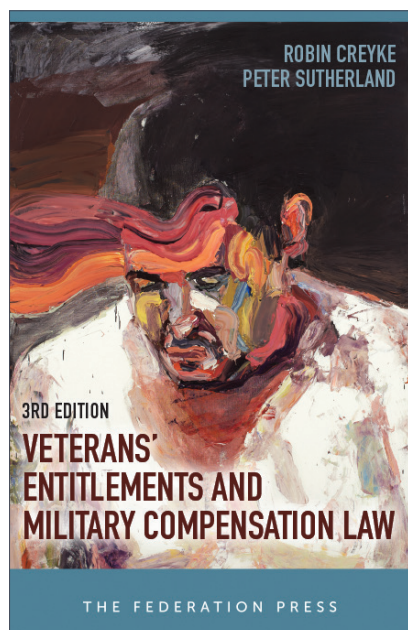


## Veterans' Entitlements and Military Compensation Law (3rd ed)

Robin Creyke and Peter Sutherland (eds) | The Federation Press | 2015



The third edition of this work, first published in 2000, provides detailed commentary and annotations to the *Veterans' Entitlements Act 1986* (Cth) and *Military Rehabilitation and Compensation Act 2004* (Cth). The text is a companion to the statutes which are tracked sequentially, although the sections are referenced by catchwords rather than fully repeated.

The commentary on the later statute, which governs compensation to members of the armed forces who die or are severely injured due to their service on or after July 2004 and to the dependents of such members, is a new addition. Since there has, to date, been relatively little cause for judicial interpretation of the later statute the authors necessarily annotate it with references to comparable provisions of the earlier legislation or the *Safety Rehabilitation and Compensation Act 1988* (Cth). The interpretation of the two principal acts is assisted by the detailed cross references to other relevant statutes and annotations.

A notable example of the close analysis the statutes require is found in the commentary and annotations to section 120 of the *Veterans Entitlements Act 1986*. That section sets the standards of satisfaction or proof for claims under the Act. The discussion is necessarily extensive. The authors explain that there are two standards of proof, 'the reverse criminal standard, which is more generous, and the civil standard'. The more generous provision applies to a veteran whose incapacity is war-caused, 'provided there is a 'reasonable hypothesis' of a connection between service and the incapacity, which is not disproved beyond reasonable doubt'. This, the authors observe, offers a unique contribution to legal jurisprudence and the accompanying explanation demonstrates that it calls into play extensive consideration of evidentiary principles in general and the authorities which have determined the application of the standard to the facts of particular cases.

Claims lodged after 1 June 1994 became subject to the Statement of Principles scheme by which legislative instruments establish factors defining the 'reasonable hypothesis' that applies to particular circumstances (disease, injury, cause of death). The operation of the Statements of Principles scheme is explained with precision and considerable detail and supplemented by a detailed commentary on their interpretation, with focus on some key expressions and difficulties.

The authors have found scope for reflection on the history of military compensation legislation in Australia and the many complications the long history of its application has generated. It is explained that the *War Pensions Act 1914* was the first specific compensation scheme enacted by the Commonwealth of Australia but provision for

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compensation for injury in the course of service was in existence before the First World War. The principles for compensation retained in the *Veterans Entitlements Act 1986* are sourced in the provisions which were developed in response to successive major conflicts involving Australian armed forces. The authors explain by the 1970s there was compensation for death or incapacity (a) from employment directly in connection with war or warlike preparations, (b) that occurred during service, (c) which had arisen out of or was attributable to service, (d) due to a condition which predated service but which was contributed to in a material degree or aggravated by service, or (e) from pulmonary tuberculosis where the person had served in a theatre of war.

The annotation form is driven by practical objectives to distil an extensive body of case law emerging over many decades into an efficient guide to the present operation of the compensation regime for military service. In this work the analysis is clear, accessible and supported by detailed reference to authorities and aids to interpretation. The authors expressed desire to honour those members of their families who served Australia and New Zealand as members of military forces has produced as clear a guide to the rights of claimants as the legislation and extensive judicial determinations can allow.

Reviewed by Jane Merkel