

Veteran, Spouse and Partner Ex-gratia Payments

(Service in Viet Nam: 1964–1972)

**Version 3
February 2025**

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Policy

1. Purpose

- 1.1 This Policy provides guidance on the administration of claims for ex-gratia payments provided in accordance with clause 6 of the Memorandum of Understanding agreed between the Crown, the Ex-Vietnam Services Association, and the Royal New Zealand Returned & Services Association in 2006 [Memorandum of Understanding].
- 1.2 This Policy applies to all eligible **Viet Nam veterans**, spouses and partners equally, irrespective of their country of residence.

2. Legislative reference

- 2.1 Viet Nam Memorandum of Understanding ex-gratia payments are not provided for in legislation. Thus these payments are not statutory entitlements but are discretionary payments made by the Crown under the Royal Prerogative.
- 2.2 The Crown is entitled to have an administrative policy to guide its discretion (including who is eligible for payment, criteria for payment, to whom they are made, how to claim, evidence to support a claim and how payments are made) set out in this Policy.

3. Glossary

- 3.1 For the purposes of this Policy, words in bold green are defined in a glossary at the rear of this document.

4. Viet Nam veteran eligibility for ex-gratia payment

- 4.1 A veteran is eligible for an ex-gratia payment if they:
 - served in Viet Nam as a **member of the New Zealand armed forces** between 1 January 1964 and 31 December 1972 (inclusive); and
 - have been diagnosed with one or more **prescribed conditions**.
- 4.2 A Viet Nam veteran may only be paid one ex-gratia payment, even if they have more than one prescribed condition. A Viet Nam veteran ex-gratia payment can only be made to an eligible veteran while they are alive. The estate or surviving family are not able to claim or receive an ex-gratia payment on behalf of a deceased Viet Nam veteran.
- 4.3 If an ex-gratia payment was not made to a Viet Nam veteran during their lifetime, a surviving spouse or partner may be eligible for an ex-gratia payment if the veteran died from a prescribed condition. If a deceased veteran is not survived by a spouse or partner, no ex-gratia payment can be paid.

5. Spouse or partner eligibility for ex-gratia payment

- 5.1 The surviving **spouse or partner** of a deceased Viet Nam veteran is eligible for an ex-gratia payment if the veteran:
- did not receive an ex-gratia payment while alive; and
 - died from a prescribed condition.

- 5.2 A spouse or partner is not eligible for an ex-gratia payment if a Viet Nam veteran had, but did not die from, a prescribed condition.

Eligible relationship

- 5.3 To be considered the Viet Nam veteran's surviving spouse or partner, a person must be married to, in a civil union with, or in a de facto relationship with the veteran at the time of the veteran's death.

Veteran in marriage or civil union

- 5.4 While both people in a marriage or civil union remain alive, their relationship continues to exist in law until legally ended (a marriage, by divorce; and a civil union, by dissolution). Separation does not legally end a marriage or civil union.
- 5.5 If the marriage or civil union exists at the time of the veteran's death, and all other criteria are met, a payment will be recommended. But if it has legally ended, no payment will be recommended.

Veteran in de facto relationship

- 5.6 There is no formal legal mechanism to begin or end a de facto relationship. Past de facto partners have no eligibility for an ex-gratia payment. Therefore, for an ex-gratia payment to be paid, the de facto relationship must be shown to have been current at the time of the veteran's death.

Veteran separated, but has entered into de facto relationship

- 5.7 If a veteran who is separated from a spouse or civil union partner is in a de facto relationship at the time of their death, Veterans' Affairs will consider whether to recommend that the ex-gratia amount be:
- paid in full to the de facto partner; or
 - split between the de facto partner, and the spouse or civil union partner.
- 5.8 In such cases, Veterans' Affairs will consider when the separation began, when the de facto relationship began, and the length of each relationship. For both relationships, Veterans' Affairs will also consider:
- the level of social, emotional or financial support provided by the spouse or partner (including, as applicable, any continuation of it after their separation)
 - the existence of children or dependants of the relationship
 - any other relevant factors.

Death of spouse or partner

- 5.9 An ex-gratia payment may only be made to an eligible spouse or partner while they are alive. The estate or surviving family are not able to claim or receive an ex-gratia payment on behalf of a deceased spouse or partner.

6. Prescribed conditions

Prescribed conditions (since 2006)

- 6.1 The following five prescribed conditions are listed in the Memorandum of Understanding:
- chloracne
 - chronic lymphocytic leukaemia
 - Hodgkin's disease
 - non-Hodgkin's lymphoma
 - soft tissue sarcoma.

Additional prescribed conditions (from 29 November 2021)

- 6.2 The following two additional prescribed conditions have been agreed to by the Government:
- hypertension
 - monoclonal gammopathy of undetermined significance.

7. Amount of ex-gratia payment

- 7.1 The amount of an ex-gratia payment is:
- for an eligible Viet Nam veteran — NZD \$40,000
 - for an eligible surviving spouse or partner — NZD \$25,000.

8. Applications for an ex-gratia payment

- 8.1 There is no ex-gratia payment application form. Instead, any potential entitlement request by a claimant such as a letter, email or telephone request is treated as a claim. Potential entitlement may come to the attention of Veterans' Affairs by:
- an application for entitlement under the Veterans' Support Act 2014
 - a Viet Nam veteran annual medical assessment
 - a review of a Viet Nam veteran's records held by Veterans' Affairs
 - a query made about ex-gratia payment eligibility.

- 8.2 Potential ex-gratia queries or claims will be investigated and treated as urgent, as the eligible condition may be terminal.

Evidence needed for veteran payment

- 8.3 For a veteran ex-gratia claim, the evidence needed is:
- proof that the veteran served in Viet Nam between 1 January 1964 and 31 December 1972 (inclusive); and
 - relevant medical information that supports a diagnosis of a prescribed condition (for example medical notes or reports from a GP or specialist, a death certificate or a coroner's decision).

Evidence needed for surviving spouse or partner payment

- 8.4 For a spouse or partner ex-gratia claim, the evidence needed is:
- proof that the veteran served in Viet Nam between 1 January 1964 and 31 December 1972 (inclusive)
 - a copy of the death certificate showing the veteran died as a result of a prescribed condition
 - confirmation that the veteran did not receive an ex-gratia payment in their lifetime; and
 - proof of the relationship, such as a marriage certificate or civil union certificate.
- 8.5 For exceptional circumstances to be taken into account (5.7 to 5.8 refer), compelling evidence will be needed. This would normally include, but not be limited to, a statutory declaration made under the Oaths and Declarations Act 1957 from the claimant detailing the circumstances; and credible evidence to support the claimant, preferably from an independent third party.

9. Decision on ex-gratia claim

- 9.1 The Head of Veterans' Affairs recommends to the Minister for Veterans that an ex-gratia payment under the Memorandum of Understanding should be paid.

10. Exemption from tax and asset/income testing in New Zealand

- 10.1 Memorandum of Understanding ex-gratia payments are exempt from New Zealand income tax.
- 10.2 Ex-gratia payments and interest earned are exempt from Work and Income asset and income testing.

11. Tax obligations for recipients living outside New Zealand

- 11.1 Recipients living outside New Zealand will need to check with local tax authorities what their tax obligations are for income received in their country of residence.

12. Assistance from other organisations

12.1 The following trusts can make grants to veterans who served in Viet Nam or their family members. The kind of situation they will consider assisting is set out on the websites noted below:

- Viet Nam Veterans & their Families Trust**

May assist eligible veterans or their families with some expenses, to relieve poverty or hardship.

<https://communitymatters.govt.nz/viet-nam-veterans-and-their-families-trust-2>

- Vietnam Veterans (Neville Wallace Memorial) Children's & Grandchildren's Trust**

May assist children or grandchildren of eligible veterans to realise their potential

<https://www.nzvietnamveterans.org.nz/index.php/children-s-grandchildren-s-trust>

Glossary

member of the New Zealand armed forces [Policy definition]

Means a person who is or has been a member of a New Zealand armed force raised (whether in New Zealand or elsewhere) by the Governor-General on behalf of the Sovereign.

prescribed condition [Memorandum of Understanding definition]

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”).

spouse or partner [Memorandum of Understanding definition]

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

Viet Nam veteran [Policy definition]

Means a member of the New Zealand armed forces who served in Viet Nam during the period from 1 January 1964 to 31 December 1972 (inclusive).