



December 2022

Memorandum of Understanding Working Group (MoUWG) COMMUNIQUE

Kia ora fellow Vietnam Veterans and Whanau

As advised in our NZVVA Update of 14 October 2022, negotiations have been concluded with the Crown regarding a process for including new Specified Condition/s in Schedule 1 of the Memorandum of Understanding dated 6 December 2006.

Attached are the following documents:

- The process recommended by representatives of the parties to the MoU signed by Sir Jerry Mateparae for the Crown, Graham Gibson on behalf of NZVVA and Marty Donaghue on behalf of RNZRSA **dated 14 October 2022**
- Covering letter dated **21 October 2022** from Sir Jerry Mateparae to Hon Meka Whaitiri, Minister for Veterans regarding the recommended process. Please note the further matters/out of scope issues included in the letter and which will form the basis of future work with Veterans' Affairs and the Minister.
- Letter to the parties dated **7 December 2022** from Hon Meka Whaitiri, Minister for Veterans confirming that the recommended process was **approved by Cabinet on 23 November 2022**.

I would like to thank all who have helped achieve this successful outcome which will ensure that any new conditions are added to Schedule 1 and are implemented as expeditiously as possible:

- Hon Meka Whaitiri, Minister for Veterans
- Sir Jerry Mateparae, Crown Representative
- Fellow members of the MoUWG:
 - Barry Dreyer, NZVVA
 - Rex Alexander, NZVVA
 - Chris Mullane, NZVVA

- BJ Clark, RNZRSA
- Marty Donoghue, RNZRSA
- Rob Todman, RNZRSA
- Carol Taylor, NZVVA
- Representatives of Veteran Affairs;
 - Marti Eller, Deputy Head of Veterans' Affairs
 - Jo Elworthy, Principal Advisor to the Head of Veterans' Affairs.
- Members of the Vietnam Veteran Community, including rangatahi, who provided valuable input to the MoUWG

I encourage all Members of the Vietnam Veteran Community to distribute this Update and Attachments as widely as possible among Veterans and their whanau and especially to surviving spouses and other family members who may not otherwise readily access such communications.

Nga mihi,



Graham Gibson
Chair of the MoUWG
and National President NZVVA

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.¹

¹ 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

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

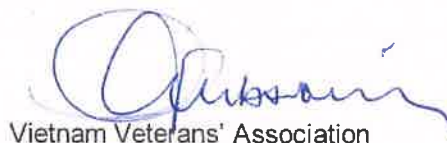
the Minister must advise Cabinet of her intention to specify that a new Prescribed Condition or Conditions will henceforth apply in New Zealand for the purposes of Schedule 1 of the MoU; and seek additional funding if required.

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

21 October 2022

Hon Meka Whaitiri, MP
The Minister for Veterans
Wellington

Tēnā koe e te Minita

Memorandum of Understanding between the Crown and Vietnam veterans

Introduction

In April this year you invited me to represent the Crown in discussions on its 2006 Memorandum of Understanding (MoU) with representatives of Vietnam veterans.

Our discussions were to address a request made by Cabinet on 29 November 2021. We were asked to develop and recommend a process that could be used to give the status of Schedule 1 conditions under the MoU to any new conditions that may appear in the future on a United States Academy of Sciences list of conditions where there is sufficient evidence to show an association with exposure to toxic substances used in Vietnam, including Agent Orange.

Vietnam veterans were represented during our discussions by four members of the Vietnam Veterans' Association, and two members of the Royal New Zealand Returned and Services' Association. We met three times.

By our second meeting we had developed a preferred option for a process. I advised you of this in an interim report on 7 September 2022. Your helpful feedback was appreciated. The veteran representatives on our working group also consulted on this option with their memberships, and reported that they had also been broadly supportive.

Our recommendation

I am writing now to confirm to you that we have met again, and we have developed our preferred option to a point where we are ready to recommend to you that it be used in the future should any new conditions be identified, as specified in the MoU, as being associated with Agent Orange exposure. This option 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.

The detail of the option is specified in the attachment to this letter. This document has been signed by all three parties. It is the recommendation of our group that it should be used in the future should appropriate circumstances arise.

We would note that work done, both by Veterans' Affairs and by the Vietnam Veterans' Association, suggests that Crown liability for ex gratia payments should any new conditions be identified as Schedule 1 conditions, would be significantly less than that which was involved when Hypertension and MGUS¹ became Schedule 1 conditions.

Now that we have presented our recommendation to you, I consider that the task of our working group has been completed.

I would also like to note that the process of arriving at this point was at all times extremely positive. Discussions went smoothly, and all parties were prepared to talk issues through as they arose, so as to arrive at a solution that would both meet the requirements of Cabinet and be acceptable to stakeholders. The discussions also provided a valuable opportunity to develop ongoing productive relationships between the parties.

Out-of-scope issues

Throughout our discussions we were mindful that the terms of reference for our work specified that we were required to examine only clause 6 of the MoU and only for the purpose of developing a process that could add new conditions to Schedule 1 of the MoU should any new conditions appear in the future on the United States Academy of Sciences list of conditions where there is sufficient evidence to show an association with exposure to toxic substances used in Vietnam, including Agent Orange.

Nonetheless, our meetings also provided an opportunity for some other issues to be raised. The Vietnam Veterans' Association consider these to be of ongoing importance, and would like an opportunity to have further discussions about them with Veterans' Affairs. They plan to follow this up with Veterans' Affairs directly.

The points they raised were the following:

- They would like to meet formally and on a regular basis with Veterans' Affairs to discuss the MoU and review the status of its implementation.
- Topics for discussion would include:
 - the difference between conditions covered under the Veterans' Support Act 2014 and the MoU;
 - consideration of updating some areas of the MoU, for example definitions, clause 8, and the treatment of children and grandchildren;

¹ Monoclonal Gammopathy of Undetermined Significance

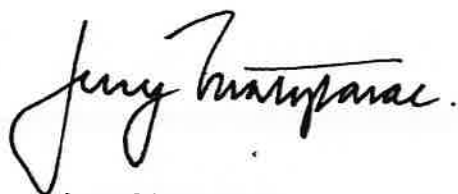
- consideration of a possible alternative trigger for Schedule 1 changes and ex gratia payments if the United States Academy of Sciences no longer produces or updates the list of conditions for which there is sufficient evidence of association with Agent Orange.
- The Vietnam Veterans' Association would also like an opportunity to meet and talk with you as Minister for Veterans; they will approach your office and request that a meeting be arranged at a time that would be convenient to you.

The aim of these actions would be to ensure that the MoU is maintained as a living document. It would also build on both the positivity of the tripartite discussions that have just concluded, and on work already initiated by Veterans' Affairs to build ongoing relationships with Vietnam veterans.

In conclusion, I would like to thank you for sponsoring these discussions. I trust that the process that has been developed, and that is described in the attachment to this letter, will meet your requirements and those of Cabinet.

I would be happy to discuss our report further with you, as would the other two parties involved in this work, the Vietnam Veterans' Association and the Royal New Zealand Returned and Services' Association.

Nāku iti noa, nā



Jerry Mateparae

Crown Representative

Attachment:

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

Hon Meka Whaitiri

MP for Ikaroa-Rāwhiti

Minister of Customs

Minister for Food Safety

Minister for Veterans

Associate Minister of Agriculture (Animal Welfare)

Associate Minister of Statistics



- 7 DEC 2022

Sir Jerry Mateparae
BJ Clark
Graham Gibson

Tēnā koutou Sir Jerry, BJ and Graham,

Vietnam veteran Memorandum of Understanding: Work to develop a process for managing new Schedule 1 conditions

I am very pleased to provide formal confirmation to you about the outcome of the work that the three parties to the Memorandum of Understanding did earlier this year to develop a process to add new conditions for the purposes of Schedule 1 of the MoU.

The Cabinet Social Wellbeing Cabinet Committee met last Wednesday 23 November. They agreed that the process, as recommended by your group, should be used in future to add new conditions for the purposes of Schedule 1 of the Memorandum of Understanding.

They also authorised the Minister for Veterans to determine that the new Prescribed Condition or Conditions on the United States 'sufficient evidence of association list' will apply in New Zealand for the purposes of Schedule 1 of the 2006 MoU between the Crown and representatives of New Zealand's Vietnam veterans.

Cabinet confirmed those decisions at its meeting this week.

I thank you all, and your teams, for the work you did to achieve this outcome. I am sure that it will serve Vietnam veterans well going forward. Please feel free to share this information with your members.

I look forward to being able to thank you all personally, and have asked my office to arrange a Zoom meeting for us before the Christmas break, so I can express my appreciation for your hard work and for the cooperative spirit in which you approached your task.

My thanks again, and very best wishes.

Nā mātou noa, nā

A handwritten signature in black ink, appearing to read 'Meka Whaitiri', written over a horizontal line.

Hon Meka Whaitiri
Minister for Veterans