

Case Summary
Office of the Judge Advocate General

DEFENDANT: AB Balmforth
TYPE OF PROCEEDING: Defence Force Magistrate
DATE OF TRIAL: 14 July 2023
VENUE: Garden Island, NSW

Charges and plea

	Statement of Offence	Plea
Charge 1	DFDA, s. 61(3), and <i>Crimes Act 1900</i> (ACT), s. 60(1) Act of indecency without consent	Withdrawn
Alternative to Charge 1	DFDA, s. 25 Assaulting a superior officer	Withdrawn
Charge 2	DFDA, s. 61(3), and <i>Crimes Act 1900</i> (ACT), s. 60(1) and <i>Criminal Code 2002</i> (ACT), s. 44 Attempted act of indecency without consent	Withdrawn
Charge 3	DFDA, s. 61(3), and <i>Crimes Act 1900</i> (ACT), s. 60(1) Act of indecency without consent	Withdrawn
Charge 1 (as amended)	DFDA, s. 61(3), and <i>Crimes Act 1900</i> (ACT), s. 60(1) Act of indecency without consent	Guilty
Charge 5	DFDA, s. 61(3), and <i>Crimes Act 1900</i> (ACT), s. 60(1) Act of indecency without consent	Withdrawn
Charge 6	DFDA, s. 61(3), and <i>Crimes Act 1900</i> (ACT), s. 60(1) Act of indecency without consent	Withdrawn

Pre-Trial: Closed hearing and non-publication orders

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</i> (ACT).

Trial: Facts and legal principles

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

Findings

	Finding
Charge 1	No Finding Required
Alternative to Charge 1	No Finding Required
Charge 2	No Finding Required
Charge 3	No Finding Required
Charge 1 (as amended)	Guilty

- *This summary is not intended to be a substitute for the reasons of the Service tribunal or to be used in any later consideration of the tribunal's reasons.*

Charge 5	No Finding Required
Charge 6	No Finding Required

Sentencing: Facts and legal principles

Prior to the defendant being arraigned, the Prosecuting Officer made two applications. Both were unopposed. The first was made pursuant to Rule 13 of the *Court Martial and Defence Force Magistrate Rules 2020* to withdraw Charges 1, 2, 3, 5 & 6 on the Charge Sheet. The second was made pursuant to s 141A of the DFDA to amend both the charge number and the particulars in respect of the original Charge 4. It would become ‘Charge 1’ and also incorporate the particularised acts of original Charges 5 & 6. The DFM was informed that the defendant would enter a plea of guilty to an amended Charge 1 and acceded to the applications.

On 02 Jul 22, the ship that the complainant and defendant were posted to was alongside a port in Japan. The defendant was at a bar and approached the complainant. He was very drunk.

The defendant then touched the complainant indecently three times. The defendant was trying to talk to the complainant while touching her but she was unable to understand him due to his level of intoxication. On 02 Nov 22, the defendant participated in a Record of Interview with service investigators and told them that he had no recollection of the events but was “horrified” and “shocked” by his behaviour.

The DFM accepted that there were a number of mitigating features in the defendant’s favour including: the entry of a guilty plea at the earliest opportunity, genuine remorse, otherwise good character, independent and proactive steps taken to engage with medical professionals and very good prospects for rehabilitation.

Notwithstanding the mitigating features, the DFM found that the defendant’s behaviour also involved a number of objectively serious aggravating features, notably that the behaviour was protracted in nature, it took place in front of another female member of ship’s company and involved an egregious breach of trust. The DFM held that the behaviour was not in keeping with each of the Defence Values.

In order to satisfy the principles of general deterrence and maintenance of good order and discipline, the DFM held that a substantial period of detention was required. Taking into account the mitigating features, the DFM structured the sentence of detention so that 30 days would actually be served with the balance of the sentence suspended.

Punishments and orders

Charge 1	Not Applicable
Alternative to Charge 1	Not Applicable
Charge 2	Not Applicable
Charge 3	Not Applicable
Charge 1 (as amended)	To undergo detention for a period of 90 days. Pursuant to DFDA s. 78, the Tribunal orders that 60 days of the sentence of detention be suspended.
Charge 5	Not Applicable
Charge 6	Not Applicable

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Outcome on automatic review

The Reviewing Authority's decision on automatic review was handed down on 22 August 2023.

	Conviction	Punishments / Orders
Charge 1	Not Applicable	Not Applicable
Alternative to Charge 1	Not Applicable	Not Applicable
Charge 2	Not Applicable	Not Applicable
Charge 3	Not Applicable	Not Applicable
Charge 1 (as amended)	Upheld	Upheld
Charge 5	Not Applicable	Not Applicable
Charge 6	Not Applicable	Not Applicable

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