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# Fight erupts over Defence moves to sack special forces whistleblowers

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A small number of special forces soldiers who blew the whistle on alleged war crimes at an official inquiry have been issued termination notices against the advice of the military watchdog.

The notices have set up a clash between the military hierarchy and the Inspector-General of the Australian Defence Force, whose most senior war crimes investigator, Justice Paul Brereton, recommended in his recent report that whistleblowers who had done nothing wrong should be promoted while witnesses who had honestly disclosed their own wrongdoing should not necessarily be sacked.

“It is crucial that their careers be seen to prosper,” Justice Brereton wrote last November of key witnesses who had engaged in no wrongdoing.



An Australian special forces soldier in Afghanistan. ADF

Others who had committed alleged war crimes themselves but had later helped the truth come out by giving truthful testimony to the inquiry, should be given special consideration, he wrote.

As the Defence Force continues to deal with the fallout of the Inspector-General's report, delegates of the Chief of the Army Rick Burr have moved to sack at least three whistleblowers from the Special Air Service Regiment and commandos.

Asked about this process, a Defence spokesperson said: "The fact that some individuals assisted the inquiry is not disputed and regardless of any recommendation the inquiry made, it is ultimately a matter for Defence as to what if any administrative action is taken."



Chief of Army Lieutenant General Rick Burr in November. ALEX ELLINGHAUSEN

The spokesperson also said that while termination notices had been issued, the responses from soldiers threatened with sacking would be considered before any final decisions were made.

Defence sources in Canberra, who were not authorised to speak publicly, confirmed that the office of the Inspector-General had been forced to issue "support" letters to help a small number of soldiers who were issued termination notices.

Multiple Defence sources aware of behind-the-scenes efforts to protect whistleblowers said at least two of the soldiers who were issued termination notices allegedly engaged in war crimes on the orders of more senior soldiers, and in both cases, these alleged crimes would never have been discovered without the disclosures, the sources said.

Some soldiers suspected of repeatedly lying about their own involvement in war crimes have also been issued termination notices, but were given no support from

the Inspector-General. *The Age* and *The Sydney Morning Herald* have confirmed this by speaking to more than a dozen serving and former special forces insiders.

In November, General Burr and Defence Force Chief Angus Campbell both publicly praised the role of special forces soldiers who disclosed alleged war crimes to Justice Brereton, who led the Inspector-General's inquiry.

Justice Brereton ultimately found that Australian special forces soldiers allegedly committed up to 39 murders and recommended that up to 19 current or former soldiers should face criminal investigation, possible prosecution and be stripped of their medals.

Justice Brereton warned in his November report that "too often ... have the careers of whistle-blowers been adversely affected". He urged the Defence Force to promote "cleanskin" whistleblowers – those who had observed or disclosed alleged war crimes but not participated in any alleged summary executions. Chief of the Defence Force Angus Campbell is yet to act on that recommendation.

Justice Brereton also urged General Campbell and General Burr to consider special treatment for those "whose conduct is such that they cannot be rewarded by promotion, but who, having made disclosures to the Inquiry in protected circumstances when they reasonably believed they would not be used against them, and whose evidence was ultimately of considerable assistance to the Inquiry, ought not fairly be the subject of adverse administrative action".

"Again, it will be an important signal that they have not been disadvantaged for having ultimately assisted to uncover misconduct, even though implicating themselves."



General Angus Campbell. GETTY IMAGES

When he announced Justice Brereton's findings in November, General Campbell described being "deeply appreciative of people who came forward to speak with concern of what they had seen, in some cases of what they had participated in".

“It was a very brave thing for them to do, because in the climate and the culture I have described, they would have been very concerned for doing so,” he said in comments which suggested General Campbell was aware that key whistleblowers had also disclosed their own wrongdoing.

But since then, senior officers working under General Burr’s ultimate command have, in at least three cases, disregarded the advice from the Inspector-General and issued termination notices that inform a soldier they will be sacked unless they provide mitigating circumstances.

The question of how to deal with special forces veterans who have admitted to egregious acts is not simple. Even considering their assistance to the inquiry, their alleged conduct may be so serious that it warrants dismissal. However, that is the same workplace penalty suffered by SAS and commando soldiers who have been found to have repeatedly lied about their own role in war crimes only to have it disclosed by others.

The tension comes amid confusion about how the federal police and Commonwealth Director of Public Prosecutions will work with the new Office of the Special Investigator, which was announced by Prime Minister Scott Morrison in November to help prosecute those accused of war crimes. The Office of the Special Investigator (OSI), led by former Victorian judge Mark Weinberg, is analysing what information from the Brereton inquiry can be used in criminal prosecutions and what must be withheld because it was obtained under a special power that gives immunity to those who confess to wrongdoing.

However, the OSI is at risk of replicating steps already taken by the Australian Federal Police, which was referred war crimes allegations by Justice Brereton in 2018. Federal police agents have spent almost three years investigating former special forces soldier and Victoria Cross recipient Ben Roberts-Smith, who is accused of multiple war crimes, and are also investigating serious allegations against another soldier known as “Soldier C”.

Shifting these investigations to a newly created bureaucracy is potentially fraught if it causes delays, as witnesses’ memories fade or suspects find opportunities to collude. It may also leave some already traumatised witnesses dealing with new investigators with whom they have no prior relationship or who have no corporate investigation knowledge.

Former SAS soldiers said federal police agents had taken statements and built rapport with key witnesses in 2018 and 2019. Official sources in Canberra said it was unclear how many federal agents would be seconded to the new office, although it would involve at least some of the AFP taskforces set up in 2018 to probe war crimes.

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