages that the convening officer considers to be inadmissible, and
 - (d) If the accused so requests, the name and unit of any waiting member who has not been appointed by name.
- (6) When the documents referred to in subclause (5) of this rule are given to the accused, the charge shall be explained to him unless he states in writing that he does not require such an explanation.
- (7) At the same time, the accused shall be advised of his right to submit to his commanding officer, not later than 48 hours before the commencement of the trial, a list of persons whom he wishes to call in his defence (not being prosecution witnesses), and shall be informed that all reasonable steps will be taken to arrange the attendance of those persons at the trial.
- (8) Subject to subclause (9) of this rule, at any time after the accused has been remanded for trial by court-martial, the prosecutor shall, on request by the accused, supply to the accused (so far as the information is not contained in the summary of evidence or the abstract of evidence given to the accused under subclause (5)(c) of this rule)—
 - (a) The name and address of each person (in this subclause and subclause (9) of this rule referred to as an identification witness) known to the prosecutor who claims to have seen the offender in the circumstances of the offence, whether or not the prosecutor intends to call that witness to give evidence at the trial; and
 - (b) A statement of any description of the offender given by each such witness to the service authorities; and
 - (c) A copy of any identikit picture or other drawing made by any such witness or from information supplied by him.

- (9) The convening officer may, on the application of the prosecutor, make an order excusing the prosecutor from disclosing to the accused any information referred to in subclause (8)(a) of this rule if he is satisfied that such an order is necessary to protect the identification witness or any other person.
- (10) Where 2 or more charges are contained in the same charge sheet, the accused may, before the trial, apply in writing to the convening officer to have all or any of the charges tried separately on the ground that he would be prejudiced in his defence if that course were not followed; and the convening officer shall, if he is satisfied that it is in the interests of justice to do so, order that all or any of the charges to which the application relates be tried separately.
- (11) Where 2 or more persons are charged jointly, or are charged in the same charge sheet with offences alleged to have been committed by them separately, they shall each be given written notice of that fact and any of them may, before the trial, apply in writing to the convening officer to be tried separately on the ground that he would be prejudiced in his defence if that course were not followed; and the convening officer shall, if he is satisfied that it is in the interests of justice to do so, order that the accused be tried separately.

61 Conditions under which evidence of alibi may be given

- (1) In this rule the expression **evidence in support of an alibi** means evidence tending to show that by reason of the presence of the accused at a particular place or in a particular area at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission.
- (2) In any trial before a court-martial, the accused shall not, without the leave of the court-martial, adduce evidence in support of an alibi unless he has given to his commanding officer, within 14 days after the date on which he was remanded for trial, written notice of the particulars of the alibi.
- (3) Without prejudice to subclause (2) of this rule, the accused shall not, without the leave of the court-martial, call any other person to give evidence in support of an alibi unless—

- (a) The notice under that subclause includes the name and address of the witness or, if the name or address is not known to the accused when he gives the notice, any information in his possession that might be of material assistance in finding the witness:
 - (b) If the name or the address is not included in the notice, the court-martial is satisfied that before giving the notice the accused took all reasonable steps to ensure that the name or address would be ascertained, and that after giving the notice he continued to take all such steps:
 - (c) If the name or the address is not included in the notice, but the accused subsequently discovers the name or address or receives other information that might be of material assistance in finding the witness, he forthwith gives to his commanding officer notice of the name, address, or other information, as the case may require:
 - (d) If the accused is notified by or on behalf of the prosecutor that the witness has not been traced by the name or at the address given, he forthwith gives notice of any such information that is then in his possession or, on subsequently receiving any such information forthwith gives notice of it.
- (4) The court-martial shall not refuse leave under this rule if it appears to the court-martial that the accused was not given notice, in accordance with rule 32(e) or (as the case may require) rule 50(e) of these rules, of the requirements of this rule.
 - (5) Any evidence tendered to disprove an alibi may, subject to any directions by the court-martial as to the time when it is to be given, be given before or after evidence is given in support of the alibi.
 - (6) Any notice of alibi purporting to be given under this rule on behalf of the accused by his defender or counsel shall, unless the contrary is proved, be deemed to be given with the authority of the accused.

*Judge advocate***62 Qualifications of judge advocate**

- (1) At any court-martial in New Zealand, the person appointed to be the judge advocate must be—
 - (a) a barrister or solicitor of the High Court of New Zealand who has held a practising certificate as such for not less than 5 years; or
 - (b) a District Court Judge.
- (2) At any court-martial outside New Zealand, the person appointed to be the judge advocate shall be—
 - (a) A barrister or solicitor of the High Court of New Zealand who has held a practising certificate as such for not less than 5 years; or
 - (b) A person holding appointment as a judge advocate for the naval military, or air forces of the United Kingdom or of Australia; or
 - (c) A member of the legal profession in any Commonwealth country (other than New Zealand) who, in his professional capacity, has broadly the same rights and is subject broadly to the same obligations under the law of that country as a barrister or solicitor of the High Court of New Zealand has and is subject to under the law of New Zealand; or
 - (d) a District Court Judge.

Subclause (1) was substituted, as from 28 August 2003, by rule 3(1) Armed Forces Discipline Rules of Procedure Amendment Rules 2003 (SR 2003/175).

Subclause (2)(c) was amended, as from 28 August 2003, by rule 3(2) Armed Forces Discipline Rules of Procedure Amendment Rules 2003 (SR 2003/175) by inserting the expression “; or”.

Subclause (2)(d) was inserted, as from 28 August 2003, by rule 3(2) Armed Forces Discipline Rules of Procedure Amendment Rules 2003 (SR 2003/175).

63 Responsibilities of judge advocate

- (1) The judge advocate shall represent the Judge Advocate General at the court-martial and shall be responsible to the Judge Advocate General for the proper discharge of his functions at the court-martial.
- (2) The judge advocate shall at all times act impartially towards the prosecution and the accused.

- (3) In the performance of his duty under section 134 of the Act, the judge advocate shall, whether or not his opinion or assistance is expressly sought, act as follows:
 - (a) He shall advise the convening officer and the court-martial of any informality or defect in—
 - (i) The charge sheet; or
 - (ii) The constitution of the court-martial; or
 - (iii) Any other matter relating to the proceeding;
 - (b) After the final addresses to the court-martial on behalf of the prosecution and the accused, he shall sum up the evidence and advise the court-martial on the application of the law to the case before the court-martial closes to deliberate on its findings:
 - (c) If the court-martial declares a finding of guilty (including any finding authorised by section 135 of the Act) and the judge advocate is of the opinion that the finding is contrary to law, he shall once (but only once) more advise the court-martial of the findings that are, in his opinion, open to it in law.
- (4) The judge advocate shall be present whenever the court-martial is sitting, whether in open or closed court, except when the court-martial is deliberating on its findings or on a reconsideration of its findings.
- (5) The judge advocate shall (without prejudice to the president's duty under rule 80 of these rules) take all necessary steps to ensure that the accused is not prejudiced in his defence by his own ignorance, or by any incapacity to state his case intelligibly or question witnesses, or in any other way.
- (6) The judge advocate shall advise the court-martial whenever he considers a witness should be called or recalled to be questioned on any matter that the judge advocate considers requires clarification.
- (7) The judge advocate shall ensure that a proper record of the proceeding is made, and is kept in safe custody in accordance with rules 132 and 133 of these rules.

64 Rulings by judge advocate on question of law or procedure

- (1) When the judge advocate is required to rule on any question of law or procedure in accordance with section 134 of the Act,

he shall hear the arguments and evidence relevant to the point at issue, and shall give his ruling on the point, together with such reasons for his ruling as he considers necessary.

- (2) When the judge advocate considers a question of law or procedure in the absence of the members of the court-martial,—
- (a) The proceeding before him shall comprise part of the proceedings before the court-martial:
 - (b) Sections 70(1) and 71, subsections (1) to (4) and subsection (9) of section 131, and sections 141, 144, and 147, of the Act, and these rules (so far as they are not inconsistent with any of the provisions of this rule) shall apply in respect of the proceeding before the judge advocate as if the proceeding were held before the court-martial:
 - (c) Anything that is authorised by any of the provisions referred to in paragraph (b) of this subclause, except sections 70(1) and 144(1) of the Act, to be done by the president of the court-martial may be done by the judge advocate.
- (3) When, in any case to which subclause (2) of this rule applies, a person commits an offence against section 70(1) or section 144(1) of the Act, the judge advocate shall report the matter to the president who shall take such action as the court-martial considers appropriate.
- (4) In any case to which subclause (2) of this rule applies, the judge advocate shall ensure that the members of the court-martial do not see the record of the proceedings before him until the trial has been completed.

Regulation 64(2)(b) was amended, as from 16 June 1988, by regulation 11 Armed Forces Discipline Rules of Procedure 1983, Amendment No 1 (SR 1988/100) by substituting the expression “(1) to (4) and subsection (9)” for the expression “(1) to (3)”.

65 Access to judge advocate by prosecutor and accused

When the judge advocate has been appointed, the prosecutor and the accused shall be entitled to seek his opinion on any question of law or procedure relating to the charge or trial, whether before or during the trial; but, while the judge advocate is attending the court-martial, neither the prosecutor nor

the accused may seek his advice without the consent of the court-martial.

Counsel

66 Qualifications of counsel

Except as otherwise provided in these rules, the following persons are qualified to appear as counsel at a court-martial:

- (a) Where the court-martial is held in New Zealand, any barrister or solicitor of the High Court of New Zealand;
- (b) Where the court-martial is held overseas,—
 - (i) Any barrister or solicitor of the High Court of New Zealand;
 - (ii) Any person approved by the convening officer on being satisfied that the person is a member of the legal profession in any other country and, in his professional capacity, has broadly the same rights and is subject broadly to the same obligations under the law of that country as a barrister or solicitor of the High Court of New Zealand has and is subject to under the law of New Zealand.

67 Notice of appointment of counsel

- (1) If the accused intends to be represented by counsel of his choice, he shall give notice accordingly to the convening officer as soon as practicable after he is remanded for trial.
- (2) If the court-martial is satisfied in any case that the accused failed to give sufficient notice under subclause (1) of this rule, and counsel has not already been appointed to represent the prosecution, it may, on the application of the prosecutor, adjourn the proceeding to enable such counsel to be appointed.
- (3) If the convening officer appoints counsel to represent the prosecution, then, unless the accused has given notice of his intention to be represented by counsel in accordance with subclause (1) of this rule, the convening officer shall, at least 7 days before the date fixed for the commencement of the trial, give to the accused notice of his intention to appoint counsel for the prosecution.

- (4) Notwithstanding anything in subclause (3) of this rule, the trial may start within 7 days after the convening officer has given to the accused a notice of his intention to appoint counsel to represent the prosecution, if the accused consents.

68 Rights of counsel

- (1) Every counsel appearing before a court-martial shall have the same rights as the prosecution or the accused whom he represents.
- (2) Subject to these rules, counsel may—
- (a) Call and orally examine, cross-examine, and re-examine witnesses; and
 - (b) Raise objections, make statements, and address the court-martial on any matter relating to the proceeding; and
 - (c) Offer any plea; and
 - (d) Inspect the record of proceedings; and
 - (e) Generally act on behalf of the prosecution or accused whom he represents.
- (3) Where the accused is represented by counsel, he shall not be entitled to exercise personally any powers referred to in subclause (2) of this rule (other than to plead to the charge), except with the consent of the courtmartial.

69 Duties of prosecutor, and defender or counsel

- (1) Every prosecutor, and every defender or counsel, appearing before a court-martial shall—
- (a) Do his best to assist the court-martial in the administration of justice:
 - (b) Present his case fairly:
 - (c) Treat the members of the court-martial, and the judge advocate, with due respect:
 - (d) Comply in all respects with these rules, so far as they are applicable to the case:
 - (e) Conform with the practice of the High Court of New Zealand relating to the examination, cross-examination, and re-examination of witnesses, so far as it is applicable to the case.
- (2) No prosecutor, and no defender or counsel, shall—

- (a) Refer to any matter that is not relevant to the charge before the court-martial; or
 - (b) Assert as fact any matter that he does not intend to prove or that has not been given in evidence; or
 - (c) State his own opinion on the evidence or on what the evidence tends to prove.
- (3) Without limiting the generality of subclause (1) of this rule, the prosecutor shall ensure that he brings the whole case before the court-martial, and he shall not take any unfair advantage of, or withhold evidence from, the accused.

Constitution of court-martial

70 Court-martial to consider legality of its constitution

- (1) As soon as a court-martial has assembled, but before it has opened the proceeding, the president shall formally lay before it—
- (a) The convening order; and
 - (b) The charge sheet, or, if there is more than one charge sheet, the charge sheet that is to be dealt with first; and
 - (c) Where any waiting member of the court-martial has not been appointed by name, the name and unit of each such member.
- (2) The court-martial shall, before opening the proceeding, satisfy itself that it is constituted in accordance with the Act and these rules, and that, in particular,—
- (a) The court-martial appears to have been properly convened;
 - (b) The court-martial has at least—
 - (i) Five members, in the case of a general court-martial; or
 - (ii) Three members, in the case of a restricted court-martial;
 - (c) The president and the other members of the court-martial—
 - (i) Have been duly appointed; and
 - (ii) Are eligible to be, and are not disqualified from being, appointed; and

- (iii) Are of the minimum rank required by the relevant provisions of section 120 or, as the case may require, section 121 of the Act:
 - (d) The judge advocate has been duly appointed.
- (3) If the court-martial is not satisfied of any matter referred to in subclause (2) of this rule and considers that it is not itself competent under the Act and these rules to rectify the matter, it shall report the matter to the convening officer before opening the proceeding.

71 Vacancy in membership of court-martial, etc

- (1) If, when a court-martial first assembles, it is found that a member of the court-martial is disqualified under the Act from acting as such, or is absent, the president may appoint a waiting member to take the disqualified or absent member's place.
- (2) When a court-martial first assembles, the president may, if he is satisfied that it is in the interests of justice to do so, replace a member appointed by the convening officer with a waiting member.

72 Court-martial to consider jurisdiction

- (1) After a court-martial has satisfied itself of the legality of its constitution in accordance with rule 70 of these rules, it shall satisfy itself that it has jurisdiction to try the charge, and, in particular, that—
 - (a) The accused appears, from the charge sheet, to be subject to the Act and to the jurisdiction of the court martial; and
 - (b) That each charge contained in the charge sheet before the court martial discloses an offence against the Act, and is drawn in accordance with these rules.
- (2) If the court-martial is not satisfied of any matter referred to in subclause (1) of this rule and considers that it is not itself competent under the Act and these rules to rectify the matter, it shall report the matter to the convening officer before opening the proceeding.

73 President to declare court-martial open

- (1) When the court-martial has complied with rules 70 to 72 of these rules and is ready to proceed with the trial, the president shall declare the court-martial open.
- (2) The court-martial shall cause the accused to be brought before it, and the prosecutor shall take his place.

74 Objections to membership of court-martial by accused

- (1) The order convening the court-martial and the names of the officers appointed to try the accused, shall be read in the hearing of the accused in accordance with section 129(2) of the Act.
- (2) When the accused is asked whether or not he objects to any member of the court-martial, he shall be required to name every member to whom he objects before any such objection is considered.
- (3) Where 2 or more persons are to be tried, whether jointly or separately, each of them shall be asked, in the order in which they are to be tried (where they are to be tried separately) or in the order in which their names appear in the convening order (where they are to be tried jointly), whether or not he objects to any member of the court-martial.
- (4) If the accused objects to more than one member, the objections shall be dealt with in ascending order of rank of the members concerned, except that an objection to the president shall be dealt with first.
- (5) The accused may make a statement, or call any person to make a statement, in support of any objection; and, if he calls any person for that purpose, that person may be questioned by the accused and by any member of the court-martial.
- (6) Any member to whom the accused objects may make a statement to the court-martial relating to the objection.
- (7) Every member of the court-martial, except the member to whom the objection under consideration relates, shall declare his opinion on the objection, whether or not the accused has also objected to him.
- (8) Where an officer is appointed to the court-martial pursuant to subsection (3) or subsection (4) of section 126 of the Act and the accused is asked whether or not he objects to that officer,

subclauses (2) to (7) of this rule shall apply as if that officer had been designated as a member in the convening order.

- (9) If, as a result of objections under this rule, the number of remaining members of the court-martial is not less than the minimum required by section 120 or (as the case may require) section 121 of the Act but is less than the number fixed by the convening officer and there is no waiting member available to be appointed, the court-martial shall adjourn and report the matter to the convening officer to enable another member or other members to be appointed, unless it considers that such an adjournment would be contrary to the interests of justice or the good of the service concerned, in which case it may proceed with the trial, having first recorded its reasons for doing so.
- (10) If after every objection under this rule has been dealt with the number of remaining members of the court-martial is not less than the minimum so required, the accused shall, subject to subclause (9) of this rule, be asked if he objects to the court-martial as constituted; and, if he does object and the court-martial is satisfied that the objection is well founded, the court-martial shall report the matter to the convening officer in accordance with section 129(6) of the Act.

Miscellaneous provisions

75 Swearing of members

- (1) As soon as rules 70 to 74 of these rules have been complied with, the judge advocate shall, in the presence of the accused, administer an oath in the form and manner prescribed by the Chief of Defence Force to the president, and then to the other members of the court-martial either separately or together.
- (2) A court-martial may be sworn at one time to try any number of accused then present before it, whether they are to be tried jointly or separately.
- (3) Notwithstanding any of the foregoing provisions of this rule, where 2 or more persons are to be tried separately by a court-martial and any of the accused objects to the constitution of the court-martial, the court-martial may proceed with the trial of the other accused before the objection has been determined,

in which case the members of the court-martial shall be sworn without awaiting the determination of the objection.

76 Swearing of judge advocate

When the members of the court martial have been sworn, the president shall, in the presence of the accused, administer an oath in the form and manner prescribed by the Chief of Defence Force to the judge advocate.

77 Officer under instruction

- (1) Any officer who is subject to the Act may, by direction of the convening officer or with the permission of the president, attend any court martial throughout the proceeding as an officer under instruction.
- (2) Where any such officer is permitted to attend, the judge advocate shall, immediately after he has been sworn in accordance with rule 76 of these rules, in the presence of the accused, administer an oath in the form and manner prescribed by the Chief of Defence Force to the officer.
- (3) No officer under instruction shall take any part in the proceeding, or in the deliberations of the court-martial.

78 Interpreters and recorders

- (1) Subject to subclause (2) of this rule, a court martial may at any time during a trial, if it thinks it expedient to do so, appoint such competent and impartial persons to act as interpreters, shorthand writers, typists, or recording machine operators as it thinks fit.
- (2) Before a person is appointed under subclause (1) of this rule, the accused shall be asked if he objects to that person being appointed, and, if he does, the court-martial shall deal with the objection in the same manner as if it were an objection to the appointment of a member of the court martial.
- (3) Before a person commences his duties under this rule, he shall be sworn in the presence of the accused in the form and manner prescribed by the Chief of Defence Force.

79 Order of trial where more than one accused

- (1) Where there are 2 or more accused to be tried separately, the court-martial shall try them in the order laid down by the convening officer in the convening order; or, if the convening officer has not specified the order of trial, the court-martial shall decide the matter for itself
- (2) Where 2 or more accused are to be tried jointly, they shall—
 - (a) Be arraigned; and
 - (b) Be required to elect whether or not to give evidence or call witnesses,—in the order in which their names appear in the convening order.
- (3) Where 2 or more accused are to be tried jointly, and more than 1 of them wish—
 - (a) To exercise their right of cross-examination; or
 - (b) To make a submission of no case to answer; or
 - (c) To make a closing address; or
 - (d) To make a plea in mitigation of punishment,—those who wish to do so shall be called upon in the order in which their names appear in the convening order.
- (4) Where the same counsel or defender represents 2 or more accused who are to be tried jointly, he may exercise only one right of cross examination of a witness, make only one closing address, and make only one plea in mitigation of punishment, on behalf of all the accused whom he represents.

80 Special duty of president

- (1) The president shall ensure that the trial is conducted in accordance with the Act and these rules, and in a manner befitting a court of justice.
- (2) In particular, the president shall—
 - (a) Ensure that the prosecutor and the defender or counsel conduct themselves in accordance with these rules:
 - (b) Ensure that justice is administered, and that the accused has a fair trial, and does not suffer any disadvantage in consequence of his position as a person on trial, or of his ignorance, or of his inability to examine, cross-examine, or re-examine witnesses or to present his own evidence clearly and intelligibly, or otherwise:

- (c) Afford the accused every reasonable opportunity to make his defence, and shall not unnecessarily restrict the accused in the manner in which he makes his defence; nor shall he stop the presentation of the defence on the ground of irrelevance except in extreme cases, although he may caution the accused to avoid being irrelevant:
- (d) Ensure that the accused refrains from making remarks contemptuous of or disrespectful towards the court-martial, and from using insulting language; but, subject to that, he shall not prevent the accused from impeaching the evidence or motive of any witness or charging any other person with any blame or criminality where to do so is a part of the case for the defence, although he may caution the accused of his liability to cross-examination if he follows such a course:
- (e) Ensure that no officer under instruction who is present expresses an opinion to the court-martial on any matter relating to the trial before the court martial has announced its findings, nor on sentence before the court-martial has passed sentence.

Part 11

Conduct of trial by court-martial

Arraignment of accused

81 Accused to be arraigned

- (1) When the members of the court-martial, the judge advocate, and any other person referred to in rules 77 and 78 of these rules whom it is necessary to have sworn before the accused is arraigned, have been duly sworn, the judge advocate shall arraign the accused.
- (2) If there is more than 1 charge against the accused before the court-martial, he shall be arraigned on each charge separately.
- (3) Where the accused is liable to be tried upon charges in more than 1 charge sheet, the following provisions shall apply, subject to rules 82 to 87 of these rules:
 - (a) The accused shall be arraigned and tried on the charge or charges in the first charge sheet to be dealt with:

- (b) The court-martial shall announce its findings in respect of the charge or charges in that charge sheet:
 - (c) The president shall close the proceedings, and formally lay the second charge sheet before the court martial to enable it to comply with rule 72 of these rules:
 - (d) When the court-martial is ready to proceed with the trial, the president shall reopen the court-martial:
 - (e) The accused shall then be arraigned and tried on the charge or charges in that charge sheet:
 - (f) The court-martial shall follow the same procedure in respect of the third and any subsequent charge sheet.
- (4) If, in any case to which subclause (3) of this rule applies, the accused pleads guilty to the charge or charges in any charge sheet (other than the one to be dealt with last, the court-martial shall either—
- (a) Forthwith comply with the requirements of rule 114 of these rules before the accused is arraigned on any charge in any subsequent charge sheet; or
 - (b) Defer complying with those requirements until the accused has been arraigned and tried on any such charge.

82 Accused may plead to jurisdiction of court-martial

- (1) Before pleading to any charge, the accused may offer a plea to the jurisdiction of the court-martial.
- (2) The accused may adduce evidence in support of his plea, and the prosecutor may adduce evidence in rebuttal.
- (3) The prosecutor may also address the court-martial in opposition to the plea, and the accused may reply to the prosecutor's address.
- (4) Where the accused offers a plea to the jurisdiction of the court-martial the court-martial shall obtain a ruling on the matter from the judge advocate.
- (5) If the judge advocate rules that the plea should be dismissed, the court-martial shall cause that ruling and the reasons for it to be recorded and announced, and shall proceed with the trial.
- (6) If the judge advocate rules that the plea should be upheld, the court-martial shall cause that ruling and the reasons for it to be recorded and announced, and, subject to subclause (7) of

this rule, adjourn the proceeding and report the matter to the convening officer.

- (7) If, in any case to which subclause (6) of this rule applies, any other charge against the accused is before the court-martial, the court-martial may, before adjourning the proceeding under that subclause, proceed with the trial of that other charge.
- (8) Where the court-martial reports to the convening officer under subclause (6) of this rule, the convening officer shall, subject to subclause (9) of this rule, dissolve the court-martial and either—
 - (a) Order the accused to be released; or
 - (b) Convene a new court-martial to try the accused.
- (9) If, in any case to which subclause (8) of this rule applies, any other charge against the accused is before the court-martial, or there is another charge sheet against the accused upon which the convening officer wishes the court-martial to proceed, the convening officer may, before dealing with the matter under that subclause, direct the court-martial to proceed with the trial of that other charge or charge sheet.

83 Accused may plead in bar of trial

- (1) Before pleading to any charge, the accused may offer a plea in bar of trial—
 - (a) In reliance on any of the provisions of sections 20 to 22 of the Act; or
 - (b) In reliance on any pardon granted to him in respect of the offence with which he is charged.
- (2) The accused may adduce evidence in support of his plea, and the prosecutor may adduce evidence in rebuttal.
- (3) The prosecutor may also address the court-martial in opposition to the plea, and the accused may reply to the prosecutor's address.
- (4) Where the accused offers a plea in bar of trial, the court-martial shall obtain a ruling on the matter from the judge advocate.
- (5) If the judge advocate rules that the plea should be dismissed, the court-martial shall cause that ruling and the reasons for it to be recorded and announced, and shall proceed with the trial.

- (6) If the judge advocate rules that the plea should be upheld, the court-martial shall cause that ruling and the reasons for it to be recorded and announced, and, subject to subclause (7) of this rule, adjourn the proceeding and report the matter to the convening officer.
- (7) If, in any case to which subclause (6) of this rule applies, any other charge against the accused is before the court-martial, the court-martial may, before adjourning the proceeding under that subclause, proceed with the trial of that other charge.
- (8) Where the court-martial reports to the convening officer under subclause (6) of this rule, the convening officer shall, subject to subclause (9) of this rule, withdraw the charge and dissolve the court-martial.
- (9) If, in any case to which subclause (8) of this rule applies, any other charge against the accused is before the court-martial, or there is another charge sheet against the accused upon which the convening officer wishes the court-martial to proceed, the convening officer may, before dealing with the matter under that subclause, direct the court-martial to proceed with the trial of that other charge or charge sheet.

84 Application for separation of trials

- (1) Where 2 or more persons are charged jointly, or are charged in the same charge sheet with offences alleged to have been committed by them separately, any of them may, before pleading to the charge, apply to the court-martial to be tried separately on the ground that he would be prejudiced in his defence if that course were not followed.
- (2) Every application for separate trials shall be heard and determined by the judge advocate in the absence of the members of the court-martial.
- (3) The prosecutor may address the judge advocate in opposition to the application, and the accused may reply to the prosecutor's address.
- (4) The judge advocate shall recall the members of the court-martial, and shall report his ruling on the application to the court-martial.

- (5) If the judge advocate rules that the application should be refused, the court-martial shall cause that ruling and the reasons for it to be recorded and announced, and shall proceed with the trial.
- (6) If the judge advocate rules that the application should be granted, the court-martial shall cause that ruling and the reasons for it to be recorded and announced, grant the application, and, subject to subclause (7) of this rule, proceed to try the accused separately.
- (7) If, in any case to which subclause (6) of this rule applies the judge advocate also rules that it is in the interests of justice that any of the accused be tried by another court-martial, the court-martial shall cause that ruling and the reasons for it to be recorded and announced, adjourn the proceeding, report the matter to the convening officer, and then proceed with the trial in respect of any accused to whom the ruling does not relate.
- (8) Where the court-martial reports to the convening officer under subclause (7) of this rule, the convening officer shall, either—
 - (a) Withdraw the charge against the accused to whom the ruling relates; or
 - (b) Convene a new court-martial to try that accused; or
 - (c) Dissolve the court-martial and convene new courts-martial to try each accused where all are to be dealt with by new courts-martial.

85 Application for severance of charge sheets

- (1) Where the charge sheet before the court-martial is the second or a subsequent charge sheet, the accused may, before pleading to the charges therein, apply to the court-martial to have the charge sheet dealt with by a new court-martial on the ground that he would be prejudiced in his defence if that course were not followed.
- (2) Every application for the separation of a charge sheet shall be heard and determined by the judge advocate in the absence of the members of the court-martial.
- (3) The prosecutor may address the judge advocate in opposition to the application, and the accused may reply to the prosecutor's address.

- (4) The judge advocate shall recall the members of the court-martial, and shall report his ruling on the application to the court-martial.
- (5) If the judge advocate rules that the application should be refused, the court-martial shall cause that ruling and the reasons for it to be recorded and announced, and shall proceed with the trial
- (6) If the judge advocate rules that the application should be granted, the court-martial shall cause that ruling and the reasons for it to be recorded and announced, grant the application, adjourn the proceeding, and report the matter to the convening officer.
- (7) Where the court-martial reports to the convening officer under subclause (6) of this rule, the convening officer shall either—
 - (a) Withdraw the charge sheet; or
 - (b) Convene a new court-martial to try the accused on the charges in that charge sheet.
- (8) When the court-martial has reported to the convening officer in accordance with subclause (6) of this rule, it shall proceed with the trial in relation to any charge sheet still to be dealt with.

86 Application for severance of charges

- (1) Where 2 or more charges are contained in the same charge sheet, the accused may, before pleading to the charge, apply to the court-martial to have any charge tried separately on the ground that he would be prejudiced in his defence if that course were not followed.
- (2) Every application for the separation of charges shall be heard and determined by the judge advocate in the absence of the members of the court martial.
- (3) The prosecutor may address the judge advocate in opposition to the application, and the accused may reply to the prosecutor's address.
- (4) The judge advocate shall recall the members of the court-martial, and shall report his ruling on the application to the court-martial.

- (5) If the judge advocate rules that the application should be refused, the court martial shall cause that ruling and the reasons for it to be recorded and announced, and shall proceed with the trial.
- (6) If the judge advocate rules that the application should be granted the court martial shall cause that ruling and the reasons for it to be recorded and announced, grant the application, and, subject to subclause (7) of this rule, proceed to try the accused separately on the charge or charges to which the application relates as if the charge or charges had been contained in a separate charge sheet.
- (7) If, in any case to which subclause (6) of this rule applies, the judge advocate also rules that it is in the interests of justice that the accused be tried on any of the charges by another court-martial, the court-martial shall cause that ruling and the reasons for it to be recorded and announced, and shall then adjourn the proceeding and report the matter to the convening officer.
- (8) Where the court martial reports to the convening officer under subclause (7) of this rule, the convening officer shall either—
 - (a) Withdraw the charge; or
 - (b) Convene a new court-martial to try the accused on that charge.
- (9) After the court martial has reported to the convening officer in accordance with subclause (7) of this rule, it shall proceed with the trial on the remaining charges.

87 Accused may object to charges

- (1) Before pleading to any charge, the accused may object to it on any or all of the following grounds:
 - (a) That it does not disclose an offence against the Act;
 - (b) That it is not drawn in accordance with these rules;
 - (c) That it is not correct in law for any other reason.
- (2) The prosecutor may address the court-martial in opposition to the objection, and the accused may reply to the prosecutor's address.
- (3) Where the accused objects to a charge, the court-martial shall obtain a ruling on the matter from the judge advocate.

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- (4) If the judge advocate rules that the objection should be dismissed, the court martial shall cause that ruling and the reasons for it to be recorded and announced, and shall proceed with the trial.
 - (5) If the judge advocate rules that the objection should be upheld, the court-martial shall cause that ruling and the reasons for it to be recorded and announced, and, subject to subclause (6) of this rule, either—
 - (a) Amend or divide the charge, if that can be done in accordance with rule 122 of these rules; or
 - (b) Adjourn the proceeding and report the matter to the convening officer.
 - (6) If, in any case to which subclause (5) of this rule applies, any other charge against the accused is before the court-martial or there is another charge sheet against the accused, the court-martial may, before adjourning the proceeding under paragraph (b) of that subclause, proceed with the trial of that other charge or charge sheet.
 - (7) Where the court-martial reports to the convening officer under subclause (5)(b) of this rule, the convening officer shall, subject to subclause (8) of this rule, either—
 - (a) Amend or divide the charge, if that can be done in accordance with rule 122 of these rules, and direct the court-martial to try the charge as so amended or divided; or
 - (b) Dissolve the court-martial; or
 - (c) Dissolve the court-martial and convene a new court-martial to try the accused.
 - (8) If, in any case to which subclause (7) of this rule applies, any other charge against the accused is before the court-martial, or there is another charge sheet against the accused upon which the convening officer wishes the court-martial to proceed, the convening officer may, before dealing with the matter under that subclause, direct the court-martial to proceed with the trial of that other charge or charge sheet

88 Plea to charge

- (1) Subject to rules 82 to 87 of these rules, the accused shall be required to plead either guilty or not guilty to each charge on which he is arraigned, and the accused's plea shall be recorded.
- (2) Where the accused wishes to plead guilty to a charge, he may—
 - (a) Plead guilty to the offence charged, or
 - (b) Where the court-martial is empowered by section 74(3) or section 135 of the Act to convict the accused—
 - (i) Of an offence other than that with which he is charged; or
 - (ii) Of committing the offence without the specified intent or in circumstances rendering the accused liable to a less severe punishment; or
 - (iii) Subject to exceptions or variations in accordance with rule 111(2) of these rules,—
plead guilty to such other offence, or to committing the offence charged without the specified intent or in circumstances rendering him liable to a less severe punishment, or to the offence charged subject to such exceptions or variations, as the case may be.
- (3) In any case where the accused refuses to plead, or pleads unintelligibly, the court-martial shall enter and record a plea of not guilty on his behalf.

89 Acceptance of plea of guilty

- (1) If the accused pleads guilty to any charge, the judge advocate shall, after considering whether or not section 189 of the Act applies to the case, explain to the accused the nature of the offence to which the plea relates, the general effect of his plea, and the difference in the procedure that must be followed according to whether an accused pleads guilty or not guilty; and the court-martial shall not consider whether or not it should accept the plea until the judge advocate has complied with this subclause.
- (2) The court-martial shall not accept a plea of guilty unless it is satisfied that the accused understands the nature of the offence and the general effect of the plea.

- (3) The court-martial shall not accept a plea of guilty in any case to which rule 88(2)(b) of these rules applies unless the convening officer concurs, which concurrence may be notified to the court-martial by the prosecutor.
- (4) Where the court martial does not accept a plea of guilty, it shall enter and record a plea of not guilty to the charge on the accused's behalf.
- (5) Where the court martial is satisfied that it should accept a plea of guilty, it shall record and announce a finding of guilty and, subject to rule 92(3) of these rules, proceed in accordance with rule 114 of these rules.

Regulation 89(2) was substituted, as from 16 June 1988, by regulation 3 Armed Forces Discipline Rules of Procedure 1983, Amendment No 2 (SR 1990/80).

90 Pleas on alternative charges

- (1) Where the accused pleads guilty to the first of 2 or more alternative charges, the court-martial shall, if it accepts the plea, record and announce a finding of guilty in respect of that charge, and the prosecutor shall withdraw each subsequent alternative charge before the accused is arraigned on it.
- (2) Where the accused pleads guilty to the second or a subsequent alternative charge, the court-martial may either—
 - (a) With the concurrence of the convening officer (which concurrence may be notified to the court-martial by the prosecutor), record and announce a finding of guilty in respect of that charge and a finding of not guilty on each alternative charge that preceded it in the charge sheet; in which case the prosecutor shall, if there is any further alternative charge contained in the charge sheet, withdraw that charge before the accused is arraigned on it; or
 - (b) Proceed as if the accused had pleaded not guilty to all of the alternative charges.

91 Mixed pleas of guilty and not guilty

Where the court-martial records a finding of guilty in respect of any charge following a plea of guilty, and—

- (a) There is another charge (not being an alternative charge to that charge) in the same charge sheet to which the

accused, or any other accused who is being tried jointly with him, pleads not guilty; or

- (b) Two or more persons face that charge and 1 or more of them pleads not guilty,—

the court-martial shall try the accused, or the other accused, on the other charge, or (as the case may require) try the other person on that charge, and record and announce its finding thereon before proceeding in accordance with rule 114 of these rules.

92 Change of plea

- (1) Where the accused pleads not guilty to any charge, he may, at any time before the court-martial closes to deliberate on its finding, withdraw his plea of not guilty and substitute a plea of guilty to the charge.
- (2) If the court-martial is satisfied in accordance with rule 89 of these rules that it should accept the substituted plea of guilty, it shall record the plea, record and announce a finding of guilty, and, so far as is necessary, proceed in accordance with rule 114 of these rules.
- (3) If at any time during the proceeding it appears to the court-martial that an accused who has entered a plea of guilty to any charge did not understand the nature of the offence to which the plea related or the general effect of his plea, the court-martial shall amend the record, enter and record a plea of not guilty in substitution for the plea of guilty, and proceed accordingly.
- (4) If, in any case to which subclause (3) of this rule applies, there was originally a charge before the court-martial in the alternative to that to which the change of plea relates and that alternative charge was withdrawn by the prosecutor in accordance with subclause (1) or subclause (2)(a) of rule 90 of these rules, the court-martial shall reinstate that alternative charge, have the accused arraigned on it, and proceed as if the charge had never been withdrawn.

*Application for adjournment***93 Application for adjournment following plea of not guilty**

- (1) Where the accused pleads not guilty to any charge, the president shall ask him whether he wishes to apply for an adjournment of the proceeding on either or both of the following grounds:
 - (a) That any of these rules relating to the procedure to be followed before a trial by court-martial has not been complied with and that he has been prejudiced in his defence by that non-compliance:
 - (b) That he has not had sufficient time to prepare his defence.
- (2) If the accused applies for an adjournment of the proceeding, he may adduce evidence in support of the application, and the prosecutor may adduce evidence in rebuttal.
- (3) The prosecutor may also address the court-martial in opposition to the application, and the accused may reply to the prosecutor's address.
- (4) On any such application, the court-martial may grant an adjournment if it thinks it is in the interests of justice to do so.

*Case for prosecution***94 Accused may make admission**

The accused may admit any fact alleged against him so as to dispense with proof of that fact, and that admission shall be recorded in the record of proceedings.

95 Opening and presentation of case

- (1) The prosecutor may if he wishes, and shall if required by the court-martial, make an opening address stating the substance of the prosecution's case and the nature and effect of the evidence to be adduced.
- (2) He shall then call the witnesses for the prosecution to give their evidence.

96 Calling of evidence not contained in summary or abstract

- (1) Where the prosecutor intends to call any evidence that is not contained in the summary of evidence or the abstract of evidence or in a navigation report given to the accused, he shall, where practicable, give to the accused a reasonable time before the commencement of the trial, notice of his intention to adduce that evidence, together with a statement of the evidence.
- (2) Where the accused did not, in the opinion of the court-martial, receive such prior notice and statement, the court-martial shall, when the evidence has been heard, advise the accused that he may apply for an adjournment of the proceeding, or a postponement of any cross-examination arising out of the evidence, to enable him to consider the evidence properly.
- (3) If the accused makes such an application, the court-martial may grant an adjournment or a postponement if it thinks that it is in the interests of justice to do so.

97 Notice to accused that prosecution witness not to be called

- (1) The prosecutor shall not be bound to call every witness for the prosecution whose evidence is contained in the summary of evidence or the abstract of evidence given to the accused, nor every witness of whom he has given notice to the accused in accordance with rule 96(1) of these rules.
- (2) If the prosecutor does not intend to call any such witness, he shall, subject to subclause (4) of this rule, either—
 - (a) Give reasonable notice of that fact to the accused; or
 - (b) Tender the witness for cross-examination at the trial
- (3) In any case to which subclause (2)(a) of this rule applies, the prosecutor shall inform the accused that he may communicate with the witness, and may call him to give evidence if he is available.
- (4) The prosecutor shall not be required to comply with subclause (2) of this rule where the attendance of the witness is dispensed with in accordance with the provisions of any Act or of rules 126, 127, and 141 of these rules, or with the consent of the accused.

*Calling and examination of witnesses***98 Witness to be sworn**

Except as provided by section 130 of the Act, every witness shall be sworn in the presence of the accused in the form and manner prescribed by the Chief of Defence Force before he gives his evidence.

99 Exclusion of witness from courtroom

- (1) At any time during the trial, the prosecutor or the accused may apply to the court-martial for an order that all or any of the witnesses, other than the prosecutor, the defender, and the accused, be excluded from the courtroom until they are called to give their evidence; and, if such an order is made, every person to whom it applies shall leave the courtroom but remain within call.
- (2) If, while a witness is giving evidence, any question arises relating to the admissibility of any evidence, the court-martial may direct the witness to leave the courtroom while the question is dealt with

100 Examination of witnesses

- (1) Every witness may be—
 - (a) Examined by the party calling him;
 - (b) Cross-examined by the other party;
 - (c) Re-examined by the party calling him on any matter arising out of the cross-examination
- (2) Every question to a witness shall be put orally.
- (3) If objection is made by a witness, the prosecutor, or the accused to any question, the witness shall not be required to answer it unless and until the objection is dismissed by the court-martial.
- (4) The court-martial may allow the cross-examination or re-examination of any witness to be postponed if it thinks it is in the interests of justice to do so.

101 Questioning of witness by members of court-martial, etc

- (1) The president, the judge advocate, and any other member of the court-martial with the permission of the president, may put questions to any witness.
- (2) The prosecutor and the accused may, in respect of any answer given by the witness to any such question, put such questions to the witness as the court-martial may allow as proper.

Submission that no case to answer

102 Accused may submit no case to answer

- (1) At the conclusion of the prosecution's case in respect of any charge, the accused may submit that there is no case to answer and that accordingly he should not be called upon to make his defence to the charge.
- (2) Every such submission shall be heard and determined by the judge advocate in the absence of the members of the court-martial.
- (3) The prosecutor may address the judge advocate in opposition to the submission, and the accused may reply to the prosecutor's address.
- (4) The judge advocate shall rule in favour of the submission if he is satisfied, in respect of the charge,—
 - (a) That there is no case for the accused to answer; and
 - (b) That it is not open to the court-martial to amend the charge in order to meet the submission; and
 - (c) That it is not open to the court martial, on the evidence before it, to make a special finding under section 74(3) or section 135 of the Act or under rule 111(2) of these rules.
- (5) When the judge advocate has determined what his ruling should be he shall recall the members of the court-martial and report his ruling to them.
- (6) If the judge advocate rules against the submission, the court-martial shall cause that ruling and the reasons for it to be recorded and announced and shall proceed with the trial.
- (7) If the judge advocate rules in favour of the submission, the court-martial shall cause that ruling and the reasons for it to

be recorded, find the accused not guilty of the charge, and announce that finding in open court.

- (8) Nothing in this rule shall prevent the court-martial, after hearing the prosecutor and the judge advocate, from finding the accused not guilty of the charge at any time after the conclusion of the prosecution's case
- (9) Where it does so, it shall announce the finding in open court.

Case for defence

103 Judge advocate to advise accused of his rights

- (1) Following the conclusion of the prosecution's case, the judge advocate shall advise the accused as follows:
 - (a) That, if the accused wishes, he may give evidence as a witness, but he is not bound to do so:
 - (b) That if the accused does give evidence, he will be liable to be cross-examined by the prosecutor, and questioned by the members of the court-martial and the judge advocate himself:
 - (c) That, whether or not the accused gives evidence, he may call witnesses on his behalf.
- (2) Having advised the accused of his rights in accordance with subclause (1) of this rule, the judge advocate shall ask the accused whether or not he wishes to give evidence or call any witnesses.
- (3) If the accused elects to give evidence or call any witnesses, he may make an opening address setting out the substance of his defence, and the nature and effect of the evidence to be adduced, and shall then proceed in accordance with his election.

104 Evidence by accused or accused's spouse or civil union partner

- (1) The accused, and the accused's spouse or civil union partner, are competent witnesses at any stage of the proceeding, whether the accused is charged singly or jointly with any other person.
- (2) Except as provided in the Evidence Act 1908, neither the accused nor the accused's spouse or civil union partner may be called as a witness except on the application of the accused.

- (3) Neither the accused nor the accused's spouse or civil union partner may be compelled to disclose in the proceeding any communication that one made to the other during the marriage or civil union.
- (4) The accused, when giving evidence, may be asked any question in cross-examination, notwithstanding that it may tend to incriminate him as to the offence charged.
- (5) The accused shall not be asked, and if he is asked shall not be bound to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that with which he is then charged, or that he is of bad character, unless—
 - (a) The proof that he has committed or been convicted of such other offence is admissible in evidence as tending to show that he is guilty of the offence with which he is then charged; or
 - (b) He has, personally or by his counsel or defender, asked questions of the witnesses for the prosecution designed to establish his own good character; or
 - (c) He has given evidence himself as to his good character, or has, personally or by his counsel or defender, asked questions of any witness called on his behalf that were designed to establish his own good character; or
 - (d) The nature or conduct of the defence is such as to involve imputations against the character of any witness for the prosecution; or
 - (e) He has given evidence against any other person charged with the same offence.
- (6) Where the accused refrains from giving evidence as a witness, no person other than the accused or his counsel or defender, or the judge advocate, shall comment on the fact.
- (7) Where the accused refrains from calling his or her spouse or civil union partner as a witness, no comment adverse to the accused shall be made on the fact.
- (8) If the accused gives evidence, he shall, unless the court-martial otherwise orders, give his evidence from the witness box or other place from which the other witnesses give their evidence.

The heading to rule 104 was amended, as from 26 April 2005, by section 12 Relationships (Statutory References) Act 2005 (2005 No 3) by substituting the words “accused’s spouse or civil union partner” for the word “spouse”.

Subclauses (1) and (2) were amended, as from 26 April 2005, by section 12 Relationships (Statutory References) Act 2005 (2005 No 3) by inserting the words “or civil union partner” after the word “spouse”.

Subclause (3) was substituted, as from 26 April 2005, by section 12 Relationships (Statutory References) Act 2005 (2005 No 3).

Subclause (7) was amended, as from 26 April 2005, by section 12 Relationships (Statutory References) Act 2005 (2005 No 3) by inserting the words “or civil union partner” after the word “spouse”.

105 Evidence in rebuttal

On the conclusion of the case for the defence, the prosecutor may, by leave of the court-martial, call or recall any witness to give evidence on any matter raised by or on behalf of the accused in his defence that the prosecutor could not properly have put before the court-martial before the accused disclosed his defence, or that the prosecutor could not reasonably have foreseen.

Closing addresses and summing up

106 Closing addresses by prosecution and defence

- (1) After all the evidence has been given, the prosecutor and the accused may make a closing address to the court-martial.
- (2) The accused shall be entitled to make his closing address after the prosecutor has made his.

107 Calling and recalling of witnesses before summing up

- (1) The court-martial may, at any time before the judge advocate sums up, call or recall any witness if it thinks that it is in the interests of justice to do so.
- (2) If the court-martial calls or recalls a witness under subclause (1) of this rule, the prosecutor and the accused may put such questions to the witness as the court-martial may allow as proper.
- (3) The prosecutor and the accused may, at any time before the judge advocate sums up, with leave of the court-martial, recall any witness, and either party may put such questions to the witness as the court-martial may allow as proper.

108 Judge advocate to sum up

- (1) After the closing addresses by the prosecutor and the accused, the judge advocate shall, in open court, sum up the evidence and advise the court-martial on the law as it applies to the case.
- (2) Where the case against the accused depends wholly or substantially on the correctness of one or more visual identifications of him, the judge advocate shall warn the court-martial of the special need for caution before finding the accused guilty in reliance on the correctness of any such identification.
- (3) The warning need not be in any particular words but shall—
 - (a) Include the reason for the warning; and
 - (b) Alert the court-martial to the possibility that a mistaken witness may be convincing; and
 - (c) Where there is more than one identification witness, advert to the possibility that all of them may be mistaken.

Sitting in closed court

109 Deliberations by court-martial

- (1) Subject to subclause (2) of this rule, where the court-martial sits in closed court, the judge advocate and any officer under instruction shall be present, as well as the members of the court-martial.
- (2) The judge advocate shall not be present when the court-martial sits in closed court to deliberate on its finding on any charge or to reconsider its finding on any charge.

Finding of court-martial

110 Deliberation on finding

- (1) After the judge advocate has summed up, he shall withdraw, and the court-martial shall assemble in closed court to deliberate on its finding.
- (2) Each member of the court martial shall give his opinion on the finding orally, in closed court, and in order of seniority commencing with the most junior in rank.
- (3) Where there is more than one charge, each member shall give his opinion on the finding on each charge separately.

- (4) If, during the course of its deliberations, the court-martial requires further advice from the judge advocate, it shall suspend its deliberations, and ask for and receive the advice in open court.

111 Form of finding

- (1) Except as otherwise provided in section 136 of the Act, the court-martial shall, in respect of each charge before it, record one of the following findings:
- (a) A finding of guilty—
 - (i) Of the offence charged; or
 - (ii) In accordance with subsection (3) of section 74 or subsection (1) or subsection (2) or subsection (3) or subsection (4) of section 135 of the Act; or
 - (iii) Of the offence charged subject to specified exceptions or variations in accordance with subclause (2) of this rule:
 - (b) A finding of not guilty:
 - (c) A finding of not guilty and honourably acquitted:
 - (d) A finding in accordance with section 190 of the Act.
- (2) Where, in respect of any charge, the court-martial is of the opinion that the facts proved in evidence differ from those alleged in the particulars of the charge but are nevertheless sufficient to prove the offence to which the charge relates, and that the difference has not prejudiced the accused in his defence, the court-martial may, instead of recording a finding of not guilty, record a finding of guilty subject to such exception or variation as is specified in the finding.

112 Announcement of finding

- (1) When the court-martial has completed its deliberations on finding, it shall reassemble in open court, and shall recall the judge advocate and inform him of its finding.
- (2) Where the finding is one of guilty and the judge advocate is of the opinion that the finding is contrary to law, he shall once (but only once) more advise the court-martial of the findings that are, in his opinion, open to it in law; and the court-martial shall then reconsider its finding in closed court.

- (3) Subject to subclause (2) of this rule, the court-martial shall, after informing the judge advocate of its finding, record its finding in the form prescribed by the Chief of Defence Force, and the president shall then announce the finding in open court.

Procedure subsequent to finding

113 Finding of guilty where mixed plea of guilty and not guilty

Where the court-martial finds the accused guilty in respect of any charge to which he pleaded not guilty, and there is before the court-martial—

- (a) Another charge against the accused, or against any other accused who is being tried jointly with him, in the same charge sheet to which the court-martial has accepted a plea of guilty; or
- (b) Another accused whose plea of guilty to that charge has been accepted by the court-martial,—

the court-martial shall, so far as is necessary, comply with rule 114 of these rules on the charge to which the plea of guilty was accepted or (as the case may be) in respect of the other accused before proceeding in accordance with rule 116 of these rules.

114 Finding of guilty after plea of guilty

- (1) Subject to rules 81(4) and 91 of these rules, where the accused has pleaded guilty to any charge and the court-martial has accepted that plea, the prosecutor shall, except as provided by subclause (2) of this rule, either read to the court-martial the summary of evidence or the abstract of evidence and any statement of a witness's evidence prepared for the purposes of rule 96 of these rules, or inform the court-martial of the contents of the summary or the abstract and any such statement.
- (2) The prosecutor shall not read or refer to any material contained in the summary of evidence or the abstract of evidence, or in any such statement, that is inadmissible in evidence, nor, in such a case, shall he allow the court-martial to see the original of the document until the trial has been completed.
- (3) Where the court-martial considers that the summary of evidence or the abstract of evidence, together with any such statement, is inadequate or incomplete, it shall hear and record in

accordance with these rules, sufficient evidence to enable it to determine the sentence to be imposed.

- (4) Subject to rule 115 of these rules, the court-martial shall, after complying with the foregoing provisions of this rule, proceed in accordance with rule 116 of these rules

115 Trial of charge in other charge sheet

Where the court-martial finds the accused guilty on any charge, and there is another charge sheet against the accused upon which the convening officer wishes the court-martial to proceed, the court-martial shall not proceed in accordance with rule 116 of these rules until it has arraigned and tried the accused on the charge or charges in the other charge sheet.

116 Accused's record, and plea in mitigation

- (1) Where the court-martial finds the accused guilty on any charge, it shall take and consider evidence of the accused's age, rank, and service record before deliberating on the sentence to be imposed.
- (2) The prosecutor shall adduce evidence in relation to the matters referred to in subclause (1) of this rule, and shall, in particular, draw to the attention of the court-martial—
- (a) Any recognised acts of gallantry or distinguished conduct on the part of the accused, and any decoration to which he is entitled; and
 - (b) Any offence of which the accused has been found guilty during his service, as recorded in the service records; and
 - (c) The length of time during which the accused has been under arrest awaiting trial (including the time, if any, during which the accused was held in custody), or in confinement under a current sentence.
- (3) Evidence of the matters referred to in the foregoing provisions of this rule may be given by a witness producing to the court a written statement containing a summary of the relevant entries in the accused's service record in the form prescribed by the Chief of Defence Force, if the witness first in open court verifies such statement and identifies the accused as the person to whom the entries relate.

- (4) In addition to the matters referred to in the foregoing provisions of this rule, the prosecutor shall, whenever practicable, call as a witness an officer to present to the court-martial any information in the possession of the service authorities relating to the following matters:
 - (a) The accused's circumstances so far as they may be relevant to the question of the proper sentence to be imposed;
 - (b) The accused's general conduct in the service;
 - (c) Particulars of any other offence of which the accused has been convicted by a civil court, whether in New Zealand or overseas, after attaining the age of 14 years.
- (5) Notwithstanding subclause (4)(c) of this rule, the court martial shall not be informed of any conviction to which that provision applies unless—
 - (a) The conviction is proved in accordance with section 148 of the Act; or
 - (b) The accused has admitted, after being advised of the purpose for which the admission was sought, that he was convicted of the offence concerned.
- (6) The accused may cross-examine any witness who gives evidence under this rule.
- (7) The accused may insist on the production of his actual service record, and, if any discrepancies are found between this and the written form before the court-martial, the court-martial shall ensure that the form is amended to accord with the record.
- (8) When the foregoing provisions of this rule have been complied with, the accused may—
 - (a) Give evidence himself; and
 - (b) Call witnesses in mitigation of punishment, and as to character; and
 - (c) Address the court-martial in mitigation of punishment.
- (9) Where the accused addresses the court-martial in mitigation of punishment, the prosecutor may, with the leave of the court-martial, reply to the accused's address.

Regulation 116(2)(c) was amended, as from 16 June 1988, by regulation 12 Armed Forces Discipline Rules of Procedure 1983, Amendment No 1 (SR 1988/100) by inserting the words “(including the time . . . held in custody)”.

117 Request by accused for other offences to be taken into account

- (1) Where the accused asks the court-martial to take into account any other offence in accordance with section 139 of the Act, the president shall, before the court-martial withdraws to deliberate on sentence, inform the accused of which of the offences the court-martial will agree to take into consideration, and ask the accused whether or not he admits having committed those offences.
- (2) The accused shall specify which of the offences he admits having committed, and the court-martial shall cause a list of those offences to be drawn up, signed by the accused and the president, and attached to the record of proceedings as an exhibit.

118 Postponement of deliberation on sentence where 2 or more accused

Where 2 or more accused are tried separately by the same court-martial upon charges arising out of the same transaction, the court-martial may, if it thinks it is in the interests of justice to do so, postpone its deliberation on sentence in respect of any one or more of the accused until it has determined and announced its findings in respect of all such accused.

119 Sentence and recommendation of mercy

- (1) Each member of the court-martial shall give his opinion on sentence orally, in closed court, and in order of seniority commencing with the most junior in rank.
- (2) Every sentence shall be recorded in the form prescribed by the Chief of Defence Force, and announced in open court by the president.
- (3) The provisions of this rule shall also apply in respect of recommendations of mercy.

120 Announcement of conclusion of trial

After the sentence has been announced or, as the case may require, the accused has been found to be under disability, or acquitted (whether on account of insanity or otherwise), the

president shall announce in open court that the trial is concluded.

Part 12
**Further rules relating to trial by
court-martial**

121 Withdrawal of charge

A court-martial may, with the concurrence of the convening officer (which may be notified to the court-martial by the prosecutor), allow the prosecutor—

- (a) To withdraw a charge at any time before the accused has been arraigned on it; or
- (b) To withdraw a charge sheet at any time before the accused has been arraigned on any charge in it.

122 Amendment or division of charge

(1) Where, at any time during a trial,—

- (a) Application is made by the prosecutor or the accused for the amendment of any charge or the division of any charge into 2 or more charges; or
- (b) It appears to the court-martial that any such amendment or division may be in the interests of justice,—

the court-martial shall obtain from the judge advocate a ruling on whether or not it is proper to so amend or divide the charge.

- (2) If the judge advocate rules that it is not proper to so amend or divide the charge, the court-martial shall cause that ruling and the reasons for it to be recorded and announced, and shall proceed with the trial.
- (3) If the judge advocate rules that it is proper to so amend or divide the charge, the court martial shall cause that ruling to be recorded and announced, amend or divide the charge accordingly, and proceed with the trial.
- (4) When a court-martial reports to a convening officer under rule 87(5)(b) of these rules, he may so amend or divide the charge in respect of which it has reported to him if he is satisfied that it is proper to do so.

- (5) Where the court martial or the convening officer so amends or divides any charge, the trial shall proceed as if the accused had been remanded on that charge as amended or divided.

123 Accused under disability or insane

- (1) Where a court-martial is required by section 188 of the Act to determine whether the accused is under disability, each member shall give his opinion thereon orally, in closed court, and in order of seniority commencing with the most junior in rank.
- (2) The finding of the court martial shall be recorded in the form prescribed by the Chief of Defence Force as directed by the court-martial, and shall be announced in open court by the president.
- (3) Where the court martial finds the accused to be under disability, the president shall announce that finding as being subject to approval by the reviewing authority.
- (4) Where a court martial makes an order in accordance with section 191 or section 194 of the Act that the accused be detained in a psychiatric hospital, or an order in accordance with section 191(2)(b) of the Act that the accused be released, it shall record that order in the form prescribed by the Chief of Defence Force, and the president shall announce the order in open court.

124 Interviewing of witnesses

- (1) Except for the purpose of investigating evidence in support of an alibi of which notice has been given in accordance with rule 61 of these rules, the prosecutor shall not, without the consent of the accused (or his defender or counsel), interview any witness—
- (a) Who was called on behalf of the accused at the taking of the summary of evidence or the abstract of evidence and whose evidence has been included in that document; or
- (b) Whose attendance has been requested by the accused in accordance with these rules.
- (2) Except in a case to which rule 97(2)(a) of these rules applies, neither the accused nor any person acting on his behalf shall, without the consent of the prosecutor, interview any witness—

- (a) Who was called in support of the charge at the taking of the summary of evidence or the abstract of evidence and whose evidence has been included in that document; or
- (b) In respect of whom the prosecutor has given notice in accordance with rule 96 of these rules of his intention to call as a witness.

125 Procuring attendance of witnesses

- (1) A witness who is subject to the Act may be directed to attend—
 - (a) At the taking of a summary of evidence, by an order given by the accused's commanding officer;
 - (b) At a court-martial, by an order given by—
 - (i) The accused's commanding officer; or
 - (ii) The convening officer; or
 - (iii) After the court-martial has assembled, the president.
- (2) A witness who is not subject to the Act may be directed to attend—
 - (a) At the taking of a summary of evidence, by a summons given under the hand of the accused's commanding officer;
 - (b) At a court-martial, by a summons given under the hand of—
 - (i) The convening officer; or
 - (ii) After the court-martial has assembled, the president.
- (3) Every summons issued to a witness under subclause (2) of this rule shall be in the form prescribed by the Chief of Defence Force, and shall be served on the witness in one of the following ways:
 - (a) By being delivered to him personally, or by being brought to his notice if he refuses to accept it;
 - (b) By being left for him with some other person at the witness's usual place of residence at least 24 hours before his attendance is required;
 - (c) By being sent to him by registered letter addressed to him at his last known or usual place of residence or at his place of business.
- (4) Where the attendance of a witness is requested—

- (a) At the taking of a summary of evidence, by the officer taking the summary or by the accused; or
 - (b) At a court-martial, by the prosecutor or by or on behalf of the accused,—
the appropriate service authority specified in subclause (1) or subclause (2) of this rule shall take the necessary steps to secure the attendance of the witness if the attendance of that witness can be reasonably procured.
- (5) Notwithstanding anything in subclause (4) of this rule, where the attendance of a witness is sought by or on behalf of the accused and the service authority is satisfied that the attendance of that witness is not properly required by the accused, any cost incurred by the Crown in procuring the attendance of the witness may be charged to, and recovered as a debt due by, the accused.

126 Documentary evidence where witness dead or unavailable

- (1) Where, in respect of any person who gave evidence at the taking of a summary of evidence and whose evidence is included in that document, the judge advocate is satisfied, on such evidence (whether admissible or not) as he considers sufficient that, the witness—
- (a) Is dead; or
 - (b) Is outside the country in which the court-martial is to be or is being held, and it is not reasonably practicable to secure his attendance; or
 - (c) Is unfit by reason of old age or his bodily or mental condition to attend; or
 - (d) Cannot with reasonable diligence be found,—
the statement of the evidence given by the witness orally and on oath at the taking of the summary of evidence may, without further proof, be read as evidence for either party at the court-martial, whether for the offence in respect of which the summary of evidence was taken or for any other offence arising out of the same transaction or set of circumstances as that offence, unless the other party proves that the statement forming part of the summary of evidence was not taken in accordance with these rules

- (2) Without limiting subclause (1) of this rule, the procedure prescribed by that subclause may be followed in respect of any witness with the consent of both parties.

127 Evidence on commission

- (1) Where the accused is to be tried by a court-martial, the Judge Advocate General may, whether before or during the trial, arrange for the evidence of a witness to be taken on commission in accordance with the succeeding provisions of this rule if he is satisfied that—
- (a) The evidence is essential to the prosecution or the defence; and
 - (b) The evidence is not admissible under rule 126 of these rules; and
 - (c) The attendance of the witness cannot or should not be procured because—
 - (i) The witness is outside the country in which the court-martial is to be or is being held and it is not reasonably practicable to procure his attendance; or
 - (ii) The witness is unfit by reason of old age or his bodily or mental condition to attend; or
 - (iii) Undue delay or expense would be caused by requiring him to attend.
- (2) Where, in any case to which subclause (1) of this rule applies, the Judge Advocate General considers that the evidence of a witness should be taken on commission, he shall—
- (a) Appoint a person whom he considers qualified (in this rule referred to as the commissioner) to take upon oath and record the witness's evidence; and
 - (b) Give to the prosecutor and the accused notice of the name and address of the commissioner and of the witness; and
 - (c) Advise the prosecutor and the accused in the notice that the hearing by the commissioner will take place at a date to be determined by the commissioner, being not earlier than 10 clear days after the date on which the notice is given.

- (3) The prosecutor and the accused may be represented at the hearing, and their representatives shall have the same rights of examination, cross-examination, and re-examination as if the witness were giving evidence in person at the trial.
- (4) The commissioner shall fix a date for the hearing, being one that will allow the prosecutor and the accused to be represented in accordance with subclause (3) of this rule, and shall advise the prosecutor and the accused of the place, date, and time of the hearing.
- (5) The Judge Advocate General shall furnish the commissioner with the following:
 - (a) A copy of the order convening the court-martial:
 - (b) A copy of each charge upon which the accused has been or is to be arraigned:
 - (c) A copy of the summary of evidence or the abstract of evidence, and any statement of evidence given by the prosecutor under rule 96 of these rules:
 - (d) A copy of any navigation report prepared in accordance with rule 59 of these rules:
 - (e) The name and address of the witness to be examined:
 - (f) A list of interrogatories or questions by the Judge Advocate General, including any questions submitted for the purpose by the prosecutor or the accused, upon which it is desired to have the witness examined by the commissioner.
- (6) The commissioner shall order the witness to attend the hearing, if the witness is subject to the Act, and may summon the witness to attend by an order under his hand, if he is not so subject.
- (7) If the witness is unable to attend, the commissioner may adjourn the hearing, or may proceed to the place where the witness is and examine him there.
- (8) Subject to section 130 of the Act, the commissioner shall, before taking the witness's evidence, administer an oath in the form and manner prescribed by the Chief of Defence Force to the witness; and the provisions of the Act and these rules relating to the administration of oaths at courts-martial shall apply with any necessary modifications.

- (9) The provisions of these rules relating to witnesses and interpreters (including their fees, allowances, and expenses), and to the giving of evidence, in respect of courts-martial shall also apply with any necessary modifications.
- (10) The record of the witness's evidence taken under this rule (in this rule referred to as the record of evidence), duly certified by the commissioner, shall be admissible in evidence at the trial to the same extent and subject to the same objections as if the witness had given that evidence in person at the trial.
- (11) At least 48 hours before the record of evidence is to be produced at the trial, a copy of it shall be given to the accused.
- (12) Where the president is of the opinion that, notwithstanding the record of evidence, it is in the interests of justice that the witness be required to attend in person at the trial, and he is satisfied that the witness is now able to attend, he shall endorse that opinion on the record of proceedings, and require the attendance of the witness.
- (13) In the absence of the Judge Advocate General, the powers conferred on him by this rule may be exercised by any Deputy Judge Advocate General, or by any other person authorised for the purpose by the Judge Advocate General.

128 Exhibits

- (1) Subject to subclause (2) of this rule, every document or thing produced in evidence at a trial before a court-martial shall be made an exhibit.
- (2) When an original document or book is produced in evidence, the court-martial may, instead of making it an exhibit, compare a copy of or an extract from the document or book with the original and, if the court-martial is satisfied that the copy or extract is correct,—
 - (a) The president shall endorse on the copy or extract a certificate to that effect in the form prescribed by the Chief of Defence Force; and
 - (b) The court-martial may return the original document or book to the witness, and attach the certified copy to the record of proceedings as an exhibit.
- (3) Every exhibit shall—

- (a) Either be marked with a number or letter in sequence and signed by the president, or have attached to it a label so marked and signed; and
 - (b) Be attached to or kept with the record of proceedings unless, in the opinion of the president, it is not expedient to do so.
- (4) Where an exhibit is not attached to or kept with the record of proceedings, the judge advocate shall ensure its safe custody pending the directions of the convening officer for the ultimate disposal of the exhibit.

129 Sitting of court-martial

- (1) Except as otherwise provided in the Act or these rules, a trial before a court-martial shall be continued from day to day, and the court-martial shall sit for such time each day as may be reasonable in all the circumstances.
- (2) A court-martial shall not sit on any Sunday, nor on Christmas Day, Good Friday, or (in New Zealand) Anzac Day, unless, in the opinion of the court-martial or the convening officer, the exigencies of the service make it necessary to do so.

130 Adjournment of court-martial

Where a court-martial adjourns its proceedings in circumstances in which it considers that it may be expedient in the interests of justice for the convening officer to exercise the power conferred on him by section 132 of the Act to dissolve the court-martial, the senior member present shall forthwith report the matter to the convening officer.

131 View by court-martial

Where a court-martial views any place the judge advocate, the prosecutor, and the accused (together with his defender or counsel) shall be present, in addition to the members.

132 Preparation of record of proceedings

- (1) The proceedings of a court-martial shall be recorded in accordance with the provisions of this rule.

- (2) The proceedings shall be recorded in writing in the form prescribed by the Chief of Defence Force.
- (3) Where a shorthand writer or a recording machine is employed to take down or tape the proceedings,—
 - (a) All evidence put forward during the trial; and
 - (b) Any objection, submission, or application made during the trial, and
 - (c) Any address made during the trial by the prosecutor or the accused; and
 - (cc) Any explanation in respect of a plea of guilty made in accordance with rule 89(1) of these rules; and
 - (d) The summing up of the trial by the judge advocate—shall be recorded verbatim.
- (4) Where a typist is employed to take down the proceedings,—
 - (a) All evidence put forward during the trial shall be recorded in narrative form as nearly as possible in the words used, except that every question put to a witness in cross-examination, and the answer given to it, shall be recorded verbatim:
 - (b) Except as provided in paragraph (a) of this subclause, the proceedings shall be recorded in sufficient detail to enable a reviewing authority to follow the course of the proceedings and to judge of the merits of the case; but a record of a particular matter shall be made if the prosecutor or the accused so requires.
- (5) Where no shorthand writer, typist, or recording machine is employed to take down or tape the proceedings,—
 - (a) All evidence put forward during the trial shall be taken down by the judge advocate and recorded in narrative form as nearly as possible in the words used; but a particular question, together with the answer given to it, shall be taken down and recorded verbatim if the court-martial or the prosecutor or the accused or the judge advocate himself so requires:
 - (b) Except as provided in paragraph (a) of this subclause, the proceedings shall be taken down by the judge advocate and recorded in sufficient detail to enable a reviewing authority to follow the course of the proceedings and to judge of the merits of the case; but a record

of a particular matter shall be made if the prosecutor or the accused so requires.

- (6) No matter that does not form part of the trial shall be recorded in the record of proceedings; but, if the court-martial considers that any such matter is deserving of comment, the president may set it out in a separate report to the convening officer.
- (7) As soon as practicable after the conclusion of the trial, the president shall date and sign the record of proceedings and one copy, and the judge advocate shall countersign both documents.

Regulation 132(3)(cc) was inserted, as from 16 June 1988, by regulation 13 Armed Forces Discipline Rules of Procedure 1983, Amendment No 1 (SR 1988/100).

133 Custody and inspection of record of proceedings

- (1) The record of proceedings, together with all exhibits, shall be deemed to be in the custody of the judge advocate during the trial, except when the court-martial is sitting in closed court to deliberate on or to reconsider its finding, when they shall be deemed to be in the custody of the president.
- (2) With leave of the court-martial, at any stage of the trial the prosecutor or the accused may have any part of any tape of the proceedings played back to him or any part of any shorthand notes or of the record of proceedings read to him, and, subject to the proper security of the exhibits, he may inspect any exhibit.

134 Transmission of record of proceedings to reviewing authority

Where a court-martial convicts the accused on any charge, or finds in accordance with section 188 of the Act that the accused is under disability, the judge advocate shall, as soon as practicable after rule 132(7) of these rules has been complied with, forward the record of proceedings and the signed copy of the record through the convening officer to the reviewing authority.

135 Loss of original record of proceedings before review

- (1) Where the whole or any part of the original copy of the record of proceedings is lost before it can be considered by the reviewing authority but the duplicate copy duly signed in accordance with rule 132(7) of these rules is available, that duplicate copy shall be sufficient for the purposes of the review.
- (2) Where, in such a case, the duplicate copy so signed is not available but some other copy is available, that other copy shall be sufficient for the purposes of the review if the president or the judge advocate certifies it as correct.
- (3) Where, in such a case, neither the duplicate copy so signed nor any certified copy is available, then, except as provided in subclause (4) of this rule, evidence of the proceedings shall be obtained to allow the record of proceedings to be reconstituted to the extent necessary to enable the reviewing authority to follow the course of the proceedings and to review the case; and the reconstituted record of proceedings shall be sufficient for the purposes of the review.
- (4) Notwithstanding the foregoing provisions of subclause (3) of this rule, where part only of the original copy of the record of proceedings has been lost and the remaining part is sufficient to enable the reviewing authority to follow the course of the proceeding and to review the case, that remaining part shall be sufficient for the purposes of the review, and it shall not be necessary to reconstitute the record.

136 Loss of original record of proceedings after review

- (1) Where the whole or any part of the original copy of the record of proceedings is lost after it has been considered by the reviewing authority but the duplicate copy duly signed in accordance with rule 132(7) of these rules is available, that duplicate copy shall be sufficient for the purposes specified in subclause (5) of this rule.
- (2) Where, in such a case, the duplicate copy so signed is not available but some other copy is available, that other copy shall be sufficient for the purposes specified in subclause (5) of this rule if the president or judge advocate certifies it as correct.

- (3) Where, in such a case, neither the duplicate copy so signed nor any certified copy is available, then, except as provided in subclause (4) of this rule, evidence of the proceedings shall be obtained to allow the record of proceedings to be reconstituted to the extent necessary to enable the reviewing authority or the reconsidering authority to follow the course of the proceedings and to review the case or reconsider the sentence, as the case may be; and the reconstituted record of proceedings shall be sufficient for the purposes specified in subclause (5) of this rule.
- (4) Notwithstanding the foregoing provisions of subclause (3) of this rule, where part only of the original copy of the record of proceedings has been lost and the remaining part is sufficient to enable the reviewing authority or the reconsidering authority to follow the course of the proceedings and to review the case or reconsider the sentence, as the case may be, that remaining part shall be sufficient for the purposes specified in subclause (5) of this rule, and it shall not be necessary to reconstitute the record.
- (5) Such copy or sufficient record or reconstituted record may be used and shall be sufficient, subject to the provisions of this rule, for the purposes of a further review pursuant to section 162(1) of the Act, or the consideration of a petition pursuant to section 162(2) of the Act, or the reconsideration of any sentence of imprisonment or detention pursuant to section 166 of the Act.

Part 13

Reviewing authorities and reconsidering authorities

137 Board of Review

- (1) The Board of Review constituted under section 151 of the Act shall, subject to the Act and to subclause (2) of this rule and rule 140 of these rules, regulate its procedure as it sees fit.
- (2) Where it is necessary for the Board of Review to vote on any matter in order to reach a decision, each member shall have 1 vote and the matter shall be decided by a majority of votes.

138 Variation of form of sentence

If the sentence of a court-martial is informally expressed, the reviewing authority, on a review under Part 8 of the Act, may vary the form of the sentence so as to express it properly.

139 Petition against conviction or sentence

- (1) Every petition against conviction or sentence pursuant to section 162(2) of the Act shall be in the form prescribed by the Chief of Defence Force, and shall be signed by the accused personally.
- (2) Every such petition shall be handed by the accused to his commanding officer, or, where the accused is in custody, to the person in charge of the place in which the accused is confined, and the commanding officer or person in charge shall forward the petition to a reviewing authority as soon as practicable after receiving it.

140 Promulgation of decision

- (1) Except as provided in subclauses (3) and (6) of this rule, the succeeding provisions of this rule apply both to a review under Part 8 or section 197 or section 198 of the Act and to a reconsideration of a sentence of imprisonment or detention under section 166 of the Act; and, in those succeeding provisions, the term **authority** means a reviewing authority or a reconsidering authority, as the case may require.
- (2) The authority shall record the particulars of its decision in the form prescribed by the Chief of Defence Force.
- (3) The authority shall include in its decision particulars of any order made, directed to stand, quashed, or varied, under section 160 of the Act.
- (4) The authority shall send its formal decision to the accused's commanding officer, or, where the accused is in custody, to the person in charge of the place in which the accused is confined.
- (5) The commanding officer or person in charge shall—
 - (a) Inform the accused of the decision; and
 - (b) Note the details of promulgation on the form; and
 - (c) Return the form to the authority.

- (6) In the case of a review under Part 8 or section 197 or section 198 of the Act, the formal decision, with the details of promulgation duly noted on it, shall be attached to and form part of the record of proceedings.

Procedure for new trial

141 Procedure where new trial ordered

- (1) The succeeding provisions of this rule apply where a new trial is ordered—
- (a) By a reviewing authority under Part 8 of the Act; or
 - (b) By the Courts Martial Appeal Court under section 8(2) of the Courts Martial Appeals Act 1953.
- (2) In any case to which this rule applies, rule 56 and rule 58(1)(b) of these rules shall not apply; instead, the convening officer shall direct—
- (a) That a new charge sheet be prepared in accordance with the provisions of section 164 of the Act and any instructions given by the reviewing authority, or with the directions of the Courts Martial Appeal Court, as the case may be; and
 - (b) That the accused be tried on the charge in that new charge sheet, which the convening officer shall sign.
- (3) Those parts of the summary of evidence or the abstract of evidence prepared for the original trial, or of any navigation report, or of any statement of a witness's evidence prepared for the purposes of rule 96 of these rules, that are relevant to the charge in the new charge sheet may be used for the purposes of the new trial.
- (4) The record of the evidence given by any witness at the original trial may, with the leave of the new court-martial, be read as evidence—
- (a) If the prosecutor and the accused agree; or
 - (b) If the court-martial is satisfied that the witness cannot or should not be required to attend because—
 - (i) He is dead; or
 - (ii) He is outside the country in which the new trial is to be held and it is not reasonably practicable to secure his attendance; or

- (iii) He is unfit by reason of old age or his bodily or mental condition to attend; or
 - (iv) He cannot with reasonable diligence be found; or
 - (v) Undue delay or expense would be caused by requiring him to attend; or
 - (vi) Of the exigencies of the service;—
and, in such a case, the record of evidence may be read without further proof if it forms part of the original record of proceedings of the original court-martial, or a copy of that original record, and the original record or copy is admissible as evidence in accordance with section 149 of the Act.
- (5) Where the convening officer intends to seek the admission of any record of evidence under subclause (4) of this rule, he shall, as soon as practicable and in any case not later than 24 hours before the commencement of the new trial, give a copy of such evidence to the accused, and to the judge advocate and the prosecutor.

Part 14 Courts of inquiry

142 Interpretation

In this Part of these rules, unless the context otherwise requires,—

Court means a court of inquiry under section 200 of the Act

Member, in relation to a court of inquiry, includes the president

President means the president of the court of inquiry

Record of proceedings, in relation to a court of inquiry, includes the record of the evidence collected, and any report or comment made by the court and attached to the record of the evidence.

143 Order assembling court

- (1) The order assembling the court shall be in the form prescribed by the Chief of Defence Force, and shall specify the composition of the court, the place and time at which the court is to assemble, and the terms of reference of the court.

- (2) The assembling authority may at any time revoke, vary, or suspend the order.

144 Rank and seniority of members

When a court is appointed to inquire into the conduct of an officer or warrant officer, every member shall be of at least equal rank and seniority to that officer or warrant officer, and at least one member shall be of superior rank.

145 Terms of reference

The assembling authority shall provide the court with appropriate terms of reference, and shall state whether any report or comment is required upon the matter under investigation.

146 Court to sit in private

- (1) The court shall sit in private and all persons, except the members, a witness giving evidence, and such other persons as may be authorised by this Part of these rules or by the president to be present, shall be excluded from the place where the court is sitting.
- (2) No person shall be represented at the inquiry, and no person shall have an adviser present to assist him at the inquiry.

147 Assembly and procedure

- (1) Subject to subclause (2) of this rule, the court shall assemble at the time and place specified in the order assembling the court.
- (2) Where, for any reason, the court is unable to assemble at the time or place so specified, it shall assemble as soon after that time as possible or as near to that place as possible, as the case may be, and shall note in the record of proceedings its reasons for being unable to assemble at the time or place specified.
- (3) The president shall lay the order and the terms of reference before the court, and the court shall then proceed to collect and record evidence in accordance with this Part of these rules.

148 Sittings of court

- (1) The court shall sit on such occasions and in such places as the president may from time to time decide.

- (2) The president may from time to time adjourn the court.
- (3) Notwithstanding the foregoing provisions of this rule, the assembling authority may at any time direct the court to reassemble for such purpose as the assembling authority may specify.

149 Attendance of witnesses

- (1) A witness who is subject to the Act may be directed to attend before the court by an order given by the president.
- (2) A witness who is not subject to the Act may be directed to attend before the court by a summons given under the hand of the president.
- (3) Every summons to a witness issued under subclause (2) of this rule shall be in the form prescribed by the Chief of Defence Force, and shall be served on the witness in one of the following ways:
 - (a) By being delivered to him personally, or by being brought to his notice if he refuses to accept it:
 - (b) By being left for him with some other person at the witness's usual place of residence at least 24 hours before his attendance is required:
 - (c) By being sent to him by registered letter addressed to him at his last known or usual place of residence or at his place of business.
- (4) Subject to rule 154 of these rules, the president may order or summon to attend to give evidence such persons as the court thinks fit.

150 Collecting and recording of evidence

- (1) The court shall not be bound by the ordinary rules relating to the admissibility of evidence, and may at its discretion admit in evidence any matter of hearsay or any other matter that would not be admissible in a Court of law.
- (2) Where it admits any such evidence, it shall be for the court in its discretion to determine the weight to be attached to that evidence.
- (3) The court shall put such questions to a witness as it considers desirable to test the truth or accuracy of any evidence given by

the witness, and to elicit such further information as may be necessary to determine the truth.

- (4) The court shall record or cause to be recorded in writing the evidence of every witness in narrative form as nearly as possible in the words used, or, where the court considers it expedient, in the form of questions and answers.
- (5) Each witness may read over the record of his evidence, and may ask that any necessary corrections be made to it.
- (6) Each witness shall initial all alterations, and shall then sign the record of his evidence at the end and initial each page of it.

151 Witness to be sworn

- (1) Except as provided by subclause (2) of this rule, every witness shall be sworn by a member of the court in the form and manner prescribed by the Chief of Defence Force before he gives his evidence.
- (2) Where a child is called as a witness and does not, in the opinion of the court, understand the nature of an oath, his evidence may be received, though not given on oath, if, in the opinion of the court, he has sufficient intelligence to justify the reception of the evidence and he understands the duty of speaking the truth.
- (3) If any witness referred to in subclause (1) of this rule objects to being sworn, or if it is not reasonably practicable to administer an oath to him in a manner appropriate to his religious belief, he shall be permitted to make a solemn affirmation instead of swearing an oath.
- (4) The making of an affirmation under subclause (3) of this rule shall have the same force and effect, and shall entail the same consequences, as the taking of an oath.

152 Interpreters and recorders

- (1) A competent and impartial person or persons may be appointed at any time during the course of the inquiry by either the assembling authority or the president to act as interpreter, shorthand writer, typist, or operator of a recording machine to assist the court in collecting and recording the evidence.

- (2) Before an interpreter commences his duties under this rule, a member shall administer to him an oath in the form and manner prescribed by the Chief of Defence Force.
- (3) If an interpreter objects to being sworn or it is not reasonably practicable to administer an oath to him in a manner appropriate to his religious belief, he shall be permitted to make a solemn affirmation instead of swearing an oath.
- (4) The making of an affirmation under subclause (3) of this rule shall have the same force and effect, and shall entail the same consequences, as the taking of an oath.

153 Procedure where conduct of superior officer may be in question

- (1) The president shall adjourn the court and report to the assembling authority if at any time it appears to the court that the conduct of an officer or warrant officer senior or superior in rank to a member is or is likely to be called into question in the course of the inquiry.
- (2) Upon receiving the president's report, the assembling authority shall consider the matter, and, if he is satisfied that the conduct of such a person is or is likely to be called into question, may dissolve the court and assemble a new court having regard to the requirements of rule 144 of these rules.
- (3) If the assembling authority does not dissolve the court, he shall, notwithstanding that the conduct of an officer or warrant officer senior or superior in rank to a member is or is likely to be called into question, direct it to continue its inquiry, without prejudice to the power of the president to make a further report if the evidence justifies such a course of action.

154 Rights of person who may be affected by inquiry

- (1) If at any time it appears to an assembling authority or to a court that an inquiry, not being an inquiry under section 201 of the Act into the absence of a serviceman, affects or is likely to affect the character or the service reputation of a person subject to the Act, the president shall ensure that the person is given adequate notice of the time, place, date, and nature of

- the inquiry, and shall afford him a reasonable opportunity to exercise the rights set out in subclause (3) of this rule.
- (2) If the person notifies the court that he does not wish to exercise those rights, the president shall note the record of proceedings to that effect.
 - (3) The rights to which such a person is entitled in such a case are as follows:
 - (a) He may read or have read or played back to him any evidence that has already been given:
 - (b) He may require any witness who has already given evidence to be recalled to enable him to question the witness:
 - (c) He may be present during the proceedings or the remainder of the proceedings (as the case may be) while the court is hearing evidence, and may question any witness who gives evidence that in his opinion affects his character or service reputation:
 - (d) He may give evidence himself, or call any witness to give evidence, to rebut or explain any evidence that has been given that in his opinion affects his character or service reputation:
 - (e) He may seek and, where the exigencies of the service permit, shall be granted an adjournment to enable him to obtain advice.
 - (4) Where the person affected wishes to call a witness to give evidence pursuant to subclause (3)(d) of this rule, the president shall take the necessary steps under rule 149 of these rules to secure the attendance of the witness unless it is impracticable to do so, in which latter case the president shall note the fact in the record of proceedings.
 - (5) Notwithstanding anything in subclause (4) of this rule, where the attendance of a witness is requested by the person affected and the court is satisfied that the attendance of that witness is not properly required by that person, any cost incurred by the Crown in procuring the attendance of the witness may be charged to, and recovered as a debt due by, the person affected.

155 Person adversely affected entitled to copy of record of proceedings

A person subject to the Act who has been charged with an offence in respect of any matter or thing that has been investigated by a court shall be entitled to a copy of the record of proceedings.

156 Exhibits

- (1) Subject to subclause (2) of this rule, every document or thing produced in evidence at an inquiry shall be made an exhibit.
- (2) When an original document or book is produced in evidence, the court may, instead of making it an exhibit, compare a copy of or an extract from the document or book with the original and, if the court is satisfied that the copy or extract is correct,—
 - (a) The president shall endorse on the copy or extract a certificate to that effect in the form prescribed by the Chief of Defence Force, and
 - (b) The court may return the original document or book to the witness, and attach the certified copy to the record of proceedings as an exhibit.
- (3) Every exhibit shall—
 - (a) Either be marked with a number or letter in sequence and signed by the president, or have attached to it a label so marked and signed; and
 - (b) Be attached to or kept with the record of proceedings unless, in the opinion of the president, it is not expedient to do so.
- (4) Where an exhibit is not attached to or kept with the record of proceedings, the president shall ensure its safe custody pending the directions of the assembling authority for the ultimate disposal of the exhibit.

157 Signing and dispatch of record of proceedings

- (1) The record of proceedings shall, at the conclusion of the inquiry, be signed at the end by each member, who shall add his rank and unit.

- (2) If there is a difference of opinion among the members on any material matter, the grounds of difference shall be stated in the record.
- (3) After the record of proceedings has been signed, the president shall forward it to the assembling authority who shall record on the record his own opinion of the findings, sign the record, and, where necessary, forward the record to a superior commander.
- (4) Except as provided in subclause (5) of this rule, the record of proceedings shall be given an appropriate security classification according to the nature of the inquiry and the evidence collected and recorded.
- (5) Where the content of the record of proceedings does not warrant a security classification, the record of proceedings shall be given an appropriate **In Confidence** privacy marking.

158 Admissibility of record of proceedings, etc

- (1) Subject to the succeeding provisions of this rule, the record of proceedings, and any evidence in respect of the proceedings, including any confession, statement, or answer to a question made or given by a person during the proceeding, shall not be admissible in evidence against any person in any other proceedings, judicial or otherwise.
- (2) Where a serviceman is charged under section 47 of the Act with desertion, or under section 48 of the Act with being absent without leave, the record of the declaration of the court under section 201 of the Act relating to the serviceman shall be prima facie evidence of the matters stated in it.
- (3) The record of proceedings and any evidence in respect of the proceeding, including any confession, statement, or answer to a question made or given by a person during the proceeding, may be given in evidence against that person if he is charged—
 - (a) Under section 71 of the Act with making a false statement; or
 - (b) Under section 109 of the Crimes Act 1961 with perjury.

159 Record of proceedings not to be disclosed

The record of proceedings shall not be disclosed to persons not subject to the Act without authority from a superior com-

mander of the service concerned, nor shall it be disclosed to persons subject to the Act unless such persons need to be aware of the contents to enable them to perform their service duties, or are entitled to a copy under rule 155 of these rules.

Part 15

Miscellaneous provisions

160 Fees and allowances

- (1) A serviceman who is—
 - (a) A member of a court-martial or court of inquiry; or
 - (b) A prosecutor or a defender at a court-martial; or
 - (c) A witness, interpreter, shorthand writer, typist, or an operator of a recording machine at a court-martial or court of inquiry, or at the taking of a summary of evidence,—shall not be prevented by the operation of any provision limiting the number of days in any one year for which he may receive service pay from receiving for his services pay according to his rank for each day or part of a day upon which he sits as a member, performs the duties of a prosecutor or defender, or is in attendance, as the case may be.
- (2) Subject to subclause (3) of this rule, a person not subject to the Act, and a person subject to the Act other than a serviceman, who is a witness or interpreter at a court-martial or court of inquiry, or at the taking of a summary of evidence, shall be entitled, as against the party calling him or as the court or the officer taking the summary may direct, to be paid the fees, allowances, and travelling expenses payable to witnesses and interpreters in accordance with the Witnesses and Interpreters Fees Regulations 1974¹.
- (3) The amounts payable to any person under subclause (2) of this rule shall be subject to such directions as—
 - (a) The officer ordering the summary of evidence, in the case of the taking of a summary of evidence; or
 - (b) The convening officer, in the case of a court-martial; or
 - (c) The assembling authority, in the case of a court of inquiry,—

¹ SR 1974/124

may think fit relating to the disallowance of the whole or any part of such amount.

161 Order for compensation

- (1) Every order for compensation under section 86 of the Act must be made in the form prescribed by the Chief of Defence Force.
- (2) The operation of any such order is suspended in accordance with rule 161A or rule 161B or rule 161C unless the offender consents in writing to the operation of the order not being suspended.
- (3) If an order is made under section 86(2) of the Act that the whole or any part of the money found in the possession of the offender be applied in payment of compensation, the money that is subject to the order must, while the operation of the order for compensation is suspended, be held in safe custody as directed by the officer exercising summary powers or the court-martial or the reviewing authority who or which makes the order.
- (4) If an order under section 86 of the Act is varied by a reviewing authority under section 117 of the Act, or under Part 8 of the Act, or on an appeal, payment must be made in accordance with the order as finally varied.

Rule 161 was substituted, as from 1 April 2004, by rule 3 Armed Forces Discipline Rules of Procedure Amendment Rules 2004 (SR 2004/27).

161A Suspension of order for compensation made by officer exercising summary powers

If an order for compensation exceeding 3 days' basic pay is made under section 86 of the Act by an officer exercising summary powers and the consent referred to in rule 161(2) is not given, the order is suspended until it has been reviewed by a reviewing authority under section 117 of the Act.

Rules 161A to 161C were inserted, as from 1 April 2004, by rule 3 Armed Forces Discipline Rules of Procedure Amendment Rules 2004 (SR 2004/27).

161B Suspension of order for compensation made by court-martial

If an order for compensation made under section 86 of the Act is made by a court-martial and the consent referred to in rule

161(2) is not given, the operation of the order is suspended until the latest of the following:

- (a) the close of the day on which, at the conclusion of the review of the order under Part 8 of the Act by a reviewing authority, the decision of the reviewing authority is promulgated:
- (b) the expiry of the period prescribed under the Courts-Martial Appeals Act 1953 as the period within which an application for leave to appeal to the Courts Martial Appeal Court against the conviction upon which the order was made must be lodged:
- (c) if, within the period referred to in paragraph v(b), an application for leave to appeal of the kind described in that paragraph is duly lodged, the close of the day on which the application is finally refused or is withdrawn or the appeal is determined or abandoned:
- (d) if an appeal which is against the conviction upon which the order was made and which is made to the Courts Martial Appeal Court in the circumstances specified in the proviso to section 6 of the Courts Martial Appeals Act 1953 is abandoned, the close of the day on which the appeal is abandoned:
- (e) if an appeal to the Courts Martial Appeal Court (whether an appeal made with the leave of that Court or an appeal made in the circumstances specified in the proviso to section 6 of the Courts Martial Appeals Act 1953) is brought and determined in respect of the conviction upon which the order was made, the expiry of the period prescribed by the Courts Martial Appeals Act 1953 as the period within which an application for a certificate to appeal to the Court of Appeal must be made:
- (f) if, within the period referred to in paragraph (e), an application of the kind described in that paragraph is made or an application to the Supreme Court for leave to appeal directly to the Supreme Court is made in respect of the conviction,—
 - (i) the close of the day on which the application is refused; or

- (ii) if the certificate or leave to appeal is granted, the close of the day on which the appeal is determined or abandoned:
- (g) if the decision on the appeal is that of the Court of Appeal, the expiry of the period prescribed under the Supreme Court Act 2003 as the period within which an application to the Supreme Court for leave to appeal under section 10A of the Courts Martial Appeals Act 1953 against that decision must be made:
- (h) if, within the period referred to in paragraph (g), an application to the Supreme Court for leave to appeal under section 10A of the Courts Martial Appeals Act 1953 against the decision of the Court of Appeal is made,—
 - (i) the close of the day on which the application is refused; or
 - (ii) if leave to appeal under section 10A of the Courts Martial Appeals Act 1953 is granted, the close of the day on which the appeal is determined or abandoned.

Rules 161A to 161C were inserted, as from 1 April 2004, by rule 3 Armed Forces Discipline Rules of Procedure Amendment Rules 2004 (SR 2004/27).

161C Suspension of order for compensation made by reviewing authority under Part 8 of Act

If an order for compensation is not made at a trial by a court martial but is made by a reviewing authority under Part 8 of the Act, and the consent referred to in rule 161(2) is not given, the operation of the order is suspended until the latest of the following:

- (a) the expiry of the period prescribed under the Courts-Martial Appeals Act 1953 as the period within which an application for leave to appeal to the Courts Martial Appeal Court against the conviction must be lodged:
- (b) if, within the period referred to in paragraph (a), an application for leave to appeal of the kind described in that paragraph is duly lodged, the close of the day on which

the application is finally refused or is withdrawn or the appeal is determined or abandoned:

- (c) if an appeal which is against the conviction upon which the order was made and which is made to the Courts Martial Appeal Court in the circumstances specified in the proviso to section 6 of the Courts Martial Appeals Act 1953 is abandoned, the close of the day on which the appeal is abandoned:
- (d) if an appeal to the Courts Martial Appeal Court (whether an appeal made with the leave of that Court or an appeal made in the circumstances specified in the proviso to section 6 of the Courts Martial Appeals Act 1953) is brought and determined in respect of the conviction upon which the order was made, the expiry of the period prescribed by the Courts Martial Appeals Act 1953 within which an application for a certificate to appeal to the Court of Appeal must be made:
- (e) if, within the period referred to in paragraph (d), an application of the kind referred to in that paragraph is made or an application to the Supreme Court for leave to appeal directly to the Supreme Court is made in respect of the conviction,—
 - (i) the close of the day on which the application is refused; or
 - (ii) if the certificate or leave to appeal is granted, the close of the day on which the appeal is determined or abandoned:
- (f) if the decision on the appeal is that of the Court of Appeal, the expiry of the period prescribed under the Supreme Court Act 2003 as the period within which an application to the Supreme Court for leave to appeal under section 10A of the Courts Martial Appeals Act 1953 against that decision must be made:
- (g) if, within the period referred to in paragraph (f), an application to the Supreme Court for leave to appeal under section 10A of the Courts Martial Appeals Act 1953 against the decision of the Court of Appeal is made,—

- (i) the close of the day on which the application is refused; or
- (ii) if leave to appeal under section 10A of the Courts Martial Appeal Act 1953 is granted, the close of the day on which the appeal is determined or abandoned.

Rules 161A to 161C were inserted, as from 1 April 2004, by rule 3 Armed Forces Discipline Rules of Procedure Amendment Rules 2004 (SR 2004/27).

162 Order for restitution

- (1) Every order for restitution made under section 87 of the Act (with or without compensation under subsection (3) of that section) must be in the form prescribed by the Chief of Defence Force.
- (2) The operation of any such order is suspended in accordance with rule 162A or rule 162B or rule 162C unless the officer exercising summary powers or the court-martial or the reviewing authority acting under Part 8 of the Act who or which makes the order states in writing that, in his or her opinion, the right to the possession of the property is not in dispute.
- (3) The property that is subject to any such order must, while the operation of the order is suspended, be held in safe custody as directed by the officer exercising summary powers or the court-martial or the reviewing authority acting under Part 8 of the Act who or which makes the order.
- (4) If such an order is varied, by a reviewing authority under section 117 of the Act, or under Part 8 of the Act, or on an appeal, delivery of the property must be made in accordance with the order as finally varied.

Rule 162 was substituted, as from 1 April 2004, by rule 3 Armed Forces Discipline Rules of Procedure Amendment Rules 2004 (SR 2004/27).

162A Suspension of order for restitution made by officer exercising summary powers

If an order for restitution made under section 87 of the Act is made by an officer exercising summary powers and no statement of a kind referred to in rule 162(2) is made, delivery of the property that is subject to the order to the person specified

in the order is suspended until the order has been reviewed by a reviewing authority under section 117 of the Act.

Rules 162A to 162C were inserted, as from 1 April 2004, by rule 3 Armed Forces Discipline Rules of Procedure Amendment Rules 2004 (SR 2004/27).

162B Suspension of order for restitution made by court-martial

If an order for restitution made under section 87 of the Act is made by a court-martial and no statement of a kind referred to in rule 162(2) is made, delivery of the property that is subject to the order to the person specified in the order, without the written consent of the offender and (in the case of an order made under section 87(4) of the Act) the pawnbroker, is suspended until the latest of the following:

- (a) the close of the day on which, at the conclusion of the review of the order under Part 8 of the Act by a reviewing authority, the decision of the reviewing authority is promulgated:
- (b) the expiry of the period prescribed under the Courts-Martial Appeals Act 1953 as the period within which an application for leave to appeal to the Courts Martial Appeal Court against the conviction upon which the order was made must be lodged:
- (c) if, within the period referred to in paragraph (b), an application for leave to appeal of the kind described in that paragraph is duly lodged or an appeal is made in the circumstances specified in the proviso to section 6 of the Courts Martial Appeals Act 1953, the close of the day on which the application is finally refused or is withdrawn or the appeal (whether made with leave or in the circumstances specified in that proviso) is determined or abandoned:
- (d) if an appeal which is against the conviction upon which the order was made and which is made to the Courts Martial Appeal Court in the circumstances specified in the proviso to section 6 of the Courts Martial Appeals Act 1953 is abandoned, the close of the day on which the appeal is abandoned:
- (e) if an appeal to the Courts Martial Appeal Court is brought and determined in respect of the conviction

upon which the order was made, the expiry of the period prescribed by the Courts Martial Appeals Act 1953 as the period within which an application for a certificate to appeal to the Court of Appeal must be made:

- (f) if, within the period referred to in paragraph (e), an application of the kind described in that paragraph is made or an application to the Supreme Court for leave to appeal directly to the Supreme Court is made in respect of the conviction,—
 - (i) the close of the day on which the application is refused; or
 - (ii) if the certificate or leave to appeal is granted, the close of the day on which the appeal is determined or abandoned:
- (g) if the decision on the appeal is that of the Court of Appeal, the expiry of the period prescribed under the Supreme Court Act 2003 as the period within which an application to the Supreme Court for leave to appeal under section 10A of the Courts-Martial Appeals Act 1953 against that decision must be made:
- (h) if, within the period referred to in paragraph (g) an application to the Supreme Court for leave to appeal under section 10A of the Courts Martial Appeals Act 1953 against the decision of the Court of Appeal is made,—
 - (i) the close of the day on which the application is refused; or
 - (ii) if leave to appeal under section 10A of the Courts Martial Appeals Act 1953 is granted, the close of the day on which the appeal is determined or abandoned.

Rules 162A to 162C were inserted, as from 1 April 2004, by rule 3 Armed Forces Discipline Rules of Procedure Amendment Rules 2004 (SR 2004/27).

162C Suspension of order for restitution made by reviewing authority under Part 8 of Act

If an order for restitution made under section 87 of the Act is not made at a trial by a court-martial but is made by a review-

ing authority under Part 8 of the Act, and no statement of a kind referred to in rule 162(2) is made, delivery of the property that is subject to the order to the person specified in the order, without the written consent of the offender, is suspended until the latest of the following:

- (a) the expiry of the period prescribed under the Courts Martial Appeals Act 1953 as the period within which an application for leave to appeal to the Courts Martial Appeal Court against the conviction must be lodged:
- (b) if, within the period referred to in paragraph (a), an application for leave to appeal of the kind described in that paragraph is duly lodged or an appeal is made in the circumstances specified in the proviso to section 6 of the Courts Martial Appeals Act 1953, the close of the day on which the application is finally refused or is withdrawn or the appeal (whether made with leave or in the circumstances specified in that proviso) is determined or abandoned:
- (c) if an appeal which is against the conviction upon which the order was made and which is made to the Courts Martial Appeal Court in the circumstances specified in the proviso to section 6 of the Courts Martial Appeals Act 1953 is abandoned, the close of the day on which the appeal is abandoned:
- (d) if an appeal to the Courts Martial Appeal Court is brought and determined in respect of the conviction upon which the order was made, the expiry of the period prescribed by the Courts Martial Appeals Act 1953 as the period within which an application for a certificate to appeal to the Court of Appeal must be made:
- (e) if, within the period referred to in paragraph (d), an application of the kind referred to in that paragraph is made or an application to the Supreme Court for leave to appeal directly to the Supreme Court is made in respect of the conviction,—
 - (i) the close of the day on which the application is refused; or

- (ii) if the certificate or leave to appeal is granted, the close of the day on which the appeal is determined or abandoned:
- (f) if the decision on the appeal is that of the Court of Appeal, the expiry of the period prescribed under the Supreme Court Act 2003 as the period within which an application to the Supreme Court for leave to appeal under section 10A of the Courts Martial Appeals Act 1953 against that decision must be made:
- (g) if, within the period referred to in paragraph (f) an application to the Supreme Court for leave to appeal under section 10A of the Courts Martial Appeals Act 1953 against the decision of the Court of Appeal is made,—
 - (i) the close of the day on which the application is refused; or
 - (ii) if leave to appeal under section 10A of the Courts Martial Appeals Act 1953 is granted, the close of the day on which the appeal is determined or abandoned.

Rules 162A to 162C were inserted, as from 1 April 2004, by rule 3 Armed Forces Discipline Rules of Procedure Amendment Rules 2004 (SR 2004/27).

163 Revesting of stolen property

- (1) The operation of the provisions of section 26(1) of the Sale of Goods Act 1908 as to the revesting of the property in stolen goods on a finding of guilty or a conviction is suspended in accordance with rule 163A or rule 163B unless the officer exercising summary powers who records the finding of guilty or the court-martial before which the conviction takes place states in writing that, in that officer's opinion, the title to the property is not in dispute.
- (2) Any property to which the provisions of section 26(1) of the Sale of Goods Act 1908 apply must, while the operation of those provisions is suspended, be held in safe custody as directed by the officer or the court-martial, as the case may be.

Rule 163 was substituted, as from 1 April 2004, by rule 3 Armed Forces Discipline Rules of Procedure Amendment Rules 2004 (SR 2004/27).

163A Suspension of revesting of stolen property where finding made by officer exercising summary powers

If a finding of guilty to which the provisions of section 26(1) of the Sale of Goods Act 1908 apply is made by an officer exercising summary powers and no statement of a kind referred to in rule 163(1) is made, the operation of those provisions is suspended until the finding has been reviewed by a reviewing authority under section 117 of the Act.

Rules 163A to 163B were inserted, as from 1 April 2004, by rule 3 Armed Forces Discipline Rules of Procedure Amendment Rules 2004 (SR 2004/27).

163B Suspension of revesting of stolen property where finding made by court-martial

If a conviction to which the provisions of section 26(1) of the Sale of Goods Act 1908 apply takes place before a court-martial and no statement of a kind referred to in rule 163(1) is made, the operation of those provisions is suspended until the latest of the following:

- (a) the close of the day on which, at the conclusion of the review of the order under Part 8 of the Act by a reviewing authority, the decision of the reviewing authority is promulgated;
- (b) the expiry of the period prescribed under the Courts Martial Appeals Act 1953 as the period within which an application for leave to appeal to the Courts Martial Appeal Court against the conviction upon which the order was made must be lodged;
- (c) if, within the period referred to in paragraph (b), an application for leave to appeal of the kind described in that paragraph is duly lodged or an appeal is made in the circumstances specified in the proviso to section 6 of the Courts Martial Appeals Act 1953, the close of the day on which the application is finally refused or is withdrawn or the appeal (whether made with leave or in the circumstances specified in that proviso) is determined or abandoned;
- (d) if an appeal which is against the conviction upon which the order was made and which is made to the Courts Martial Appeal Court in the circumstances specified in

the proviso to section 6 of the Courts Martial Appeals Act 1953 is abandoned, the close of the day on which the appeal is abandoned:

- (e) if an appeal to the Courts Martial Appeal Court is brought and determined in respect of the conviction upon which the order was made, the expiry of the period prescribed by the Courts Martial Appeals Act 1953 as the period within which an application for a certificate to appeal to the Court of Appeal must be made:
- (f) if, within the period referred to in paragraph (e), an application of the kind described in that paragraph is made or an application to the Supreme Court for leave to appeal directly to the Supreme Court is made in respect of the conviction,—
 - (i) the close of the day on which the application is refused; or
 - (ii) if the certificate or leave to appeal is granted, the close of the day on which the appeal is determined or abandoned:
- (g) if the decision on the appeal is that of the Court of Appeal, the expiry of the period prescribed under the Supreme Court Act 2003 as the period within which an application to the Supreme Court for leave to appeal under section 10A of the Courts Martial Appeals Act 1953 against that decision must be made:
- (h) if, within the period referred to in paragraph (g), an application to the Supreme Court for leave to appeal under section 10A of the Courts Martial Appeals Act 1953 against the decision of the Court of Appeal is made,—
 - (i) the close of the day on which the application is refused; or
 - (ii) if leave to appeal under section 10A of the Courts Martial Appeals Act 1953 is granted, the close of the day on which the appeal is determined or abandoned.

Rules 163A to 163B were inserted, as from 1 April 2004, by rule 3 Armed Forces Discipline Rules of Procedure Amendment Rules 2004 (SR 2004/27).

164 Exceptions from rules on account of exigencies of service

- (1) Where, in the opinion of the officer who is or would be responsible for convening a court-martial to try the accused, or if he is not available, of the senior officer present, the exigencies of the service render compliance with all or any of the provisions of the rules mentioned in subclause (4) of this rule impracticable, that officer, or the senior officer may make a declaration to that effect in the form prescribed by the Chief of Defence Force.
- (2) Any declaration made under subclause (1) of this rule by the senior officer present shall be forwarded by him as soon as possible to the officer who is or would be responsible for convening a court-martial to try the accused.
- (3) When a declaration has been made under subclause (1) of this rule, it shall not be necessary to comply with any provision of these rules that is mentioned in the declaration, and these rules shall be construed accordingly.
- (4) The provisions of these rules in respect of which a declaration may be made under subclause (1) of this rule are the following:
 - (a) The requirement in rule 32(a) for an abstract of evidence to be taken before a commanding officer or a superior commander remands an accused to be tried by court-martial:
 - (b) The requirement in rule 43(a) for a summary of evidence or an abstract of evidence to be taken before a commanding officer remands an accused to his superior commander:
 - (c) The requirement in rule 43(d) for a copy of the charge, summary of evidence, or abstract of evidence to be handed to the accused not less than 48 hours before investigation by a superior commander:
 - (d) The requirement in rule 50(a) for a summary of evidence or an abstract of evidence to be taken before a commanding officer or a superior commander remands an accused to be tried by court-martial:
 - (e) The requirement for the documents listed in rule 60(5) to be handed to the accused not less than 72 hours before his trial by court-martial.

- (5) If an accused is tried by court-martial or is dealt with summarily by a superior commander, any declaration that has been made in his case under subclause (1) of this rule shall be attached to the record of proceedings of the court-martial or to the record made by the superior commander, as the case may be.

165 Exception from rules in interests of security

- (1) Where, in the opinion of the officer who is or would be responsible for convening a court-martial to try the accused, or, if he is not available, of the senior officer present, a charge-sheet, summary of evidence, abstract of evidence, or other document that is required under these rules to be given to an accused contains information the disclosure of which would or might be directly or indirectly useful to the enemy or any foreign country, or would or might be otherwise harmful to New Zealand, that officer or senior officer may make a declaration to that effect in the form prescribed by the Chief of Defence Force specifying the document concerned.
- (2) Any declaration made under subclause (1) of this rule by the senior officer present shall be forwarded by him as soon as possible to the officer who is or would be responsible for convening a court-martial to try the accused.
- (3) When a declaration has been made under subclause (1) of this rule, it shall not be necessary to give to the accused any document mentioned in that declaration, or any copy of such document; instead, it shall be sufficient compliance with these rules if the accused is given a proper opportunity to inspect such document while preparing and making his defence.
- (4) If an accused is tried by court-martial or is dealt with or tried summarily by a superior commander, any declaration that has been made in his case under subclause (1) of this rule shall be attached to the record of proceedings of the court-martial or to the record made by the superior commander, as the case may be.

166 Revocations

The rules specified in the Schedule to these rules are hereby
revoked.

**Schedule
Rules revoked**

Rule 166

Title	Serial Number of Statutory Regulations
<i>A. Rules Relating to the Army</i>	
The Army Rules of Procedure 1951	1951/256
The Army Rules of Procedure 1951, Amendment No 1	1954/202
The Army Rules of Procedure 1951, Amendment No 2	1969/259
The Army Rules of Procedure 1951, Amendment No 3	1978/179
<i>B. Rules Relating to the Air Force</i>	
The Air Force Rules of Procedure 1951	1951/255
The Air Force Rules of Procedure 1951, Amendment No 1	1954/201
The Air Force Rules of Procedure 1951, Amendment No 2	1969/258
The Air Force Rules of Procedure 1951, Amendment No 3	1978/178

P G MILLEN,
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 govern proceedings and inquiries under the Armed Forces Discipline Act 1971. Separate provisions are made for the summary disposal of charges in the Navy on the one hand, and in the Army and the Air Force on the other. In all other respects, the rules are common to all three services.

Issued under the authority of the Regulations Act 1936.
Date of notification in *Gazette*: 10 November 1983.

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Notes

1 *General*

This is an eprint of the Armed Forces Discipline Rules of Procedure 1983. It incorporates all the amendments to the rules as at 1 July 2009. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

2 *About this eprint*

This eprint has not been officialised. For more information about officialisation, please see “Making online legislation official” under “Status of legislation on this site” in the About section of this website.

3 *List of amendments incorporated in this eprint (most recent first)*

Armed Forces Discipline Rules of Procedure 2008 (SR 2008/237): rule 164
