



REFERRAL TO THE AFP

**TO: The Coordinator
Operations Monitoring Centre
Australian Federal Police**

Refer to the AFP Website for location details
(<http://www.afp.gov.au/contact.aspx>)

Investigation (part A)

☒

Search Warrant Assistance (part A&C)

☐

Proceeds of Crime (part A&B)

☐

Forensic Assistance (part A&D)

☐

Pre Referral Advice

☐

PART A – REQUEST FOR INVESTIGATION

Refer to the AFP Website for information relating to referring matters to the AFP.
(<http://www.afp.gov.au/what-we-do/referrals.aspx>)

CONTACT DETAILS	
Referring Agency:	Dept of Defence – Security Investigations Unit
Agency Reference Number / Operation Name:	INV-DSA01-SIU-2017-11
Referring Officer/ Case Officer Contact:	Name: s47F Teleph Address: CP3-03-036, Campbell Park Offices, Northcott Drive, Campbell ACT 2610 Email: s47F Signat
Date of Referral:	15 March 2018

REFERRAL DETAILS	
Allegation/Incident Description Relevant Act and Section/Penalty	Unauthorised Disclosure of Classified Information to a Journalist s70 (Disclosure of information by Commonwealth officers) <i>Crimes Act 1914 (Cth)</i>
Period of Offence	24 May & 12 September 2017
Incident Type	Two incidents of Unauthorised Disclosure
Property/Fraud Value	Nil

SUSPECT 1 - DETAILS

Name

Gender

Date of Birth

Address

Postal Address

Telephone

Email

SUSPECT 2 - DETAILS

Name

Gender

Date of Birth

Address

Postal Address

Telephone

Email

CLIENT IMPACT

Tick the most appropriate box indicating the impact of the matter on your agency, and complete the explanatory notes section justifying the selection.

	Critical	A matter is politically sensitive or goes to central issues of management of agency or program.	
	Significant	A serious or complex crime has been committed which the agency cannot resolve without AFP involvement.	
	Routine	AFP investigation desirable	
	Strategic Strike	A matter is defined as a strategic strike under a service agreement with the AFP	
	MOU/Agreement	As per agreed upon between	Compromise of

		referring agency and the AFP	foreign partner military operation, damaging our international relationship.
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BACKGROUND INFORMATION/EXECUTIVE SUMMARY

1. On the 24 May 2017 Defence became aware of an imminent United States Naval operation. through diplomatic channels. Shortly after notification was received the s47F
2. On 12 September 2017 at approximately 4.30pm s47F s47F in regard to the Australian Defence Force (ADF) Joint Task Group, Indo-Pacific Endeavour 2017 (IPE 17). s47F continued to make enquiries with Defence staff during the next week. Subsequently concerns were raised that s47F was possibly in possession of SECRET planning information for IPE 17 s47F s47F
3. On both occasions in May and September 2017, s47F is thought to have had knowledge of classified Defence operations, prior to the details of those operations being officially released to the general public.
4. The Defence investigation has been unable to identify any relevant direct or suspicious communication from Defence data and telephone networks, s47F one of s47F associates, or s47F media organisation. There is no evidence to suggest that classified documents relating to the FONOP or IPE 17 were provided to s47F s47F
5. A probability exists that s47F has received information verbally or at least directly in person, or via mobile application such as 'WhatsApp', s47F s47F The provision of turner data to support an AFP investigation can be facilitated.
6. The Defence investigation considered a number of criminal offences. However the primary offence is considered to be contra to s70 (Disclosure of information by Commonwealth officers) Crimes Act 1914 (Cth), other offences may include, but not limited to;
 - a. s478.1 (Unauthorised access to, or modification of, restricted data) *Criminal Code Act 1995* (Cth).
 - b. s73A (Unlawfully giving or obtaining information as to defences) *Defence Act 1903*
 - c. Potential avenue for remedying the situation is to commence administrative or disciplinary action against Defence Members and/or APS Employees involved in this unauthorised disclosure, under the Defence Force Discipline Act 1982 and Public Service Act 1999.

7. Since the last incident in September 17 and the initiation of the Defence investigation, there have been no further incidents, of a similar nature involving s47F or the s47F which may infer awareness of the sensitivity Defence views such issues.

SUPPORTING DOCUMENTATION

(Evidence gathered in relation to offences identified. Please attach copies of relevant documents and an Evidence Matrix)

- **Have you attached supporting documentation?**

YES / NO Can be provided as required.

ADDITIONAL RELEVANT INFORMATION

From Defence enquiries, two potential suspects were initially identified s47F
s47F

CONSIDERATION FOR A JOINT INVESTIGATION

Defence would continue support this referral through the Defence Security & Vetting Service's, Investigation Unit.

s47F

Approved by:
s47F

Assistant Secretary Security Operations

Date: 15 March 2018



Australian Government
Department of Defence

Mr Phillip Prior
Acting Secretary

Air Chief Marshal MD Binskin, AC
Chief of the Defence Force

CDF/OUT/2017/595

Commissioner Andrew Colvin, APM, OAM
Commissioner of Australian Federal Police
GPO Box 401
Canberra City 2600

Dear Andrew,

We write to refer for AFP investigation an apparent unauthorised communication of classified information outside Defence. Defence has become aware of this potential communication through a news broadcast by the ABC 7:30 program and other articles published on the ABC website in the last 24 hours.

In summary, the ABC broadcasted a news report last night on the 7:30 program titled 'Report on a Secretive Military Inquiry Created Last Year to Look Into Rumours of Unlawful Killings of Civilians in Afghanistan' (transcript enclosed). Defence understands the broadcast referred to documents which were described as being classified SECRET AUSTEO, showed images of documents which appeared to carry the marking SECRET AUSTEO and appeared to quote from documents carrying the same classification. Similar references are made in a series of written articles and images published today at <http://www.abc.net.au/news/2017-07-11/killings-of-unarmed-afghans-by-australian-special-forces/8466642> (enclosed). Defence is not aware that any classified documents were authorised for release to the ABC concerning the subject matter of these news reports, including the quoted documents.

Unauthorised communication of Defence information which has been classified at SECRET AUSTEO level is a very serious matter for Defence. It is particularly important to Defence to understand how the material came to be communicated to the ABC and/or its employees. We confirm that your investigators will have access to the information and assistance they require from Defence personnel and employees to conduct their inquiries, and recommend that they continue to use our established link matter through the Australian Defence Force Investigative Service (ADFIS).

PO Box 7900, Canberra BC, ACT 2610
www.defence.gov.au

This referral follows up working level referral of this matter through ADFIS, and the important AFP Liaison Officer position which is maintained there. We appreciate the early comment that we have received through those channels on this matter.

Yours sincerely,

s47F

Phillip Prior
Acting Secretary

1 July 2017

s47F

MD Binskin, AC
Air Chief Marshal
Chief of the Defence Force

1 July 2017

Enclosures

1. Transcript, 'Report on a Secretive Military Inquiry Created Last Year to Look Into Rumours of Unlawful Killings of Civilians in Afghanistan,' *7:30 Report*, 10 Jul 17
2. Dan Oakes and Sam Clark, 'The Afghan Files,' ABC, 11 Jul 17

Transcript

Station: **ABC** Date: **10/07/2017**

Program: **7:30** Time: **07:32 PM**

Compere: **STAN GRANT** Summary ID: **X00071017152**

Item: **REPORT ON A SECRETIVE MILITARY INQUIRY CREATED LAST YEAR TO LOOK INTO RUMOURS OF UNLAWFUL KILLINGS OF CIVILIANS IN AFGHANISTAN.**

INTERVIEWEES: GLENN KOLOMEITZ, FORMER ARMY LAWYER; 'CORPORAL JONES'

Audience:	Male 16+	Female 16+	All people
	87000	109000	200000

STAN GRANT: Since 2001, the long military campaign in Afghanistan has cost the lives of 41 Australian soldiers. What we don't often hear about are the deaths of Afghan civilians. Tonight, 7.30 exclusively reveals details of some of those deaths, and allegations that one of them was covered up by Australian Defence personnel. An insider, who has asked to remain anonymous, has told 7.30 of a disturbing culture that he says emerged among an influential minority of Australian Special Forces soldiers - a culture of recklessness and cover-up. As Dan Oakes reports, a secretive military inquiry established last year to look into so-called rumours of unlawful killings is now investigating concrete information about a number of civilian deaths. And a warning - this story contains an image of a deceased child.

[Excerpt]

REPORTER:	The challenges of waging war in Afghanistan are well documented.
GLENN KOLOMEITZ:	It's a very complex and highly ambiguous operating environment.
REPORTER:	What isn't well documented is that some Australian soldiers now stand accused of using that ambiguous environment to act outside the laws of war.
GLENN KOLOMEITZ:	It's not like conflicts of the past where you had a defined uniformed enemy out in the field of battle with whom you engaged and the winner goes home.
REPORTER:	Glenn Kolomeitz did two tours of Afghanistan as a legal officer advising Australian soldiers, and still represents veterans who have returned home.
GLENN KOLOMEITZ:	It's important to remember here the vast majority of these soldiers - most, if not all have some degree of post-traumatic stress disorder or mental health conditions. In the course of running these cases for these soldiers, I have been made aware of possible breaches of the rules of engagement.
REPORTER:	Do you know if any of these involve the killing of civilians?
GLENN KOLOMEITZ:	That's something I can't legally speak about.
REPORTER:	Tonight, we reveal serious allegations that Australian soldiers may have committed unlawful killings during

Australia's longest war and claims that the death of an unarmed Afghan civilian was covered up.

CORPORAL JONES:

I saw innocent people killed who didn't need to die or deserve to die. In circumstances that were unwarranted and, ultimately, avoidable.

REPORTER:

This man is an actor. But the words he speaks are those of a highly decorated Australian veteran of the war in Afghanistan who is not allowed to speak publicly, but can remain silent no longer. We'll call him Corporal Jones. Corporal Jones enlisted in the Australian Army in the 1990s, and soon set his sights on joining Australia's elite Special Forces.

CORPORAL JONES:

Special Forces was that avenue that pushed for perfectionism, professionalism, and obviously it was at the forefront of the military.

REPORTER:

He got his wish, serving on multiple tours of Afghanistan, where Special Forces soldiers did some of the toughest and most lethal work of the war.

CORPORAL JONES:

If we look at the whole context of Afghanistan, it's a very remote, isolated environment to operate in.

REPORTER:

Corporal Jones says an influential minority of Australian soldiers exploited that isolation, and his uneasiness with some of the things he witnessed them do has prompted him to speak publicly.

CORPORAL JONES:	Ultimately, the behaviour of some elements of special operations led to indiscriminate, reckless and avoidable deaths of innocent civilians.
GLENN KOLOMEITZ:	We were fighting an enemy who appeared to be a civilian. In fact, in the letter of the law, they were, in fact, civilians who were unlawfully taking part in the fight. So they dressed as civilians and would operate amongst the civilian population.
REPORTER:	Glenn Kolomeitz saw firsthand how Australian troops in Afghanistan operated in combat, and gave them legal advice about what they could and couldn't do.
GLENN KOLOMEITZ:	The main role is to enable the commanders on the ground, in planning their operations, to conduct their operations within the bounds of the rules of engagement, of the law.
REPORTER:	But Kolomeitz left Afghanistan in 2010 and missed the fallout on the ground of one of the most infamous moments of our war there.
NEWSREADER:	An Australian soldier has been charged with manslaughter over the deaths of five Afghan children and a male civilian.
REPORTER:	The soldier charged was Lance Corporal David Millar. Millar was involved in a raid targeting a Taliban leader in February 2009. While under fire and acting on orders, he threw two grenades into a compound that

housed an Afghan family. Five children and a man were killed. A tragic outcome that still haunts David Millar.

DAVID MILLAR:

I was horrified, numb, just struggling to grasp ...

REPORTER:

However, the case fell over after Millar's lawyer successfully argued that the charges were defective but Corporal Jones says the fact that Millar had been charged in the first place angered troops in Afghanistan, and sent them a chilling message.

CORPORAL JONES:

Commanders in the field realise that, even if they do the right thing, their guys could be held out and skinned alive. So as a result, the protectionism started to occur where civilian casualty incidents - which are unavoidable and unforeseeable in war - were not reported, and subsequently covered up to ensure the guys on the ground were protected.

REPORTER:

Corporal Jones believes that once deaths started to be covered up by some Special Forces soldiers, it opened the door to the reckless killing of innocent civilians by Australians.

CORPORAL JONES:

These deaths were would ultimately go unreported. And if there was a circumstance where questions were raised over a death, they can be quite easily manipulated into believing they were legitimate engagements.

REPORTER:

Corporal Jones is not alone. 7.30 has spoken to 10 other former and current soldiers. Reluctant to break

the code of secrecy expected of Special Forces, they wouldn't go on camera, but they agreed that a culture of recklessness infected some elements of Special Forces in Afghanistan around who was a legitimate target and who wasn't.

Behind closed doors, Defence has called a full inquiry by its Inspector-General into the culture of Special Forces. It's understood the inquiry is investigating the killing of at least two children.

Using a number of sources, 7.30 has pieced together an account of one alleged killing that is being investigated by the Inspector-General. It was October 2012, in the sparsely populated backblocks of Kandahar province. With the help of their night-vision scopes, Australian troops were moving through the area, which was described by one person with knowledge of the incident as a relatively benign environment. The precise sequence of events that followed is still being investigated, but the pre-dawn calm was shattered by a volley of gunshots, allegedly from an Australian weapon. A boy lay dead.

7.30 has been told these photographs were taken by the Australian troops who allegedly killed him. They recorded the precise location of his death and the position of his body among the rocks. Photographing the bodies of Afghans killed was standard practice for Australian soldiers. What wasn't standard practice is what allegedly happened next. 7.30 has been told the killing was never reported up the chain of command,

despite no evidence that the boy was armed and, therefore, may have been a civilian.

When I was given these pictures, I decided to crosscheck the story I'd been told about what they depicted. So I engaged a journalist in Afghanistan to find the family of the boy in the photos. Six weeks ago, that journalist travelled to a town near where the boy was killed.

UNIDENTIFIED SPEAKER: [From subtitles] Is that him?

MOSSA JAN: [From subtitles] Yes it God wills, it is him.

REPORTER: This is Mossa Jan, a respected elder from the village. He says the boy in the photo was his nephew.

MOSSA JAN: [From subtitles] He was a small boy, a small boy. He had no guilt. He had no sins. We will be happy for (the soldier) to go to court. Look at him with your own eyes, you can see it. This photo was taken of the body, he is not alive.

REPORTER: Mossa Jan says the boy's name was Khan Mohammed. He was 14 or 15 years old, and he was killed by foreign troops while picking wild figs. He says no villagers heard the shooting, but his family believe he was killed during the day, just before his body was found. However, an Australian source with knowledge of the incident - and the photographs - show the shooting happened at night.

According to Mossa Jan's account, Khan Mohammed's death was unjustified. So in an effort to find out whether there was a different version of these events, we asked Defence for information about the incident. Remarkably, it said it had no record of a civilian casualty in that place at that time, despite the fact that the photographs were accompanied by GPS coordinates.

7.30 can reveal that, in addition to the Inspector-General, the Australian Federal Police, the body that investigates alleged war crimes, is now considering a full investigation of the killing of Khan Mohammed.

The Inspector-General's inquiry, headed by New South Wales Supreme Court Judge Paul Brereton, is being carried out in secret. It has all the powers of a royal commission. 7.30 understands that a number of former and serving soldiers have spoken to its investigators. Corporal Jones is one of them. He believes Australian authorities need to investigate.

CORPORAL JONES:

The locals don't have mechanisms to report. They are fearful. There's certainly no incentive for them to report. There's no mechanism in place for them to report these incidents. So that in itself is an enabler to facilitate these incidents.

REPORTER:

Khan Mohammed's death isn't the only one under the spotlight of the Inspector-General. 7.30 has learnt that the inquiry is also looking into a second incident involving potential civilian casualties.

In September 2013, Australian soldiers shot and killed a man named Bismillah Azadi during a compound clearance. As the soldiers searched his body, they found his wounded six-year-old son in blankets nearby. He died minutes later. These deaths were reported. A classified inquiry has found that Azadi had pointed a pistol at the soldiers, and was probably a Taliban sympathiser. However, due to security concerns, the inquiring officer did not travel to the scene or interview the family of the dead. The soldiers were cleared of any wrongdoing.

With the help of the Afghan journalist, we contacted Bismillah Azadi's family. They claim he was unarmed and was not a Taliban member, and that Australian soldiers had apologised for the killing, saying they'd made a mistake.

Despite the classified inquiry clearing the soldiers involved, Defence has confirmed to 7.30 that the deaths of Azadi and his son have been referred to the Inspector-General.

Corporal Jones says, as the recklessness in Afghanistan spread, he became concerned by another disturbing development: the growing emphasis on the number of enemy killed in action.

CORPORAL JONES:

The measure of success for operations turned out to be more about body count - the kill count.

REPORTER:

He says it was never official policy, but other former Special Forces soldiers have confirmed to 7.30 the kill

count became a criterion of success, which they believed increased the chances of civilians being killed.

CORPORAL JONES:

No commander would come out and say we need to raise our body count status for this trip. But every time a rotation was presented, or spoken about its measure of success, the first slide shown on any briefing would be the enemy killed in action.

REPORTER:

7.30 has uncovered a paper trail which shows that there were significant issues with the way that Australian soldiers were interpreting the rules of engagement in Afghanistan. Apparently, prompted by an incident in 2012 in which Australians killed two unarmed mullahs, Defence Force Chief David Hurley issued an amplification of rules of engagement, stating Australian troops can only shoot if they had a high degree of confidence a civilian was participating in hostilities. He said soldiers who killed civilians where there was doubt about whether they were directly participating in hostilities risked prosecution for the war crime of murder. When we asked Defence about why the amplification was sent, a spokesperson said the rules of engagement were reviewed on an ongoing basis. But Corporal Jones says that, by this stage, some Special Forces soldiers were, in fact, fabricating evidence with the use of drop weapons.

CORPORAL JONES:

If a person was engaged in questionable circumstances, it was easy enough to place a pistol with the body, take a photo of it, and then write it off as a legitimate battlefield kill.

REPORTER:	Corporal Jones says that drop weapons were often pistols carried by some Australian Special Forces troops on patrol for the purpose of creating evidence that a killing was justified after the fact. While Jones never witnessed a soldier plant such a weapon, he says their use was common knowledge amongst the troops.
CORPORAL JONES:	The carriage of drop weapons was common amongst some elements, and openly discussed in that forum.
REPORTER:	7.30 has confirmed with two other Afghanistan veterans that drop weapons were widely talked about by Australians on the ground. Former army lawyer Glenn Kolomeitz says any allegation about breaches of the rules of engagement should be thoroughly investigated, but warns against a witch-hunt targeting individual soldiers.
GLENN KOLOMEITZ:	Many of these blokes are suffering from post-traumatic stress disorder or other mental health conditions as a result of what they've seen, what they've done. That context can't be ignored. They are our soldiers who have done a very demanding job for us in a very demanding operational theatre, and they need to be looked after, regardless of the allegations.
REPORTER:	Corporal Jones says whether the inquiry finds evidence of unlawful killings or not, it's crucial that what he calls a culture of brutality and unaccountability is tackled head-on.
CORPORAL JONES:	By focusing on specific incidents or specific individuals, we're only removing the tip of the iceberg - what lies

beneath the water will be what sinks special operations command.

[End of excerpt]

* * END * *

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TRANSCRIPT PRODUCED BY ISENTIA

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The Afghan Files

Defence leak exposes deadly secrets of Australia's special forces

By the National Reporting Team's Dan Oakes and Sam Clark

Updated about 4 hours ago
Published about 7 hours ago

Hundreds of pages of secret defence force documents leaked to the ABC give an unprecedented insight into the clandestine operations of Australia's elite special forces in Afghanistan, including incidents of troops killing unarmed men and children.

The ABC can reveal that some of the cases detailed in the documents are being investigated as possible unlawful killings.

This comes a day after the ABC revealed the alleged cover up of the killing of an Afghan boy and another alleged incident in which a father and son were shot dead during a raid.

The documents, many marked AUSTEO — Australian Eyes Only — suggest a growing unease at the highest levels of Defence about the culture of Australia's special forces as they prosecuted a bloody, secretive war against insurgents across a swathe of southern Afghanistan.

One document from 2014 refers to ingrained "problems" within special forces, an "organisational culture" including a "warrior culture" and a willingness by officers to turn a blind eye to poor behaviour.

Another document refers to a "desensitisation" and "drift in values" among elite Special Air Service soldiers serving in Afghanistan, while others allude to deep divisions between the two elite units which primarily comprise the special forces - the SAS based in Perth and 2 Commando Regiment based in Sydney.

A large proportion of the documents are reports on at least 10 incidents between 2009-2013 in which special forces troops shot dead insurgents, but also unarmed men and children.

The Inspector General of the Australian Defence Force is investigating at least two of the incidents as part of its inquiry into the conduct in Afghanistan of special forces, which includes alleged unlawful killing.

Those two incidents — which both occurred in September 2013 — are the deaths of a man and his six-year-old child during a raid on a house, as revealed yesterday by the ABC, and the killing of a detainee who was alone with an Australian soldier and allegedly tried to seize his weapon.

The Afghan Files

This is one story in a seven-part series based on leaked documents exposing Australian special forces troops' role in the Afghanistan war. For context, they are best read in order.

NOW READING

#1

Leaked documents expose deadly secrets of Australian special forces

#2

An interrogation, a shooting and no witnesses

#3

What the documents reveal about killings of unarmed Afghans

#4

The spy and the SAS soldier with a loaded Glock

#5

Who is the enemy? Australia's secretive rules of engagement

#6

Chaos over severed hands

#7

Relations between Australia's special forces units on 'knife edge'

A report into another 2013 incident in which an Afghan man riding a motorcycle was killed by Australian troops, and a female passenger possibly injured, states that Afghan authorities were becoming increasingly agitated over Australians allegedly killing unarmed civilians, and threatened to stop working with Australians.



Inside the Afghan Files ABC News

The documents also provide fresh details of some notorious incidents, including the severing of the hands of dead Taliban fighters by Australian troops.

The report shows Federal Liberal MP Andrew Hastie, then a SAS officer and commander of the soldier who cut off the hands, immediately expressed alarm about what happened and reported the incident up the chain of command.

The incident also caused tension between the SAS and Australian Defence Force Investigative Service (ADFIS), with the commanding officer of the SAS Regiment writing an angry letter to the head of ADFIS, in which he claimed ADFIS was seeking to charge SAS members over the incident in order to obscure their own culpability in what happened.

Another letter, sent in 2013 by a senior officer of 2 Commando to Chief of Army David Morrison, exposes the rift between the SAS and 2 Commando.

The letter, in response to claims made by SAS Victoria Cross winner Mark Donaldson in his autobiography, said relations between the two units were on a "perilous knife edge" and in "an extremely unhealthy state".

The most dense and complex documents are those that seek to codify what tests Australian soldiers have to apply before they shoot to kill.

In 2013, sparked by an incident the previous year in which Australians killed two unarmed Afghan men, a series of directives and memos was issued by the Defence Force hierarchy stressing the need to be certain that Afghans were "directly participating in hostilities" before shooting them.

The documents indicate just how difficult this certainty could be to arrive at, particularly regarding 'spotters', or Afghans who kept watch and relayed information to Taliban fighters, without necessarily being armed.

Spotters could be shot for riding a motorcycle in a 'stop-start' fashion, talking on a radio or "manoeuvring to gain a tactical advantage", according to the documents. But as Australia began to step back from operations in Afghanistan, purportedly to allow the Afghan security forces to take responsibility for security in Uruzgan province, an Australian officer hinted that Afghan patience might be wearing thin.

"This shift may require a review of the burdens of proof as they pertain to the necessity of engaging spotters perceived to be directly participating in hostilities," he wrote after an Afghan man on a motorcycle was shot and killed, but the Australian soldier responsible cleared.

"The necessity of [special forces] to press the tactical advantage of the engagement needs to be weighed against the political disadvantage created by civilian casualty allegations against [Coalition forces] at this stage of the campaign."

Delve further into the documents and read the full stories uncovered as part of the ABC's investigation into The Afghan Files.

What the documents reveal about killings of unarmed Afghans

A helicopter attack killing boys and their donkeys, a detainee allegedly lunging for a knife shot dead and a boy mistakenly killed as he hid under blankets are all detailed in the documents.

They show that on a number of occasions Defence investigations only occurred because locals complained to Afghan authorities, and those authorities demanded answers from the Australian forces, or because journalists or NGOs raised concerns.

Some of the incidents detailed have been publicly acknowledged by Defence previously, usually in response to media reporting, but the outcomes of investigations are seldom made public — until now.

Read summaries of 10 cases between 2009-2013 in which special forces troops shot dead insurgents, but also unarmed men and children.

READ THE SUMMARIES

An interrogation, a shooting and no witnesses

Inside a hut, in the far east of Afghanistan's Uruzgan Province, an Australian soldier was left alone with a captured insurgent.

But while others outside prepared for a helicopter transfer, the detainee was shot dead.

The ABC can reveal the secretive defence inquiry probing allegations of unlawful killings in Afghanistan is now investigating the incident.

READ THE STORY

'What the f* are you doing': Chaos over severed hands**

It was one of the most notorious incidents in Australia's recent military history
— the severing of hands of dead Taliban fighters in Afghanistan.

When it was first reported by the media in August, 2013, it caused a public
furore and deep concern within Defence.

Now, for the first time, secret defence documents obtained by the ABC reveal
the full story of how and why the "chopped hands" controversy came about.

READ THE STORY

The spy and the SAS soldier with a loaded Glock

Even in a warzone like Afghanistan, spies and soldiers need to relax, to let their hair down.

And so it was that on December 7, 2013, a handful of officers from the Australian Secret Intelligence Service and nine Australian soldiers — deployed to guard the spies — decided to put a lamb on the barbie.

But what started as a convivial dinner in covert premises in Kabul ended badly with an SAS trooper pulling his handgun on a female ASIS officer.

READ THE STORY

Who is the enemy?

From the very beginning of the war in Afghanistan, Australian troops were faced almost every day with decisions that had to be made within a split second.

The farmer smiling at you as you patrolled through his village could have an AK-47 stashed behind a nearby wall. The youth watching silently as you left your base could be reporting your movements to the insurgents.

The Taliban didn't wear uniforms and often did not carry weapons on them. They travelled on motorbikes and in utes. They shook your hand by day and laid improvised explosive devices by night.

Now, Defence documents obtained by the ABC give an insight into the ambiguities and difficulties faced by troops on the ground.

READ THE STORY

'Unhealthy' relations between elite teams

They are the most celebrated and prestigious units in the Australian Army.

The SAS - the Special Air Service Regiment - and the 2nd Commando Regiment are Australia's special forces elite, the soldiers tasked with the most difficult missions in warzones like Afghanistan.

But now Defence Department documents leaked to the ABC reveal that relations between the two units — which also have a crucial role in domestic counter-terrorism operations — have reached an all time low.

READ THE STORY

Got a confidential news tip?

Signal

A free, instant messaging and phone calling service. The content of the messages are encrypted end-to-end, meaning no-one but us can read them.

Contact us on Signal: 0419242515

WhatsApp

An instant messaging service owned by Facebook that offers end-to-end encryption. While the messages are private, WhatsApp stores some data like phone numbers and timestamps.

Contact us on WhatsApp: 0419242515

*No system is 100 per cent secure, but these services can be used to protect your identity.
Please read the terms and conditions of these services to work out the best method of
communication for you.*

The Afghan Files

This is one story in a seven-part series based on leaked documents exposing Australian special forces troops' role in the Afghanistan war. For context, they are best read in order.

#1 Leaked documents expose deadly secrets of Australian special forces	NOW READING	#2 An interrogation, a shooting and no witnesses	#3 What the documents reveal about killings of unarmed Afghans
#4 The spy and the SAS soldier with a loaded Glock		#5 Who is the enemy? Australia's secretive rules of engagement	#6 Chaos over severed hands
#7 Relations between Australia's special forces units on 'knife edge'			

Photos: Margaret Burin

Topics: defence-industry, defence-forces, defence-and-national-security, afghanistan, australia

An interrogation, a shooting and no witnesses

By the National Reporting Team's Dan Oakes and Sam Clark

Updated about 4 hours ago
Published about 7 hours ago

A secretive inquiry probing allegations of Australian war crimes in Afghanistan is investigating the killing of a Taliban detainee by an Australian soldier in 2013.

It was revealed on 7.30 last night that the inquiry is already investigating the possibility that Australian soldiers covered up their killing of a 14 or 15-year-old Afghan boy in 2012, and also investigating the death of man called Bismillah Azadi and his six-year-old son in 2013.

Defence has confirmed to the ABC that the inquiry, headed by NSW Supreme Court judge Paul Brereton on behalf of the Inspector General of the Australian Defence Force, is also "reviewing" the death of the detainee which has never been publicly disclosed until now.

According to a "quick assessment" report obtained by the ABC, the man and two other "persons of interest" were captured during a clearance operation carried out by Afghan and Australian troops in the far east of Uruzgan province.

The Afghan troops interrogated them and told the Australians the men were Taliban and needed to be taken back to the main base at Tarin Kowt for questioning.

At some point one Australian soldier was left alone with one detainee in a hut.

According to the report, the Australian removed the cuffs from the Afghan in order to transfer him to a helicopter and the detainee allegedly tried to grab the Australian's rifle.

There were no witnesses to the killing and the quick assessment cleared the Australian of any wrongdoing.

The commanding officer of the special operations task group wrote on the quick assessment report: "I don't believe an [Australian Defence Force Investigative Service] investigation will 'value add' at this stage due to their inability to compel witnesses to give statements (ie. the members will exercise their right to remain silent, as has been evidence in previous cases)."

"If a serious incident is deemed to have occurred, ADFIS will be involved as a matter of course by the inquiry officer."

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- #1
Leaked documents expose deadly secrets of Australian special forces
- #2
An interrogation, a shooting and no witnesses NOW READING
- #3
What the documents reveal about killings of unnamed Afghans
- #4
The spy and the SAS soldier with a loaded Glock
- #5
Who is the enemy? Australia's secretive rules of engagement
- #6
Chaos over severed hands
- #7
Relations between Australia's special forces units on 'knife edge'





Inside the Afghan Files ABC News

However, investigators from ADFIS who arrived in Afghanistan soon afterwards declared they were investigating a potential war crime of “wilful killing”. They demanded the weapon used to kill the Afghan detainee be handed over for examination.

The commanding officer of the special operations task group — on the advice of the Defence lawyer assigned to the task group — refused, saying the investigators’ warrant was flawed as it listed the wrong offence, and that the killing was a clear cut case of self-defence.

He also said that the weapon had been used in operations since the killing and he therefore failed to see how forensically testing it would be of any use. The investigators then allegedly threatened to take the weapon by force.

The situation was only defused when the commanding officer reluctantly handed over the weapon. He and the legal officer were later investigated for allegedly obstructing an ADFIS investigation but counter-claimed that they had been threatened by the investigators. It was also later determined that the warrant was, indeed, faulty.

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#4 The spy and the SAS soldier with a loaded Glock	#5 Who is the enemy? Australia's secretive rules of engagement		#6 Chaos over severed hands
#7 Relations between Australia's special forces units on 'knife edge'			

Header photo: Margaret Burin

Topics: defence-industry, defence-forces, defence-and-national-security, afghanistan, australia

What the documents reveal about killings of unarmed Afghans

By the National Reporting Team's Dan Oakes and Sam Clark

Updated about 2 hours ago
Published about 7 hours ago

On occasion, the killing of Afghan civilians or unarmed insurgents was investigated by the Australian Defence Force.

Usually, this was an inquiry conducted by an officer from outside the unit.

Often the inquiry officer's job was made more difficult by the fact that, due to the security situation, it wasn't possible to visit the scene of the killing and interview locals who witnessed the incident.

The ABC has obtained a number of the inquiry reports and other documents which show that on a number of occasions the inquiries occurred only because locals complained to Afghan authorities, and those authorities demanded answers from the Australian forces, or because journalists or NGOs raised concerns.

Yesterday, the ABC revealed that Defence's Inspector General (IGADF) is investigating the killing of two children in separate incidents in 2012 and 2013. It is not clear whether all of the incidents listed below are being investigated by the Inspector General's inquiry.

Sometimes, particularly after 2011, when concerns began to grow in Canberra about the actions of Australia's special forces in Afghanistan, staff from the Australian Defence Force Investigative Service (ADFIS) were sent to investigate incidents.

This culminated in September 2013, when in the space of a week Australian special forces soldiers killed a man and his sleeping child, and an Afghan detainee was shot dead after allegedly trying to seize the weapon of an Australian SAS trooper.

On at least one of these occasions, the commanding officer of the Special Operations Task Group in Tarin Kowt refused to hand over evidence to ADFIS investigators without a warrant, leading to an ugly confrontation between officers from special forces and ADFIS investigators.

Some of the incidents detailed below have been publicly acknowledged by Defence previously, usually in response to media reporting, but the outcomes of investigations are seldom made public.

Heavily redacted inquiry reports were sometimes released, but political considerations were taken into account when that decision was made.

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- #5
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For example, advice to the Defence Minister about the inquiry into the killing of two mullahs by SAS members in 2012 said "publishing additional detail through release of a redacted report would increase the risk to Australia's relations with Afghanistan".

In that case, Afghan officials from then-president Hamid Karzai down had complained bitterly and publicly about the killings, stating that the dead men were not Taliban and the deadly raid was not authorised by the Afghan Government.

Inquiry officer inquiries invariably found that Australian soldiers had acted within their rules of engagement, and that no further action should be taken.

The following are summaries of the inquiry reports found among the hundreds of pages of secret Defence documents leaked to the ABC.

Three men killed, including one hiding in hay stack

Date: 2/4/2009


Location: Jalbay, Uruzgan Province

Description: Australians hunting for a "medium value" target arrived at the village of Jalbay in helicopters after dark. The Taliban target was not there, but the Australians killed three men, including one who was hiding in a hay stack, one hiding in a chaff pile, and another trying to take cover in a line of trees

nearby. The Australians later said that the men who were hiding in the chaff pile and hay stack were in a "firing position", but no weapons were found afterwards.

Outcome: Inquiry found the Australian soldiers had acted within the rules of engagement, yet admitted no weapons were found, and that a number of intelligence sources said the men were civilians, not insurgents. The inquiry officer also claimed that an alleged lack of protest by locals over the killings, and the fact the dead men supposedly did not behave like "uninvolved" Afghan civilians when the soldiers arrived, meant they were likely to have been "associates" of the Taliban member being targeted.

Apache helicopter destroys vehicle that switched off lights



"It is recommended that no further inquiry into this incident is necessary, as the use of lethal force against the occupants of the two Hilux vehicles was, in the circumstances, legitimate targeting."

Date:10/6/2009

Location: Noy Juy, Mirabad

Description: After heavy fighting between Australian troops and insurgents, the Australians saw suspected fighters leaving the area in a number of vehicles at dusk. Radio chatter intercepted by Australian soldiers suggested that insurgents had been instructed to turn the headlights of their Toyota Hilux off as they retreated from the area. Soon after this, Australian soldiers on the ground and the crew of a Dutch Apache attack helicopter saw a vehicle switch its lights off as it drove away from the area. The Apache helicopter destroyed

the Hilux. The headlights of another vehicle were seen to be switched off and the Apache destroyed that car as well. Media reports later suggested civilians were killed.

Outcome: Inquiry found the killing of the suspected insurgents fell within the rules of engagement. A legal assessment of the incident suggested that the civilian casualties may have resulted from a large explosion witnessed earlier in the day, however, this seems to contradict claims of locals who say they were targeted by two helicopters.

Detainee whose handcuffs 'separated' shot dead

"...the insurgent paused in the doorway and grabbed a sickle knife... the insurgents plasticuffs had separated and SGT ***** fired several shots, killing the insurgent."



Date: 3/10/2010

Location: Zangitan, Kandahar Province

Description: Australian troops detained two men. One Australian soldier questioned the detainees through an interpreter. The interpreter left the room, followed by one detainee walking and then the Australian. The detainee then allegedly reached up and grabbed a knife from a ledge just above the doorway. The detainee, whose plastic handcuffs had "separated" then struggled with the Australian, before the Australian shot him several times and killed him. It was not until two years later, after a journalist asked questions, that a Defence quick assessment discovered that dead man was a detainee, and had not been killed during a battle. ADFIS then investigated the incident.

Outcome: It was determined that the man was a detainee when he was killed, and the chief of joint operations, Lieutenant General Ash Power, said in a brief in August 2012 that he was "disappointed with the operational decision making and reporting procedures at the time of the incident". However, it was determined that the Australian was within his rights to shoot the detainee dead.

Man and boy killed 'returning from local medical clinic'

Date: 27/3/2011

Location: Sah Zafar, Chora Valley

Description: Australian and Afghan troops conducting a 'cordon and callout operation' were sent to a location where it was hoped they would capture a high-value Taliban target. As they moved along a road they were shot at from a concealed area. The Australians returned fire and immediately moved up to the location from where the shots originated. There they found a dead man and a fatally injured child. Locals in a "distressed state" arrived at the scene and told the Australians that the dead man was the boy's uncle, and that he was returning with his nephew from the local medical clinic. Australian soldiers tested the dead man's hands and found traces of nitrate, which they said proved he had handled explosives and was an insurgent. However, this was later disproved, as there was no evidence the man was an insurgent, and nitrates are present within commonly-used fertilisers in Afghanistan. The

report says the commanding officer and the officer who carried out the initial 'quick assessment' had an "incomplete" understanding of the technology. Bags containing medication were also found at the scene of the killing, lending further credence to the locals' story.

Outcome: The inquiry found the Australian troops were acting within the rules of engagement when they killed the man, but was heavily critical of the process by which he was labelled an insurgent after his death.

Afghan boy survives being shot through face

Date: 1/5/2012

Location: Deh Rafshan area of Uruzgan Province

Description: Australians were carrying out a "capture/kill" mission targeting a mid-level insurgent commander and bomb maker in the Deh Rafshan area of Uruzgan Province. The insurgent leader was holding a meeting with "four known key insurgents", so the Australians set up a number of "blocking positions" to contain them. An Australian sergeant saw two Afghans who he believed were trying to evade the cordon, and both he and an Afghan soldier called on them in Pashtu to stop. They kept walking towards some elevated ground, and the Australian, believing they would gain a tactical advantage if they reached the higher ground, fired a single shot. The men kept moving, and a 13-year-old boy, drawing water from a well nearby, walked after them in order to convince them to stop. The Australian fired at the men again, and

they finally stopped. When he approached the men he found the 13-year-old boy with a gunshot wound to neck and an exit wound through his mouth. No weapons were found, and the men were ultimately released. The boy survived.

Outcome: The inquiry report found the Australian soldier had acted within the rules of engagement. However, it says that at a meeting held with village elders after the shooting, the boy's father said he witnessed a "heated argument" between two Australian soldiers, which he believed to be about the shooting.

On the hunt for deadly Afghan soldier, two men killed

Date: 31/8/2012

Location: Sula

Description: Australian troops were hunting for an Afghan soldier who had killed three Australian troops on August 29. During the operation, an SAS trooper wrestled Mullah Jalil Akhund to the ground. The inquiry report said Mullah Jalil Akhund was initially compliant, but then tried to grab the Australian's weapon, so the Australian soldier shot him dead. Another man, Mullah Janan Akhund, was allegedly seen by two Australian special forces soldiers talking on a radio as an Australian helicopter approached the area. According to the report, he "failed to comply with a number of directions to

stop and was assessed by the SOTG members to be manoeuvring to gain tactical advantage through a covered position and potentially accessing a cache of weapons", so the Australians killed him.

Outcome: The inquiry found that the Australians acted according to their rules of engagement. However, it also found that the Australian troops were using International Security Assistance Force (ISAF) rules of engagement instead of Australian. It also revealed that Australians were relying on their own experience to determine when an Afghan was demonstrating insurgent "tactics, techniques and procedures", and then killing them, but that those criteria had not been endorsed by senior officers. A "communications pack" accompanying the report recommended that the report not be made public "following consideration of Australia's national interests".

Helicopter strike kills boys and donkeys

Date: 28/2/2013

Location: Char Chineh District, Uruzgan Province

Description: Australian and Afghan troops were conducting a sweep through a remote region. The Australians reportedly picked up radio chatter from insurgents indicating an "imminent threat", and pinpointed two insurgents 1.3 kilometres away from a checkpoint they had set up. They called in a helicopter strike, but then saw the helicopter's fire hit an area a few hundred metres from where they believed the insurgents were. They halted the air strike and went

to where the shots had hit, finding two dead Afghan boys and three dead donkeys

Outcome: Despite the ADF saying no Australian was to blame, a NATO enquiry carried out in the days afterwards found the Australian commander on the ground and the pilot of the American attack helicopter "did not fulfil their obligations" when they failed "to coordinate observation and fire onto the same point".

Motorcyclist gunned down for stopping and starting

Date: 9/3/2013

Location: Southern region of Uruzgan Province

Description: During an armed reconnaissance of "insurgent high activity zones" with their Afghan partner troops, Australian troops saw a motorbike carrying two people moving in a "stop/start" fashion. One Australian said he tried using hand gestures and verbal commands to get the motorcyclist to stop but that the motorcycle was heading to an area that "would provide a tactical advantage within the greenbelt". A second Australian shot and killed the rider, while the female passenger fell off and sat on the ground, seemingly unhurt. The Australian did not tell anybody at the time that he had shot the motorcyclist, and it was erroneously reported that Afghan troops were responsible.

Outcome: The inquiry found that the killing fell within the rules of engagement, but that Afghan officials were becoming increasingly agitated about incidents in which Australian troops killed unarmed Afghans. The report said there should be consideration given to changing to the rules of engagement around unarmed suspected "spotters".

Detainee shot dead in hut prompts war crime probe

Date: 23/09/2013

Location: Patan, Chenartu District

Description: Australian and Afghan soldiers detained three "persons of interest". They were handcuffed and taken to a nearby area to be questioned. The first two men were questioned inside a hut and then sent outside. The third man was questioned and a helicopter was arranged to fly the three suspected insurgents for further questioning. While alone with the third detainee, a special forces soldier removed the plastic handcuffs from the man. The Australian soldier said that as soon as he removed the cuffs the detainee grabbed for his rifle. The soldier, who was alone with the detainee, called out for assistance but before help arrived he shot and killed the detainee.

Outcome: A "quick assessment" of the incident found that the soldier operated within the rules of engagement, however just days after the incident ADFIS investigators arrived in Afghanistan, telling the commanding officer of special forces that the soldier was under investigation for the war crime of

wilful killing. They demanded the soldier's weapon for forensic testing, and the commanding officer refused, saying the killing was in self-defence, and that the warrant supplied by the ADFIS investigators was invalid. The weapon was later given to the investigators, and the commanding officer and his legal officer investigated for allegedly hindering an ADFIS investigation. Nobody was ever charged, and the warrant was later found to have been flawed. Defence has referred this case to the Inspector General's inquiry.

Child found under blankets with bullet wound

Date: 26/9/2013

Location: Spin Kecha village, north west Uruzgan Province

Description: While searching a compound as part of an operation targeting a high value Taliban target, special forces soldiers saw a man, later named as Bismillah Azadi, allegedly pointing a pistol at them. Bismillah was shot and killed by two special forces soldiers, but they were unaware of a child hidden in blankets near him. The child was later discovered with a single gunshot wound to the abdomen and within five minutes was pronounced dead. A payment to the child's family of \$US1,500 was made.

Outcome: Inquiry found there was insufficient evidence to conclude that Bismillah was a member of the Taliban or an insurgent. However, the fact that he had pointed a loaded pistol at Australian troops and the absence of a local outcry following his death was cited as reason to suspect that he was

supportive of the insurgency. The inquiry also concluded that the Australian soldiers who fired on Azadi had fired in self defence and exercised appropriate restraint. Defence has referred this case to the Inspector General's inquiry.

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An interrogation, a shooting and no witnesses

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NOW READING

#4
The spy and the SAS soldier with a loaded Glock

#5
Who is the enemy? Australia's secretive rules of engagement

#6
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#7
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Header photo: Margaret Burin

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The spy and the SAS soldier with a loaded Glock

What started as a convivial dinner in covert premises in Kabul ended badly with an SAS trooper pulling his handgun on a female spy.

By the National Reporting Team's Dan Oakes and Sam Clark

Updated about 4 hours ago
Published about 7 hours ago

Even in a warzone like Afghanistan, spies and soldiers need to relax, to let their hair down.

And so it was that on December 7, 2013, a handful of officers from the Australian Secret Intelligence Service and nine Australian soldiers — deployed to guard the spies — decided to put a lamb on the barbie.

The beer and spirits were flowing freely.

Two Afghan interpreters were present and at one stage, some Canadians joined the party.

But what started as a convivial dinner in covert premises in Kabul ended badly with an SAS trooper pulling his handgun on a female ASIS officer.

The ABC first reported the incident in 2014 but little detail was made public.

Now, a secret report obtained by the ABC paints a much fuller picture about what happened that night including how the SAS trooper allegedly held his loaded Glock pistol under the chin of the female spy.

It also reveals that some Australian troops in Afghanistan regularly drank alcohol — some of it supplied by the Australian Embassy — in direct contravention of standing orders.

The 36-page report is marked Secret AUSTEO (Australian Eyes Only).

It says that on the night in question three members of “another government agency” and nine defence force personnel were at the BBQ.

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Soldier put muzzle directly under spy’s chin

The report says alcohol was consumed during the evening.

There was evidence both the man and the woman involved “were to some degree intoxicated”.

Neither is named in the report. They are referred as A35 (the soldier) and Officer L.

It says that around 11:00pm A35 headed back to his room "carrying his pistol in his hand, because his holster was in his room".

"Officer L followed soon after him.

"As she entered the courtyard she alleges in a written statement that A35 pointed his pistol directly at her.

"She alleges he then lowered the pistol, while further conversation took place, before raising it again and placing the muzzle directly under her chin. She saw that his finger was not on the trigger, and did not believe he intended to fire.

"However, she was aware that a magazine was attached to the pistol, was conscious that they had both been drinking and was worried about the potential for an accident."

A35 was 'talking with hands'

The report says A35 denied placing the weapon under her chin but admitted he was "possibly waving (the pistol) around and 'talking with his hands'."

Officer L walked away and when at what she thought was a safe distance, turned and called A35 "a complete dickhead".

She immediately told a colleague who noticed that she was "visibly shaking and had a quavering voice".

The reasons for the incident were not made clear, although Officer L told investigators A35 was interested in a relationship, something he denied. A35 countered that Officer L was known as "a flirt".

The report found that while ASIS officer were allowed to consume alcohol under certain circumstances, ADF personnel were not, except on special occasions such as ANZAC Day.

All the Defence Force members present on the night – except A35 – initially denied they had been drinking.

However, they later changed their story and said the ADF chain of command was "well aware" that members of the detachment drank alcohol.

They added that senior members in their chain of command also drank.

They told investigators alcohol was needed as a “currency” to gather information from intelligence agencies and the armed forces of other countries, and it was unworkable to have defence force personnel and ASIS agents living and working together under different alcohol restrictions.

Incident followed order of large amount of alcohol

The report said that early in the inquiry, investigators had been informed one large alcohol order had been requested and supplied to ADF members through the Australian Embassy’s duty free facility.

“The order included 12 cases of beer and 40 bottles of spirits.”

Both the ASIS officer and the SAS member were sent back to Australia within days of the incident.

Other documents obtained by the ABC show that the Army hierarchy was concerned about turning the matter over to the Australian Defence Force Investigative Service because it could end up in a public hearing, and compromise operational security (OPSEC).

However the then Chief of the Defence Force, General David Hurley, cautioned against this approach.

“I think we are placing too much emphasis on the OPSEC aspect of this incident. There appears sufficient evidence for [Special Operations Command and Chief of Army] to act re the consumption of alcohol and the ‘blind eye’ turned to it by the [chain of command],” General Hurley writes.

“The provision of false evidence is more serious and could be forwarded to ADFIS (Australian Defence Force Investigative Service) — the OPSEC issue need not be a barrier to this. We need to smarten our response to these matters.”

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of Australian special forces

NOW READING

#4
**The spy and the SAS soldier with a
loaded Glock**

#7
Relations between Australia's special forces units on 'knife edge'

#2
An interrogation, a shooting and no
witnesses

#5
Who is the enemy? Australia's secretive
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#3
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- | | | |
|---|---|---|
| #1
Leaked documents expose deadly secrets of Australian special forces | #2
An interrogation, a shooting and no witnesses | #3
What the documents reveal about killings of unarmed Afghans |
| #4
The spy and the SAS soldier with a loaded Glock | #5
Who is the enemy? Australia's secretive rules of engagement | #6
Chaos over severed hands |
| #7
Relations between Australia's special forces units on 'knife edge' | | |

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Who is the enemy? Australia's secretive rules of engagement

By the National Reporting Team's Dan Oakes and Sam Clark

Updated about 2 hours ago
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Picture this: you are an Australian special forces soldier on operations in Afghanistan.

Out of the corner of your eye you've spotted a person you believe to be a "squirter".

Do you shoot?

And if you do open fire on the "squirter", are you operating within the Australian Defence Force Rules of Engagement?

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From the very beginning of the war in Afghanistan, Australian troops were faced almost every day with decisions that had to be made within a split second.

The farmer smiling at you as you patrolled though his village could have an AK-47 stashed behind a nearby wall. The youth watching silently as you left your base could be reporting your movements to the insurgents.

The Taliban did not wear uniforms and often did not carry weapons on them. They travelled on motorbikes and in utes. They shook your hand by day and laid improvised explosive devices by night.

Now, Defence documents obtained by the ABC give an insight into the ambiguities and difficulties faced by troops on the ground.

Which brings us back to the squirter.

s33

That person might be moving to gain a tactical advantage. s33

s33

And if you do pull the trigger — and shoot a civilian — will your superiors find that you operated within the ROE, the all-important Rules of Engagement.

The ROE: a tightly-held secret

No army wants to let its enemy know when it will pull the trigger and when it will hold fire.

Obviously, any LN pointing a weapon at an Australian was a valid target.

#1
Leaked documents expose deadly secrets of Australian special forces

#2
An interrogation, a shooting and no witnesses

#3
What the documents reveal about killings of unarmed Afghans

#4
The spy and the SAS soldier with a loaded Glock

#5
Who is the enemy? Australia's secretive rules of engagement

#6
Chaos over severed hands

#7
Relations between Australia's special forces units on 'knife edge'

NOW READING

But documents obtained by the ABC show the Australian Defence Force instructed its members that unarmed Afghans might be legitimately killed if they were DPIH — “directly participating in hostilities”.

Much paper and ink was expended on defining this term but in the context of day-to-day operations in Afghanistan it often pertained to two distinct patterns or types of activity: moving in a “tactical” fashion towards higher ground or to an area where weapons might potentially be stored, and “spotting” for Taliban fighters.

This meant that if you were an Afghan riding a motorcycle in a certain fashion near Australian troops, or were seen talking on a radio or mobile phone, you could be considered fair game.

The documents seen by the ABC stress that mere suspicion, or instinct, was not enough, though. There had to be a solid basis for that suspicion, based on knowledge of insurgent “tactics, techniques and procedures”.

In April 2013, the Chief of the Defence Force, the Chief of Joint Operations and the head of the Joint Taskforce 633 (Australia’s troops deployed in the Middle East), all issued directives stressing that Australian soldiers must have a high degree of confidence that a targeted person is directly participating in hostilities.

“An ADF member is exposed to criminal and disciplinary liability, including potentially the war crime of murder...for opening fire on a person when there is a substantial risk that the person is not DPH,” General David Hurley, then the CDF, wrote.

Given the potential consequences, it is perhaps unsurprising that — with the exception of one infamous incident — in more than a decade of Australian involvement in Afghanistan, not one Australian soldier appears to have been subjected to legal or disciplinary action over the killing of a civilian.

In May 2009, an internal inquiry found that Australian soldiers who killed three men during an assault on a compound were cleared despite the fact that one of the dead was hiding in a pile of chaff, another was running away from the compound and the third was hiding in a hay stack.

None of the three were armed, no weapons were found nearby and none of the eight Afghan men captured alive was questioned about the identities of the dead men.

The officer who carried out the inquiry did not travel to the scene or question the local inhabitants.

Despite all this, he determined the dead men “acted in a manner consistent with taking a direct part in hostilities.”

When Australian SAS troopers hunting for the killer of three Australian soldiers in October 2012 killed two Afghan men, the Minister for Defence, David Johnston, was told in a briefing paper: "The scope of the legal concept of direct participation in hostilities...is necessarily subjective in nature...there is no compelling reason to second-guess the judgement of the soldiers involved."

On that occasion, one of the dead men, Mullah Janan Akhund, was seen talking on a radio as an Australian helicopter was about to land, then "assessed by SOTG members to be manoeuvring to gain tactical advantage through a covered position and potentially accessing a cache of weapons".

He was shot multiple times in the head and chest by two Australians, including Victoria Cross winner Ben Roberts-Smith.

The other man, Mullah Jalil Akhund, allegedly tried to wrest a weapon from an SAS trooper after being detained and was killed with "close range and deadly fire".

Nonetheless, the inquiry officer in that case did "identify a number of concerns in relation to the application of Australian ROE with respect to individuals taking a direct part in hostilities".

It was this incident that prompted General Hurley's warning to his troops that they could be tried for war crimes if they killed civilians without sufficient justification, and the clarification of rules of engagement that went out to all Australian forces in April 2013.

Civilian killings turning locals against troops

One other incident provides a window into the growing realisation that the killing of civilians was turning the local population against Australia and its allies.

On March 10, an Australian commando shot and killed a man on a motorcycle during an operation south-east of the main Australian base at Tarin Kowt. A female passenger was injured.

It was not until the provincial chief raised the incident a day later that Australian commanders realised their man had killed the Afghan motorcyclist.

A report on a subsequent meeting between Australian Special Forces personnel and the chief of police, Matiullah Khan, noted that he was agitated about "shooting civilians, especially females who do not target [Coalition Forces] or [Afghan National Security Forces]."

A later report compiled by a NATO investigation team noted that the local head of the Afghan national intelligence service, the NDS, "...echoed Matiullah Khan's sentiments, stating that Uruzgan citizens already blamed the National Directorate of Security for civilian casualty incidents arising from Special Operation raids."

The commando who killed the Afghan motorcyclist was cleared on the basis that intercepted communications revealed insurgents were active in the area, and the motorcyclist had exhibited behaviour — ignoring commands to stop, riding in a stop-start fashion and watching the Australian troops — that was consistent with "spotter" behaviour.

However, the author of the NATO report, an Australian officer, hinted that the patience of Afghan authorities with the killing of civilians might be wearing thin.

"The President of Afghanistan's recently declared delegation of responsibilities to Provincial security officials shows the national acceptance of [Afghan National Security Forces] as the lead security agency. This shift makes discretionary [Coalition] unilateral operations less acceptable to the Afghan population and [Government]," he wrote.

"This shift may also require a review of the burdens of proof as they pertain to the necessity of engaging spotters perceived to be directly participating in hostilities.

"The necessity of [special forces] to press the tactical advantage of the engagement needs to be weighed against the political disadvantage created by civilian casualty allegations against [Coalition forces] at this stage of the campaign."

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The Afghan Files

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- | | | |
|---|--|---|
| #1
Leaked documents expose deadly secrets of Australian special forces | #2
An interrogation, a shooting and no witnesses | #3
What the documents reveal about killings of unarmed Afghans |
| #4
The spy and the SAS soldier with a loaded Glock | #5
Who is the enemy? Australia's secretive rules of engagement | #6
Chaos over severed hands |
| #7
Relations between Australia's special forces units on 'knife edge' | | |

NOW READING

Header photo: Margaret Burin

Topics: defence-industry, defence-forces, defence-and-national-security, afghanistan, australia



'What the f* are you doing': Chaos over severed hands**

By the National Reporting Team's Dan Oakes and Sam Clark

Updated about 2 hours ago
Published about 7 hours ago

It was one of the most notorious incidents in Australia's recent military history — the severing of dead Taliban fighters' hands in Afghanistan.

When it was first revealed by the ABC in August, 2013, it caused a public furore and deep concern within Defence.

Now, for the first time, secret defence documents obtained by the ABC reveal the full story of how and why the "chopped hands" controversy came about.

The documents — one of which is marked "SECRET AUSTEO, INQUIRY IN CONFIDENCE" — reveal the incident caused bitter infighting within defence and sparked allegations of a "drift" in values within Australia's elite special forces.

REPORT OF THE INQUIRY OFFICER

INQUIRY INTO INCIDENT INVOLVING SENSITIVE SITE EXPLOITATION BY MEMBERS OF SOTG ON 28 APR 13

F69031

The documents state that on April 28, 2013, special forces were in search of a particular insurgent — an Australian National Priority Target codenamed Objective Rapier, a senior insurgent commander responsible for numerous attacks.

According to the documents, helicopters and a total of 120 soldiers were involved in the operation, including troops from the SAS and commandos.

One of the SAS officers in the patrol was Captain Andrew Hastie, now a federal Liberal MP.

The documents say that during the fighting in the southern province of Zabul, four insurgents were killed.

An SAS corporal searched the first body, finding a Makarov pistol.

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#1

The report of the defence inquiry into the matter says:
"[He] then severed a single hand of the EKIA (enemy killed in action) with a scalpel."

He repeated the process with two other EKIA's, cutting off their right hands.

Australian troops are required to collect fingerprints and eye scans of every Taliban fighter who is killed, if it is possible to do so.

But the mutilation or mistreatment of the bodies of the dead is a violation of the laws of war.

The report says: "In his evidence (the SAS corporal) said that once again he had severed the hands of EKIA's 2 and 3 of his own volition, as there was time pressure to retrieve the biometric material and to get back to the helicopters for extraction."

"At this point in time patrol commander (a sergeant) ... arrived at EKIA 3, and seeing the two hands on the ground, exclaimed words to the effect:

"What the f*** are you doing?"

Cutting off hands 'a tactical necessity'

The patrol commander told Defence investigators the soldier with the scalpel was "speechless" but a colleague replied: "This is a tactical necessity. This is a procedure to conduct latent fingerprints in the laboratory to take explosive residues."

The report states that Captain Hastie, then the commander of Troop B, observed a severed hand "at the site of the EKIA 3" and also asked what was going on.

When Captain Hastie and the sergeant returned to their base they discussed the incident at length and asked another SAS member to find out if the practice was permitted under Defence rules and regulations.

Cpt Hastie told his men not to sever any more hands and the next day reported the incident to his commanding officer.

The report paints a picture of confusion and growing alarm as news of what the SAS member had done began to radiate from the base at Tarin Kowt.

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An interrogation, a shooting and no witnesses

What the documents reveal about killings of unarmed Afghans

The spy and the SAS soldier with a loaded Glock

Who is the enemy? Australia's secretive rules of engagement

Relations between Australia's special forces units on 'knife edge'

It says the soldier "... exercised poor judgment, in that he failed to adequately appreciate the possible strategic consequences of those actions, in particular the potential responses from local nationals, (the Afghan Government), the Australian public and the media."

As the report makes clear, a training session just nine days before the patrol went out played a key and controversial role in what later transpired.

The training session was conducted by an Australian Defence Force Investigative Service (ADFIS) sergeant posted to Afghanistan as a crime scene officer as well as a civilian fingerprint expert. A number of SAS members and a Defence scientist also attended the session.

'You're sweet with us bringing back a hand?'

What was discussed remains hotly disputed.

Some SAS members claimed that the two experts explicitly sanctioned the removal of hands, one SAS trooper claiming that the experts described it as the "gold plate solution". Another said someone asked, "So you're sweet with us bringing back a hand?" to which the reply was, "Yes ... you've got to do what you've got to do on the ground".

The Defence scientist who was present — described in the report as "possibly the most independent person at the training" — characterised the advice given by the experts as, "Here are a range of techniques that can be used to gather evidence from a scene. It's up to those guys, under the tactical situation that they're experiencing, to determine what is the most appropriate technique to use."

The civilian expert said he had only discussed body parts being examined in the context of "post-blast" investigations and denied ever discussing the severing of hands.

The ADFIS Sergeant said that when the subject of severing hands came up, he agreed that it would be a good method of securing fingerprints, but cautioned that the SAS members had to ask their superiors whether it was acceptable.

The sergeant also said he was not surprised the SAS members left the training thinking the severing of hands was legitimate, as "... that was all they were focused on".

This division between the SAS members and the experts who provided the briefing was reflected later in a letter from the commanding officer of the SAS Regiment to head of ADFIS, in which he accused ADFIS investigators of attempting to save the reputation of their colleague at the expense of the SAS.

"To be clear, I believe the ADFIS team were deliberately seeking to charge members of my team to prevent any adverse action on members of their own. This is a perception shared by persons outside my chain of command as well," the SAS officer wrote in October 2013.

As the inquiry progressed, it became clear that Australian troops in Afghanistan had not been explicitly instructed about whether the collection of body parts for biometric testing was acceptable.

New guidelines were quickly put in place emphasising that "the mutilation and otherwise maltreatment of human remains" is not permitted.

Despite this, the officer who carried out the inquiry wrote that some SAS members still sought clarification about whether the practice was acceptable in any circumstances.

"The above position could be attributed to a common desire by the members to support [the SAS trooper who severed the hands], following his employment of the technique. That type of support is not surprising considering the nature of the unit and its operations. However, the views expressed appeared to go beyond mere support for [him] and demonstrated a drift in values, or at least a degree of desensitisation."

Other, more senior personnel who were interviewed by the inquiry were less ambivalent.

Cpt Hastie is quoted as saying, "My gut instinct was okay, that's a strange practice." Another SAS member said, "There's no uncertainty. I wouldn't cut f***ing people's hands off, sir."

The inquiry officer said in conclusion that he could not identify what had caused any "value shift" in the SAS members, but noted that they regularly see dead and dismembered bodies, and themselves regularly killed and injured people.

"The significance of [this] is that these members require very clear direction in relation to what they can and can't do, and the members request as much," he wrote.

"Additionally, it would be imprudent for commanders to assume that these members are in a position to make value judgements, in a way that will align with the judgement of the commanders, and others."

More than four years after the incident, it is not clear if any disciplinary action

was ever taken against the SAS trooper who severed the hands.

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#1

Leaked documents expose deadly secrets of Australian special forces

#2

An interrogation, a shooting and no witnesses

#3

What the documents reveal about killings of unarmed Afghans

#4

The spy and the SAS soldier with a loaded Glock

#5

Who is the enemy? Australia's secretive rules of engagement

#6

Chaos over severed hands

NOW READING

#7

Relations between Australia's special forces units on 'knife edge'

Header photo: Margaret Burin

Topics: defence-industry, defence-forces, defence-and-national-security, afghanistan, australia



Relations between Australia's special forces units on 'a perilous knife edge'

By the National Reporting Team's Dan Oakes and Sam Clark

Updated about 5 hours ago
Published about 7 hours ago

They are the most celebrated and prestigious units in the Australian Army.

The SAS — the Special Air Service Regiment — and the 2nd Commando Regiment are Australia's special forces elite, the soldiers tasked with the most difficult missions in warzones like Afghanistan.

But now Defence Department documents leaked to the ABC reveal that relations between the two units — which also have a crucial role in domestic counter terrorism operations — were severely damaged by the war in Afghanistan.

The tensions between the SAS, based in Perth, and the commandos, based in Sydney, are revealed in letters written in 2013 by a former senior commando officer to the then Chief of Army, David Morrison and to Victoria Cross (VC) winner, SAS Corporal Mark Donaldson.

The letters from the senior officer, obtained by the ABC, were prompted by Corporal Donaldson's book, *The Crossroad*.

The book included details of operations involving the two units in which the VC winner criticised the conduct and professionalism of the commandos.

The two units operated alongside each other in Afghanistan as part of Australia's Special Operations Task Group on an operation called CASTNET.

The most controversial claim was that during an operation in Helmand Province, commandos used explosives to enter Afghan homes, after saying they wouldn't do so.

As a result Australian troops were exposed to attack from insurgents, Corporal Donaldson wrote.

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- #1
Leaked documents expose deadly secrets of Australian special forces
- #2
An interrogation, a shooting and no witnesses
- #3
What the documents reveal about killings of unarmed Afghans
- #4
The spy and the SAS soldier with a loaded Glock
- #5
Who is the enemy? Australia's secretive rules of engagement
- #6
Chaos over severed hands
- #7
Relations between Australia's special forces units on 'knife edge'

NOW READING

'Extremely unhealthy' culture among teams

The former senior commando officer initially wrote to Corporal Donaldson saying he was "incredibly disappointed" with the criticisms, that they were not true and that the SAS had been told explosives were going to be used.

He told Corporal Donaldson: "Relationships between the two units are at an extremely unhealthy state..."

"The culture of your unit, my unit and SOCMND (Special Operations Command) is on a perilous knife edge."

Receiving no reply, he wrote to General Morrison on November 25, 2013.

The former senior commando officer said the book contained factual errors.

"Furthermore it unfairly maligns officers and commandos and may place in doubt their role in effectively implementing Australian Government policy."

He said it "unjustly criticises the commando reputation and dishonours their service".

In doing so, he said, it "exacerbates a systemic internal cultural divide".

The book "appears to undermine the reputation of the 2nd Commando Regiment and therefore the ongoing trust and support of the nation to which we belong".

In his reply, General Morrison stressed the book was a personal memoir and not an official military history and that "a degree of editorial latitude" had to be given to the author.

He also said he was concerned about the former commando officer's comments about a "cultural divide" and that he would take this up with senior officers.

While in his letter to the former commando officer was critical of the book, he praised his army service and noted that the VC winner was a "truly humble and self-effacing individual".

He also said, rather curiously, "Furthermore I noted your VC is one in which there is no doubt that it was deserved".

A spokesperson for Pan Macmillan Australia, the publisher of The Crossroad, did not respond to a request for comment.

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- | | | |
|--|--|--|
| #1
Leaked documents expose deadly secrets of Australian special forces | #2
An interrogation, a shooting and no witnesses | #3
What the documents reveal about killings of unarmed Afghans |
| #4
The spy and the SAS soldier with a loaded Glock | #5
Who is the enemy? Australia's secretive rules of engagement | #6
Chaos over severed hands |
| #7
Relations between Australia's special forces units on 'knife edge' | | NOW READING |

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Topics: defence-industry, defence-forces, defence-and-national-security, afghanistan, australia



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Telephone s47F

SEC(S)/OUT/2019/30

Commissioner Andrew Colvin APM OAM
Australian Federal Police
Edmund Barton Building
47 Kings Avenue
BARTON ACT 2600

Dear Commissioner Colvin

In accordance with agreed procedure for referring matters to the Australian Federal Police (AFP) following the unauthorised disclosure of Commonwealth information, please accept this letter as a formal request for an AFP investigation.

On 5 March and on 7 March 2019, Fairfax journalist Mr David Wroe published articles allegedly sourcing content from minutes classified as PROTECTED and SECRET AUSTEO from a Defence Strategic Command Group meeting on 11 September 2018.

The articles address alleged Australian Border Force (ABF) underfunding resulting in a 20 percent shortfall in its target for sending patrol boats to sea, and allege that Defence cancelled a maritime operation with Pacific neighbours and an air surveillance exercise with Indonesia in order to perform the work of the ABF.

The Secretary of the Department of Home Affairs supports this referral and will receive a copy of this letter. My point of contact for this matter is s47F

s47F

Yours sincerely

s47F

Greg Moriarty

12 March 2019

Copy to: Mr Michael Pezzullo, Secretary, Department of Home Affairs



Australian Government
Department of Defence

Secretary

Telephone: s47F
Facsimile: [REDACTED]

SEC(S)/OUT/2018/64

Commissioner Andrew Colvin APM OAM
Australian Federal Police
Edmund Barton Building
47 Kings Ave
BARTON ACT 2600

Dear Commissioner Colvin

In accordance with agreed procedure for referring matters to the AFP involving the unauthorised disclosure of Commonwealth information, please accept this letter as a formal request for an AFP investigation.

As you are aware, on 29 April 2018 News Limited journalist, Ms Annika Smethurst, published an article which referred to highly classified information. The article referred to correspondence between the Secretary of the Department of Home Affairs and me, as well as a Ministerial Submission from the Australian Signals Directorate regarding a Home Affairs proposal for legislative amendments.

The Secretary of the Department of Home Affairs supports this referral and will receive a copy of this letter. My points of contact for this referral are [REDACTED]

s47F [REDACTED]

Yours sincerely

s47F [REDACTED]

Greg Moriarty [REDACTED]

30 April 2018 [REDACTED]