

What Are Servants Of The Crown?

By

Victims Of Abuse

In The

Australian Defence Force Association Inc. A0059257W

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ABSTRACT

[This document is not about arguing whether uniformed members of the Australian Defence Force should be Servants Of The Crown or Employees of the Commonwealth. That is a debate for another day.

Rather it is about clearing up the confusion regarding their status in law and the Plan that has arisen a result of a misconception that uniformed members of the Australian Defence Force are employees of the Commonwealth.

They are, in return for sacrificing most of their civil rights, rights that no union in their right mind would sacrifice through an Enterprise Bargaining Agreement, members of the Australian Defence Force receive significantly greater disability coverage through Military Superannuation and the Department Of Veterans Affairs.

For those who have been abused, those rights and benefits have been stripped away in order to cover up the abuse whilst the criminal gets to keep theirs.]

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Ver. 1.5a @ 17/09/2018

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1.0 Management Summary

1.1 Overview – More Hazardous Than Being In The Public Service

The status of uniformed members of the Australian Defence Force dates back to King Charles the First.

Being a uniformed member of the day is much more hazardous and dangerous than sitting in the Parliament or working in the Public Service.

They live in a hostile environment explosives, flammable liquids, weapons that can injury.

The hazards that they regularly live with would not be tolerated in a civilian workplace by any self respecting occupational health and safety shop steward.

1.2 Comcare Hesitant To Even Enforce ADF Safety Standards

In addition, Comcare has consistently and persistently been ineffective in taking on Defence when they make a dangerous situation worse by ignoring even their own safety rules. See **Comcare v Commonwealth** of Australia [2012] FCA 1419

Then they go to war / Low Intensity Conflicts and have people shooting them and using explosive devices to kill them.

1.3 Throwing A Hand Grenade / Sniping Has A Real Difference In The ADF From Parliament And The Public Service

Throwing a hand grenade or sniping in the Parliament or the Federal Public Service will not get you killed.

In the Australian Defence Force , these things can and will get you seriously injured or killed.

1.4 Parliament Has Acknowledged This Danger Through DVA And Military Super

The Parliament has acknowledged that service in the Australian Defence Force is a young persons profession by setting up generous and special benefits for those injured during their Australian Defence Force service through:

1. The Department Of Veterans Affairs Acts and
2. Then invalidity and other superannuation provisions.
3. Mandatory Retirement Provisions at earlier ages than in the Civilian World.

1.5 Members Of The ADF Are Servants Of The Crown Not Employees!

If only they were that lucky!

Members of the Australian Defence Force are not employees of the Commonwealth.

Their exact legal status is that of servants of the Crown – not employees.

1.6 Downside Of Being Servant Of The Crown

These are:-

- ✕ No Union
- ✕ No Fair Work Act Protection
- ✕ No Real Discrimination Protection
- ✕ You Get Shanghaied - Sign Up For One Job But End Up Doing Another
- ✕ Can't Just Resign
- ✕ Can Be Sacked Any Time – No Unfair Dismissal
- ✕ They can place you involuntarily on Leave Without Pay which means you have to rely on Family Resources to survive – you can't access Centre Link nor can you resign or get a another job.
- ✕ Don't Have Weekends
- ✕ No Overtime Pay / Meal Money
- ✕ Required To Shift Every Two Years
- ✕ Can Be Crash Posted At Any Time
- ✕ Work Ridiculous Hours – 72 hour watches
- ✕ Have Effective No Choice Over Medical Treatment
- ✕ Non Medical Personnel Making Medical Decisions On You
- ✕ Subject To ADF Rules Even When On Leave
- ✕ No Longer Fully Covered For Health Care
- ✕ If You Are Injured – Instead Of Being Looked After As Promised – Thrown Onto Scrap Heap
- ✕ Pay Rates At Lower Ranks Just Above Poverty Line
- ✕ You Are At The Complete Mercy Of Those Above You

Service In The Australian Defence Force Akin To Slavery

1.7 Promises Made To You As A Servant Of The Crown

When you join as a servant of the Crown, you are promised the following:-

1. The Australian Defence Force will cover your medical expenses – **that's why they don't pay the Medicare Levy.**
2. When you leave, any injuries sustained will be looked after by the Department Of Veterans Affairs.
3. If you are seriously disabled, you get your invalidity pension from Military Superannuation.

1.8 What Happens To Victims Of Abuse In The ADF Who Are Servants Of The Crown?

For Victims Of Abuse in the Australian Defence Force, they have been ripped off twice.

They were ripped off twice in the following manner:-

1. The failure to enforce the statutes, Queens Regulations, Ship's Standing Orders, Base Standing Orders, and Captains Standing Orders which specifically prohibit abuse in the Australian Defence Force.
2. When the serious abuse occurs they are stripped of:-
 - a. Their Health Care Rights through the Department Of Veterans Affairs and
 - b. Their Superannuation Rights.

For the Victim of Abuse In The Australian Defence Force, the promises made on joining and forming part of the relationship between them and the Commonwealth are deliberately and maliciously broken.

The problem has never has been one of having legislation and regulation to prevent the abuse.

The problem has always been one of enforcing that legislation and those regulations.

When all is said and done by the Australian Defence Force on this issue, more is said than is done.

They allow the abusers to keep their benefits and complete their careers but the badly injured victims are thrown on the scrap heap with no treatment for their injuries or invalidity pension.

As part of the covering up of abuse:-

- ✕ Instead of being properly examined and processed as medical discharge, you are discharged on other grounds that prevent your access to:-
 - Treatment from the Department Of Veterans Affairs and
 - Your invalidity pension from Military Superannuation.
- ✕ The abuse is covered up to protect the careers of the abusers and not documented in your military or military medical records.
- ✕ Medical Treatment within the Australian Defence Force is used as a form of abuse.
- ✕ The victim is stripped of their treatment and superannuation rights whilst their abuser gets to keep theirs.
- ✕ If you complain about the abuse, you get more abuse.

2.0 Servants Of The Crown

2.1 Legal References

1. **Marks v Commonwealth** [1964] HCA 45; (1964) 111 CLR 549 (12 August 1964)
2. **White v Director of Military Prosecutions** [2007] HCA 29 19 June 2007 S312/2006
3. **336/96 Print N0433** [1996] AIRC 313; (1 April 1996) - Industrial Relations Act 1988 - s.188 application for registration as an association Armed Forces Federation of Australia (D No. 30076 of 1992)

2.2 Servants Of The Crown

Members of the Australian Defence Force are not employees of the Commonwealth.

Their exact legal status is that of servants of the Crown – not employees

As was noted by Deputy President Williams in **336/96 Print N0433** :-

“The statutory provision, referred to above, that appointment or promotion of an officer in the armed services is not to “create a civil contract between the Crown or the Commonwealth and the person appointed or promoted” strongly points to a conclusion that, prior to such appointment or promotion, there is no such civil contract in existence. If that is the case, and since the statutory provision makes it abundantly clear that neither appointment or promotion of an officer itself creates such a contract, then, at no time whilst a person is serving as a member of the armed forces would there be a contractual relationship between that person and the Crown or the Commonwealth.

.....

The Commission recognises that members of the armed forces may now have afforded to them benefits that are afforded to persons usually considered to be employees and that the government and/or the armed forces themselves may from time to time use language in respect to members of the armed forces that is appropriate to an employment relationship. Neither of these factors, however, can alter the relationship between the members of the armed forces and the Crown. Neither turns that relationship into one either of contract or of employer and employee. Nor can the fact that for certain purposes such persons are “deemed” to be employees. Indeed, the very fact that the Parliament has perceived the need to specify or deem in certain legislation that such persons are employees of itself suggests that, but for such specification or deeming, such persons would not be employees.”

3.0 Downside Of Being Servant Of The Crown

These are:-

3.1 No Union

- ✕ Cannot have a union to protect what little rights they have.

3.2 No Fair Work Act Protection

- ✕ Are locked out of the Fair Work Act

3.3 No Real Discrimination Protection

- ✕ Locked out of most of the Discrimination Acts

3.4 You Get Shanghaied - Sign Up For One Job But End Up Doing Another

- ✕ You sign up to be an Electronics Technician, but after joining up are told, they have too many electronics technicians so you will be a cook instead.

Sounds unbelievable but it happens regularly, because once you sign up they own you.

- ✕ One of our members signed up to be just that. After he was told, they had no space on the course at Nirimba so he was going to be sent to HMAS Leeuwin and then they would “see what they could do after a year”. If nothing else it would have delayed completion of the course by a year and subsequent pay rises.
- ✕ In another case a number of adults were signed up by the Royal Australian Navy to do their apprenticeships but then sat in a depot for two years doing nothing because the Royal Australian Navy had no intention of providing the courses.

3.4.1 Analogous To Signing Up To Being An MP And Then Being Made A Cleaner At Parliament House

This situation is analogous to you signing up to being a Member of Parliament and then upon arriving that the Parliament has changed its mind and that instead you are now a cleaner.

3.4.2 Even Though The ADF Has Recruited You Under False Pretences – You Can’t Resign

As you will see from the next section, even though the Australian Defence Force has recruited you under false pretences, you can’t resign.

3.4.3 Once You Are In The Australian Defence Force Owns You

Once you are in the Australian Defence Force, they own you!

Any where else you could resign and walk away because of the deception.

3.5 Can’t Just Resign

What Are Servants Of The Crown? By Victims Of Abuse In The Australian Defence Force Association Inc. A0059257W

- ✕ Don't have the right to resign – they can only leave when either their enlistment is up or Defence allows them to leave – see **MARKS v. THE COMMONWEALTH** [1964] HCA 45; (1964) 111 CLR 549. Also see **Annexure C**.

If they leave without permission they are:-

- a. Hunted down
- b. Caught
- c. Court Martialed and
- d. Sent to Prison for leaving without permission whereas in the Civilian World, all you would forfeit is pay in lieu of notice.
- e. Sent back to the base where their abusers are so they can continue the abuse. See **Annexure C**.

3.6 Can Be Sacked Any Time – No Unfair Dismissal

- ✕ Can be sacked at any time with no reason.

As a Servant of the Crown you serve at the absolute Pleasure of the Crown.

Ultimately all it takes is for someone to convince the Minister to inform the Governor General that your service no longer pleases the Crown and that is it – you are out with no right of review or unfair dismissal.

3.7 Can Be Made Involuntary Leave Without Pay

- ✕ Can be made Involuntary Leave Without Pay at any time with no reason or appeal and without your agreement.

When they do this to you:-

- ✕ You can't get Centre Link because you still have a job – it is just that it is not giving you any money.
- ✕ You can't resign – they don't accept it.
- ✕ You can't get permission to do another job.

The only way you can survive is through family support or hand outs from the relevant relief trust fund if you are lucky, as some of our members have found out.

You haven't even been court martialed but in effect forfeit your pay through an administrative decision.

You couldn't do that in the Civilian World, although I bet some employers wish they could.

3.8 Lose Annual Leave

- ✕ You may be granted annual leave but they can cancel it at any time. They will re credit the leave, but if you booked accommodation or transportation e.g Airline Tickets to Bali, you do not get reimbursed the loss.

Furthermore, if you are only able to carry annual leave for up to three years. If because of the needs of the Service, you have been unable to take it, you lose it, unless by grace and favour of your Commanding Officer, he does the paper work to allow you to keep it. It doesn't always happen.

In Civilian Street, your employer can't:-

- ✕ Cancel your leave or
- ✕ Take it away from you.

3.9 Don't Have Weekends

- ✕ We are all used to having our weekends or equivalent. Yet this is not the case when you are a Servant of the Crown.
- ✕ You are required for Weekend Duty.
- ✕ You may not even be rostered but someone calls in ill and there goes your weekend.

3.10 No Overtime Pay / Meal Money

- ✕ Of course they say Service Allowance is given to you in lieu of unpaid over time, but is only flat amount of \$13,991 per annum which you lose at the higher ranks. To put it into perspective typically at sea you are working an 18 hr day.
- ✕ So assuming you are an able seaman on \$86,298 working a traditional 40 hour week you would be being paid at an hourly rate of \$44.95.
- ✕ Now take the same hourly rate and divide it into the Service Allowance means it comes in as 311 standard hours or 155 hours at double time.
- ✕ Yet you are working in the field or on a ship anywhere from 12 -18 hours a day.
- ✕ If you are working an 18 hour day, i.e. an extra 10 hours, the Service Allowance only pays for the first 2 weeks of over time, then you are working unpaid overtime for the rest of the year.
- ✕ We wouldn't let an employer get away with that in the real world.
- ✕ Also in the real world, you are always guaranteed your 8 hours rest from time of completion of overtime to when you next have to be at work, and if this means after your normal start time, you get paid for it.
- ✕ Not so in the Australian Defence Force, no guaranteed rest, you can be made to turn to again as soon as the "overtime" is finished.
- ✕ No meal money, and if you are on base, you have to pay for meals and accommodation.

3.11 Work Ridiculous Hours

When at sea you are normally what we call a one in three watch plus day work.

What does this mean:-

1. You work a normal day between eight and four.
2. In addition to that day you are keeping watch with four hours on and then 8 hours off in addition to the day work.
3. When the ship sets a higher level of alert, you start keeping one in two. This means in addition to your day work you are keeping watch with four on and then only four hours off.
4. In your time off you are expected to feed, clean your clothes and sleep.

On occasion this leads you to keeping 72 hour continuous watches.

For those in the infantry on patrol, they are effectively on duty from the time they are deployed until the time they return to the base.

3.12 Required To Post To A New Location / Ship Every Two Years

- ✂ Every two years you get posted to a new base or ship.

3.13 Can Be Crash Posted At Any Time

- ✂ A key member of the Australian Defence Force becomes ill, you can be without warning transferred over night to replace them.

3.14 Have Effective No Choice Over Medical Treatment

- ✂ Whilst in theory, you have the right to say no to medical treatment, in reality if you do, life gets made very difficult for you by those more senior in rank

3.15 Non Medical Personnel Making Medical Decisions On You

- ✂ In the Army, the Medical Doctor may sign a light duties certificate or order sending you to Hospital or the Soldier Recovery Centre, but it does not work unless your Commanding Officer signs off on it.

In the Real World, medical decisions and treatment are left to qualified Medical Personnel not your boss.

3.16 Subject To ADF Rules Even When On Leave

- ✂ Are subject to the Defence Force Discipline Act 24 hours, 7 days a week – see *WHITE V DIRECTOR OF MILITARY PROSECUTIONS* [2007] HCA 29 19 June 2007 S312/2006

3.17 No Longer Fully Covered For Health Care

- ✘ Health Care is provided by the Australian Defence Force as part of your conditions as a Servant Of The Crown. This is why they do not pay the Medicare Levy.
- ✘ Yet they are no longer covered for injury 24 hours, 7 days a week in terms of the Department Of Veterans Affairs.

3.18 If You Are Injured – Instead Of Being Looked After As Promised – Thrown Onto Scrap Heap

- ✘ In the case of injury on the job they are thrown out. The Australian Army is the worst offender in this context. If you are not fully deployable, out you go. Yet in the Civilian World, if you were suffering Post Traumatic Stress Disorder from your work e.g. a teller in an armed robbery, your employer would have to find you alternative employment in the company.
- ✘ Also it shows the lie of what they say when you join, that if you are injured the Australian Defence Force will look after you.

3.19 Pay Rates At Lower Ranks Just Above Poverty Line

- ✘ At the lower ranks, their income is barely over the poverty line, the only way it gets above is through the various service allowances.
- ✘ The impact upon family life is appalling with the constant postings.

3.20 You Are At The Complete Mercy Of Those Above You

- ✘ The Australian Defence Force is extremely hierarchical with great power over you given to those above you in rank.
- ✘ Man has no rights but that which they can enforce, but the enforcement of those rights are dependant on those above you agreeing to do so.
- ✘ Your career is in the absolute hands of those above you, and if they don't like you, you are in danger. Sure you can do a redress of Grievance but they have a track record of not succeeding.

3.21 Service In The Australian Defence Force Akin To Slavery

When you think about it service in the Australian Defence Force is very much a kin to slavery.

4.0 Promises Made To You As A Servant Of The Crown

When you join as a servant of the Crown, you are promised the following:-

1. The Australian Defence Force will cover your medical expenses – **that's why uniformed members of the Australian Defence Force do not pay the Medicare Levy.**
2. When you leave, any injuries sustained will be looked after by the Department Of Veterans Affairs.
3. If you are seriously disabled, you get your invalidity pension from Military Superannuation.

5.0 What Happens To Victims Of Abuse In The ADF Who Are Servants Of The Crown?

5.1 Overview

5.1.1 Victims Of Abuse In The ADF Are Ripped Off Twice

For Victims Of Abuse in the Australian Defence Force, they have been ripped off twice.

They were ripped off twice in the following manner:-

1. The failure of the Australian Defence Force to enforce the statutes, Queens Regulations, Ship's Standing Orders, Base Standing Orders, and Captains Standing Orders which specifically prohibit abuse in the Australian Defence Force.
2. When the serious abuse occurs the Australian Defence Force strips of:-
 - a. Their Health Care Rights through the Department Of Veterans Affairs and
 - b. Their Superannuation Rights.

For the Victim of Abuse In The Australian Defence Force, the promises made are broken.

The problem has never has been one of having legislation and regulation to prevent the abuse.

The problem has always been one of enforcing that legislation and those regulations.

When all is said and done by the Australian Defence Force on this issue, more is said than is done.

They allow the abusers to keep their benefits and complete their careers but the badly injured victims are thrown on the scrap heap with no treatment for their injuries or invalidity pension.

5.1.2 The Penalties Suffered By Victims By The ADF Covering Up Abuse

As part of the covering up of abuse:-

- ✂ Instead of being properly examined and processed as medical discharge, you are discharged on other grounds that prevent your access to:-
 - Treatment from the Department Of Veterans Affairs and
 - Your invalidity pension from Military Superannuation.
- ✂ The abuse is covered up to protect the careers of the abusers and not documented in your military or military medical records.
- ✂ Medical Treatment within the Australian Defence Force is used as a form of abuse.

- ✕ The victim is stripped of their treatment and superannuation rights whilst their abuser gets to keep theirs.
- ✕ If you complain about the abuse, you get more abuse.

5.2 Discharged Other Than As Medical

Typically, with the Victims of Abuse In the Australian Defence Force, the rules are not followed when they are discharged.

1. They are not properly medically examined when they discharge, when the regulations say they should.
2. They are not medically discharged
3. Instead they are discharged:-
 - a. Services No Longer Required (SNRLA)
 - b. Not Medically Fit (This is not a medical discharge)
 - c. Discharge At Own Request.

There is one case we are aware of where the abuser became aware that their Victim was being Medically Discharged. The abuser then successfully pulled strings to quash the medical discharge and make it a SNRLA discharge.

You can try and change your discharge retrospectively after discharge but the rules for both the Australian Defence Force and Military Superannuation will only use reports generated at the time of discharge.

Good luck with that – unless you are being treated as a special by a Senior Officer in the Australian Defence Force.

5.2.1 Denial Of Medical Treatment From DVA

Typically abuse and the injuries sustained are covered up and not documented in your medical records.

As a result when you go to the Department Of Veterans Affairs to claim for treatment for the injuries sustained there is no record.

Therefore as a result, the Victim will have their claim rejected unless witnesses are prepared to come forward.

However, if the witness is still serving in the Australian Defence Force or is a contractor with the Australian Defence Force they will not do this for fear of adversely affecting their career or Defence Contract.

The Department Of Veterans Affairs will accept a Statutory Declaration for Child Victims as proof of the incident but it is at the discretion of the Delegate for Adult Victims.

Thus the victims are stripped of what they were promised – treatment by the Department Of Veterans Affairs.

5.2.2 Denial Of Invalidity Pension From Military Superannuation

As a result of you:-

1. Not being medically discharged.
2. No record or incomplete record of your abuse in your Australian Defence Force records.
3. Not being properly examined at time of discharge

It becomes almost impossible to claim your right to an invalidity pension.

You can try and change your discharge retrospectively after discharge but the rules for Military Superannuation will only use reports generated at the time of discharge.

Good luck with that – unless you are being treated as a special case by a Senior Officer in the Australian Defence Force.

5.3 Abuse Is Covered Up To “Protect” Officers, Abusers And The ADF

When abuse occurs:--

1. It is a sign that the Officers have lost control.
So admitting to the abuse is bad for their careers.
2. There is the mistaken belief that covering up the abuse is good for Defence. The reality is the opposite, enforcing and upholding discipline is good for Defence and not covering it up.
3. Abusers will run the argument about the adverse effect of punishment on their “innocent” families
4. Finally, quite often, the abusers are great mates with their Officers, and rely upon that friendship to cover up the abuse, after all, what is the point of punishing them, the victim is still damaged.

5.4 Medical Treatment Used As Form Of Abuse – Abuser Paid For Abuse By The Royal Australian Navy

Sometimes Medical Treatment is forced upon you as a form of abuse. The latest trick is to claim that you are mentally ill and force you to a psychiatric unit – See **Annexure B.**

In this case, the Base Medical Officer was taken before the Western Australia Medical Practitioners Board. He was found guilty and fined \$60,000 with Legal Costs of \$340,000.

Lieutenant Commander Fahey lost her career, superannuation rights yet her abuser:-

1. Even though found guilty of professional misconduct had his fine and legal fees paid for by the Royal Australian Navy
2. Remained in the Service
3. Got promoted to Captain

5.5 Abuse Victims Stripped Of Their Health Care Rights And Superannuation Rights

Typically abuse and the injuries sustained are covered up and not documented in your medical records.

As a result when you go to the Department Of Veterans Affairs to claim for treatment for the injuries sustained there is no record.

Therefore as a result, the Victim will have their claim rejected unless witnesses are prepared to come forward.

They lose their superannuation despite it being part of the deal of being a Servant of the crown.

5.6 Complain About Abuse And Get Abused Further

As can be seen from **Annexure C**, the soldier there tried to get away from his abusers and complained.

Instead he was the one court martialed, nothing was done about his abusers.

In **Annexure D**, the excuse for the abuse was that the abuser was :-

“Jones had been trying to instill discipline into a wayward and headstrong young female by ordering her to remove her blouse and expose her bra, by spanking her on four occasions - three times on her bare buttocks, making her count the blows and ordering her to say she was a naughty girl”

The old, excuse – just trying to toughen the Victim up.

In this case:-

- 1 The abuser got his full pension and **DVA Coverage, including whilst he was in prison.**
- 2 His victim was discharged, stripped of her superannuation rights and is now a complete train wreck without full coverage from the Department Of Veterans Affairs.

Some other examples:-

1. In another case, the child abuse victim had taken refuge with his parents, the Military Police broke into his parents house and dragged him back to the place of abuse.
2. In another case, instead of prosecuting the sexual assailant, the Victim was made to undergo breast reduction surgery at the hands of an Army Doctor suffering Parkinson's Disease –and yes, he damaged the victim by getting it wrong!

Annexure A – Article On Servants Of The Crown



Defence employment safeguards missing in action

Military personnel lack the job protections enjoyed by other public servants, a court has again confirmed.

By John Wilson

28 September 2015 — 4:44pm

[The Public Sector Informant: latest issue](#)

"At least since the reign of Charles II," observed the full bench of the Federal Court recently, the "command of military forces" has been a prerogative right of the Crown. As a result, the rights and protections afforded to employees in Australia – including public servants at the Defence Department – do not extend to men and women in uniform.

While this may seem unpalatable to some, and indeed one commentator suggested [defence personnel were essentially being forced to waive "their claim to be treated as people"](#), the practice has long been accepted at common law. Courts in England and Australia have acknowledged for centuries that ["enlisted servicemen and women were not employees"](#), with a variety of consequences.



Australian troops in a light armoured vehicle in Oruzgan province in southern Afghanistan.

Photo: ADF

However, in the 2015 case of [*C v Commonwealth of Australia*](#), an enlisted member of the Royal Australian Air Force challenged this orthodoxy. The applicant, "C", was declared medically unfit for service after he was diagnosed HIV positive, and was discharged shortly thereafter. Relying on the general protections provisions of the Fair Work Act, which prohibit adverse action against employees on the basis of physical disability, C argued that the legislation extended the definition of employees such that service personnel were considered thus by statute, if not at common law.

Since the 18th century, English law reports have been dotted with cases of ill-treated service personnel failing to find justice in the courts. In 1786, the Law Lords denied an action in *Sutton v Johnstone* because "the salvation of this country depends upon the discipline of the fleet; without discipline they would be a rabble, dangerous only to their friends, harmless to the enemy". By the beginning of the 1800s, it was accepted that the monarch's prerogative control over the armed forces necessitated that servicemen "[had virtually no rights whatsoever in \[their\] employment](#)".



As a consequence, soldiers had no enforceable rights under contract, could be dismissed without cause and were unable to sue for unpaid entitlements. As Lord Kenyon observed in a later case: "His Majesty's pleasure supersedes all enquiry, as he has the absolute direction and command of the army." Military personnel served at the Crown's pleasure, and that was that.

Such an approach was accepted by colonial Australian courts from an early stage, and confirmed by the Defence (Personnel) Regulations, which say "no civil contract of any kind is created with the Crown or the Commonwealth" by appointment, enlistment, promotion, transfer or posting.

Fast forward to the present, and the Federal Court was disinclined to depart from this longstanding position. Justices Anna Katzmann, Richard Tracey and Robert Buchanan disagreed with submissions that the Fair Work Act's definition differed substantially from common law, such that military personnel could be considered employees. [They concluded simply that](#) "the relationship between the Crown and a member of the Defence Force has not been and is not founded on contract and is not that of employer or employee".

There are, of course, various public policy considerations that augur in favour of maintaining this approach. In the heat of battle, officers can hardly be restricted in their actions by seemingly quaint employment regulations. Fighting in Afghanistan, meanwhile, is unlikely to be workplace health and safety compliant any time soon.

Yet while these factors and others have influenced judicial decision-making for several hundred years, whether they still necessitate the lack of employment protections afforded to enlisted personnel is open to question.

A blistering 2012 article written, aptly enough, by a lecturer at the University of NSW's Australian Defence Force Academy campus highlighted the need to "abandon this antiquated fiction". Ned Dobos argued that viewing soldiering not as a job "but as a higher calling" ultimately "dehumanised our armed servicemen and servicewomen", and therefore service ought to be positively reconceptualised as, with no offence intended, "just" another job. If such an approach were adopted, the rationale for the lack of employment rights afforded to military personnel loses any remnants of persuasive power.

Many enlisted individuals in Canberra no doubt work alongside APS employees on a daily basis. They share desk space, work on similar tasks and chat around the water cooler. That one has a host of employment rights guaranteed by the Public Service Act, the Fair Work Act and basic contract principles, and the other must hope for the good grace of their superiors and compliance with vague provisions in the Defence (Personnel) Regulations, is incongruous to modern workplace regulation. History notwithstanding, employment is what the relationship between Australia and its military personnel objectively represents.

Much has changed since the reign of Charles II. "The days of press gangs and 'soldiery as rabble' are long since gone," [Professor Garth Nettheim wrote in 1973](#), and as a result the judicial proposition that "military matters between military men are for military tribunals to determine" no longer withstands scrutiny. Several decades later, *C v Commonwealth of Australia* is a timely reminder that the employment status of defence personnel deserves reconsideration by Parliament.

Fighting in Afghanistan is unlikely to be workplace health and safety compliant any time soon.

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<https://www.smh.com.au/public-service/defence-employment-safeguards-missing-in-action-20150923-gitjtd.html>

**Annexure B – Executive Officer HMAS Stirling Victimised
By Being Sent To Psych Unit**

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National Hearing Care
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NATIONAL

My years of abuse: navy officer

16 May 2006 — 10:00am



AUSTRALIA'S first female navy officer has alleged she suffered years of physical and mental abuse in the armed forces, saying she was "beaten up" daily.

Former Lieutenant-Commander Robyn Fahy also claims the navy intended to have her involuntarily committed to a psychiatric facility and that she subsequently lost her job.

Ms Fahy last night lashed out at the service she joined in 1986, when she was stationed at the Defence Force in Canberra. "On a daily basis I was beaten up I can't remember a day where I wasn't punched or kicked or spat on," she told ABC TV.

Despite this, Ms Fahy topped her year. "At the graduation parade I got punched, and in fact when I walked toward the governor-general to receive my award I got spat on so by the time I reached him I had saliva on my uniform," she said.

She said her time in the navy had been a hard for her family.

"They had seen the bruises over my body in the last two years and I think they knew that I would probably get beaten up."

In 2000 Ms Fahy was promoted to executive officer of HMAS Stirling in Perth - but there the abuse worsened, she said.

The base's commanding officer took an instant dislike to her. "[It was] mostly verbal abuse and threats," she said.

Kirshy Read, Ms Fahy's assistant officer at the time, backed her allegations: "It was very obvious they didn't get along and it was not uncommon to see the [commanding officer] putting her down or having a go at her."

Ms Fahy also claims she was threatened by her commander in July 2000, after she backed up harassment claims made by former Lieutenant Kellie Wiggins.

Three months later, following a severe headache, Ms Fahy visited the base's acting doctor. The doctor wrote a letter to a consulting psychiatrist that allegedly implied she had attempted suicide, was borderline depressed and had a personality disorder. "I couldn't even begin to speculate as to

why someone would think it appropriate to write such malicious falsehoods about another officer," Ms Fahy said.

The psychiatrist diagnosed her as having bipolar disorder and suggested she be admitted to hospital and sedated. "I found this to be the most frightening concept to deal with and it has taken me quite a lot of time to get over it. They intended to have me committed to a psychiatric facility against my will."

Two independent doctors subsequently found there was nothing wrong with the naval officer, but Ms Fahy lost her job regardless. "I felt I had to speak up and try and do something otherwise this would keep happening again and again," she said. "I don't believe that the Australian Defence Force is above the law."

An inquiry by the West Australian medical board into the conduct of the doctor found him guilty of medical misbehaviour.

Earlier this year, the chief of the Defence Force, Air Marshal Angus Houston, pledged to wipe bullying out. Responding to Ms Fahy's claims, the navy sent the ABC said: "The navy is committed to a mutually acceptable resolution of her case."

AAP

Annexure C – Defence Punishing The Victim And Not The Abuser



Family says AWOL soldier tried to flee tormenter

[7.30](#)

By Hayden Cooper

Updated 23 Oct 2012, 8:19am



Media player: "Space" to play, "M" to mute, "left" and "right" to seek.

[Video: Soldier's detention raises bullying questions for ADF \(7.30\)](#)

The family of a soldier sentenced to detention for going AWOL claims the Army ignored his complaints of abuse and say he was simply trying to escape his tormenter.

Private Alex Curtis suffers severe depression and acute anxiety, disorders his family says stem from an assault at the hands of a higher-ranking soldier.

Private Curtis has now been tried and sentenced to 24 days in detention for being absent without leave (AWOL) after fleeing his training post in Darwin after his alleged attacker was transferred to the same unit.

The 25-year-old alleges a corporal physically abused him in front of other comrades while intoxicated in a bar two years ago.

His family says when Private Curtis reported the incident to his superiors, he was told nothing would be done and to ignore the incident.

They claim he has been unfairly treated and now fear for his mental health.

At Victoria's Puckapunyal Army base in late 2010, Private Curtis was at a bar full of more senior soldiers when two picked him out for special attention.

In a tense encounter he was slapped repeatedly in the face by his superiors and accused of showing disrespect.

"And then he got slapped a third time and at that stage he went quiet and didn't know what to do," said his mother Carol Curtis.

"He had his drink in his hand and went to have a sip and the warrant officer came in from behind and bashed his head down on the glass and split his lip open."

Downward spiral

According to Private Curtis's family, the bar incident caused a downward spiral into depression, fear and anxiety.

His brother Terry Curtis, who also served in the Army, says when his younger brother tried to report the abuse, he was ignored.

"The fact that a senior NCO or a warrant officer in this case could be slapping him around and physically abusing him while also being intoxicated at the time and also being in a public place surrounded by other NCOs that again did nothing and said nothing," Terry said.

"The next day Alex goes to his next chain of command, his corporal, his supervisor, and nothing was done.

"Apparently Alex was told just to ignore it - this sort of stuff happens all the time.

"If he was to continue his complaint, he would eventually be more bullied and intimidated."

Terry was serving in Afghanistan when the incident took place.

He says he is "disgusted" by the way his brother has been treated.

"It's pretty disappointing that the Army can treat a soldier this way, someone who volunteered to join the army. I'm not happy at all," he said.

"Here I was serving in Afghanistan and yet the Army's treating my family like this - it makes everything I've done useless."

On the run

With no other choice Private Curtis continued his training. But earlier this year in Darwin, memories of the abuse resurfaced when the corporal responsible for the assault was appointed to his unit.

Private Curtis went to the airport and flew home to Sydney, making him absent without leave.

He evaded military authorities for four months but was arrested last Monday at Sydney Airport.

He had planned a trip to the UK to see his girlfriend but was stopped at customs and arrested.

Private Curtis's sister Hailey believes the military police are ignoring the abuse that caused him to run from the Army.

"When the initial assault happened he told his superior officers, they did nothing," she said.

"A lot of people were around to see the assault happen.

"They did nothing and even now he's being treated like some sort of criminal when all he was trying to do was get away from an environment that made him depressed and made him feel scared."

Mental health 'ignored'

Medical records reveal Private Curtis is suffering acute anxiety and severe depression, a diagnosis his family believes makes him unfit for detention.

Terry Curtis says the Army does not seem to care about his brother's mental condition.

"He's not good, not good at all - we've been to a lot of doctors and psychologists and the Army doesn't seem to care about any of it," Terry said.

"Everyone seems to have all the doctor and psychologist reports, but to them Alex is guilty of AWOL and that's the end of it."

Ms Curtis, who fears for her son's well-being, recently recorded one of their conversations.

Ms Curtis: Have you had any sleep?

Private Curtis: No, I didn't get much last night - I had a panic attack. They gave me some valium and stuff.

Ms Curtis: Did you want the valium?

Private Curtis: Yeah, I was hyperventilating and stuff.

Ms Curtis: Do you feel intimidated or bullied?

Private Curtis: Everywhere I am.

Ms Curtis: If they yell at you, refuse to answer - insist that they talk to you like a human being.

The Defence Force will not comment on Private Curtis's case for privacy reasons, but says all detainees are provided with medical and psychological support.

Despite his desperate wish to leave the Army, Private Curtis has been told he will have to rejoin his unit in Darwin after he has served his detention.

Topics: [defence-forces](#), [army](#), [mental-health](#), [courts-and-trials](#), [seymour-3660](#), [darwin-0800](#), [sydney-2000](#)

First posted 22 Oct 2012, 7:35pm

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<http://www.abc.net.au/news/2012-10-22/soldiers-family-claims-pub-assault-ignored/4327656>

Annexure D – Naval Officer Spanking Junior Sailor As Part Of “Discipline”

Naval officer jailed for spanking junior

<https://www.canberratimes.com.au/national/act/naval-officer-jailed-for-spanking-junior-sailor-who-was-left-traumatised-by-the-ordeal-1.1111111>

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NATIONAL ACT

Naval officer jailed for spanking junior

14 December 2011 – 5:00pm



A naval officer will spend at least a year in jail after being convicted of spanking a junior female sailor who was left traumatised by the ordeal.

Lieutenant John Alan Jones stood in the dock dressed in a civilian business shirt and slacks during the closing moments of his court martial yesterday afternoon.



Naval officer jailed for spanking junior

The 57-year-old former supply officer aboard HMAS Sirius had first entered the Fyshwick courtroom as a lieutenant-commander just over three weeks ago on November 29 to contest nine charges of committing acts of indecency against a young subordinate on the naval logistics ship.

The real-life military legal drama came to an end just after 4pm with Jones

sentenced to 18 months' jail, demotion by one rank from lieutenant-commander to lieutenant and dismissal from the Royal Australian Navy after being found guilty of seven offences.

He was also fined \$2000, having earlier pleaded guilty to attempting to destroy a navy laptop computer on which spanking pornography had been stored.

Jones can apply to be released on a six-month good behaviour bond after serving the first 12 months of his sentence.

His defence was complicated from the start by the early admission into evidence of a covert smartphone recording, made by his victim while they were driving around Perth together, in which he admitted spanking her on three separate occasions.

While he never took the stand, a fact Judge Advocate Lieutenant-Colonel Jennifer Woodward told the Court Martial panel could not be held against him, Jones's barrister, Lieutenant-Commander Alistair Abadee, said the spankings weren't sexual.

Jones had been trying to instil discipline into a wayward and headstrong young female by ordering her to remove her blouse and expose her bra, by spanking her on four occasions - three times on her bare buttocks, making her count the blows and ordering her to say she was a naughty girl.

During her emotionally charged testimony the victim, whose identity cannot be made public, said all the incidents had occurred, she had not wanted them to occur and she had been so distressed she had considered suicide.

She had been scared of Jones and had not thought others would believe her claims because of the difference in their ranks.

Prosecutor, Flight Lieutenant Steven Whybrow, said Jones's abuse of his authority made the offences worse. Panel president, Captain Michael Hickey (RAN), cited this as a key reason to jail the former supply officer.

Lieutenant-Commander Abadee, who told the court the victim could have stopped the spankings if she had complained earlier, said Jones had also had "suicidal ideation". While the demotion takes effect immediately the other punishments do not come into force until the automatic review of the court martial is complete. Jones, who was taken to Duntroon for medical assessment after the sentencing, is to be held at Sydney's Holsworthy military detention centre until then.

- **Support is available for anyone who may be distressed by calling SANE**