

## HON MEKA WHAITIRI, MINISTER FOR VETERANS

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

January 2022

This publication provides papers associated with Cabinet's November 2021 decision on funding to ensure the Crown can make ex gratia payments to Vietnam veterans who are diagnosed with Prescribed Conditions, as required under the Memorandum of Understanding between the Crown and representatives of New Zealand's Vietnam veterans.

The pack comprises the following documents:

- November 2021 Cabinet Social Wellbeing Committee Minute of Decision *Memorandum of Understanding (2006) between the Crown and Representatives of New Zealand's Vietnam Veterans* [SWC-21-MIN-0191]; and
- The associated Cabinet Paper *Memorandum of Understanding (2006) between the Crown and Representatives of New Zealand's Vietnam Veterans* [SWC-21-SUB-0191].

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).

Certain information has been withheld in accordance with 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

**Portfolio**                      **Veterans**

On 24 November 2021, the Cabinet Social Wellbeing Committee:

- 1        **noted** that the 2006 Memorandum of Understanding between the Crown and representatives of New Zealand's Vietnam veterans (MoU) 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 MoU 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, for the first time since the MoU was signed, two new conditions, hypertension and monoclonal gammopathy of undetermined significance, meet the requirements of the Prescribed Conditions definition; and would thus make veterans with those conditions eligible for an ex gratia payment of \$40,000;
- 4        **noted** that the MoU does not require any process for its own amendment; nor does it require ratification by the New Zealand Government of the conclusions of the United States National Academy of Sciences overview of research, or any involvement by a New Zealand body in determining what conditions are eligible for an ex gratia payment;
- 5        **noted** that Veterans' Affairs has received a claim for an ex gratia payment on behalf of a Vietnam veteran who has been diagnosed with hypertension;
- 6        **noted** that the Crown has no discretion or ability to decline or to refuse to make an ex gratia payment if a veteran meets the criteria of having served in Vietnam and having been diagnosed with a Prescribed Condition, whether that condition was listed as a Prescribed Condition when the MoU was signed, or whether it became a Prescribed Condition at a later date;
- 7        **noted** that Veterans' Affairs currently holds records of 771 Vietnam veterans with hypertension, 738 of whom have not previously received an ex gratia payment; and that approximately 2,080 Vietnam veterans are still living;
- 8        **noted** that the cost of making 738 ex gratia payments for hypertension would be \$29.52 million.

- 9 **noted** that it is estimated that approximately 54.7 percent of living Vietnam veterans could eventually be diagnosed with hypertension; and that the total cost of making ex gratia payments to these veterans would be in the vicinity of \$44 million;
- 10 **noted** that the appropriation that funds Vietnam veteran ex gratia payments is annually maintained at \$1.1 million;
- 11 **agreed** that in order to avoid breaching the terms of the MoU:
- 11.1 to fund the appropriation at a level that would allow the Crown to make ex gratia payments to any Vietnam veteran with a diagnosis of hypertension or monoclonal gammopathy of undetermined significance; and
- 11.2 to work with the other parties to the MoU 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; and amend the MoU with the agreement of the parties;
- 12 **approved** the following changes to appropriations to give effect to the decision at paragraph 11 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
<b>Non Departmental Other Expenses:</b> Support for Vietnam Veterans (M75)	29.520	2.000	2.000	2.000	2.000

- 13 **agreed** that the expenses incurred under paragraph 12 above be charged as a pre-commitment against the Budget 2022 operating allowance;
- 14 **agreed** that the changes to appropriations in 2021/22 above be included in the 2021/22 Supplementary Estimates; and that, in the interim, the increase be met from Imprest Supply;
- 15 **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, seek further funding from Cabinet.

Rachel Clarke  
Committee Secretary

**Present:**

Rt Hon Jacinda Ardern  
Hon Grant Robertson  
Hon Kelvin Davis  
Hon Carmel Sepuloni (Chair)  
Hon Chris Hipkins  
Hon Andrew Little  
Hon Poto Williams  
Hon Kris Faafoi  
Hon Peeni Henare  
Hon Dr Ayesha Verrall  
Hon Aupito William Sio  
Hon Meka Whaitiri  
Hon Priyanca Radhakrishnan

**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 an issue relating to ex gratia payments, as provided for in the 2006 Memorandum of Understanding (the MoU) between the Crown and representatives of New Zealand's Vietnam veterans, and recommends how this issue should be managed.

### **Executive Summary**

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. For the first time since the MoU was signed in 2006, two new conditions, hypertension and monoclonal gammopathy of undetermined significance, have now been added to the United States list. They thus meet the requirements of the Prescribed Conditions definition in the MoU.
7. Veterans' Affairs has received a claim from a legal firm acting on behalf of a Vietnam veteran, seeking an ex gratia payment for hypertension.

8. Veterans' Affairs currently has records of 771 Vietnam veterans who are receiving treatment for hypertension. Of those, 738 have not previously received an ex gratia payment.<sup>1</sup> Should provision need to be made for payments of \$40,000 to each of these clients, the cost would be \$29.52 million. The current appropriation that provides for Vietnam veteran ex gratia payments is annually maintained at \$1.1 million.
9. Should all living Vietnam veterans who have not yet received an ex gratia payment become eligible at some stage in their lives for an ex gratia payment for hypertension, the estimated cost could be \$80.28 million. New Zealand statistics suggest that this figure would, in practice, be considerably lower.<sup>2</sup>
10. There is no process required or in place for making changes to the Prescribed Conditions list. 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.
11. s.9(2)(h)

### **The background to the development of the Memorandum of Understanding**

12. New Zealand combat troops served in Vietnam between 1965 and 1971, with some further military involvement continuing until 1975. On their return to New Zealand, veterans faced a number of consequences for fighting in what had been a controversial and unpopular conflict. There was a sense that they did not receive adequate recognition for professional service in a demanding theatre of operations and a toxic environment. In particular, they resented what they saw as general indifference to the physical and psychological problems some experienced from causes such as exposure to defoliants used by United States forces, and post-traumatic stress disorder.
13. Government actions to redress these grievances began in the late 1990s and culminated in the signing, in December 2006, of the MoU between the Crown and organisations representing Vietnam veterans.<sup>3</sup>
14. The Appendix to this paper details the background to New Zealand's involvement in the Vietnam conflict, and how the grievances of the returning veterans eventually led to the development and signing of the MoU.
15. For some of the veterans, there remains a feeling that the MoU does not adequately compensate them for the price that they paid through their service. Issues associated with service in Vietnam have, for example, been the subject of a significant number of submissions to the Waitangi Tribunal's WAI 2500 Military Service Kaupapa Inquiry, which began in 2017. Many of those who

<sup>1</sup> A veteran may receive an ex gratia payment only once.

<sup>2</sup> Based on the results of the 2015/16 NZ Health Survey which showed that the prevalence of diagnosed/treated hypertension in adults aged over 75 is 54.7 percent.

<sup>3</sup> The Royal New Zealand Returned and Services' Association and the Ex-Vietnam Services Association.

made submissions to the Inquiry in person were Vietnam veterans – both Māori, and also Pākehā veterans supporting Māori – presenting on the particular topic of Agent Orange, and the impact they feel that chemical agents have had on their health and their lives. One of the remedies this group has sought consistently through WAI 2500 and more general lobbying, is for all Vietnam veterans to receive an ex-gratia payment as recognition of this exposure, and the ongoing impact of their struggle for acknowledgement.

16. The package offered to Vietnam veterans through the MoU, including the ex gratia provisions, is in addition to the entitlements received by all those defined as veterans under the Veterans' Support Act 2014. This differentiation was intentional. The decision to offer it was in recognition of the lengthy time it had taken to recognise and compensate Vietnam veterans for the impact on their health of the toxic environment in which they served; and the lack of appreciation for their service when they returned to New Zealand after serving in Vietnam.

### **The status of the Memorandum of Understanding**

17. This is the only such MoU in existence. While not legally binding, it still remains Government policy; and it is deeply important to veterans. Through the years it has formed a special package of care for Vietnam veterans and their families which sits outside the Veterans' Support Act 2014.

### **Prescribed Conditions in the Memorandum of Understanding**

18. Part 6 of the MoU includes provision for \$40,000 ex gratia payments to Vietnam veterans diagnosed with certain specified conditions, thought to be associated with exposure to the herbicides and defoliants sprayed in Vietnam (generally known as Agent Orange).
19. Ex gratia payments for specified conditions were recommended to the Government in 2006 by a Joint Working Group on Concerns of Viet Nam Veterans. The Government accepted, in the MoU that followed, that eligibility for ex gratia payments would be based on the conditions appearing on the United States National Academy of Sciences list of conditions for which research had shown there was "sufficient evidence of association between the chemicals of interest and health outcomes".<sup>4</sup> The MoU called these Prescribed Conditions.
20. The United States list (which is regularly reviewed) is based on an overview of international research and databases, dealing with the association between herbicides, such as Agent Orange, and particular health conditions. The conclusions of the Academy of Sciences are based on the associations between exposure and outcomes at the human population level, rather than the likelihood that any individual's health problem is associated with or caused by the herbicides in question.
21. In 2006, there were five conditions on the United States list: chronic lymphocytic leukaemia, soft tissue sarcoma, Non-Hodgkin's lymphoma, Hodgkin's disease, and chloracne. Those conditions are listed in Schedule 1 to the MoU.

<sup>4</sup> Since 1994, the United States has undertaken reviews of the long-term health effects on Vietnam veterans of these defoliants. An update on this research is published every two years.



22. The MoU also provided, by way of the definition of “Prescribed Conditions,” for future conditions that might be added at some time to the “sufficient evidence of association” list to be eligible for an ex gratia payment. Clause 6.2 states that:

For the avoidance of doubt, any Vietnam veteran suffering from a condition which becomes a Prescribed Condition after the execution of [the] memorandum will be entitled to the one off ex gratia payment...and all other benefits to which Vietnam veterans suffering from the conditions on the Prescribed List are entitled.

23. Each Vietnam veteran can receive only a single ex gratia payment for a Prescribed Condition, regardless of whether they suffer from more than one such condition.

#### **The issue that has now arisen**

24. For the first time since the MoU was signed in 2006 two conditions, hypertension and monoclonal gammopathy of undetermined significance (MGUS), have been added to the United States “sufficient evidence of association” list, and thus meet the criteria for being considered “Prescribed Conditions” under the MoU. Under the terms of the MoU, veterans suffering from those conditions have therefore become eligible for an ex gratia payment.
25. Veterans’ Affairs has received a claim from a legal firm acting on behalf of a Vietnam veteran, seeking an ex gratia payment for hypertension, on the grounds that it is (or should now be considered) a Prescribed Condition.

#### **The matters that affect the consideration of this claim are complex**

26. While the MoU clearly accepts that it can be amended, it does not detail, nor require, any process for its own amendment, including a process for adding new conditions. It appears to assume that conditions newly added to the National Academy of Sciences list in the United States will automatically attract an ex gratia payment in New Zealand.
27. A decision by a United States research organisation thus creates an automatic obligation on the New Zealand Government. There is no requirement or option for the New Zealand Government to consider fiscal or any other implications, or whether the research suggests that any specific criteria or other tests should be met before application in New Zealand.
28. This contrasts with the Statements of Principles process, which, since 2014, has applied to all eligible veterans who make claims for service-related conditions under the Veterans’ Support Act 2014. That process requires consideration by the Veterans’ Health Advisory Panel (an independent statutory body) and a Cabinet decision before a new condition can be adopted as creating eligibility by a veteran for compensation or support.

**Legal advice: Legal implications of the addition of new conditions to the United States list**

29. s.9(2)(h)

30. s.9(2)(h)

31. s.9(2)(h)

32. s.9(2)(h)

33. s.9(2)(h)

34. s.9(2)(h)

35. s.9(2)(h)

Proactively Released by the Minister for Veterans



## Financial implications of the latest additions to the United States list

36. While one of the new conditions added to the United States list, MGUS, is very rare, hypertension is not (particularly in the age cohort in which Vietnam veterans are found). Veterans' Affairs has records of 771 living Vietnam veterans with hypertension. All are receiving support from Veterans' Affairs, as this condition has long been known to be associated with service - a Statement of Principles relating to it has been in existence since 1994.
37. Thirty-three of this group have already received an ex gratia payment for a Prescribed Condition and would not be eligible to receive another. A total of 738 would therefore be able to make a claim immediately should hypertension be confirmed as a Prescribed Condition. The cost of making a \$40,000 ex gratia payment to each of these clients would be \$29.52 million.
38. The current appropriation that includes provision for Vietnam veteran ex gratia payments is annually maintained at \$1.1 million. The appropriation would be significantly underfunded in servicing those with hypertension that Veterans' Affairs is aware of.
39. The addition of this new condition could eventually affect a significant majority of the remaining living Vietnam veteran population. Around 2000 of this group have not yet received an ex gratia payment – if all were to develop hypertension and make a claim, this would amount to \$80.28 million.<sup>5</sup>
40. The actual figure, however, is likely to be lower. The 2015/16 New Zealand Health Survey showed that the prevalence of diagnosed hypertension in adults aged over 75 is 54.7 percent. Should that be reflected in the Vietnam veteran population, the total cost of ex gratia payments would be in the vicinity of \$44 million.
41. The total commitment would also need to factor in the date from which any new ex gratia payments can be paid. Hypertension and MGUS were added to the United States "sufficient evidence of association" list in 2018. Should a veteran have died from either of those conditions since they were added to the United States list, without having received an ex gratia payment under the MoU, their spouse or partner could claim an ex gratia payment of \$25,000 under clause 6.3 of the MoU. There are unlikely to be a large number of such claims and these smaller amounts could be paid from the appropriation as currently funded.

## Options to address the issue

42. While the MoU is not a legal agreement or contract, it does reflect an understanding reached between the parties whereby the Crown agreed to support a special package of measures, including compensation for Vietnam veterans. Clause 20.1 of the MoU describes the agreement that was arrived at as "a statement made in good faith". Veterans will be well aware of the statement made in the House by the then Prime Minister Helen Clark in 2008:

<sup>5</sup> At 24 September 2021, a total of 2080 Vietnam veterans are believed to still be living. Since 2007, 97 ex gratia payments have been paid to veterans, 73 of whom are believed still to be living, and not therefore eligible to claim for a further ex gratia payment. The maximum number of veterans who may be able to claim an ex gratia payment for a Prescribed Condition is thus 2007.

*The commitments the Crown has made to the treatment of Vietnam veterans who were affected by toxic environments in Vietnam and to their families are set out in the memorandum of understanding of 6 December 2006, and the Crown will adhere to them.*<sup>6</sup>

43. The Crown could opt to make the payments as required now and not seek to change the MoU. This would require significant new funding to the appropriation to meet immediate claims, and a lesser amount on an ongoing basis. It would also create a precedent, requiring the Crown to accept, unchecked and unchallenged, any other new conditions that might be added to the United States National Academy of Sciences list in the future.
44. Alternatively, the Crown may wish to legislate to have the MoU included in the Veterans' Support Act 2014. This would provide an opportunity to amend some of its provisions, and could introduce limitations on whether and how new conditions could be added to those qualifying for ex gratia payments. While this could be seen as giving the MoU more status, it is already highly valued by Vietnam veterans. Such a legislative option would also take some time to effect, particularly if the content of the legislation had to be consulted with the other parties to the MoU before being drawn up. Should proposed legislation seek to limit the entitlements now in the MoU, it is likely that the response of the other parties (one of which is the influential Royal New Zealand Returned and Services' Association) would be very negative.
45. Neither of those options are recommended as ways to deal with the issue. The preferred option, which this paper recommends, has two parts. It would see the Crown:
  - 45.1 agree to make ex gratia payments to veterans suffering from the two new conditions that have been added to the United States "sufficient evidence of association" list (hypertension and MGUS), in order to avoid breaching the terms of the MoU; and then
  - 45.2 work with the other parties to the MoU 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; and amend the MoU with the agreement of the parties.
46. This would enable the Government to keep faith with the Vietnam veterans by accepting that, under the current terms of the MoU, the two new conditions on the United States list already qualify veterans who have been diagnosed with those conditions to claim an ex gratia payment of \$40,000; or, should a veteran have died from those conditions since they were added to the United States list in 2018, without having received an ex gratia payment under the MoU, their spouse or partner could claim an ex gratia payment of \$25,000.
47. It also provides an avenue for the Government to bring in a process for adding eligibility for any **further** new conditions that could lead to ex gratia payments

<sup>6</sup> Ministerial Statement, Vietnam veterans, a Crown Apology 28 May 2008.

under the MoU that would be in line with the process that has been in place since 2014 under the Veterans' Support Act for accepting new conditions as creating eligibility for an entitlement.

48. New Zealand veterans are well aware that, since the MoU was signed in 2006, new processes (Statements of Principles) have been put in place in New Zealand legislation to determine which conditions may be related to service; this process includes review by a New Zealand body (the Veterans' Health Advisory Panel) as to their appropriateness in the New Zealand situation, and Cabinet confirmation before they are adopted.
49. Applying a similar process to further new conditions under the MoU, which could arise from time to time, could involve requiring that the research associated with any new condition that appears on the United States "sufficient evidence of association" list be referred for consideration to the Veterans' Health Advisory Panel, in the same way as material relating to Statements of Principles, developed in Australia, are referred to the Panel for consideration. The report of the Panel would then be brought to Cabinet for ratification.
50. There would be strong legal and policy arguments for doing this.
51. Developing a process before accepting further new conditions amounts to making a change to the MoU as agreed, so there would need to be consultation with the other party to the MoU with the Crown – Vietnam veterans as represented by the Royal New Zealand Returned and Services' Association and the Vietnam Veterans' Association (the successor body to the Ex-Vietnam Services Association).
52. There is no reason to think that the United States work which reviews Agent Orange-associated research is not robust, and the eventual outcome of a process, should one be established, is likely to be that the conditions concerned would be confirmed as being associated with exposure to the chemicals used in Vietnam; and would qualify those who have served in Vietnam and developed the condition for an ex gratia payment.
53. There would thus be a requirement to fund the appropriation sufficiently to meet the costs of adding any subsequent new conditions to the list of those which attract an ex gratia payment under the MoU.

## Implications for the appropriation

54. It is recommended that the existing appropriation, *Support for Vietnam Veterans*, be increased as set out in the table below.

Vote Defence Force Minister for Veterans (M75)	\$m – increase/(decrease)				
	2021/22	2022/23	2023/24	2024/25	2025/26 & Outyears
<b>Non Departmental Other Expenses: Support for Vietnam Veterans (M75)</b>					
Existing appropriation	1.100	1.100	1.100	1.100	1.100
Recommended uplift	29.52	2.00	2.00	2.00	2.00
<b>Total</b>	<b>30.62</b>	<b>3.100</b>	<b>3.100</b>	<b>3.100</b>	<b>3.100</b>

55. The appropriation is currently funded at \$1.1 million, and that sum should be retained to cover the other calls on the funding (including annual medical assessments for all Vietnam veterans and ex gratia payments for those who may be diagnosed with the existing Prescribed Conditions).
56. The uplift figures are based on the following assumptions:<sup>7</sup>

Number of Vietnam veterans still eligible to receive an ex gratia payment	2007
Proportion of New Zealand population likely to be diagnosed with hypertension by age 75	54.7%
As reflected in eligible Vietnam veteran population	1,098 veterans
Number of Vietnam veterans currently diagnosed with hypertension who have not previously received an ex gratia payment, and who could be paid immediately	738

57. The uplift in appropriation of \$29.52 million for 2021/22 would see the Crown accepting its responsibility, as of now, to accept the new conditions already added to the United States list, and to make payments to those veterans who may claim for the condition. This would enable ex gratia payments to the 738 veterans currently diagnosed with hypertension, who could make an immediate claim. As these veterans are already known to Veterans' Affairs, they would be contacted as soon as Cabinet has made its decision on this matter, and invited to submit a claim for an ex gratia payment. The payments could be made before the end of Financial Year 2021/22.
58. The extent of the analysis that can be done at this stage to predict the marginal liability from future claims is limited. It is not known how many of the remaining Vietnam veterans will at some stage be diagnosed with hypertension and become eligible to claim for an ex gratia payment. It may be that a large proportion of those likely to develop the condition as a result of exposure to Agent Orange have already done so. There may be a number who are still to develop it. At this stage an element of uncertainty remains, and the situation may not become clear for several years.

<sup>7</sup> No allowance is made for ex gratia payments relating to MGUS as the condition is so rare – Veterans' Affairs currently has no client with that condition.

59. For this reason, it is recommended that there should be an uplift to the appropriation of \$2 million over the period 2022/23 to 2025/26 and outyears. This would be sufficient to cover up to 50 new claims for hypertension that might emerge over each 12-month period. The uptake figures would be monitored and reviewed in the light of the additional data that will become available once the process is under way.
60. Should the demand for ex gratia payments be lower than the proposed appropriation level, the funds would be returned to the centre.
61. 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 would request further funding from Cabinet.
62. Veterans' Affairs would be able to administer the initial high number of payments during 2021/22 to the 738 veterans already diagnosed with hypertension within current resources, so additional operating costs are not sought.

### **Population Implications**

63. Automatically adding new entitlements for Vietnam veterans on the basis of overseas research that does not have to be reviewed before being applied in New Zealand would continue the disparity between the way particular entitlements are managed for the Vietnam veteran cohort and the way they are managed for all other New Zealand veterans. New Zealand veterans are, however, aware that such a provision was built into the MoU with the Crown, and that it has been in operation for 15 years. It is accepted, if not welcomed. The recommended option would enable a move towards greater equity between those who served in Vietnam and other New Zealand veterans.

### **Human Rights**

64. There are no human rights implications to the options set out in this paper.

### **Consultation**

#### *Departmental*

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

#### *Cross-party consultation*

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

### **Communications**

67. Should Cabinet agree to fund the appropriation Support for Vietnam Veterans at a level which would be sufficient to pay ex gratia payments to those Vietnam veterans who have been diagnosed with hypertension or MGUS, I plan to issue a press release. Veterans' Affairs would directly contact those known to be affected by this decision; and also amend the information it provides to veterans

on its website, and publicise the change in its other communications with veterans. Proactive release

68. 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

69. 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.
 

**Noted**
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.
 

**Noted**
3. **Note** that, for the first time since the Memorandum of Understanding was signed, two new conditions, hypertension and monoclonal gammopathy of undetermined significance, meet the requirements of the Prescribed Conditions definition; and would thus make veterans with those conditions eligible for an ex gratia payment of \$40,000.
 

**Noted**
4. **Note** that the Memorandum of Understanding does not require any process for its own amendment; nor does it require ratification by the New Zealand Government of the conclusions of the United States National Academy of Sciences overview of research, or any involvement by a New Zealand body in determining what conditions are eligible for an ex gratia payment.
 

**Noted**
5. **Note** that Veterans' Affairs has received a claim for an ex gratia payment on behalf of a Vietnam veteran who has been diagnosed with hypertension.
 

**Noted**
6. **Note** that the Crown has no discretion or ability to decline or to refuse to make an ex gratia payment if a veteran meets the criteria of having served in Vietnam and having been diagnosed with a Prescribed Condition, whether that condition was listed as a Prescribed Condition when the MoU was signed, or whether it became a Prescribed Condition at a later date.



**Noted**

7. **Note** that Veterans' Affairs currently holds records of 771 Vietnam veterans with hypertension, 738 of whom have not previously received an ex gratia payment; and that approximately 2080 Vietnam veterans are still living.

**Noted**

8. **Note** that the cost of making 738 ex gratia payments for hypertension would be \$29.52 million.

**Noted**

9. **Note** that it is estimated that approximately 54.7 percent of living Vietnam veterans could eventually be diagnosed with hypertension; and that the total cost of making ex gratia payments to these veterans would be in the vicinity of \$44 million.

**Noted**

10. **Note** that the appropriation that funds Vietnam veteran ex gratia payments is annually maintained at \$1.1 million.

**Noted**

11. **Agree:**

11.1 in order to avoid breaching the terms of the MoU, to fund the appropriation at a level that would allow the Crown to make ex gratia payments to any Vietnam veteran with a diagnosis of hypertension or monoclonal gammopathy of undetermined significance; and then

11.2 to work with the other parties to the MoU 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; and amend the MoU with the agreement of the parties.

**Agree/Disagree**

12. **Approve** the following changes to appropriations to give effect to the decision at recommendation 11 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
<b>Non Departmental Other Expenses:</b> Support for Vietnam Veterans (M75)	29.520	2.000	2.000	2.000	2.000

**Approved/Not Approved**



13. **Agree** that the expenses incurred under recommendation 12 above be charged as a pre-commitment against the Budget 2022 operating allowance.

**Agreed/Not Agreed**

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

**Agreed/Not Agreed**

15. **Note** 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 at a later point from Cabinet.

**Noted**

Authorised for lodgement

Hon Meka Whaitiri  
Minister for Veterans

**Appendix:**

1. The road to development of the Memorandum of Understanding between the Crown and Vietnam Veterans

## THE ROAD TO DEVELOPMENT OF THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CROWN AND VIETNAM VETERANS

### Background

#### *New Zealand involvement in Vietnam*

1. New Zealand's early contribution to the conflict in Vietnam involved a civilian surgical team treating civilian casualties of war in Qui Nhon from 1963-1975 and a non-combatant engineer unit working on reconstruction projects from 1964-1965. In 1965, the Government announced that a combat unit would join the United States-led coalition. The deployment of combat troops to Vietnam would continue until the end of 1971.
2. New Zealand ended its military involvement in 1972, with the contribution of two training teams to support the United States strategy to equip and train South Vietnamese Forces. From 1973, the Royal New Zealand Air Force based in Singapore would remain involved regularly supporting medical and humanitarian teams and ceasing with the evacuation of civilians and New Zealand Embassy officials from Saigon on 21 April 1975.

#### *United States military and the herbicide programme in Vietnam*

3. The defoliation program in Vietnam began on 4 December 1961. Herbicide operations had two primary military objectives; defoliation of trees and plants to improve observation and destruction of enemy crops.
4. An undetermined amount of herbicides and insecticides was procured and distributed by Australian Forces in Vietnam from 1966 to 1971. The use of these chemicals was confined largely to defoliation around base camps, improving security, and controlling mosquito-borne diseases. The chemicals appear to have been largely dispersed by use of ground delivery techniques, although low-volume aerial applications of insecticides, usually by helicopter, were reported. From 1966, New Zealand units were integrated within the 1<sup>st</sup> Australian Task Force at Nui Dat in Phuoc Tuy Province. From 1967, Royal New Zealand Air Force pilots flew helicopters with 9 Squadron Royal Australian Air Force, while others operated as forward air controllers with the United States Air Force.
5. In October 1969, the United States Department of Defense restricted the use of Agent Orange to areas remote from populations on the basis of a National Institute of Health study. From mid-1970 defoliant missions shifted to using Agent White. The last authorised herbicide flight operation was undertaken on 31 October 1971.
6. It is estimated that nearly 72 million litres of herbicides over approximately 14570 square kilometres were sprayed in South Vietnam. Agent Orange accounted for approximately 42.4 million litres of the total amount sprayed.

### *Foundation for the Memorandum of Understanding*

7. New Zealand's participation in the conflict created significant political and public debate with large-scale protests in major centres around the country. Returning veterans, many of whom were dealing with the consequences of combat, also faced the indignity of widespread condemnation by their fellow New Zealanders for their participation in the conflict.

8. Government action to consider the issues impacting Vietnam veterans began in the late 1990s with the commissioning of a report published in 1999 and another in 2001. New information presented in 2003 confirmed that New Zealand personnel had been operating in areas where spraying had occurred. It was considered that it was in the interests of Vietnam veterans, their families, and the public, to conduct an inquiry into the exposure of Vietnam veterans to Agent Orange and other defoliants.

9. In October 2004, the Health Committee, established to undertake the "*Inquiry into the exposure of New Zealand defence personnel to Agent Orange and other defoliant chemicals during the Vietnam War and any health effects of that exposure*" published its report and concluded that the Government should accept that Vietnam veterans had been exposed to a toxic environment and that the failures of past governments to recognise that Vietnam veterans had been exposed to a toxic environment should be publically acknowledged.

### *Government accepts Vietnam veterans exposed to a toxic environment*

10. In December 2004, a public apology was issued by the Minister of Veterans' Affairs and a statement of the actions to be taken by the Government to address the needs of veterans and their families. The response was considered by Vietnam veterans and their supporters to be inadequate.

### **Veteran organisations seek recognition and recompense for Vietnam veterans including ex gratia payments**

11. Following an approach by the Royal New Zealand Returned and Services' Association and the Ex-Vietnam Services Association, the Government established a working group in 2005 to make recommendations to address the health and well-being needs of Vietnam Veterans and their families.

12. The report of the Joint Working Group on Concerns of Viet Nam Veterans to the Government comprised three major themes; *acknowledging the past, putting things right, and improving services to Viet Nam veterans*. These themes formed the basis of the measures and support agreed to in the Memorandum of Understanding.