
Book Review

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VETERANS' ENTITLEMENTS AND MILITARY COMPENSATION LAW

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Veterans' Entitlements and Military Compensation Law (3rd ed), Robin Creyke and Peter Sutherland, Federation Press, 2016, 928 pages: ISBN 9781760020460. Softcover \$150.00.

The publication of the earliest edition of this book in 2000 marked the first detailed examination of the peculiar law that governs the compensation entitlements of military veterans. Any practitioner or scholar who works in this area would know that veterans' entitlements is so completely different from other forms of compensation law that a wholly separate treatment of the area is essential to its understanding. While very few cases about veterans' entitlements reach the High Court, the area provides a huge amount of work for other federal courts and tribunals. The reason is obvious. Veterans' entitlements is governed by extremely complex principles from the *Veterans' Entitlements Act 1986* (Cth) and now also the *Military Rehabilitation and Compensation Act 2004* (Cth). The latter applies to military service occurring on or after 1 July 2004, while the former applies to all earlier service. This means that for many years to come, perhaps even decades, military compensation law will be governed by two lengthy statutes and the 2004 statute will slowly become the primary vehicle for claims. Both statutes run to several hundred pages; both are also informed by "Statements of Principle" (SOPs) which are administrative determinations issued by specialist medical panels and are vainly intended to settle some questions of liability. There are also a huge number of relevant court and tribunal decisions. This regime rivals our migration and tax codes for its intricate detail, which is subject to almost endless amendments by successive parliaments. Creyke and Sutherland provide a masterly explanation of this and many more features of the area. They provide careful and detailed commentary on both statutes, drawing upon a remarkably large number of cases.

Several aspects of the book deserve particular comment. The first is that the authors do not limit their scope to compensation in the narrow sense. They have included a separate chapter by Bruce Topperwein about defence honours and awards and also the rules governing war graves. These matters are often more important to veterans than questions of financial compensation, so their inclusion extends the scope of the book into areas that are novel but no less important. A second notable feature of the book is its seamless coverage of both the 1986 and 2004 statutes. The analysis of each statute is detailed and immensely readable but made much stronger by the connections and contrasts that the authors draw between the two. These many connections are especially useful for those who must use the 2004 statute because the vast bulk of existing knowledge stems from cases about the 1986 statute, which means that the careful guidance of the authors about what principles from the 1986 statute can and cannot be transposed to the 2004 assumes particular value. Third, the authors manage to convey just how important the SOPs are to veterans' entitlement claims. The SOPs are legislative instruments and constitute a form of "soft law" that have no real equivalent in Australian law. The authors devote great attention to explaining the often obscure content of SOPs and make clear why these often require as much attention as the statutes under which they are promulgated. The coverage of SOPs provides a new and especially welcome addition to this work.

The authors also move easily from the minute detail of the two key statutes to focus on some of the key problems of the area. The most obvious is s 120 of the *Veterans' Entitlements Act 1986* (Cth), which introduces two possible standards. One is a civil standard and the other is a reverse onus set at the criminal standard (meaning that a claim must be accepted unless decision-makers can be satisfied beyond reasonable doubt that there is no sufficient ground to do so). This reverse onus applies where there is a "reasonable hypothesis" connecting the claimed incapacity and the military service of the claimant.

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Creyke and Sutherland rightly note that this unique rule is not simply favourable to claimants. It draws together a blend of evidentiary rules, principles of administrative decision making and merits review, all of which must be applied to cases where the applicant typically has several interrelated medical conditions. The authors describe and explain this notoriously complex area with exceptional clarity, which is aided in many places by a strong understanding of the functions exercised by the administrative officials and merits review bodies that must apply these tests.

The law governing veterans' entitlements continues to be burdened by the most cruel of ironies. Those who serve in our armed forces face dangers like no other members of society. They should have access to fair and adequate compensation. Most informed observers would also quickly realise that serving and former members of the defence forces who have been injured in their military service are often unable to tackle officialdom in pursuit of their rights. Why then are these very people faced with a compensation system so complex that even George Orwell might have struggled to imagine its nightmarish details? That nightmare is at least made bearable to practitioners, judges and tribunal members by this fine work.