

5 s.22 [REDACTED]

s.22 [REDACTED]

10 s.22 [REDACTED]

s.22 [REDACTED]

15 s.22 [REDACTED]

s.22 [REDACTED]

20 s.22 [REDACTED]

s.22 [REDACTED]

30 s.22 [REDACTED]

35 s.22 [REDACTED]

DEFENCE FORCE MAGISTRATE: Thank you. Madam Prosecutor, defence counsel, my intention was to arraign the accused individually. But it is a joint charge sheet, so to continue dealing with it as a single trial but obviously arraign individually, lest anyone objects.

40 PROSECUTOR: No, sir.

DEFENCE FORCE MAGISTRATE: I will also do it in the order that they appear on the charge sheet. SMN s.22 [REDACTED] please stand. As you
45 defending officer will have explained to you, there is now a number of

matters that I will raise with you directly. The first is to ask if you'll make formal admissions to being the person named in the charge sheet and to being a Defence member. You do not have to make these admissions. It's purely a matter for you.

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I'll commence by reading the heading on the charge sheet, as is applicable to you.

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SMN s.22 [REDACTED] s.22 [REDACTED], a member of the Royal Australia Navy and at the time of the offences specified in the following charges a Defence member under the Defence Force Discipline Act 1982.

Seaman, are you the person named in the heading on the charge sheet?

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ACCUSED s.22 [REDACTED]: Yes, sir.

DEFENCE FORCE MAGISTRATE: Do you admit that today you are a Defence member subject to the provisions of the DFDA?

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ACCUSED s.22 [REDACTED]: Yes, sir.

DEFENCE FORCE MAGISTRATE: Were you at the time of the alleged offence – that's on or about 3 February 2017 – a Defence member and subject to the provisions of the DFDA?

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ACCUSED s.22 [REDACTED]: Yes, sir.

DEFENCE FORCE MAGISTRATE: Now, at this stage of the proceedings you have the right to make certain applications and objections in accordance with section 141 of the DFDA. Have you discussed this with your defending officer?

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ACCUSED s.22 [REDACTED]: Yes, sir.

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DEFENCE FORCE MAGISTRATE: Do you have any such applications or objections to make?

ACCUSED s.22 [REDACTED]: No, sir.

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DEFENCE FORCE MAGISTRATE: What I'll now do is arraign you on the charge that is on the charge sheet, which is I will read out the charge and ask whether you plead guilty or not guilty to that charge.

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Second charge on the charge sheet applicable to you, SMN s.22 [REDACTED],

Defence Force Discipline Act 1982 section 60(1) prejudicial conduct. Being a Defence member at HMAS *Cerberus*, Crib Point in the State of Victoria on 3 February 2017, SMN s.22 did an act that was likely to prejudice the discipline of the Royal Australian Navy by actively participating in a closed Facebook messages group “Yeah, the Boys” and by posting 11 laughing face emoticons in response to a nude photograph of SMN s.22 s.22, a female trainee, that was edited and uploaded to the Facebook message group without her consent.

10 On that charge how say you: guilty or not guilty?

ACCUSED s.22: Guilty, sir.

15 DEFENCE FORCE MAGISTRATE: Thank you. What I will do, I think, counsel, is arraign the other two accused and then explain, seeing how they are common offences, the elements of the offences and ask if they maintain their pleas. SMN s.22, please be seated.

20 SMN s.22, please stand. I’m now about to go through exactly the same process that you’ve heard with respect to SMN s.22. I won’t read the introductory bits but to say again it is purely a matter for you as to whether you wish to make any of the admissions I’m about to ask.

25 *SMN s.22 s.22, a member of the Royal Australian Navy and at the time of the offences specified in the following charges a Defence member under the Defence Force Discipline Act 1982.*

30 Seaman, are you the person named in the heading on the charge sheet?

ACCUSED s.22: Yes, sir.

DEFENCE FORCE MAGISTRATE: Do you admit that today you are a Defence member subject to the provisions of the DFDA?

35 ACCUSED s.22: Yes.

40 DEFENCE FORCE MAGISTRATE: Were you at the time of the alleged offence, that is, on or about 3 February 2017, a Defence member and subject to the provisions of the DFDA?

ACCUSED s.22: Yes, sir.

45 DEFENCE FORCE MAGISTRATE: You have the right at this stage to make certain applications or objections to me with respect to the charges

and, for that matter, the trial. Have you discussed this with your defending officer?

ACCUSED S.22: Yes, sir.

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DEFENCE FORCE MAGISTRATE: Do you have any such applications or objections to make?

ACCUSED S.22: No, sir.

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DEFENCE FORCE MAGISTRATE: What I'll now do is arraign you on the charge, that is, read it out and ask how you plead.

SMN S.22, Defence Force Discipline Act 1982 section 60(1) prejudicial conduct. Being a Defence member at HMAS *Cerberus*, Crib Point in the State of Victoria on 3 February 2017, SMN S.22 did an act that was likely to prejudice the discipline of the Royal Australian Navy by actively participating in a closed Facebook message group, Yeah, the Boys, and making a comment "when they bring the whole bakery" and posting four elephant emoticons in response to a nude photograph of SMN S.22, S.22, a female trainee, that was edited and uploaded to the Facebook message group without her consent.

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On that charge, how say you: guilty or not guilty?

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ACCUSED S.22: Guilty, sir.

DEFENCE FORCE MAGISTRATE: Thank you. Please be seated.

SMN S.22, please stand. Again, I am about to go through the same process with yourself. Again, with respect to the admissions that I'm about to ask, it is your choice whether to make them or not. I will start by reading the heading on the charge sheet as it is applicable to you.

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SMN S.22, S.22, a member of the Royal Australian Navy, and at the time of the offences specified in the following charges, a Defence member under the Defence Force Discipline Act 1982.

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Seaman, are you the person named in the heading on the charge sheet?

ACCUSED S.22: Yes, sir.

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DEFENCE FORCE MAGISTRATE: Do you admit that today you are a Defence member subject to the provisions of the DFDA?

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ACCUSED s.22: Yes, sir.

5 DEFENCE FORCE MAGISTRATE: Were you at the time of the alleged offence, that is, on or about 3 February 2017, a Defence member and subject to the provisions of the DFDA?

ACCUSED s.22: Yes, sir.

10 DEFENCE FORCE MAGISTRATE: You have the right to make objections or applications to me under section 141 of the DFDA with respect to the charge sheet in the trial. Have you discussed this with your defending officer?

15 ACCUSED s.22: Yes, sir.

DEFENCE FORCE MAGISTRATE: Do you have any such applications or objections to make?

20 ACCUSED s.22: No, sir.

DEFENCE FORCE MAGISTRATE: In that case, I will now read out the charge to you and ask how you plead. SMN s.22 fifth charge, Defence Force Discipline Act 1982, section 60(1), prejudicial conduct. Being a Defence member at HMAS *Cerberus*, Crib Point, in the State of Victoria, on 3 February 2017, SMN s.22 did an act that was likely to prejudice the discipline of the Royal Australian Navy, by actively participating in a closed Facebook message group, "Yeah, the Boys", and making a comment "Yeah, boy, more rolls than a bakery", in response to a nude photograph of SMN s.22 s.22 a female trainee, that was edited and uploaded to the Facebook message group without her consent.

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On that charge, how say you: guilty or not guilty?

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ACCUSED s.22: Guilty, sir.

DEFENCE FORCE MAGISTRATE: Thank you. Please be seated. Seaman, please remain seated for the moment because there's a few things that I will need to read out but I am addressing all three of you collectively at this stage, and then I will ask you to individually stand as I direct questions to you.

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45 Before I can accept your pleas of guilty, there are two further matters that I need to explain to you so I am satisfied that you understand your pleas.

The first is that I need to explain the elements of the offences, although it's of course one single offence, to which you have pleaded guilty.

5 Madam Prosecutor, I have left behind my notes on prejudicial conduct from another matter, so let's ^{s22} so how my ad hoc deconstruction goes. If you, and obviously the defending officers, disagree with the elements I am about to read out, please let me know.

10 PROSECUTOR: Yes, sir.

DEFENCE FORCE MAGISTRATE: Gentlemen, prejudicial conduct has three elements and there are no fault elements associated with it, so they are all physical elements. The first physical element is that you were a Defence member at the relevant time, to which you have already admitted.

15 The second physical element is that you did an act that was likely to prejudice the discipline of, in this particular case, the Royal Australian Navy. Correct that. The second element is that you did an act, that is, the act that has been specified in your respective charges. The third element is that that act was likely to prejudice the discipline of the navy.

20 SMN **S.22**, please stand. Do you understand the elements of the offence as I have read them out to you?

25 ACCUSED **S.22** Yes, sir.

DEFENCE FORCE MAGISTRATE: Do you wish to maintain your plea of guilty to that charge?

30 ACCUSED **S.22** Yes, sir.

DEFENCE FORCE MAGISTRATE: Thank you. Please be seated.

35 SMN **S.22** do you understand the elements of the offence as I have read them out to you?

ACCUSED **S.22** Yes, sir.

40 DEFENCE FORCE MAGISTRATE: Do you wish to maintain your plea?

ACCUSED **S.22** Yes, sir.

DEFENCE FORCE MAGISTRATE: Thank you. Please be seated.

SMN s.22, do you understand the three elements of the offence as I have read them out to you?

5 ACCUSED s.22: Yes, sir.

DEFENCE FORCE MAGISTRATE: Do you wish to maintain your plea?

ACCUSED s.22: Yes, sir.

10 DEFENCE FORCE MAGISTRATE: Thank you. Please be seated.

15 Gentlemen, there is one further matter and that is I will explain how by pleading guilty the trial process has varied, and then again, I will ask whether you wish to maintain your plea. Had you individually entered a plea of not guilty, the prosecutor would have been required to prove each and every one of the three elements that I have just identified to a standard of beyond reasonable doubt. If I accept your plea, that will not happen.

20 Rather, I will move to formally convict you on the basis of your plea and the prosecutor will then outline the facts of the matter as the prosecution understands them to be. You do not, by virtue of your plea of guilty, necessarily accept the truth of everything that the prosecutor might put to me in her outline, but what you do do is indicate an acceptance of the truth of sufficient of those matters to substantiate your guilt on the charge.

25 SMN s.22 please stand. Do you understand the difference in the procedure as I have just outlined it?

30 ACCUSED s.22: Yes, sir.

DEFENCE FORCE MAGISTRATE: Do you wish to maintain your plea of guilty?

35 ACCUSED s.22: Yes, sir.

DEFENCE FORCE MAGISTRATE: Thank you. Please be seated.

40 SMN s.22, please stand. Do you understand the difference in the procedure as I have just outlined it?

ACCUSED s.22: Yes, sir.

45 DEFENCE FORCE MAGISTRATE: Do you wish to maintain your plea of guilty?

ACCUSED s.22: Yes, sir.

DEFENCE FORCE MAGISTRATE: Thank you. Please be seated.

5 SMN s.22, do you understand the difference in the procedure as I have just outlined it?

ACCUSED s.22: Yes, sir.

10 DEFENCE FORCE MAGISTRATE: Do you wish to maintain your plea of guilty?

ACCUSED s.22: Yes, sir.

15 DEFENCE FORCE MAGISTRATE: Thank you. Please be seated.

20 Gentlemen, having outlined the elements and the different procedure, and noting that you're all represented by competent counsel, I accept your pleas and I formally record a conviction against each of you individually, pursuant to section 60 of the DFDA of prejudicial conduct. What we will now do is proceed to the sentencing phase. Madam Prosecutor?

s.22 [Redacted]

s.22 [Redacted]

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s.22 [Redacted]

35 s.22 [Redacted]

s.22 [Redacted]

40 s.22 [Redacted]

s.22 [Redacted]

s.22 [REDACTED]

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s.22 [REDACTED]

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s.22 [REDACTED]

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s.22 [REDACTED]

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s.22 [REDACTED]

s.22 [REDACTED]

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s.22 [REDACTED]

s.22 [REDACTED]

s.22 [REDACTED]

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DEFENCE FORCE MAGISTRATE: I will now commence with my sentencing comments, followed by the actual sentences.

s.22 [REDACTED] please remain seated for the moment. This takes a little bit of time to work my way through. When I come to the individual sentences, I will have you stand at that stage.

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5 s.22 are before me for action under Part IV of the Defence Force Discipline Act, following their respective convictions of a charge each under section 60 of the Defence Force Discipline Act of prejudicial conduct. In summary, whilst members were here at *Cerberus* for their initial employment training as boatswains, they were part of what I will describe as an informal Facebook Messenger group called, “Yeah, the Boys”.

10 This was a closed group. It allowed the members to participate in conversations and send messages to each other. Whilst it was initially set up as part of the boatswain class, it was not unsurprisingly also used for informal and private communication and the sending of jokes.

15 In early February 2017, a member of that group, who does not appear before this Court, had uploaded an edited image of SMN s.22 without her consent. It was what I will just summarise as an inappropriate image of her. SMN s.22 was known to the members, particularly the people who are here before me today, as a fellow seaman trainee here at *Cerberus*, but she was not a boatswain; indeed, she was undergoing her cook training.

20 SMN s.22 responded to that, and he would appear to be the first in time, posting 11 laughing face emoticons. SMN s.22 following with a comment, “When they bring the whole bakery” and four elephant emoticons. SMN s.22 then followed that with a, “Yeah boy, more rolls than the bakery”.

25 That makes up the sum of the actions and the offending in this case. Obviously, each member appears before me effectively separately and I have had careful consideration to the individual actions. Also, as I go through the rest of my reasons, their individual personal circumstances, although on a number of occasions I will say “the members”, given there is a lot of common factors in their cases.

30 In determining the appropriate punishment, the law recognises a number of sentencing aims and requires me to have regard to a number of sentencing principles and specifies certain factors which I must take into account in the sentencing process. I am required to impose a sentence of appropriate severity, given the circumstances of the offences, and the personal circumstances of the offenders.

35 While there is a wide discretion in deciding on sentence, that discretion must be exercised in a principled way. It is against this background I indicate formally that I have had regard to the sentencing principles set out

at DFDA section 70, including the need to maintain discipline in the Defence Force, obviously, a significant factor in the case of a prejudicial conduct charge, and to those sentencing principles contained in the Commonwealth Crimes Act 1914.

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There are four aims of sentencing and the following order is not hierarchical. One aim of sentencing is retribution. That is, the sentence should impose on the offender the punishment which he deserves for his wrongful conduct. Another aim of sentencing is deterrence. There are two kinds; first, specific deterrence, which aims to dissuade the offender from committing further offences, and secondly, general deterrence, which aims to dissuade others who may be likeminded from committing similar offences.

As was explained by his Honour, Hunt CJ in *Queen v Harrison* (1997) 93 A Crim R 314 at 320:

Except in well-defined circumstances such as youth or the mental incapacity of the offender, public deterrence is generally regarded as the main purpose of punishment and the subjective considerations relating to the particular prisoner (however persuasive), are necessarily subsidiary to the duty of the Courts to see that the sentence which is imposed will operate as a powerful factor in preventing the commission of similar crimes by those who may otherwise be tempted by the prospect that only light punishment will be imposed.

Another aim of sentencing is denunciation, meaning that the sentence imposed must send, on behalf of the Defence community, a symbolic statement of disapproval of the conduct of the offender. As was observed by Kirby J in *Ryan v The Queen* (2001) 206 CLR 267 at paragraph 118:

Denunciation and impartiality: A fundamental purpose of the criminal law and of the sentencing of convicted offenders is to denounce publicly the unlawful conduct of an offender. The objective requires that a sentence should also communicate society's condemnation of the particular offender's conduct. The sentence represents "a symbolic collective statement that the offender's conduct should be punished for encroaching on our society's basic codes of values as enshrined within our substantive criminal law".

Another aim of sentencing is rehabilitation. In this context that means that the sentence imposed must take into account the prospects of rehabilitating the offender to enable him to retake his place as a

responsible and law-abiding member of society and of the Defence community.

5 Where the offender's chances of rehabilitation are good, this will be an important factor in determining sentence. For example, when rehabilitation is underway at the time of sentencing, leniency has often been warranted, especially where the offender is young.

10 I will digress to note at this point that I am satisfied that is the case with respect to all members before me; that is, not only that they are young, but that rehabilitation is already underway and that I think that their prospects are good.

15 In determining a sentence which meets these aims of sentencing, I must take into account any mitigating or aggravating circumstances of which I need to be satisfied on the balance of probabilities and beyond reasonable doubt respectively. The relevant legislation also requires me to have regard to specific factors, which I have done so. Some, of course, have more prominence in this case and they are the ones that I will specifically mention.

20 With regards to the nature and circumstances of the offence, I have set it out and it was an offence of short compass. Perhaps the most relevant point to add to that is I am satisfied that the offending involved a lack of planning or sophistication with respect to these three members. This was spontaneous and foolish conduct. It was not planned or executed with any degree of sophistication or effort.

25 With respect to their relationship to the victim, while it is a prejudicial conduct charge, there is a clear victim in this case, that being SMN s.22. She was known to them. They must have known that their actions would compound her humiliation in the circumstances.

30 With respect to their rank, age and maturity, all of them were seaman stars at the time and have subsequently completed their initial employment training and are rated seamen today.

35 At the time of offending their respective ages were, for SMN s.22 21, for SMN s.22 22, and for SMN s.22 19. Today they are 22, 22 and 40 20 respectively. This is a small difference but effectively I have paid no real regard to it. I am satisfied that with respect to all of them the offending can be partially attributed to immaturity.

45 With respect to their characters, character statements were tendered in the following fashion: for SMN s.22 from s.22 for

SMN s.22, from LS at the time and now PO s.22 and also CPC s.22. There was also a sailor's performance annual report by PO s.22 on SMN s.22. There is a character statement by PO s.22 for SMN s.22

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In summary, I am satisfied that all of these members are of good character, that they are otherwise good young sailors who have good prospects in front of them. I am satisfied the behaviour was out of character with respect to all of them.

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With respect to their personal histories, all of them are single. SMN s.22 completed year 10, SMN s.22 year 11 and I also had some submissions on his prior work history and the limited socialisation that was involved with that, and SMN s.22 completed year 12. They all enlisted in August 2016, commenced their boatswain initial employment training in October '16 and graduated in July of this year.

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They have all shown contrition for the offence by, amongst other things, making admissions to the service police when first confronted and in the case of SMN s.22 when initially not even confronted. They have all participated in an agreed statement of facts. I am thankful to counsel for also being able to achieve a joint agreed statement of facts in the circumstances.

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SMN s.22 has prepared an apology, which I am confident he will serve on – “serve” is perhaps the wrong term – deliver to SMN s.22 in due course. As well as him, I note that SMNs s.22 and s.22 were told not to make contact with SMN s.22 and I hold nothing against them for not having done so or apologised at this point.

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I have had significant regard to the early indication of a plea of guilty. To the extent that the plea was indicative of remorse, acceptance of responsibility and willingness to facilitate the course of justice, I accept that all those factors are present. I have already indicated that a prejudicial conduct charge perhaps has significance as a type of offending in the circumstances of the Defence Force.

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Perhaps speaking on someone else's behalf, I infer two things on behalf of Chief of Navy. The first one is that he wants his sailors to live up to service values. The second one is that when they do not live up to service values he wants them to live up to service values. I think early admissions to service police and then a plea in the circumstances reflects that second expectation.

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But for that, I may have thought that some punishment was going to be

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required that would have assisted people to correct their attitude and behaviour going forward. Given the circumstances of the sailors, that probably would have given me but one other alternative. In the circumstances today, they will not be going to a period of detention. I am
5 not saying that but for the plea I would have done, but it definitely would have been something I would have been considering whilst engaged in my deliberations. There is a complete absence of civil and service offences that allows me to treat them all as first offenders and I can extend a degree of leniency, which I have done.

10 With respect to their behaviour after the commission of the offence, all three sailors have clearly applied themselves to their early service career and are trying to make the best of their current situation and their ability to learn in their initial postings; and I commend them for that.

15 I am advised by the prosecution that all three have agreed to assist in the prosecution of any other members arising from the circumstances of this offending. That is a significant mitigating factor and I have taken it into account.

20 With respect to the deterrent effect that my sentence may have on the sailors themselves, genuine remorse is one factor indicating realistic prospects of rehabilitation and therefore a reduced need for specific deterrence. So is demonstrated progress towards rehabilitation between
25 the time of offending and today and, in the case of SMN s.22, an element of self-reporting as well. I am satisfied that general deterrence has a significantly reduced weight in the circumstances of this case.

30 With respect to the deterrent effect that any sentence or order may have on consideration of others, if Pathway to Change and the implementing single service programs like New Generation Navy have made anything clear, surely it is that offences of this nature cannot and will not be tolerated. This is more than just a misunderstanding. There would have been no
35 doubt in the members' minds if they had have paused for but a moment to realise that their conduct was completely unacceptable and other sailors need to realise that such conduct is completely unacceptable.

40 I continue though to hold out hope for rehabilitation in light of both the offending occurring relatively early on in their service career while they perhaps were not yet fully inculcated into the navy's way of thinking and also the character evidence and their own performance since.

45 When considering what punishment to award I have to, of course, be cognisant of the consequential effects of that punishment. I note the maximum fine that I can award is \$3833, and they all have varying

abilities to pay, particularly as they are all currently single. I have had regard though to their individual presentence reports.

5 Finally, there is the need to maintain discipline in the Defence Force. I do not think I need to repeat what I have already said about service values, perhaps except to say of the five service values this offending pretty much ticks each and every one of them, which is not a good thing to see. I have already noted that the victim, to the extent that you have one in a prejudicial conduct charge, was a fellow Defence Force member.
10 Whether that makes it any more disappointing or not I would be loath to say, except to say it is disappointing.

15 This brings me to the final sentencing principles that I need to consider in every case and, of course, in this case. When it comes to considering which sentence is appropriate the principle of proportionality requires that I impose a sentence which bears a reasonable or proportionate relationship to the offending conduct in question.

20 Accordingly, the principle imposes an obligation to ensure that the sentence imposed on the offender is of a severity that reflects the gravity of offence, considered in light of its objective circumstances. The objective circumstances of the offence include the maximum statutory penalty for the offence, the degree of harm caused, the method by which it was committed and the degree of culpability of the offender.

25 The maximum punishment allowable by law for this offence is three months' imprisonment. This is an indication of how seriously the legislature regards this type of offence, but I keep in mind the maximum is reserved where the offence is so grave as to warrant the maximum prescribed penalty, which is not the case here.
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I consider this offending to be at the lower to medium end. I do note I do not consider it to be at the low end. I place particular weight on the fact that there was a fellow navy member who was the subject of the inappropriate activities.
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I also place weight on the enduring nature of the comments. This was not a passing oral comment made, but rather something that was uploaded or typed on to a computer system and everyone, no doubt, is aware that by doing so, it is there and it remains there for a number of people to see.
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In determining sentence, I must also take into account the personal circumstances of the offenders, while being careful to ensure I do not allow attention to persuasive personal considerations to result in inadequate weight being given to the objective seriousness of the
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offending. As well as the broad personal circumstances, I have placed though significant weight on the early cooperation with the service police, the early indications of pleas of guilty, and the offer to assist the prosecutorial authorities going forward.

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With respect to parity, while there is no general rule that the same sentence must be passed on a co-accused, the Court should nonetheless take into account the sentence imposed on a co-offender, so that there is no justifiable sense of grievance arising from the sentence disparity.

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Where matters such as age, maturity, background and all other subjective characteristics of the offenders differ significantly, I would not be required to equate the sentences. While I have not had lengthy submissions on the personal or subjective circumstances of the two members who were dealt with by the Chief Judge Advocate, I think I can infer quite a bit from the fact that they were also junior recruits. While they had finished their recruit training, they were junior sailors early on in their career.

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The last principle I mention is that of parsimony. The principle of parsimony requires that I impose not the maximum sentence which I think the offending warrants, but rather only the minimum sentence which I regard as necessary to meet the sentencing aims which have been referred to.

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When considering the appropriate punishment, I effectively should start from the bottom of the scale of punishments and consider whether that punishment is appropriate. If not, I then look at the more serious punishment in ascending order.

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Finally, I may also order part or whole suspension of sentences of fines or detention. A three-stage approach should be adopted to considering suspended sentences. The first step is a determination of whether the base punishment, in this jurisdiction that is detention or a fine, and not some other lesser sentence is called for.

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The second step is the determination of the duration of detention or the amount of the fine. It is only once those two steps have been completed would I consider the third step, namely whether suspension is in whole or part appropriate. It is impermissible to lengthen the duration of a suspended sentence or detention, or increase the amount of fine because some or part of it is suspended.

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The relevant factors going towards suspension include youth, which we have here; first offender, which we have here; remorse, which we also have; otherwise good service, and I add here, the cooperation with future

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prosecutions. To be balanced against these objectives, is the seriousness of the offence, such that I consider whether a period of detention would need to be physically served or a fine to be immediately payable.

5 I have carefully considered all the factors which I have just gone through, particularly those objective elements of the offending, the members' personal circumstances, and the consequential effects of the punishments I have determined to be the minimum necessary to achieve the aims of sentencing required in the individual cases.

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SMN s.22 please stand. SMN s.22, I have previously found you guilty of a single count of Defence Force Discipline Act section 60(1), prejudicial conduct, and I formally recorded a conviction on that charge. It is on that charge that I impose the following punishment:

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A fine of \$500, \$250 of which is suspended.

I will make some general comments on the effects of these punishments, once I have sentenced the other two members. You may be seated.

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SMN s.22 please stand. I have previously found you guilty of a single count of Defence Force Discipline Act section 60(1), prejudicial conduct, and I formally recorded a conviction on that charge. It is on that charge that I impose the following punishment:

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A fine of \$500, \$250 of which is suspended.

You may be seated.

30 SMN s.22, please stand. I have previously found you guilty of a single charge under the Defence Force Discipline Act section 60(1), prejudicial conduct, and on that charge, I formally recorded a conviction. It is on that charge that I impose the following punishment.

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A fine of \$500, \$250 of which is suspended.

You may be seated.

40 When considering whether to partially or fully suspend the fine, I considered the objective seriousness of the offending. I do consider this offending to be relatively serious. I said at the lower to medium end, and that is appropriate; it is clearly not higher than that, but it is not a trivial or inconsequential type of offence.

I considered the need particularly for general deterrence and that could not be adequately met by a fully suspended fine, nor would a fully suspended fine provide the relevant level of denunciation. I do believe though that given the personal circumstances, a partially suspended fine was appropriate.

It is also appropriate to indicate that while I have awarded the same fine to all three members, there were various factors pulling in different directions with respect to all of them. Ultimately, it would have been quibbling to make small adjustments to the left or right in either direction because, as I say, there were matters going in all directions.

Seamen, you may remain seated for this note. I just note that while your defending officers will advise you of your rights of petition and appeal, you should be aware that a sentence of fine imposed by me at my level of jurisdiction takes effect immediately. That does not mean though that you will have to pay \$250 whilst walking out of the Courtroom. Paperwork will follow, but at my level the fine is now in effect.

With respect to the \$250 that I have suspended, if you remain of good behaviour for the next 12 months, that \$250 will never become payable; so in 12 months' time, it will effectively fall away. However, if you were to commit an alleged offence within the next 12 months and then be charged, and if you were found guilty, a subsequent summary authority or Defence Force magistrate, heaven forbid you find yourself before someone like myself again, could, as well as punish you for your future offence, revoke the suspension, so the \$250 would become payable.

I have one final thing to say, so please stand all three of you while I make this comment. You have all indicated a desire to continue to serve in the navy. Navy life will present you with future challenges, both operationally, but also personally. Seventy-five per cent of my work, and that of course is an estimate, does not come from bad people, but good people who have exercised poor judgment.

Sometimes we are actually all the better for having made a mistake and learnt the lesson, than if we had never strayed in the first place at all. I hope all three of you fall into that category now and will be better sailors for the proceedings we have had today and the lessons you have learnt from it. I wish you well in your future careers. You may be seated.

s.22

s.22

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s.22

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