

## **HON MEKA WHAITIRI, MINISTER FOR VETERANS**

### **Memorandum of Understanding between the Crown and Vietnam Veterans**

December 2022

This paper notes that a new process has been developed for determining future additions to the Prescribed Conditions for the purposes of Schedule 1 of the 2006 Memorandum of Understanding between the Crown and representatives of New Zealand's Vietnam veterans (MoU).

The pack comprises the following documents:

- November 2022 Cabinet Social Wellbeing Committee Minute of Decision *Memorandum of Understanding between the Crown and Vietnam Veterans* [SWC-22-MIN-0218]; and
- The associated Cabinet Paper *Memorandum of Understanding between the Crown and Vietnam Veterans*.

This pack has been released on the New Zealand Defence Force website, available at: [www.nzdf.mil.nz/nzdf/search-our-libraries/documents/?document-type=Official+information&sort=relevance](http://www.nzdf.mil.nz/nzdf/search-our-libraries/documents/?document-type=Official+information&sort=relevance).

No information has been withheld.



# Cabinet Social Wellbeing Committee

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Memorandum of Understanding between the Crown and Vietnam Veterans

**Portfolio**                      **Veterans**

On 23 November 2022, the Cabinet Social Wellbeing Committee (SWC):

- 1        **noted** that the 2006 Memorandum of Understanding between the Crown and representatives of New Zealand's Vietnam veterans provides for ex gratia payments of \$40,000 to be made to Vietnam veterans who are diagnosed with Prescribed Conditions, based on a list developed in the United States where research shows "sufficient evidence of association" between a condition and chemicals (defoliants and herbicides) used in Vietnam;
- 2        **noted** that the Memorandum of Understanding allows, by way of the definition of Prescribed Conditions, for additional conditions to become eligible for an ex gratia payment based on the conclusions of an overview of research by the United States National Academy of Sciences;
- 3        **noted** that the Memorandum of Understanding does not specify a process for adding new conditions to Schedule 1 of the Memorandum of Understanding;
- 4        **noted** that in November 2021, SWC agreed that the Crown should work with the other parties to the Memorandum of Understanding to develop a process that could be used to add new conditions for the purposes of Schedule 1 of the Memorandum of Understanding [SWC-21-MIN-0191];
- 5        **noted** that the above work has now been completed, and the Crown representative, the Vietnam Veterans' Association, and the Royal New Zealand Returned and Services' Association have recommended a process that can be used in the future to add new conditions for the purposes of Schedule 1 of the Memorandum of Understanding;
- 6        **noted** that the recommended process, attached under SWC-22-SUB-0218, involves consideration in New Zealand before a new condition is added for the purposes of Schedule 1 of the Memorandum of Understanding;
- 7        **noted** that the recommended process will sit alongside the Memorandum of Understanding and does not require amendment to the Memorandum of Understanding;
- 8        **noted** that the recommended process will involve no additional costs or resources;

- 9 **agreed** that the recommended process should be used in the future to add new conditions for the purposes of Schedule 1 of the Memorandum of Understanding;
- 10 **authorised** the Minister for Veterans to determine that the new Prescribed Condition or Conditions on the United States National Academy of Sciences' 'sufficient evidence of association' list will apply in New Zealand for the purposes of Schedule 1 of the 2006 Memorandum of Understanding between the Crown and representatives of New Zealand's Vietnam veterans.

Rachel Clarke  
Committee Secretary

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**Present:**

Rt Hon Jacinda Ardern  
Hon Grant Robertson  
Hon Kelvin Davis  
Hon Dr Megan Woods  
Hon Chris Hipkins  
Hon Carmel Sepuloni (Chair)  
Hon Andrew Little  
Hon Poto Williams  
Hon Willie Jackson  
Hon Jan Tinetti  
Hon Dr David Clark  
Hon Dr Ayesha Verrall  
Hon Priyanca Radhakrishnan  
Hon Meka Whaitiri

**Officials present from:**

Office of the Prime Minister  
Office of the Chair  
Officials Committee for SWC

## **MEMORANDUM OF UNDERSTANDING (2006) BETWEEN THE CROWN AND REPRESENTATIVES OF NEW ZEALAND'S VIETNAM VETERANS**

### **Proposal**

1. This paper briefs Cabinet on work undertaken in response to a decision by the Cabinet Social Wellbeing Committee in November 2021 that the Crown should work with the other two parties to the 2006 Memorandum of Understanding (MoU) between the Crown and representatives of New Zealand's Vietnam veterans to develop a process that could be used in the future to add new conditions for the purposes of Schedule 1 of the MoU.

### **Introduction**

2. New Zealand combat troops served in Vietnam between 1965 and 1971, with some further military involvement continuing until 1975. Almost 30 years later it was officially accepted and acknowledged that the health of New Zealand personnel who had served in Vietnam could have been damaged by the defoliants and herbicides used by the United States in the conflict.

3. Government actions to redress this and other grievances of veterans culminated in the signing, in December 2006, of an MoU between the Crown and organisations representing those who had served in Vietnam.

4. Amongst its provisions are ex gratia payments of \$40,000 for Vietnam veterans diagnosed with certain specified conditions (Prescribed Conditions), thought to be associated with exposure to defoliants (generally known as Agent Orange). At the time the MoU was signed, there were five Prescribed Conditions. These comprised the conditions appearing on a United States National Academy of Sciences list of conditions for which it had been assessed that there was "sufficient evidence of association between the chemicals of interest and health outcomes".

5. The MoU allowed for additional Prescribed Conditions to become eligible for ex gratia payments in New Zealand, based on future additions to the United States National Academy of Sciences "sufficient evidence of association" list.

6. In 2018, for the first time since the MoU was signed in 2006, two new conditions, hypertension and monoclonal gammopathy of undetermined significance, were added to the United States list. They thus met the requirements of the Prescribed Conditions definition in the MoU.

7. This brought into focus the fact that there was no process required or in place for making changes to the Prescribed Conditions list in New Zealand. The MoU assumes that conditions newly added to the United States list will automatically become Prescribed Conditions in New Zealand, and create eligibility for an ex gratia payment.

8. Cabinet accepted that, under the terms of the MoU, the Crown is obliged to make ex gratia payments to veterans diagnosed with new conditions. Funding was made available in November 2021 to enable ex gratia payments to be made to those diagnosed with the two new conditions that had been added to the United States list.<sup>1</sup> It also agreed that the Crown would work with the other parties to the MoU, the Vietnam Veterans' Association and the Royal New Zealand Returned and Services' Association, to develop a process for dealing with new conditions that may arise in the future.

9. That work has now been completed, and a process agreed.

### **Developing a Process for Managing Potential New Conditions**

10. The Crown, represented by Sir Jerry Mateparae GNZM, supported by Veterans' Affairs, met three times between August and October 2022 with Vietnam veterans, represented by four members of the Vietnam Veterans' Association and two members of the Royal New Zealand Returned and Services' Association.

11. The group, while mindful that the Crown has no discretion or ability to decline or refuse to make an ex gratia payment if a veteran has served in Vietnam and been diagnosed with a Prescribed Condition, appreciated the importance of upholding New Zealand's sovereignty and ensuring that, whatever process they recommended, should involve a step in New Zealand before a new condition is added to Schedule 1.

12. The group was guided by a number of criteria in developing the process. They agreed it should:

12.1 honour the intent of the MoU;

12.2 meet the requirement of Cabinet Minute of Decision SWC-21-MIN-0191;

12.3 be simple to implement;

12.4 add no extra cost to Government; and

12.5 meet Cabinet Manual and Treasury guidelines.

13. The group had identified an interim preferred option by their second meeting, and consulted about this with stakeholders. Following stakeholder feedback, including feedback from the Minister for Veterans, the preferred option was refined and confirmed at the third meeting.

### **The Agreed Process**

14. The process assigns two new responsibilities in relation to the MoU, and provides for ministerial oversight of the process. The two new responsibilities are monitoring the relevant United States site, and initiating the process.

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<sup>1</sup> It would also enable ex gratia payments to the spouses or partners of veterans who had died as a result of those conditions.

15. The Head of Veterans' Affairs would have responsibility for monitoring the United States National Academy of Sciences list, and initiating the process for consideration to adopt a new condition in New Zealand.

16. That consideration would involve the Head of Veterans' Affairs conducting due diligence by seeking and considering information that would provide the background to the United States National Academy of Sciences decision, its context, and the likely impact of that decision on New Zealand's Vietnam veterans.

17. It is proposed that responsibility for adding new conditions for the purposes of Schedule 1 of the MoU should rest with the responsible Minister, using advice provided by the Head of Veterans' Affairs.

18. This advice would include the information developed through the process of due diligence that examined the basis of the United States decision to place a condition or conditions on the "sufficient evidence of association" list, and the likely impact of this decision in New Zealand.

19. The Appendix to this paper contains detail of the proposed process, as agreed by all three parties to the MoU.

20. It reflects the process described in section 9 of the Veterans' Support Act 2014 relating to the declaration of a deployment of New Zealand personnel as operational service. Under the Act, the Chief of Defence Force is responsible for providing a report to the Minister that assesses the operational and environmental threats posed to the health and wellbeing of members of the Defence Force who have been deployed. If the Minister is satisfied by this report that the deployment poses a significant risk of harm to the members deployed, the Minister must declare the deployment to be operational service.

21. What is proposed does not require any changes to be made to the MoU itself. The intention is that it would sit alongside the MoU, and would be used as necessary.

### **Financial Implications**

22. The recommended process would involve no additional costs.

### **Human Rights**

23. There are no human rights implications.

### **Consultation**

24. There has been consultation on this paper with The Treasury.

### **Communications**

25. It is proposed that the three parties to the MoU (the Crown, the Vietnam Veterans' Association and the Royal New Zealand Returned and Services' Association) would communicate the detail of the new process to their stakeholders. This would include ensuring information relating to the process is provided on the Veterans' Affairs website.

## Proactive Release

26. I intend to release this paper in full.

## Recommendations

27. The Minister for Veterans recommends that the Committee:

1. **Note** that the 2006 Memorandum of Understanding between the Crown and representatives of New Zealand's Vietnam veterans provides for ex gratia payments of \$40,000 to be made to Vietnam veterans who are diagnosed with Prescribed Conditions, based on a list developed in the United States where research shows "sufficient evidence of association" between a condition and chemicals (defoliants and herbicides) used in Vietnam.
2. **Note** that the Memorandum of Understanding allows, by way of the definition of Prescribed Conditions, for additional conditions to become eligible for an ex gratia payment based on the conclusions of an overview of research by the United States National Academy of Sciences.
3. **Note** that the Memorandum of Understanding does not specify a process for adding new conditions to Schedule 1 of the Memorandum of Understanding.
4. **Note** that in November 2021 Cabinet agreed that the Crown should work with the other two parties to the Memorandum of Understanding to develop a process that could be used to add new conditions for the purposes of Schedule 1 of the Memorandum of Understanding.
5. **Note** that this work has now been completed, and the Crown representative, the Vietnam Veterans' Association, and the Royal New Zealand Returned and Services' Association have recommended a process that can be used in the future to add new conditions for the purposes of Schedule 1 of the Memorandum of Understanding.
6. **Note** that the recommended process involves consideration in New Zealand before a new condition is added for the purposes of Schedule 1 of the Memorandum of Understanding.
7. **Note** that the recommended process will sit alongside the Memorandum of Understanding and does not require the Memorandum of Understanding to be amended.
8. **Note** that the recommended process will involve no additional costs or resources.

9. **Agree** that the recommended process should be used in the future to add new conditions for the purposes of Schedule 1 of the Memorandum of Understanding.
10. **Agree** that the Minister for Veterans shall have the power to determine that the new Prescribed Condition or Conditions on the United States National Academy of Sciences' 'sufficient evidence of association' list will apply in New Zealand for the purposes of Schedule 1 of the 2006 Memorandum of Understanding between the Crown and representatives of New Zealand's Vietnam veterans.

Authorised for lodgement

Hon Meka Whaitiri  
Minister for Veterans

**Appendix:**

1. Recommended process for specifying that a new Prescribed Condition, or Conditions, will apply in New Zealand for the purposes of Schedule 1 of the Memorandum of Understanding between the Crown and Vietnam veterans, represented by the Vietnam Veterans' Association and the Royal New Zealand Returned and Services' Association



14 October 2022

**Recommended process for specifying that a new Prescribed Condition, or Conditions, will apply in New Zealand for the purposes of Schedule 1 of the Memorandum of Understanding between the Crown and Vietnam veterans, represented by the Vietnam Veterans' Association and the Royal New Zealand Returned and Services' Association**

**Introduction**

1. Cabinet has requested (para 11.2 of SWC-21-MIN—0191) that the three parties to the 2006 Memorandum of Understanding (MoU) between Vietnam veterans and the Crown work together

*...to develop a process to consider whether any new conditions that might in future be added to the United States National Academy of Sciences "sufficient evidence of association" list should be adopted in New Zealand as Prescribed Conditions under the MoU, before those new conditions are accepted as qualifying a veteran for an ex gratia payment.*

**Our working group has developed and is recommending a process that would consider how a new condition that might be added to the United States National Academy of Sciences (USNAS) "sufficient evidence of association" list should be adopted in New Zealand.**

2. The process assigns two new responsibilities in relation to the MoU, and provides for ministerial oversight of the process. The two new responsibilities are monitoring the relevant United States site, and initiating the process.
3. The Head of Veterans' Affairs (HOVA) would have responsibility for monitoring the USNAS list and initiating the process for consideration to adopt a new condition in New Zealand.
4. That consideration would involve the HOVA conducting due diligence by seeking and considering information that would provide the background to the United States National Academy of Sciences decision, its context, and the likely impact of that decision on New Zealand's Vietnam veterans.
5. Where the MOU does not assign responsibility for adding new conditions to Schedule 1 of the MOU, we are proposing that responsibility to do so should rest with the Minister for Veterans, using advice proffered by the HOVA.
6. The HOVA's advice would include the information developed through the process of due diligence that examined the basis of the United States decision to place a condition or conditions on the "sufficient evidence of association" list, and the likely impact of this decision in New Zealand.<sup>1</sup>

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<sup>1</sup> This proposal reflects the process described in section 9 of the Veterans' Support Act 2014 relating to the declaration of a deployment of New Zealand personnel as operational service. Under the Act, the Chief of Defence Force is responsible for providing a report to the Minister that assesses the operational and environmental threats posed to the health and wellbeing of members of the Defence Force who have been deployed. If the Minister is satisfied by this report that the deployment poses a

## Detail of the recommended option

### A. Before a new condition is added to the “sufficient evidence of association” list

- Veterans’ Affairs is responsible for monitoring the relevant United States information so that any change to the “sufficient evidence of association” list can be immediately identified.

### B. Once a new condition has been added to the United States list

- The HOVA shall initiate the process as soon as practicable; and shall:
  - advise the Minister for Veterans, the Vietnam Veterans’ Association, and the Royal New Zealand Returned and Services’ Association;
  - conduct due diligence as required, in order to provide for the Minister for Veterans and Cabinet, information on the context and background of the change that has been made to the United States list; this due diligence must include:
    - confirming in writing that the United States National Academy of Sciences has added a new condition or conditions to the list of conditions for which there is sufficient evidence of association with exposure to Agent Orange;
    - seeking and compiling information on the new condition, and the context and background to its being added to the list in the United States;
    - seeking and compiling information on the likely impact in New Zealand of this decision, including the number of veterans who may be affected and any additional funding that may be required.
  - recommend that the Minister seeks additional funding if required through Cabinet;
  - recommend that the Minister takes a paper to Cabinet regarding her intention to specify that a new Prescribed Condition, or Conditions, henceforth apply in New Zealand for the purposes of Schedule 1 of the MoU;
  - prepare the necessary documentation; and
  - ensure that any Cabinet paper that is prepared, recommending that a new Prescribed Condition, or Conditions, henceforth apply in New Zealand for the purposes of Schedule 1 of the MoU, notes that, as per para 6 of SWC-21-MIN-0191:

*the Crown has no discretion or ability to decline or refuse to make an ex gratia payment if a veteran meets the criteria of having served in*

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significant risk of harm to the members deployed, the Minister must declare the deployment to be operational service.

*Vietnam and having been diagnosed with a Prescribed Condition, whether the Condition was listed as a Prescribed Condition when the MoU was signed, or whether it became a Prescribed Condition at a later date.*

- The Minister for Veterans
  - considers the advice from the HOVA; and,
  - if the Minister is satisfied that:
    - the condition, has been properly added to the United States list of conditions for which there is sufficient evidence of association with exposure to Agent Orange; and
    - the condition may affect New Zealand veterans who have served in Vietnam

the Minister must advise Cabinet of her intention to specify that a new Prescribed Condition or Conditions will henceforth apply in New Zealand for the purposes of Schedule 1 of the MoU; and seek additional funding if required.

**C. After Cabinet has noted the Minister's intention and agreed to provide further funding if required**

- Veterans' Affairs will
  - advise the Vietnam Veterans' Association and the Royal New Zealand Returned and Services' Association that a new Prescribed Condition, or Conditions, will henceforth apply in New Zealand for the purposes of Schedule 1 of the MoU; and
  - publish a statement advising that a new Prescribed Condition, or Conditions, henceforth apply in New Zealand for the purposes of Schedule 1 of the MoU
    - on its internet site; and
    - in any other manner that Veterans' Affairs thinks appropriate to bring the matter to the attention of Vietnam veterans and their whānau.

Signed

  
Crown

  
Vietnam Veterans' Association

  
RNZRSA