

# **Ex-gratia payments (Viet Nam veterans' children)**

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# Contents

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<b>Policy</b> .....	<b>3</b>
1. Purpose.....	3
2. Legislative reference .....	3
3. Eligibility .....	3
4. Amount of ex-gratia award .....	4
5. Processing of ex-gratia claim .....	4
6. Case management of veteran’s child .....	5
7. Decision on ex-gratia claim.....	5
8. Exemption from tax & asset/income testing .....	5
9. Other assistance .....	5
<b>Glossary</b> .....	<b>6</b>

# Policy

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## 1. Purpose

- 1.1 This policy is about the ex-gratia awards payable in respect of Viet Nam veterans' children diagnosed with eligible conditions.
- 1.2 Payments that may be made under this policy are:
  - *ex-gratia payment to veteran's child* — paid to a Viet Nam veteran's child diagnosed with an eligible condition
  - *ex-gratia payment to family* — paid to immediate family of a Viet Nam veteran's child who has died of an eligible condition.

## 2. Legislative reference

- 2.1 These payments are not legislated. We provide them under clauses 9.1 and 10.1–10.2 of a 2006 Memorandum of Understanding between the Crown, the Ex-Vietnam Services Association, and the Royal New Zealand Returned & Services Association.
- 2.2 The Memorandum of Understanding was in response to longstanding concerns of the Viet Nam veteran community, including about the veterans' exposure to a toxic environment in Viet Nam.

## 3. Eligibility

- 3.1 For an individual to be eligible under this policy as a veteran's child, they must:
  - be the veteran's natural-born child; and
  - have been born after the veteran's return (temporary or permanent) from qualifying operational service in Viet Nam.

### **Ex-gratia payment to veteran's child**

- 3.2 *Ex-gratia payment to veteran's child* is paid to a veteran's child diagnosed with any of the accepted conditions:
  - cleft lip
  - cleft palate
  - spina bifida
  - adrenal gland cancer
  - acute myeloid leukaemia.
- 3.3 It is a one-off payment, so may not be paid more than once to an individual (even if diagnosed with more than one accepted condition).

### **Ex-gratia payment to family**

- 3.4 *Ex-gratia payment to family* may be paid if the veteran's child dies from an accepted condition (as listed at 3.2). This is regardless of whether or not we have made an *ex-gratia payment to veteran's child*.

- 3.5 Payment is to the immediate family (could be deceased's child, grandchild, spouse/partner, parent/main caregiver, sibling):
- within immediate family, payment should normally be to the person(s) in the closest relationship to the deceased
  - outside immediate family, no payment may be made.

## 4. Amount of ex-gratia award

- 4.1 For both types of ex-gratia award under this policy, amount paid is \$30,000.

## 5. Processing of ex-gratia claim

- 5.1 There is no ex-gratia claim form. Instead, any potential entitlement should be treated as a claim. Potential entitlement might come to our attention through:
- our review of a client's case notes; or
  - a query (or other communication) from a potentially eligible individual or their support person.
- 5.2 Ex-gratia claims should be given urgency.

### Evidence needed for award to veteran's child

- 5.3 For *ex-gratia payment to veteran's child*, we need the following evidence (originals or certified copies):
- proof of the veteran's Viet Nam service
  - full birth certificate showing claimant is the veteran's natural child, born after the veteran's return from Viet Nam
  - sufficient medical evidence to confirm an accepted condition.

### Evidence needed for award to family

- 5.4 For *ex-gratia payment to family*, we need the following evidence (originals or certified copies):
- proof of the veteran's Viet Nam service
  - full birth certificate showing the deceased was the veteran's natural child, born after the veteran's return from Viet Nam
  - death certificate showing the death was from an accepted condition
  - any additional evidence needed to establish who should be paid (in some cases might involve a statutory declaration, or further follow-up).

## 6. Case management of veteran's child

- 6.1 When we confirm a claimant is the child of a Viet Nam veteran, a case manager should be assigned. Case managing of the claimant should continue:
- to the end of the claim; or
  - for a limited period beyond the end of the claim, if this would be helpful to the claimant.

## 7. Decision on ex-gratia claim

- 7.1 The Head of Veterans' Affairs makes a recommendation to the Minister for Veterans, as to whether an ex-gratia award should be paid. The decision is made by the Minister.

## 8. Exemption from tax & asset/income testing

- 8.1 Ex-gratia payments under this policy are exempt from New Zealand income tax.
- 8.2 Both the payments and interest earned on them are exempt from Work and Income asset/income testing.
- 8.3 Accordingly, once payment has been made and the Ministerial letter sent, we should also send the ex-gratia recipient:
- a letter advising of the exemptions (and advising overseas recipients to consider getting advice on whether tax or asset/income testing may apply locally)
  - an authorisation form to sign (so we can pass information about the payment to Work and Income, if asked to).

## 9. Other assistance

- 9.1 The following trusts can make grants to Viet Nam veterans or family members. Both trusts set out on their websites the kind of situations they will consider assisting:
- **Viet Nam Veterans & their Families Trust**  
May assist Viet Nam veterans or their families with some expenses, to relieve poverty or hardship.  
[www.communitymatters.govt.nz/viet-nam-veterans-and-their-families-trust](http://www.communitymatters.govt.nz/viet-nam-veterans-and-their-families-trust)
  - **Vietnam Veterans (Neville Wallace Memorial) Children's & Grandchildren's Trust**  
May assist children or grandchildren of Viet Nam veterans to realise their potential.  
[www.evsayouthtrust.org.nz](http://www.evsayouthtrust.org.nz)

## Glossary

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### **member of the armed forces** *[Section 7 of the Veterans' Support Act]*

Means a person who is or has been a member of the New Zealand armed force raised by the Governor-General on behalf of the Sovereign,—

- (a) whether in New Zealand or elsewhere; and
- (b) whether before or after the passing of this Act.

### **qualifying operational service** *[Section 8 of the Veterans' Support Act 2014]*

Means—

- (a) service on any deployment treated as a war or emergency for the purposes of the War Pensions Act 1954; or
- (b) service on any deployment declared to be operational service under section 9.

### **qualifying routine service** *[Section 8 of the Veterans' Support Act 2014]*

Means service in the armed forces before 1 April 1974 that is not qualifying operational service.

### **qualifying service** *[Section 8 of the Veterans' Support Act 2014]*

Means—

- (a) qualifying operational service; or
- (b) qualifying routine service.

### **veteran** *[Section 7 of the Veterans' Support Act]*

Means—

- (a) a member of the armed forces who took part in qualifying operational service at the direction of the New Zealand Government; or
- (aa) a member of the armed forces who took part in qualifying routine service before 1 April 1974; or
- (b) a person—
  - (i) who has been—
    - (A) appointed as an employee of the Defence Force under section 61A of the Defence Act 1990; or
    - (B) seconded to the Defence Force with the permission of the Chief of Defence Force; and
  - (ii) who took part in qualifying operational service at the direction of the New Zealand Government; or
- (c) a person who, immediately before the commencement of Part 3 of this Act, is eligible for a pension under the following provisions of the War Pensions Act 1954:
  - (i) section 19 (but only if the person was a member of the forces):
  - (ii) section 55 or 56:
  - (iii) Parts 4 and 5.