

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

**DEFENDANT:** AB Stemp  
**TYPE OF PROCEEDING:** Defence Force Magistrate  
**DATE OF TRIAL:** 04 – 07 November 2024  
**VENUE:** HMAS Cairns, QLD

**Charges and plea**

	<b>Statement of Offence</b>	<b>Plea</b>
Charge 1	DFDA, s. 61(3) and Criminal Code Act 1995, s. 135.2(1) Obtaining a financial advantage	Not Guilty
Alternative to Charge 1	DFDA, s. 56(4) Recklessly making false or misleading statement in relation to application for benefit	Not Guilty
Charge 2	DFDA, s. 61(3) and Criminal Code Act 1995, s. 135.2(1) Obtaining a financial advantage	Not Guilty
Alternative to Charge 2	DFDA, s. 56(4) Recklessly making false or misleading statement in relation to application for benefit	Not Guilty
Charge 3	DFDA, s. 61(3) and Criminal Code Act 1995, s. 135.2(1) Obtaining a financial advantage	Not Guilty
Alternative to Charge 3	DFDA, s. 56(4) Recklessly making false or misleading statement in relation to application for benefit	Not Guilty

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

Application made:	No.
Determination:	N/A

**Trial: Facts and legal principles**

The Accused was charged under the *DFDA* and the *Criminal Code*, on various dates between 2020 and 2023, he obtained a financial advantage to which he was not entitled by selecting a “Living-In Meals” option when he dined at various Defence messes (with the consequence that he did not pay for those meals), when he was only entitled to select that option if he had also elected to receive that meal option by way of a fortnightly deduction from his pay (an election which he did not make through PMKeyS). The prosecution alleged that, by this conduct, the accused had obtained a total financial advantage of \$9596.30.

The prosecution presented, among other things, evidence of the accused’s record of interview in which he admitted that he selected the Living-In Meals option when he dined in the mess, and that he was aware that he was not entitled to do so, but that he had forgotten that he had not selected the fortnightly deduction option on the PMKeyS.

At the conclusion of the prosecution’s case, the accused made an application that the charges be dismissed because he had no case to answer, on the basis of a purported misdescription of his conduct in the particulars of the charge sheet. The DFM dismissed that application.

The accused did not give any evidence, as was his right.

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The DFM found, based on the prosecution's evidence and the accused's admissions in his record of interview, that the elements of the offence had been proven beyond a reasonable doubt. The DFM found the accused guilty of the three principal charges and convicted him.

## Findings

	Finding
Charge 1	Guilty
Alternative to Charge 1	Not Applicable
Charge 2	Guilty
Alternative to Charge 2	Not Applicable
Charge 3	Guilty
Alternative to Charge 3	Not Applicable

## Sentencing: Facts and legal principles

The prosecution contended that the objective seriousness of the offending was of such a degree as to warrant dismissal from the Defence Force and the imposition of a sentence of imprisonment, to satisfy the need to achieve general deterrence and maintain service discipline. The offender submitted that the appropriate penalty commensurate with the seriousness of the offending and the Offender's personal circumstances was a reduction in rank and the imposition of a suspended period of detention. The DFM determined that the objective seriousness of the offending was slightly below the mid-range, particularly as it did not involve calculated dishonesty or deception.

The DFM found that there were other factors that did not warrant dismissal from the ADF. He was highly regarded by his chain of command, had excelled in courses he had undertaken, and had no antecedent civilian or service offences. While the offender did not plead guilty, he did make admissions against interest in his record of interview and facilitated the efficient conduct of his trial, which assisted the administration of justice.

Owing to the period of the offending and the substantial quantum of loss it occasioned, the DFM sentenced the Offender to a period of detention for 60 days for each offence (to be served concurrently) and made a reparation order in favour of the Commonwealth for the loss it suffered.

## Punishments and orders

Charge 1	1. The offender is sentenced to 60 days in detention. 2. A reparation order whereby the offender pays to the Commonwealth of Australia the sum of \$9596.30 to be repaid in the amount of \$152.32 per pay period of 63 pay periods.
Alternative to Charge 1	Not Applicable
Charge 2	1. The offender is sentenced to 60 days in detention. 2. A reparation order whereby the offender pays to the Commonwealth of Australia the sum of \$9596.30 to be repaid in the amount of \$152.32 per pay period of 63 pay periods.
Alternative to Charge 2	Not Applicable

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Charge 3	1. The offender is sentenced to 60 days in detention. 2. A reparation order whereby the offender pays to the Commonwealth of Australia the sum of \$9596.30 to be repaid in the amount of \$152.32 per pay period of 63 pay periods.
Alternative to Charge 3	Not Applicable

### Outcome on automatic review

The Reviewing Authority's decision on automatic review was handed down on 25 November 2024.

	Conviction	Punishments / Orders
Charge 1	Upheld	Substituted. Reparation order that the offender pay to the Commonwealth of Australia the amount of \$4,706.00, by way of fortnightly instalments of \$152.32, commencing on the second pay day following the end of his detention and continuing until the full amount would be paid.
Alternative to Charge 1	Not applicable	Not applicable
Charge 2	Upheld	Substituted. Reparation order that the offender pay to the Commonwealth of Australia the amount of \$3,775.50, by way of fortnightly instalments of \$152.32 commencing a fortnight after the final reparation order payment on the first charge is due and continuing until the full amount would be paid.
Alternative to Charge 2	Not applicable	Not applicable
Charge 3	Upheld	Substituted. Reparation order that the offender pay to the Commonwealth of Australia the amount of \$1,114.80, by way of fortnightly instalments of \$152.32 commencing a fortnight after the final reparation order payment on the second charge.
Alternative to Charge 3	Not applicable	Not applicable

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