

HIB Number: 000919

Date/Time  
Transmitted: 11/04/2011 05:55 PM

Subject: DEFENCE FORCE DISCIPLINE ACT 1982 SUMMONS FOR PRODUCTION  
OF DEFENCE PERSONNEL FILES - INCLUDING MEDICAL,  
PSYCHOLOGICAL AND COUNSELLING

Comment:  
Action Area HDL

**LIMITED DISTRIBUTION - NOT TO BE FORWARDED**

**SENSITIVITY: There is current high level concern about access to Defence members' medical and psychological records for the purposes of disciplinary proceedings.**

**KEY ISSUES:**

- **On 28 October 2011 a Summons was issued by the Registrar of Military Justice at the request of the defending legal officer in a General Court Martial convened to deal with serious charges against a Navy officer.**
- **The Summons was served on the Secretary of Defence on the same day and covered files and materials relating to another Defence member (the victim of the alleged actions the subject of the charges). They include the member's psychology, medical and personnel files. Also covered is material disclosing the content of counselling sessions in which the member participated.**
- **Minter Ellison, instructed by Defence Legal, appeared for the Secretary at the return of the summons at 08.30am, 4 November 2011 at the Court Martial Facility in Fyshwick, ACT. Objections were made at this time about the breadth of the Summons, relevance and a failure to comply with applicable ACT evidence laws for the protection of confidential counselling records.**
- **The Secretary's application to have the Summons set aside is adjourned until 15 November 2011.**

## **BACKGROUND:**

**A Navy officer is charged with a range of service offences under the *Defence Force Discipline Act 1982* linked to an incident alleged to have taken place aboard HMAS Sirius.**

**A General Court Martial has been convened and a hearing is listed to commence on 29 November 2011.**

**On 28 October 2011, a Summons addressed to the Secretary, Department of Defence, was issued by the Registrar of Military Justice at the request of the legal officer representing the accused.**

**The Summons was returnable on 4 November 2011, 0830, at the Court Martial Facility in Fyshwick, ACT.**

**Defence Legal is concerned about the breadth of the summons and an apparent absence of a legitimate forensic purpose.**

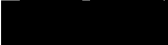
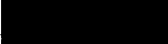
**Minter Ellison was engaged and instructed to appear before the Judge Advocate on 4 November 2011 during a pre-trial directions hearing to apply for an order to have the Summons set aside. The application included a submission about the application of Division 4.5 of the *Evidence (Miscellaneous Provisions) Act 1991 (ACT)* which sets out comprehensive court supervised processes in relation to requests for access to, and the production of, protected counselling communications. The *Act* expressly covers a counselling communication made by a person against whom a sexual offence is alleged to have been committed.**

**The Judge Advocate has adjourned the matter to 15 November 2011 to hear argument as to the validity of certain charges against the accused. The Judge Advocate's decision about those charges will have a direct bearing on the scope of the Summons and the Secretary's objections.**

**The Defence member whose interests are affected by the Summons has been advised, through her support person, about the Summons and the actions that Defence Legal is taking on the Secretary's behalf.**

## **TALKING POINTS**

- I am aware of this matter.**
- As the matter is before the courts it would be inappropriate for me to comment on it further.**

<b>Contact Officer:</b>	Michael Lysewycz	W: 62662004	M: 
<b>Authorised by:</b>	Mark Cunliffe	W: 62664143	M: 
<b>PA Clearance by:</b>	Caroline Chalker	W: 626 71951	M: 