

HASKINS v. THE COMMONWEALTH OF AUSTRALIA (S8/2011)

Writ of Summons: issued 7 January 2011

Special Case: filed 21 February 2011

The Plaintiff enlisted in the Royal Australian Navy on 5 April 2004 and continues to serve in the Navy with the rank of Able Seaman.

On or about 1 October 2007 the Australian Military Court was established pursuant to the *Defence Force Discipline Act 1982 (Cth)* ("the DFDA").

The Plaintiff was charged with eleven charges as to misuse of a Defence Travel Car, contrary to s 60 of the *Financial Management and Accountability Act 1997 (Cth)* and subs 61(3) of the DFDA ("the charges"). He pleaded not guilty to all the charges. On 8 December 2008 the charges were tried by the former Australian Military Court ("the former Court") and the Plaintiff was convicted of all charges and was sentenced to punishment of 35 days detention.

Between 11 December 2008 and 7 January 2009 the Plaintiff was detained at the Defence Force Correctional Establishment at Holsworthy in New South Wales.

On 26 August 2009, in the matter of *Lane v Morrison* this Court declared the provisions of Division 3 of Part VII of the DFDA to be invalid. On 22 September 2009 the *Military Justice (Interim Measures) Act (No 2) 2009 (Cth)* ("the Interim Measures Act") commenced operation. Part 2 of Schedule 1 to the Interim Measures Act applies to the punishments purportedly imposed by the former Court on the Plaintiff prior to the decision in *Lane v Morrison*. Pursuant to items 3, 4, and 5 of Schedule 1 to the Interim Measures Act, the rights and liabilities of the Plaintiff are declared to be and always have been the same as if the punishments purportedly imposed by the former Court had been properly imposed by a General Court Martial.

The rights and liabilities as declared by items 3, 4 and 5 of Schedule 1 to the Interim Measures Act are subject to the outcome of any review provided for by Part 7 of Schedule 1.

The Plaintiff did not lodge a petition for a punishment review with the competent reviewing authority within the time permitted under Part 7 of Schedule 1. The Plaintiff has not sought under Part 7 of Schedule 1 an extension of the period for lodging a petition for punishment review.

The Special Case states the following question for consideration by the Full Court:

- On its proper construction does the *Military Justice (Interim Measures) Act (No 2) 2009 (Cth)* provide lawful authority justifying the detention of the Plaintiff.
- If the answer to question 1 is 'yes', are items 3, 4, and 5 of Schedule 1 to the *Military Justice (Interim Measures) Act (No 2) 2009 (Cth)* valid laws of the Commonwealth?