

## **WHITE v DIRECTOR OF MILITARY PROSECUTIONS & ANOR (S312/2006)**

Application for an order to show cause filed: 5 September 2006

Date referred to the Full Court: 11 October 2006

Ms Anne-Margaret White is a Chief Petty Officer with the Royal Australian Navy based at HMAS Manoora. On 30 June 2006 she was charged with six counts of indecency and one of assault under the *Defence Force Discipline Act 1982* ("the Defence Discipline Act"). The alleged offences occurred in Williamstown, Victoria on 3-4 June 2005 and the victims were also naval personnel. The alleged offences did not occur on Commonwealth property, none of those involved were on duty at the time and no-one was in uniform. Ms White denies the charges.

On 9 November 2006 Ms White filed an amended application for an order to show cause seeking an order of prohibition against the First Defendant and other declaratory relief. She submitted that section 103 of the Defence Discipline Act is invalid insofar as it permits the First Defendant to request that the Registrar of Military Justice refer the charges against her to a Defence Force Magistrate for trial (or to convene a Court Martial). Ms White also submitted that neither a Defence Force Magistrate nor a Judge Advocate under the Defence Discipline Act is appointed pursuant to section 72 of the Constitution. She further claimed, inter alia, that the power to hear and determine the charges under section 61 of the Defence Discipline Act is an exercise of judicial power.

On 11 October 2006 Chief Justice Gleeson made an order referring this matter to the Full Court for further hearing. On 20 November 2006 Ms White filed an amended notice of a constitutional matter, clarifying the constitutional issues to be determined.

The grounds in the amended application to show cause include:

- That section 103 of the Defence Discipline Act is invalid insofar as it permits the First Defendant to request the Registrar of Military Justice to refer the charges against Ms White to a Defence Force Magistrate for trial or to convene a General Court Martial or Restricted Court martial to try the charges.
- That neither a Defence Force Magistrate nor a Judge Advocate under the Defence Discipline Act are appointed pursuant to section 72 of the Constitution.
- That neither a Court Martial nor a Defence Force Magistrate is a Court within the meaning of section 71 of the Constitution.