Book Review

Editor: Dr Janina Boughey

MILITARY LAW IN AUSTRALIA

Reviewed by Matthew Groves


This book is an edited volume dealing with many different areas of Australian law that have particular impact upon the military, including military officials, members of the armed forces and veterans. The book will have particular value to those groups, as well as any practitioner or scholar needing guidance on legal issues related to the military, because it is the first systemic attempt to draw the many and vastly different areas of law relevant to the military. Military law intersects with so many different areas, such as disciplinary proceedings, powers of arrest, international humanitarian law and workplace health and safety, that a single volume drawing these constituent parts together is welcome. The book provides highly readable accounts of the very disparate areas that constitute military law, due in large part to the impressive field of experts gathered for individual contributions. The readable character of the book is also due to the editorial decision to eschew footnotes, in favour of the extremely select use of in-text references. The absence of footnotes may distress some academic readers but it is more than compensated by the select bibliography placed at the end of the book and is divided by chapters. Military law sources are very fragmented and often include obscure official reports that are not easy locate. The collation of an enormous range of these otherwise difficult to identify sources in the bibliography provides a resource of immense value to those interested in this field.

The book is divided into five parts, which are history, the Australian defence force, domestic military law, operations law and military personnel law. A notable feature of the book is that several chapters are written by current or former military officers. Those authors are deployed to useful effect in a range of chapters that are informed with a perspective typically not seen in legal writing. A striking example is the chapter on maritime operations under the Maritime Powers Act 2013 (Cth), written by Commander Sophia White. That statute sparked intense political debate and a large amount of scholarly commentary about the nature and use of the powers created by the Act.1 White usefully notes that before the 2013 Act commenced, the same issues were governed by 35 different, overlapping federal statutes. Her careful analysis of the powers and requirements of the Maritime Powers Act 2013 is essential reading for anyone who needs to understand this unique statute. Another example is the chapter on recruitment, promotion, discharge and remuneration, which often give rise to protected individual disputes. The chapter on these issues that is written by Wing Commander Angeline Lewis provides a thoughtful analysis of this unwieldy area.

Another notable feature of the book is its excellent balance of domestic and international law analysis. While scholars, practitioners and military commanders all realise that the almost permanent deployment of Australia’s military forces in various peacekeeping and other international operations has meant that the international dimension of Australian law is now ongoing. The introduction by Dale Stephens to the section of chapter covering “operations law” traces (158) this trend to 1989, when Australia deployed troops to Namibia.2 The different chapters on aspects of operations law explain the domestic constitutional and legal include for operations, the relevance of the International Criminal Court to Australia’s defence forces, the regulation of emergent technologies in military operations and the relevance of the domestic

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2 This deployment was part of Australia’s contribution to UNTAG (the United Nations Transition Assistance Group). UNTAG was part of the process that saw the withdrawal of foreign troops and the conduct of free elections.
disciplinary framework and its administrative law principles to operational matters. This combination of analysis of both domestic and international law, drawn from different experts in the relevant fields, highlights the special strength of an edited – to draw upon a range of expertise that is beyond the reach of one or two authors.

The final section – covering military personnel law – deserves special mention for several reasons. One is that employment law in the strict sense has only partial application to the military because much of it is either excluded or supplemented by bespoke legislation arrangements. Drawing together what can loosely be described as the “human resources” side of military law provides an analysis not readily available in specialist employment law works. Another notable feature of this section is that it deals with issues that occur in all parts of life but often assume particular importance when current or former members of the military are involved. The principles governing funerals and memorial stones are governed by the State law but are supplemented for military personnel by regulations and administrative policies that most succession practitioners would struggle to find. Robin Creyke and Bruce Topperwien explain these novel arrangements with admirable clarity.

The longest chapter in this final part, which is also the longest chapter of the entire book, is the 44 page one covering military compensation, insurance and superannuation. This chapter is written by Sutherland and Creyke and provides an overview of sorts to the meticulously detailed analysis those authors have undertaken over more than 900 pages in Robin Creyke and Peter Sutherland, Veteran’s Entitlements and Military Compensation Law (Federation Press, 3rd ed, 2017). Anyone with experience in military compensation and related entitlements will understand its daunting detail and complexity. Creyke and Sutherland’s chapter provides a remarkably clear overview of this entire area and should be regarded as the first port of call for any practitioner, scholar or member of the armed forces who needs a holistic understanding of this complex and messy legislative regime.

If one criticism can be made of the coverage of this book, it is that there is no dedicated chapter or chapters to the human rights of members of the armed forces. At one level, that is understandable because Australia lacks a federal Bill or charter of rights applicable to members of the defence forces. But even the absence of such an instrument is deserving of analysis, particularly in light of the seismic changes that human rights litigation have wrought on the rights of military personnel in the Commonwealth countries which do have a Bill or charter of rights, such as Canada and the United Kingdom. The book would have benefited from a chapter that considered the rights protection available to service members in the absence of a Bill or charter of rights. That is a small criticism. This book is a considerable achievement, deserving of a wide audience.