



## HIGH COURT OF AUSTRALIA

Public Information Officer

9 September 2004

RE AN APPLICATION FOR WRITS OF CERTIORARI AND PROHIBITION AGAINST COURT MARTIAL MEMBERS COLONEL STEVEN AIRD, LIEUTENANT COLONEL BRYCE TITCUME, MAJOR PETER THUAUX, CAPTAIN SHANNON CALLAGHAN AND CAPTAIN SIMON WORBOYS, JUDGE ADVOCATE WING COMMANDER MICHAEL BURNETT, AND THE COMMONWEALTH; EX PARTE STEWART WAYNE ALPERT

Legislation under which an Australian soldier stationed at Butterworth air force base in Malaysia and accused of rape while on leave in Thailand could be dealt with by a court martial rather than by the civil courts was constitutionally valid, the High Court of Australia held today.

Private Alpert, 23, was deployed with the 6<sup>th</sup> Battalion's Delta Company at Butterworth from August to November 2001. The company had infantry training with the Malaysian armed forces and was responsible for securing RAAF aircraft and other Australian Defence Force (ADF) assets at Butterworth. Private Alpert and other members of Delta Company had recreation leave from 22 to 30 September which they could take in Thailand, Singapore or on the Malaysian peninsula. He was in a group that went to Phuket in Thailand. He travelled on a civilian passport, wore civilian clothes and paid his own way. On 28 September at a nightclub he met up with an 18-year-old British woman who was in Thailand for her gap year. Private Alpert allegedly raped her on Patong Beach. On 2 October, when he was back in Phuket for training, the woman asked an officer for Private Alpert's name and details and told the officer she was going to try to have him charged with rape. She later wrote to the commanding officer of 6RAR.

In February 2003 he was charged before a general court martial with non-consensual sexual intercourse. Private Alpert challenged the validity of Defence Force Discipline Act (DFDA) provisions which made his alleged conduct a service offence. He contended that the constitutional defence power did not extend to authorise Parliament to make laws criminalising conduct by ADF personnel during leave when serving overseas.

By a 4-3 majority, the Court held that it was within the constitutional defence power for Parliament to make Private Alpert's alleged conduct a service offence. DFDA provisions were sufficiently connected with military discipline and the proper administration of the ADF to be a law with respect to defence for constitutional purposes. The Court held Parliament therefore did have power to extend the DFDA's code of behaviour should extend to soldiers while on leave during overseas service and to permit the trial by general court martial for the offence of rape in Thailand.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*