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This Month:



Australian Military Court

Ruled Unconstitutional



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Australian Military Court Ruled Unconstitutional

The Australian Military Court (AMC) was established in October 2007 by the Howard Government. The AMC was designed to try members of enemy forces during wartime, operating outside the scope of conventional criminal and civil proceedings. The judges were military officers and fulfilled the role of jurors.

The AMC was set up to act as an inquisitorial system based on charges brought by a military authority, prosecuted by a military authority, judged by military officers, and sentenced by military officers against a member of an adversarial force.

Under Chapter Three (section 71) of the Australian Constitution it is stated that the judicial power of the Commonwealth is to be vested in a Federal Court (The High Court), and in any other federal courts which are created by Parliament and in any court that the Parliament invests with federal jurisdiction.

However, despite section 71 of the Constitution, the AMC although expressly not a court according to its legislation, was exercising the judicial power of the Commonwealth and was operating separately from civilian courts.

It is because of section 71 that the Court ruled in *Lane v Morrison [2009]* that the AMC was invalid under Chapter Three of the Australian Constitution. In finding this, the Court asserted that only Chapter Three Courts can exercise the judicial power of the Commonwealth.

In *Lane V Morrison [2009]*, Lane was charged with the offence of 'an act of indecency without consent' under the *Crimes Act [1990]* and with the offence of assaulting a superior officer. The Australian Military Court has no jurisdiction under the *Crimes Act [1990]*.

Until the Government is able to find a solution that will create a new, long-standing military justice system under Chapter Three of the Constitution, in the interim, the military is left without a justice system.

The decision by the High Court to invalidate the Australian Military Court instituted in 2007 was not unexpected, as the underlying constitutional, legal and philosophical issues have been debated widely for over a decade.

The decision has forced the Government to return to a discredited system of courts martial as it considers its next move. The Defence Minister, John Faulkner, said he and the Attorney-General, Robert McClelland, were seeking urgent legal advice on how the system could be replaced.

