

Case Summary
Office of the Judge Advocate General

DEFENDANT: CPL Smith

TYPE OF PROCEEDING: Defence Force Magistrate

DATE OF TRIAL: 16 September 2025

VENUE: Puckapunyal Military Area, VIC

Charges and plea

	Statement of Offence	Plea
Charge 1	DFDA, s. 34 Assaulting a subordinate	Not Guilty
Alternative to Charge 1	DFDA, s. 60(1) Prejudicial conduct	Guilty
Charge 2	DFDA, s. 34 Assaulting a subordinate	Not Guilty

Pre-Trial: Closed hearing and non-publication orders

Application made:	No
Determination:	N/A

Trial: Facts and legal principles

The defendant pleaded guilty on the day of trial to the alternative charge to Charge 1. The prosecution accepted the plea to the alternative charge of prejudicial conduct and therefore the first charge of assaulting a subordinate did not proceed. However, he pleaded not guilty on the second charge of assaulting a subordinate and proceeded to a contested trial. He was convicted.

The facts of the prejudicial conduct charge involved stroking the back of a junior female soldier whilst consoling her, stroking her back over clothing between the lower and middle back. This inappropriate touching was not welcome by the complainant and made her feel very uncomfortable.

A few weeks later he committed the offence of assaulting a subordinate against the same complainant. He passed behind her in a computer room, put his hand in her map pocket and lightly touched her thigh whilst making a 'whoop' sound'. She was shocked and made an immediate complaint to other members.

Neither offence involved a sexual element (because that involves a different offence and therefore could not feature in this case). The touching constituting the prejudicial conduct was described by the DFM as 'creepy'. The touching in the assault charge involved a momentary light application of force.

Findings

	Finding
Charge 1	Not Applicable
Alternative to Charge 1	Guilty
Charge 2	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.*

Sentencing: Facts and legal principles

See above for the facts.

The defendant had two previous similar convictions against different complainants. He was about to be separated from the defence force. He had a dependent family and medical conditions, which were factors that had to be taken into account under the relevant legislation. In considering all of his circumstances he was found no longer to be fit to hold the rank of CPL. A reduction in rank in his case will significantly affect his future pension entitlements.

Punishments and orders

Charge 1	Not Applicable
Alternative to Charge 1	Reduction in rank to LCPL, seniority to date from 17 September 2025
Charge 2	Reduction in rank to LCPL, seniority to date from 17 September 2025

Outcome on automatic review

The Reviewing Authority's decision on automatic review was handed down on 07 October 2025.

	Conviction	Punishments / Orders
Charge 1	Not Applicable	Not Applicable
Alternative to Charge 1	Upheld	Upheld
Charge 2	Upheld	Upheld

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