

**Case Summary**  
**Office of the Judge Advocate General**

**DEFENDANT:** CPL Clarke  
**TYPE OF PROCEEDING:** Defence Force Magistrate  
**DATE OF TRIAL:** 31 October 2022  
**VENUE:** RAAF Base Edinburgh, SA

**Charges and plea**

	<b>Statement of Offence</b>	<b>Plea</b>
Charge 1	DFDA, s. 60(1) Prejudicial conduct	Guilty
Charge 2	DFDA, s. 60(1) Prejudicial conduct	Withdrawn
Charge 3	DFDA, s. 60(1) Prejudicial conduct	Guilty
Charge 4	DFDA, s. 60(1) Prejudicial conduct	Guilty

**Pre-Trial: Closed hearing and non-publication orders**

Application made:	No
Determination:	N/A

**Trial: Facts and legal principles**

Nil, as the case proceeded by way of guilty pleas.

**Findings**

	<b>Finding</b>
Charge 1	Guilty
Charge 2	Withdrawn
Charge 3	Guilty
Charge 4	Guilty

**Sentencing: Facts and legal principles**

The defendant had last completed a Basic Fitness Assessment (BFA) on 17 May 21. As of 17 Nov 21, the defendant was automatically deemed 'not ready' for his Army Individual Readiness Notice (AIRN).

At approximately 0655h on 22 Nov 21, the defendant printed a BFA record sheet and pre-filled his personal details. About 30 minutes later he called a colleague (a Craftsman (CFN) and ADF Fitness Leader) and asked him to conduct a BFA for him. Later that afternoon, the defendant and the CFN arrived at the running track. Before the BFA commenced, the defendant asked the CFN to sign the record to state that he has successfully passed the BFA. The CFN refused to do this and the defendant failed a component of the BFA. The defendant again asked the CFN to sign the record and the CFN, once again, refused. At approximately 1700, the defendant and the CFN returned to

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the Living in Accommodation together. The defendant then asked a Lance Corporal (LCPL) to sign his record. The LCPL refused. The defendant then went on to ask a Private (PTE) to do the same. The PTE also refused. The defendant participated in a Digital Record of interview on 02 Mar 22. He denied asking the CFN, LCPL and PTE to falsify his BFA record sheet.

The Prosecuting Officer submitted that the offending conduct was objectively serious. It involved three younger members of subordinate rank, repeated attempts and a serious lack of integrity.

The Defending Officer outlined the defendant's commendable service history and confirmed that this was the first time he had failed a BFA. During the height of the pandemic, it was submitted that the defendant had let his fitness levels drop and at the relevant time, became desperate to become AIRN compliant.

The DFM accepted that the defendant was genuinely contrite, had entered pleas of guilty and was unlikely to revert to similar conduct in the future. However, given the disparity in rank, ages and experience, the repeated nature of the conduct and the degradation of service discipline, the DFM agreed that defendant's conduct was objectively serious. The need to maintain service discipline and satisfy the principle of general deterrence assumed great importance. In all the circumstances, the DFM held that the minimum appropriate punishment was reduction in rank by one rank to Lance Corporal with a new seniority date of 31 Oct 22.

### **Punishments and orders**

Charge 1	To be reduced to the rank of Lance Corporal with seniority in that rank to date from 31 Oct 22
Charge 2	N/A
Charge 3	To be reduced to the rank of Lance Corporal with seniority in that rank to date from 31 Oct 22
Charge 4	To be reduced to the rank of Lance Corporal with seniority in that rank to date from 31 Oct 22

### **Outcome on automatic review**

The automatic review was completed on 08 Dec 22.

	<b>Conviction</b>	<b>Punishments / Orders</b>
Charge 1	Upheld	Upheld
Charge 2	N/A	N/A
Charge 3	Upheld	Upheld
Charge 4	Upheld	Upheld

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