

HON MEKA WHAITIRI, MINISTER FOR VETERANS

Memorandum of Understanding (2006) between the Crown and Representatives of New Zealand's Vietnam Veterans: Update

May 2022

This publication provides a paper providing an update on the payment of ex gratia payments to Vietnam Veterans with Prescribed conditions, seeking agreement to a further \$8.380 million in funding to meet additional ex gratis claims, and seeking agreement to appoint Sir Jerry Mateparae as Crown representative for further work on Prescribed Conditions.

The pack comprises the following documents:

- April 2022 Cabinet Social Wellbeing Committee Minute of Decision *Memorandum of Understanding (2006) between the Crown and Representatives of New Zealand's Vietnam Veterans: Update* [SWC-22-MIN-0061]; and
- The associated Cabinet Paper *Memorandum of Understanding (2006) between the Crown and Representatives of New Zealand's Vietnam Veterans: Update* [SWC-22-SUB-0061].

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.

Information has been withheld in full in accordance with:

- section 9(2)(a) of the OIA: *to protect the privacy of natural persons, including that of deceased natural persons*; and
- section 9(2)(h) of the OIA: *to maintain legal professional privilege*.



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 (2006) between the Crown and Representatives of New Zealand's Vietnam Veterans: Update

Portfolio Veterans

On 6 April 2022, the Cabinet Social Wellbeing Committee (SWC):

Ex Gratia payments

- 1 **noted** that in November 2021, SWC approved funding of \$29.52 million in 2021/22 and \$2.00 million in future years to enable ex gratia payments of \$40,000 to be made to Vietnam veterans who are diagnosed with Prescribed Conditions in accordance with the 2006 Memorandum of Understanding (MoU) [SWC-21-MIN-0191];
- 2 **noted** that Veterans' Affairs has paid \$28.40 million of the above sum to those Vietnam veterans known to be immediately eligible for an ex gratia payment and who have been able to be located;
- 3 **noted** that, since the announcement of the new conditions that make Vietnam veterans eligible for an ex gratia payment was made on 30 November 2021, an additional 117 claims for ex gratia payments relating to the new conditions have been made and an additional 144 are projected for the remainder of the current Financial Year;
- 4 **noted** that the cost of meeting these additional claims would be \$8.38 million;
- 5 **noted** that funding that now remains in the *Support for Vietnam Veterans* appropriation in 2021/22 is \$2.14 million;
- 6 **noted** that attempts were made to reprioritise funds from other non-departmental appropriations to cover the additional claims;
- 7 **noted** that the *Unwind of Discount Rate - Veterans' Entitlements* appropriation was the only appropriation that could cover the shortfall, but as this appropriation was set up to recognise a non-cash interest adjustment, these funds cannot be reprioritised for this purpose;
- 8 s.9(2)(h)

- 9 **agreed**, in order to avoid breaching the terms of the MoU, to provide additional funds to the appropriation *Support for Vietnam Veterans* in 2021/22 to enable ex gratia payments to be made to eligible veterans and eligible spouses of deceased veterans who have applied for ex gratia payments, and to those who Veterans' Affairs, using the best information currently available, projects will make an application in the 2021/22 financial year;
- 10 **approved** the following changes to appropriations to give effect to the decision in paragraph 9 above, with a corresponding impact on the operating balance and net core Crown debt:

Vote Defence Force Minister for Veterans (M75)	\$m – increase				
	2021/22	2022/23	2023/24	2024/25	2025/26 & Outyears
Non Departmental Other Expenses: Support for Vietnam Veterans (M75)	8.380	-	-	-	-

- 11 **agreed** that the expenses incurred above will represent a decrease in OBEGAL and an increase in net core Crown debt;
- 12 **agreed** that the changes to appropriations for 2021/22 above be included in the 2021/22 Supplementary Estimates; and that, in the interim, the increase be met from Imprest Supply;

Further Work on Prescribed Conditions

- 13 **noted** that in November 2021, SWC also agreed to work with the other parties to the MoU (representatives of Vietnam veterans) to develop a process to manage the addition of new Prescribed Conditions to Schedule 1 of the MoU in the future [SWC-21-MIN-0191];
- 14 **agreed** that Sir Jerry Mateparae be appointed to represent the Crown in work with Vietnam veterans to develop the above process.

Rachel Clarke
Committee Secretary

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 Kris Faafoi
Hon Peeni Henare
Hon Willie Jackson
Hon Jan Tinetti
Hon Dr Ayesha Verrall
Hon Aupito William Sio
Hon Priyanca Radhakrishnan

Officials present from:

Office of the Prime Minister
Officials Committee for SWC

Office of the Minister for Veterans

Chair

Cabinet Social Wellbeing Committee

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

Proposal

1. This paper provides an update on progress following the November 2021 decisions of Cabinet¹ relating to the 2006 Memorandum of Understanding (MOU) between the Crown and Vietnam veterans. It seeks Cabinet's agreement to the appointment of Sir Jeremiah Mateparae to represent the Crown in discussions with Vietnam veterans about managing new Prescribed Conditions (that is, conditions associated with Agent Orange exposure) in the future; and seeks additional funding in the 2021/22 financial year to enable an unexpectedly high number of new claims from Vietnam veterans with Prescribed Conditions associated with Agent Orange to be met.

Executive Summary

2. On 29 November 2021, Cabinet noted that, for the first time since the MoU was signed, two new conditions met the requirements of the Prescribed Conditions definition within the MoU; and thus made veterans with those conditions eligible for an ex gratia payment of \$40,000.
3. The appropriation within Vote Defence Force that funds Vietnam veteran ex gratia payments (*Support for Vietnam veterans*) is annually maintained at \$1.10m and was insufficient to meet claims from those already diagnosed with one of the new conditions, or who may be diagnosed with them in the future.
4. Cabinet therefore agreed to increase funding for the appropriation by \$29.52m in FY 2021/22 to enable claims to be met from the approximately 738 veterans known to be immediately eligible for an ex gratia payment; and to increase the appropriation by an additional \$2.00m in outyears to provide for further claims that could be expected in the future. Cabinet also noted that, should the demand for the ex gratia payments be higher than the proposed appropriation level, Veterans' Affairs would look to reprioritise within other non- departmental appropriations, or, if required, would request further funding from Cabinet.
5. Veterans' Affairs has now made ex gratia payments to 711 veterans – that is, to all of those veterans who were known to be eligible for the payments, apart from a small group who have not been able to be located and contacted. However, Veterans' Affairs has received a number of new claims since Cabinet's decisions were announced on 30 November 2021, and accepting those claims will exceed the sum available in the appropriation. Reprioritising within other non- departmental appropriations is unable to provide funds to

¹ SWC-21-MIN-0191 and CAB-21-MIN-0503

meet these claims. Additional funding of \$8.38m is therefore requested in the current financial year (FY 2021/22).

6. At its meeting on 29 November 2021, Cabinet also requested that the Crown work with the other two parties to the MoU, the Royal New Zealand Returned and Services' Association (RNZRSA) and the Vietnam Veterans' Association (VVA). Parties were to develop a process to consider whether any new conditions determined by United States research to be associated with Agent Orange exposure should become Prescribed Conditions under the MoU, before those conditions are accepted as qualifying a veteran for an ex gratia payment, and to amend the MoU with the agreement of the parties.
7. I propose that Sir Jeremiah (Jerry) Mateparae be appointed to represent the Crown in these discussions. The curriculum vitae of Sir Jerry is appended to this paper. Once his appointment is confirmed, I will arrange to have the consultation process begin.

Claims for ex gratia payments for the newly added Prescribed Conditions

8. The MoU signed by the Crown and Vietnam veterans in 2006 provides for 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 are the conditions appearing on a United States National Academy of Sciences list of conditions for which it had been assessed that there is "sufficient evidence of association between the chemicals of interest and health outcomes".
9. 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.
10. Veterans' Affairs held records of 771 Vietnam veteran clients who were receiving treatment for hypertension. Of those, 738 had not previously received an ex gratia payment². The cost of making ex gratia payments of \$40,000 to each of these clients, was assessed at \$29.52m.
11. As the appropriation that provides for Vietnam veteran ex gratia payments is annually maintained at \$1.10m, Cabinet agreed on 29 November 2021 to additionally fund the appropriation by \$29.52m for FY2021/22.
12. Veterans' Affairs noted that there was a level of uncertainty about future liability for claims from veterans suffering from these conditions; but it was clear that further claims would be made in the future, and that further funding would be required. Cabinet therefore agreed to increase funding for the appropriation by \$2.00m in outyears.
13. Because the situation regarding future liability might not become clear for several years, Cabinet noted that, "should the demand for the ex gratia

² A veteran may receive an ex gratia payment only once.

payments be higher than the proposed appropriation level, Veterans' Affairs would look to reprioritise within other non-departmental appropriations or, if required, seek further funding from Cabinet”.

The current situation

14. Subsequent checks by Veterans' Affairs confirmed, and were able to locate, 711 eligible veterans who had been diagnosed with one of the new conditions that entitled them to an ex gratia payment. On 22 February 2022 a total of \$28.40m was paid to this group.
15. Since the announcement of new eligibility was made on 30 November 2021, a significant number of veterans either not previously registered with Veterans' Affairs, or not previously diagnosed with the newly qualifying condition, have contacted Veterans' Affairs and claimed an ex gratia payment. Claims have also been received from the spouses of veterans who had died of the relevant conditions before the announcement of eligibility had been made, each of whom would qualify, under the MoU, for a spousal ex gratia payment. By mid-March 2022, an additional 117 claims for ex gratia payments relating to the new conditions had been made; and, based on the best available information at present (the number of claims being received weekly) an additional 144 are projected for the remainder of the current Financial Year.

Funding the additional payments

16. \$1.12m from the funding uplift approved by Cabinet in November 2021 remains, following the bulk payment in February. This is available for making payments during the remainder of FY 2021/22 to any further claimants for the new conditions or any of the five other conditions which create eligibility for ex gratia payments; and to fund annual medical assessments for all Vietnam veterans. In addition, a further \$1.02m is available in the *Support for Vietnam Veterans* appropriation to be used for these payments.
17. In total, \$2.14 million is available in the *Support for Vietnam Veterans* appropriation. This is insufficient to cover the new claims that have now been made.
18. The cost of the additional claims for ex gratia payments that have already been made to Veterans Affairs, or are anticipated before the end of FY 2021/22, would be approximately \$10.52m. This leaves a funding shortfall of \$8.38m.
19. The NZDF has completed a review of Non-Departmental appropriations for Vote Defence Force to determine whether reprioritisation of funding can be used to offset the funding shortfall. This review identified the Unwind of Discount Rate - Veterans' Entitlements appropriation as the only appropriation that could cover the shortfall. However, given that this appropriation was set up to recognise a non-cash interest adjustment, these funds cannot be reprioritised for this purpose. NZDF is therefore seeking approval for an uplift to fund the shortfall of \$8.38m.

Analysis of funding shortfall

20. The amount sought from Cabinet in November 2021 was conservative. The Cabinet paper noted that, should all living Vietnam veterans develop one of the new Prescribed Conditions (hypertension) and make a claim, this would amount to \$80.28m. A lesser figure was sought for the current FY, based on those known to be immediately eligible. An assessment was made of those who, based on population figures, would be likely to develop hypertension in the future, and a smaller figure was sought, on a continuing basis in out-years.
21. There are probably several reasons why the number of applications for ex gratia payments relating to the hypertension condition exceeds that which was anticipated in November 2021:
 - 21.1 Some of the Vietnam veterans who have now applied for an ex gratia payment because they have hypertension had not previously been registered as clients, and were not known to Veterans' Affairs.
 - 21.2 Some of those registered as clients had been previously diagnosed with hypertension but had not reported this to Veterans' Affairs or claimed for it.
 - 21.3 Some other veterans who had not previously been diagnosed with hypertension may have sought medical checks following the announcement that this is now a Prescribed Condition, have been newly diagnosed with it, and have therefore made a claim.
22. The number which falls into each of those categories cannot be determined with certainty. Nonetheless it has quickly become clear that the number of veterans formally recorded by Veterans' Affairs as having hypertension, on the basis of which funding from Cabinet was sought in November 2021, was significantly fewer than the number who are now making claims.
23. s.9(2)(h)
24. While the appropriation will be further funded at the start of FY 2022/23, there are two reasons why the new funding that will then become available will not address the funding shortfall:
 - 24.1 The value of the *Support for Vietnam Veterans* appropriation for FY 2022/23 is \$3.1m, and the claims already received are in excess of this; and
 - 24.2 Those claiming are elderly and many are not in good health. As a result there is a time imperative to make payments as quickly as possible as

the full amount to which they are at present entitled cannot be paid to their estate should they die before funds become available.

Implications for the appropriation

25. It is recommended that the existing appropriation, *Support for Vietnam Veterans*, be increased as set out in the table below so that the Crown is able to meet its commitments to the Vietnam veterans under the MoU. The expenses incurred under this will represent a decrease in OBEGAL³ and an increase in net core Crown debt.

Vote Defence Force Minister for Veterans (M75)	\$m – increase/(decrease)				
	2021/22	2022/23	2023/24	2024/25	2025/26 & Outyears
Non Departmental Other Expenses: Support for Vietnam Veterans (M75)					
Existing appropriation	30.620	3.100	3.100	3.100	3.100
Recommended uplift	8.380	-	-	-	-
Total	39.000	3.100	3.100	3.100	3.100

26. It is proposed that the changes to appropriations for FY2021/22 be included in the 2021/22 Supplementary Estimates; and that, in the interim, the increase be met from Imprest Supply.

Work to establish a process for managing the addition of new ex gratia conditions in the future.

27. At its meeting on 29 November 2021, Cabinet requested that the Crown work with the other two parties to the MoU, the Royal New Zealand Returned and Services' Association (RNZRSA) and the Vietnam Veterans' Association (VVA). Parties were to develop a process to consider whether any new conditions determined by United States research to be associated with Agent Orange exposure should become Prescribed Conditions under the MoU, before those conditions are accepted as qualifying a veteran for an ex gratia payment; and to amend the MoU with the agreement of the parties.
28. I propose that Sir Jeremiah (Jerry) Mateparae be appointed to represent the Crown in these discussions. The curriculum vitae of Sir Jerry is appended to this paper.
29. This work can be funded from within Veterans' Affairs' current operational budget. Once Sir Jerry's appointment has been confirmed, I will arrange for the consultation process to begin. Terms of reference will be drawn up, reflecting the Cabinet decision, and the parties will be requested to begin this work, with a view to arriving at an agreed process for managing new Prescribed Conditions, by the end of 2022.

³ The total Crown Operating Balance before Gains and Losses.

Consultation

Departmental

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

Cross-party consultation

31. There has been consultation on this paper with the Minister of Finance.

Communications

32. Should Cabinet agree to fund the appropriation *Support for Vietnam Veterans* as requested, there is no requirement for additional communications, and the payment process currently in place within Veterans' Affairs can continue as routine business.

Proactive release

33. I intend to release this paper in full apart from any legally privileged material or other redactions required under the Official Information Act (1982).

Recommendations

34. The Minister for Veterans recommends that the Committee:

1. **Note** that Cabinet agreed on 29 November 2021 to provide additional funding of \$29.52m in 2021/22, plus \$2.00m per year across the forecast period and in outyears, to enable ex gratia payments to be made to Vietnam veterans who are diagnosed with Prescribed Conditions that had been added to 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;

Noted

2. **Note** that Veterans' Affairs has now paid \$28.40m of this sum to those Vietnam veterans known to be immediately eligible for an ex gratia payment and who have been able to be located;

Noted

3. **Note** that, since the announcement of the new conditions that make Vietnam veterans eligible for an ex gratia payment was made on 30 November 2021, an additional 117 claims for ex gratia payments relating to the new conditions have been made; and an additional 144 are projected for the remainder of the current Financial Year;

Noted

4. **Note** that the cost of meeting these additional claims would be \$8.38m;

Noted

5. **Note** that funding that now remains in the *Support for Vietnam Veterans* appropriation in FY 2021/22 is \$2.14m;

Noted

6. **Note** that attempts were made to reprioritise funds from other non-departmental appropriations to cover the additional claims;

Noted

7. **Note** that the *Unwind of Discount Rate - Veterans' Entitlements* appropriation was the only appropriation that could cover the shortfall; but as this appropriation was set up to recognise a non-cash interest adjustment, these funds cannot be reprioritised for this purpose;

Noted

8. s.9(2)(h)

Noted

9. **Agree**, in order to avoid breaching the terms of the Memorandum of Understanding, to provide additional funds to the appropriation *Support for Vietnam Veterans* in 2021/22 to enable ex gratia payments to be made to eligible veterans and eligible spouses of deceased veterans who have applied to Veterans' Affairs for ex gratia payments; and to those who Veterans' Affairs, using the best information currently available, projects will make an application in the 2021/22 financial year;

Agreed/Not Agreed

10. **Approve** the following changes to appropriations to give effect to the decision at recommendation 9 above, with a corresponding impact on the operating balance and net core Crown debt:

Vote Defence Force Minister for Veterans (M75)	\$m – increase				
	2021/22	2022/23	2023/24	2024/25	2025/26 & Outyears
Non Departmental Other Expenses: Support for Vietnam Veterans (M75)	8.380	-	-	-	-

Approved/Not Approved

11. **agree** that the expenses incurred under recommendation 10 above will represent a decrease in OBEGAL and an increase in net core Crown debt;

Agreed/Not Agreed

12. **Agree** that the proposed changes to appropriations for FY2021/22 above be included in the 2021/22 Supplementary Estimates; and that, in the interim, the increase be met from Imprest Supply;

Agreed/Not Agreed

13. **Note** that Cabinet agreed on 29 November 2021 that the Crown would work with the other parties to the Memorandum of Understanding (representatives of Vietnam veterans) to develop a process to manage the adding of new Prescribed Conditions to Schedule 1 of the Memorandum in the future; and

Noted

14. **Agree** to the appointment of Sir Jeremiah (Jerry) Mateparae to represent the Crown in work with Vietnam veterans to develop this process.

Agreed/Not Agreed

Authorised for lodgement

Hon Meka Whaitiri
Minister for Veterans

Enclosure:

1. Sir Jeremiah (Jerry) Mateparae – curriculum vitae [Withheld under s.9(2)(a)]