

The Military History Society of New South Wales presents:

The Inaugural Annual Patron's Lecture

WAR CRIMES IN AUSTRALIAN HISTORY
FROM THE BOER WAR TO VIETNAM



A Public Lecture

Major General the Honourable Justice Paul Brereton, AM, RFD

10:30AM Saturday 4 June 2022

The Auditorium, Anzac Memorial Hyde Park, Sydney CBD

Australia espouses adherence to the laws of armed conflict, and support for the institutions that monitor them. Australia has been an overt and enthusiastic supporter, and an 'early adopter', of most international treaties applicable to the law of armed conflict. Australia has firmly, but fairly, investigated and prosecuted the war crimes of our adversaries.

While Australia's record of compliance with the law of armed conflict is a good one, there are, from the Boer War through to the Vietnam War, indications that, in rare exceptions, Australian service members may have been involved in serious breaches of the laws of armed conflict, including the killing of non-combatants and persons *hors de combat*, including prisoners. The case of the BVC illustrates an irregular unit, operating with autonomy and limited supervision, under the influence of a flawed but charismatic leader, in which practices for the treatment of prisoners that were inconsistent with formal and legal obligations became accepted by some, and in which reporting of contraventions of the customs of war was deterred. But it also illustrates the courage of Australians who were not prepared to tolerate this, and who by reporting their concerns to higher authorities triggered the inquiry that led to the courts-martial. The Rabaul looting cases demonstrate a willingness to investigate and prosecute conduct contrary to the law of armed conflict.

However, the Surafend incident represents an abject failure to hold Australian forces to account, not least by reason of a closely-bonded unit maintaining a code of silence. The operations against Japanese lifeboats and survivors after the Battle of the Bismarck Sea, is an illustration of strategic purpose being accepted as prevailing over any ambiguity about legality. However, there was no ambiguity about the killing of prisoners in New Guinea; yet informal reports went uninvestigated, although Australia was at the forefront of holding the Japanese to account, albeit for much more extensive misconduct. There remain unresolved allegations of the killing of *hors de combat* personnel by Australians in Vietnam.

There are enduring themes, associated with these incidents, of disconnects between the law and formal orders on the one hand, and local practices on the other; of the influence of revenge and excessive zeal;

and of a culture of non-inquiry, non-reporting, and silence. Allegations of war crimes often emerge belatedly, for various reasons. The investigation and prosecution of serious war crimes, regardless of when they come to light, is important, not only because of the international law obligation to do so, but because they affect not only the individuals concerned, but also the nation's reputation and standing, and undermine morale and moral authority, which is part of our combat power. The failure to deal with allegations and indicators as they begin to emerge and circulate is corrosive – it gives spurious allegations life, and serious allegations a degree of impunity. The consequences of not addressing such allegations as and when they eventually arise are measured in decades.

TIME AND VENUE

10:30AM Saturday 4 June 2022 at The Auditorium, Anzac Memorial Hyde Park, Hyde Park South, corner Elizabeth and Liverpool Streets, Sydney CBD. Admission is free of charge but a donation would be appreciated. For information call 0419 698 783 or email: president@militaryhistorynsw.com.au

Biography – Major General the Honourable Justice Paul Brereton, AM, RFD



Justice Brereton was born in Sydney and practised as a solicitor from 1982 to 1987 and as a barrister from 1987 to 2005. He was appointed Senior Counsel in 1998. In 2005 he was sworn in as a Judge of the Supreme Court of New South Wales and joined the NSW Court of Appeal in August 2018. Justice Brereton is an Army Reservist who holds the rank of Major General. He enlisted in the Army Reserve in Sydney University Regiment in 1975, and was commissioned in the Royal Australian Infantry in 1979. He has served as Second-in-Command Sydney University Regiment (1994-6), Commanding Officer 4th/3rd Battalion, the Royal New South Wales Regiment (1997-99), Chief of Staff 5th Brigade (2004-5), Assistant Chief of Staff Land Headquarters (2006-7), and Commander 5th Brigade (2008-10). From 2011 to 2013 he was Head of Cadet, Reserve and Employer Support Division. He holds honorary appointments as Colonel Commandant of the Royal NSW Regiment and the University of NSW Regiment. He also sits as a member of the Defence Force Discipline Appeals Tribunal and acts as Assistant Inspector-General of the Australian Defence Force. Justice Brereton was honoured with membership of the Order of Australia (Military Division) in 2010 and received the Reserve Force Decoration in 1995. He led an Inspector-General of the Australian Defence

Force investigation into alleged criminal misconduct on the battlefield by Australian Special forces in Afghanistan, issuing the *Inspector-General of the Australian Defence Force Afghanistan Inquiry Report* in November 2020. Justice Brereton is Patron of the Military History Society of New South Wales.

ANNOUNCEMENT – VENUE

The 2022 venue for The Military History Society of NSW lecture program will be the Auditorium on the lower level of Anzac Memorial Hyde Park, corner of Elizabeth and Liverpool Streets, Sydney CBD. Numerous bus services stop at the location and Museum railway station is only 160 metres away. The venue opens its doors at around 10:00AM.

