

Dated *6th December* 2006

MEMORANDUM OF UNDERSTANDING

THE EX-VIETNAM SERVICES ASSOCIATION

AND

THE ROYAL NEW ZEALAND RETURNED AND SERVICES ASSOCIATION

AND

HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND

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This Memorandum of Understanding is DATED the 6th day of December 2006

PARTIES

- 1 THE EX-VIETNAM SERVICES ASSOCIATION (the "EVSA");
- 2 THE ROYAL NEW ZEALAND RETURNED AND SERVICES ASSOCIATION (the "RSA") and together with the "EVSA" (the "Veterans Associations"); and
- 3 HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND (the "Crown") acting by and through the Honourable Phil Goff, Minister of Defence and the Honourable Rick Barker, Minister for Veterans Affairs.

BACKGROUND

- A. The Health Select Committee of the House of Representatives held an inquiry into the health of Viet Nam Veterans in 2003/4. That inquiry raised serious issues about the health care of Veterans and made various recommendations to address those issues. As a result of the Health Select Committee's report and representations from the Veterans Associations, the Government agreed to the establishment of a Joint Working Group (the "JWG") to consider certain issues concerning Veterans. The JWG met with and received written submissions from a large number of Veterans and their families and delivered to the Government on 28 April 2006 a substantive report with recommendations. Since then the Crown and the Veterans Associations have been engaged in talks in relation to the JWG's recommendations and ways of addressing the concerns of Viet Nam Veterans.
- B. The Parties have agreed that they should sign this Memorandum Of Understanding (the "**Memorandum**") as a way of formalising the position they have reached in relation to a package of measures for Veterans which will make up the Veterans' Package (the "**Package**").
- C. The Package includes:
 - (i) an acknowledgement and apology to all Viet Nam Veterans;
 - (ii) a comprehensive range of measures for addressing short and medium-term health and welfare issues for Viet Nam Veterans and, where appropriate, their immediate families;
 - (iii) a Welcome Home Ceremony for Viet Nam Veterans incorporating aspects of Whakanoa;
 - (iv) clarification of the current and proposed future entitlements for Viet Nam Veterans and certain entitlements for all Veterans;
 - (v) a review and rewrite of the substantive legislation, the WPA, for all Veterans; and
 - (vi) a review of the delivery of services to all Veterans, including options for the future placement, responsibilities and resourcing of VANZ.
- D. This Memorandum is not intended to be legally binding on the Parties, but is instead a statement of the Parties' respective positions and best endeavours intentions.

IT IS STATED:

1. DEFINITIONS AND INTERPRETATION:

- 1.1 In this Memorandum, including in the Background, unless the context otherwise requires:

"child" means a child of a Veteran and includes a Natural Child, step-child or adopted child;



“dollars” or “\$” is a reference to New Zealand currency;

“**Expert Panel**” means a panel of medical and other experts convened to consider relevant medical research and to make recommendations to the Secretary of War Pensions on the appropriate rate of War Disablement Pension payments, and any consequential entitlements to Veterans for disabilities not included in the Ninth Schedule to the WPA as at the date of execution of this Memorandum;

“**family**” means a member of the Veteran’s family, whanau or other culturally recognised family group;

“**Five Accepted Conditions**” means the five conditions listed in schedule 2 to this Memorandum;

“**immediate family**” means a member of the Veteran’s immediate family group which might include a Spouse or Partner, child, grandchild, sibling, parent (including step-parent) or primary caregiver;

“**including**” and similar words do not imply any limitation;

“**Natural Child**” means a Veteran’s son or daughter who is genetically related to that Veteran;

“**NZDF**” means the New Zealand Defence Force;

references to a “**party**” include a reference to that party’s successors and permitted assignees;

“**Prescribed Conditions**” means, from time to time, a medical condition that is listed on the United States Academy of Sciences Institute of Medicine “sufficient evidence of association list” (the “**IOM list**”);

“**Prescribed List**” means the conditions listed on the IOM list as at the date of execution of this Memorandum and as attached as schedule 1 to this Memorandum;

“**Reeves and McLeod Reports**” means each of the reports authored by Reeves, Sir P; Faulkner, M; Birks, A; Feek, C; Helm, P and dated June 1999; and authored by Dr Deborah McLeod and dated August 2001;

“**Service**” means service of New Zealand in the armed forces, Mercantile Marines or as a member of the Emergency Reserve Corps;

“**Spouse**” or “**Partner**” has the same meaning as in the Property (Relationships) Act 1976;

“**Surviving Spouse Pension**” means a pension for surviving spouses or partners of deceased members payable under the WPA;

“**terminal illness**” means an advanced progressive disease likely to cause death within twelve (12) months of the date of diagnosis;

“**VANZ**” means Veterans Affairs New Zealand;

“**Veteran**” has the same meaning as in the WPA;

“**Viet Nam Veteran**” means a Veteran who served in Viet Nam during the period 1964 to 1972 inclusive; and

"WPA" means the War Pensions Act 1954.

- 1.2 Headings are inserted for convenience only and do not affect the interpretation of this Memorandum.
- 1.3 The singular includes the plural and vice versa.

2. STATUS, APOLOGY AND ACKNOWLEDGEMENT

- 2.1 The Veterans Associations confirm to the Crown that they have negotiated and signed this Memorandum on behalf of their members and that they have the mandate to do so. However, the signing of this Memorandum is without prejudice to the rights of any individuals against any person.
- 2.2 The Veterans Associations will assist the Crown to compile a database of Viet Nam Veterans in a form permitted by, or to the extent permitted by, law. The Crown will then make a formal public apology (the "Apology") to Viet Nam Veterans and their families. The Crown will use its best endeavours to ensure that the Apology is widely circulated within New Zealand, and is made available to Veterans living overseas.
- 2.3 The Apology will:
 - (a) acknowledge the Service to New Zealand of all Viet Nam Veterans;
 - (b) acknowledge the failure of the Crown to address concerns raised by the Viet Nam Veterans in relation to their exposure to the toxic environment during their Service in Viet Nam and the effects of any subsequent delays in, or lack of treatment of, the Viet Nam Veterans after that exposure;
 - (c) publicly reiterate existing government policy in relation to the treatment of Viet Nam Veterans who have been affected by the toxic environment in Viet Nam; and
 - (d) acknowledge that the conclusions and recommendations of the Reeves and McLeod Reports do not form the basis of current government policy because of the limited and at times incorrect information available to the authors and that there is no intention that they should form the basis for future government policy in relation to the treatment of Viet Nam Veterans.
- 2.4 The Crown will inform the major Parliamentary parties and invite them to support publicly the Package.

3. WELCOME HOME CEREMONY AND PROCESS

- 3.1 The Crown agrees to hold a Welcome Home Ceremony where a senior representative of NZDF will deliver a formal statement to Viet Nam Veterans. The ceremony will include a Whakanoa process.
- 3.2 The formal statement by the NZDF at the Welcome Home Ceremony will address the following matters:
 - (a) a formal acknowledgement of the Service to New Zealand of all Viet Nam Veterans;
 - (b) a formal welcome back to New Zealand from Service to the Viet Nam Veterans;
 - (c) a formal remembrance for deceased Viet Nam Veterans;
 - (d) recognition that the Viet Nam Veterans were not well treated on return from Service in Viet Nam;
 - (e) the actions of the NZDF in relation to information in their possession, power or control regarding the treatment received by Viet Nam Veterans after their exposure to the toxic environment



including an acknowledgement of the existence of correspondence held by the NZDF written in 1980 which had not previously been acted on or made available for earlier reviews; and

- (f) Viet Nam Veterans' concerns surrounding the disappearance of all or parts of Viet Nam Veterans' personal medical files.

- 3.3 NZDF (on behalf of the Crown) will establish a Viet Nam special exhibition at the venue selected for the Welcome Home Ceremony to assist Viet Nam Veterans' transition to Whakanaoa.
- 3.4 The Crown will set aside funding to make a contribution to the reasonable travel and accommodation costs within New Zealand for Viet Nam Veterans and their immediate families to attend the Welcome Home Ceremony.
- 3.5 The NZDF (on behalf of the Crown) will convene a commemorative parade at the Welcome Home Ceremony to acknowledge the Service of the Viet Nam Veterans and to remember deceased Viet Nam Veterans.

4. ORAL HISTORY PROGRAMME

- 4.1 The Crown will support the recording of oral accounts of the experiences of Viet Nam Veterans and their families. The recordings will be made with the assistance of oral historians.
- 4.2 The Crown will provide funding for the oral history programme through the Ministry of Culture and Heritage up to but not exceeding \$200,000 per annum for four years following the commencement of the oral history programme.
- 4.3 The oral history programme will commence during 2007 at a date to be agreed between the Veterans Associations and the Ministry of Culture and Heritage (on behalf of the Crown).

5. INCREASED MEDALLIC RECOGNITION

- 5.1 The Crown will recommend to Her Majesty the Queen that she approve the South Vietnamese Gallantry Awards to be worn by the 12 Viet Nam Veterans who received the awards from the former Government of South Vietnam.
- 5.2 The Crown will sympathetically consider medallic recognition for Viet Nam Veterans based on the submission received from the RSA to extend eligibility of the New Zealand General Service Medal 1992 (Warlike) with clasp "Vietnam" to those Viet Nam Veterans who are currently eligible for the Vietnam Medal 1964.
- 5.3 The Crown will sympathetically consider current battle/theatre honours criteria and their application to the 1 RNZIR South Vietnam Theatre Honour so as to acknowledge the Service of Rifle Companies Victor 5 and Victor 6.

6. EX GRATIA PAYMENTS FOR VIET NAM VETERANS

- 6.1 The Crown will make a one-off ex gratia payment of \$40,000 to each Viet Nam Veteran who suffers from a Prescribed Condition.
- 6.2 For the avoidance of doubt, any Viet Nam Veteran suffering from a medical condition which becomes a Prescribed Condition after the execution of this Memorandum will be entitled to the same one-off ex gratia payment as is referred to in clause 6.1 and all other benefits to which Viet Nam Veterans suffering from conditions on the Prescribed List are entitled.
- 6.3 The Crown agrees to make available a one-off ex gratia payment of \$25,000 for a Spouse or Partner

of a Viet Nam Veteran where there is reasonable evidence that the Viet Nam Veteran has died of a Prescribed Condition and has not previously received an ex gratia payment under clause 6.1 or 6.2 for that Prescribed Condition, and at its discretion to make that payment available to a former spouse or partner.

7. WAR DISABLEMENT PENSION

- 7.1 The eligibility criteria for Service-related health conditions will be reviewed to ensure that the "reverse onus of proof" standard is applied to all Veterans uniformly. The "reverse onus of proof" standard means that a condition or illness suffered by a Veteran is to be considered to relate to the Veteran's Service, unless there is proof to the contrary.
- 7.2 All Veterans who have been diagnosed by a registered medical practitioner with a terminal illness resulting from Service will be entitled to a War Disablement Pension equal to but not exceeding 160% of the current War Disablement Pension under the WPA.
- 7.3 The Crown has agreed to undertake a substantive review of the WPA. The Veterans Associations will be invited to contribute to the policy work and will be provided with regular updates on the progress of this review. The Veterans Associations will have another opportunity to set out their views during the Select Committee stages in the House. The purpose of this review is to provide a legislative environment that is appropriate for the conditions that Veterans now face and to improve service delivery for all Veterans.
- 7.4 The eligibility criteria for a Surviving Spouse Pension under the WPA will be reviewed as part of the WPA review process.

8. EXPERT PANEL

- 8.1 The Crown will establish the Expert Panel. The first priority of the Expert Panel will be to assess and recommend the appropriate rates of pensions, and any consequential entitlements for Viet Nam Veterans suffering from a Prescribed Condition and for Viet Nam Veterans suffering from a condition listed on the IOM "limited or suggestive evidence list". The IOM "limited or suggestive evidence list" as at the date of execution of this Memorandum is attached to this Memorandum as schedule 3.
- 8.2 The Expert Panel will focus on creating uniform standards and criteria to ensure that all Veterans with equal degrees of disability are treated fairly and consistently.
- 8.3 Any changes to the War Disablement Pension rates for specific conditions arising from the recommendations of the Expert Panel will be back-dated to the date of diagnosis and/or other appropriate milestones identified by the Expert Panel (where a range of rates are recommended for any single condition).

9. PROGRAMME FOR CHILDREN OF VIET NAM VETERANS

- 9.1 The Crown agrees to provide ex gratia payments of up to \$30,000 for each Natural Child who suffers from any of the Five Accepted Conditions as at the date of execution of this Memorandum.
- 9.2 The Crown will review services provided by other governments including, but not limited to, Australia and the United States of America, to children or grandchildren of veterans of those governments who were in service in Viet Nam. The Crown will consider whether there are any programmes that could be introduced in New Zealand for children or grandchildren of Viet Nam Veterans.
- 9.3 The Crown will consider how the access to and dissemination of relevant research on the intergenerational effects of the toxic environment that the Viet Nam Veterans were exposed to, can be improved.

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10. LUMP SUM PAYMENTS FOR FAMILIES OF DECEASED NATURAL CHILDREN WITH ONE OR MORE OF THE FIVE ACCEPTED CONDITIONS

- 10.1 Subject to clause 10.2, the Crown agrees to provide for one-off ex gratia payments of \$30,000 to the immediate family of a Natural Child of a Viet Nam Veteran who has reasonable evidence that the Natural Child of the Viet Nam Veteran has died from one or more of the Five Accepted Conditions. Such payments are to be made to the immediate family in an equitable fashion. For the avoidance of doubt, an ex gratia payment under this clause is in addition to any ex gratia payment made under clause 9.1.
- 10.2 Clause 10.1 only applies to Natural Children born after that Veteran's temporary or permanent return from Service in Viet Nam.

11. ONGOING RESEARCH

The Crown will access international research and sponsor ongoing research into the effects of the exposure to dioxins and other similar hazardous substances, including intergenerational effects. The Crown will also ensure that the information arising from this research is made publicly available in a form permitted by or, to the extent permitted by, law.

12. EVSA (NEVILLE WALLACE MEMORIAL) YOUTH DEVELOPMENT TRUST

The Crown will make a one-off grant of \$250,000 to the EVSA (Neville Wallace Memorial) Youth Development Trust, to assist the EVSA (Neville Wallace Memorial) Youth Development Trust in meeting its objectives.

13. VETERANS' CARD

- 13.1 All Veterans (whether or not they have attained 65 years of age) will be eligible to apply for a Veterans' Card.
- 13.2 The purpose of the Veterans' Card is to ensure that there is suitable access to medical services, and that appropriate information is available to medical professionals evaluating a Veteran's health. The exact nature of the entitlements and benefits are yet to be determined.
- 13.3 The Crown will establish a Viet Nam Veteran's Children's card for children of Viet Nam Veterans or a mutually agreed alternative mechanism, to allow medical professionals to readily identify that they are children of Viet Nam Veterans and to take into account conditions that may have arisen from the Service of their parent in Viet Nam.

14. NATIONAL REGISTER

- 14.1 The Crown agrees to establish a national register to include all Viet Nam Veterans, their Spouse or Partner and children of the Viet Nam Veterans in a form permitted by, or to the extent permitted by, law.
- 14.2 The Crown will ensure the register has sufficient capability to include epidemiological research, monitoring of Viet Nam Veterans and their families and other similar relevant information to the extent permitted by law.

15. PROVISION OF INFORMATION

- 15.1 VANZ will provide or make available to medical professionals and to Viet Nam Veterans and their children relevant medical information (if any) in its possession, power or control (in a form permitted by

or, to the extent permitted by, law) including any which it may have received under clause 11. The purpose of making the information available is to assist medical professionals, Viet Nam Veterans and their children to ensure that they are monitored and screened for the relevant conditions.

15.2 Information provided will include all relevant information, if any, in VANZ's possession, power or control relating to Post Traumatic Stress Disorder ("PTSD") and any other information regarding medical conditions arising directly from or associated with Service in Viet Nam.

15.3 The Crown will work with the Veterans Associations and the Veterans' Retirement Homes, Ranfurly, Rannerdale and Monticello to establish "centres of excellence" in providing information and support for the diagnosis and treatment of particular health conditions prevalent amongst Veterans, *including PTSD.*

16. VANZ PLACEMENT AND REVIEW

The Crown agrees to review the mechanisms for delivering services to Veterans (including Veterans resident in Australia), including the functions, responsibilities, structure, resources and placement of VANZ. The Veterans Associations will be consulted during the review process. The review will be integrated with the work on the rewriting of the WPA.

17. MEDICAL ASSESSMENTS

Viet Nam Veterans will be entitled to funding for a one-off comprehensive medical assessment by a registered medical practitioner and/or a specialist with a view to establishing eligibility for a War Disablement Pension.

18. ESTABLISHMENT OF A TRUST FUND FOR VIET NAM VETERANS AND THEIR FAMILIES

18.1 The Crown in conjunction with the Veterans Associations will establish the Viet Nam Veterans and their Families Trust (the "Trust"). The purpose of the Trust is to provide support to Viet Nam Veterans and their families in relation to concerns and circumstances not addressed elsewhere in the Package. The Trust will receive an endowment of \$7 million from the Crown. The endowment is for a period of thirty years after which the endowment will revert to the Crown.

18.2 The activities of the Trust will be financed by interest earned on the endowment. The exact form, criteria and status of the Trust is yet to be confirmed and will be set out in a trust deed to be agreed between the Parties. The intention is that the Trust will be registered under the Charities Act 2005.

19. JOINT IMPLEMENTATION GROUP

The Crown agrees to establish a Joint Implementation Group ("JIG") to oversee the successful implementation of the Package. The terms of reference for the JIG are to be determined by the Parties. The JIG will comprise representatives from the Crown and the Veteran Associations.

20. GENERAL

20.1 The Parties agree that this Memorandum is intended to be a statement, made in good faith, of the respective intentions of the Parties in relation to the Package but that it is not intended to create legal relations between them.

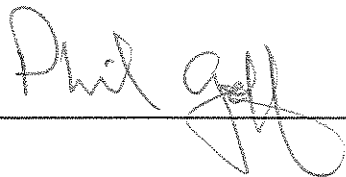
20.2 If the Parties agree that there is a more effective delivery method for any aspect of the Package (or other matter referred to in this Memorandum) but which does not compromise the intent of the Package or this Memorandum, that more effective delivery method may be substituted for the stated method.

20.3 This Memorandum shall be governed by New Zealand law.

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SIGNED BY THE PARTIES:

SIGNED for and on behalf of
HER MAJESTY THE QUEEN IN RIGHT
OF NEW ZEALAND by her MINISTER
OF DEFENCE, the Honourable
PHIL GOFF



Signature

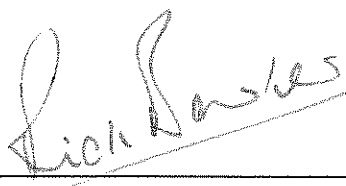
in the presence of



Witness signature
JEREMY SEED

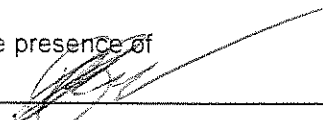
Full name of witness
8 HUNTINGDON ST, WILTON, WELLINGTON
Address
SECRETARY
Occupation

SIGNED for and on behalf of
HER MAJESTY THE QUEEN IN RIGHT
OF NEW ZEALAND by her MINISTER
OF VETERANS AFFAIRS, the Honourable
RICK BARKER



Signature

in the presence of



Witness signature
Doreen Ryan

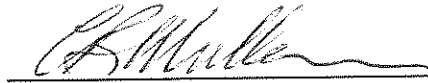
Full name of witness
12 Rolleston St Mt Cook
Address
Press Secretary
Occupation

SIGNED for and on behalf of
EX-VIETNAM SERVICES ASSOCIATION

BY:

CHRIS MULLANE

Authorised Signatory



Signature

in the presence of

Paul Carpenter

Witness signature

Paul Carpenter

Full name of witness

12 W Glenavon Place

Address

Christchurch

Occupation

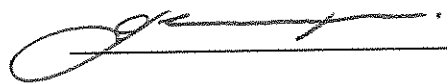
Public Servant

SIGNED for and on behalf of
THE ROYAL NEW ZEALAND RETURNED AND SERVICES ASSOCIATION

BY:

JOHN CAMPBELL

National President



Signature

in the presence of

B. Hession

Witness signature

Brian S. Hession

Full name of witness

16 Beryl Grove Lower Hutt

Address

Public Servant

Occupation

SCHEDULE 1

PRESCRIBED CONDITIONS

Chronic lymphocytic leukaemia (CLL)

Soft tissue sarcoma

Non-Hodgkin's lymphoma

Hodgkin's disease

Chloracne



SCHEDULE 2

FIVE ACCEPTED CONDITIONS

Spina bifida

Cleft lip

Cleft palate

Acute myeloid leukaemia

Adrenal gland cancer



SCHEDULE 3

Limited or Suggested Evidence of an Association

Respiratory cancer (of lung, or bronchus, larynx and trachea)

Prostatic cancer

Multiple myeloma

Acute and subacute transient peripheral neuropathy

Porphyria cutanea tarda

Type 2 diabetes

Spina bifida in Natural Children of Viet Nam Veterans

