

Case Summary
Office of the Judge Advocate General

DEFENDANT: MUSN Wyatt
TYPE OF PROCEEDING: Defence Force Magistrate
DATE OF TRIAL: 14 December 2022
VENUE: Court Martial Facility, Fyshwick, ACT

Charges and plea

	Statement of Offence	Plea
Charge 1	DFDA, s. 61(3) and Crimes Act 1900 (ACT), s. 60(1) Act of indecency without consent	Guilty

Pre-Trial: Closed hearing and non-publication orders¹

Application made:	No
Determination:	While no orders were made under the DFDA, due to the nature of Charge 1, it is an offence to publish the details of the complainant under the <i>Evidence (Miscellaneous) Provisions Act 1991 (ACT)</i> .

Trial: Facts and legal principles

Nil, as the case proceeded by way of a guilty plea.

Findings

	Finding
Charge 1	Guilty

Sentencing: Facts and legal principles

In September 2021, the defendant and complainant were deployed as part of OP COVID-19 ASSIST and based at a hotel in Sydney. On 27 Sep 21, a group of five members, including the defendant and complainant, attended a social gathered in a nearby park. At about 2030, when three members departed, the complainant was left alone with the defendant. The complainant decided to stay. Over the next 2.5-3 hours the defendant talked about his personal life and marriage. The defendant appeared to be drunk as he was repeating himself and slurring his words. Whilst talking, the defendant touched the complainant inappropriately before the complainant told him that she was not interested. At about 2315, the complainant left the park and returned to her room. Once in her room, the complainant contacted a friend and told her what had happened.

On 28 Sep 21, the defendant sent a text message to the complainant asking to meet for lunch and a chat. The complainant refused and both had no further contact. On 10 Feb 22, the complainant participated in a record of interview and made an admission regarding his conduct.

¹ *Defence Force Discipline Act 1982*, sections 140 and 148.

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The Prosecuting Officer submitted that the offending conduct fell within the lower to mid-range of objective seriousness and highlighted the age disparity between the two. A victim impact statement was also tendered which outlined the harm caused by the defendant's conduct.

The defendant and his wife gave evidence during the hearing. Due to their specific family situation the defendant was the primary carer for their daughter.

In sentencing the defendant, the DFM gave careful consideration to the defendant's early plea of guilty, otherwise good character, genuine remorse, the independent steps he had taken to ensure such behaviour is not repeated, his impeccable service in the 15 months post the offending and the hardship that would be visited upon his family (particularly his daughter) if he was either dismissed or removed from his home for an extended period of time.

Ultimately, the DFM was satisfied that a lengthy period of suspended detention, coupled with a severe reprimand, adequately fulfilled the requirements of specific and general deterrence and ensured the proper maintenance of good order and discipline.

Punishments and orders

Charge 1	To undergo detention for a period of 120 days. Pursuant to DFDA s. 78, the Tribunal orders that the whole of the sentence of detention is suspended. To be severely reprimanded.
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Outcome on automatic review

The Review Authority's decision on automatic review was handed down on 23 January 2023.

	Conviction	Punishments / Orders
Charge 1	Upheld	Upheld

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