

ISSUE No 1 – DEFINING THE TERM “VETERAN”

The term “*veteran*” is a matter which consistent with the pace of definitions at the head of legislation, should also be placed at the head of this submission.

The issue of who veteran covers has created a degree of confusion among serving and former ADF members with the resultant feeling of disenfranchisement amongst members, serving and former. The concerns expressed by both former and currently serving members at their confusion and frustration over this matter is noted and needs to be acted on.

By way of example, the following are offered:

1. A former ADF member of over 16 years eligible Defence service (RAAC) medically discharged. When asked if he had spoken to a Pensions Officer about a disability (VEA) pension, the veteran informed this writer¹ “*No mate I haven’t, got an entitlement.*” When asked why he said, “*Because I’m not a veteran.*”
2. The concerns expressed to a senior serving soldier that his partner is not considered by the Army and therefore, the Government to be a veteran notwithstanding the fact she has six service ribbons denoting operational (non-warlike) service.
3. The Vice-President of a country Victorian Sub-branch who informed this writer of a member of his sub-branch who, having served nine tours of duty in Afghanistan, does not consider himself a veteran because the Government does not either.

These are but three instances of contemporary veterans the Corporation contends will be very readily related to by other ESOs and many veterans.

It is precisely matters such as these surrounding the definition of *veteran* which the Corporation contends, causes confusion leading to disillusionment and a sense of disenfranchisement among many veterans including those who served during the Great Peace.

It is noted that the definition of *veteran* ceases in law to apply after 1945, and effectively ignores any and all current and former members of Australia’s Armed Forces who served after that date regardless of the nature of conflict be it warlike, peacekeeping or eligible defence service. The *Veterans’ Entitlements Act 1988* (Cth) defines *veteran* at s.5 thus:

“veteran means:

(a) a person (including a deceased person):

(i) who is, because of section 7, taken to have rendered eligible war service; or

(ii) in respect of whom a pension is, or pensions are, payable under subsection 13(6);

and

(b) in Parts III and VIIC also includes a person who is:

(i) a Commonwealth veteran; or

¹ The author has been a Practising Veterans’ Advocate at the VRB since June 1986 and is self-taught. He holds a Practising Certificate (TIP4 level) to appear at the Commonwealth AAT in the Veterans’ Division and enjoys a 100% success rate.

- (ii) *an allied veteran; or*
- (iv) *an allied mariner.*

Note: *Commonwealth veteran, allied veteran and allied mariner are defined in this subsection. warlike service means service in the Defence Force of a kind determined in writing by the Defence Minister to be warlike service.*

Equally significantly is the fact that MRCA 2004 is completely silent on the definition of “**veteran**.” This operates to not only add to ADF members’ confusion and disappointment, but the lack of such a definition in that Act, operates to legislatively *de minimis* their service to the nation be it operational service or otherwise.

The lack of the definition of “**veteran**” in MRCA 2004 cannot be allowed to stand and is on any view, inexcusable.

Similarly the provisions of DRCA 1988 which are also silent on this definition need to be amended in that regard.

There is no place in the Corporation’s opinion, to maintain an imbalance in the three Acts through a continued and inexcusable failure by the Commonwealth Government as represented by DVA, by not having a definition of **veteran** vested across all three Acts and also written into any proposed Draft Omnibus Bill.

The current interpretation in Australian law of **veteran** is on its face, inconsistent with the generous interpretation in US, legislative definitions of **veteran** which embraces all classifications of service active or otherwise, as long as a member has not been dishonourably discharged.

The US approach

Under US law, *Title 38 U.S. Code § 101 – Definitions*, defines veteran thus:

(2) The term “veteran” means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.²

The British approach

The UK Government is a party to a Military Covenant with its Armed Forces which was enshrined in the *Armed Forces Act 2011* (UK) and defines **veterans** viz :

Veterans are defined as anyone who has served for at least one day in Her Majesty's Armed Forces (Regular or Reserve) or Merchant Mariners who have seen duty on legally defined military operations.³

The Canadian approach

² Cornell Law School Legal Information Institute <https://www.law.cornell.edu/uscode/text/38/101> [accessed 19/10/17].

³ Ministry of Defence Veterans – Key facts at p.2, Definition, online at <https://www.armedforcescovenant.gov.uk/wp-content/uploads/.../Veterans-Key-Facts.pdf> [accessed 19/10/17]

The Veterans Affairs Canada (VAC)⁴ defines **veteran** as:

Definition of a Veteran

Any former member of the Canadian Armed Forces who successfully underwent basic training and is honourably released.

VAC considers any former member of the Canadian Armed Forces who releases with an honourable discharge and who successfully underwent basic training to be a Veteran.

The NZ approach

Veterans Affairs New Zealand (VANZ) defines the term **veteran** in the *Veterans' Support Act* (2014)⁵ (NZ) vide **s.7 – Interpretation**; viz

veteran means—

(a) a member of the armed forces who took part in qualifying operational service at the direction of the New Zealand Government; or

(b) a person—

(i) who has been—

(A) appointed as an employee of the Defence Force under section 61A of the Defence Act 1990; or

(B) seconded to the Defence Force with the permission of the Chief of Defence Force; and

(ii) who took part in qualifying operational service at the direction of the New Zealand Government; or

(c) a person who, immediately before the commencement of Part 3 of this Act, is eligible for a pension under the following provisions of the War Pensions Act 1954:

(i) section 19 (but only if the person was a member of the forces):

(ii) section 55 or 56:

(iii) Parts 4 and 5

The NZ legislation provides no beneficial application in the Act to apply to non-operational service. The exclusionary provisions in s.9 of that Act make that unambiguously clear. The Corporation considers the NZ model to be completely unsuitable

⁴ Online at <http://www.veterans.gc.ca/eng/about-us/definition-veteran> [accessed 19/10/17]

⁵ Online at <http://www.legislation.govt.nz/act/public/2014/0056/latest/whole.html#DLM5537730> [accessed 19/10/17]

and inconsistent with the very beneficial approach taken by other countries and contends the NZ model should be avoided at all costs.

The conclusion is that Australia is embarrassingly lacking in adapting its legislation to reflect the nature of service through a formal recognition enshrined in law, by defining *veteran*. The three Acts need to be harmonised to include any such definition having regard to the UK, US and Canadian approach and to also include a definition of *veteran* in an Omnibus Bill.

Similarly, consideration should be given to having a Military Covenant included in any legislation to form the document and must not on any level, be an appendage by way of a Preamble. It must be a **substantive part** of any Act, either current or proposed.