

Ex-gratia payments (Viet Nam veterans & partners)

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Policy

1. Purpose

- 1.1 This Policy is about the ex-gratia payments that may be made in respect of Viet Nam veterans diagnosed with eligible conditions.

2. Legislative reference

- 2.1 These payments are not legislated. We provide them under government decisions as to policy and clause 6 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 Potential recipients of such a payment are:

- an eligible veteran
- the veteran's surviving spouse or partner (if the veteran has died of an eligible condition, but never received an ex-gratia payment).

Eligible veteran

- 3.2 To be eligible, a veteran must have qualifying operational service in Viet Nam, and at least one of the eligible conditions:

- chloracne
- chronic lymphocytic leukaemia
- Hodgkin's disease
- non-Hodgkin's lymphoma
- soft tissue sarcoma.

Eligible spouse or partner

- 3.3 The surviving spouse or partner of a deceased Viet Nam veteran is eligible if the veteran:

- did not get any ex-gratia payment; and
- died from an eligible condition.

- 3.4 Normally, a spouse/partner claimant must have been in a marriage-type relationship with the veteran at the time of the veteran's death. Where the relationship ended before the veteran's death, we may make the payment only if satisfied that:

- exceptional circumstances exist (such as a committed and longstanding relationship that broke down soon before the veteran's death, for reasons to do with service in Viet Nam); and

- the veteran had no subsequent marriage-type relationship.

Number of ex-gratia awards payable

- 3.5 Only one ex-gratia payment may ever be made in respect of an individual veteran (even if diagnosed with more than one eligible condition).

4. Amount of ex-gratia award

- 4.1 The amount of an ex-gratia award is:

- \$40,000 — if awarded to the veteran
- \$25,000 — if awarded to the surviving spouse/partner.

5. Processing of ex-gratia claim

- 5.1 There is no ex-gratia claim form. Instead, any potential entitlement request by the claimant should be treated as a claim. Potential entitlement may come to our attention through any of the following:

- an application for entitlement under the Veterans' Support Act
- an annual medical assessment
- a review of a veteran's file
- a veteran, surviving partner or support person asking about eligibility.

- 5.2 Ex-gratia claims must be given urgency (as the condition may be terminal, or the claimant in need of the funds).

Evidence needed for award to veteran

- 5.3 For a veteran ex-gratia claim, evidence needed is:

- proof of the veteran's qualifying operational service in Viet Nam
- sufficient medical evidence to confirm an eligible condition.

Evidence needed for award to partner

- 5.4 For a spouse/partner ex-gratia claim, evidence needed is

- proof of the veteran's qualifying operational service in Viet Nam
- death certificate showing the veteran died of an eligible condition
- proof of eligible relationship.

- 5.5 For exceptional circumstances to be taken into account (see 3.4), compelling evidence is needed. This would normally include:

- letter from claimant detailing the circumstances; and
- credible supporting evidence (preferably from a disinterested party).

6. Decision on ex-gratia claim

- 6.1 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 itself is made by the Minister.

7. Exemption from tax & asset/income testing

- 7.1 Ex-gratia payments under this policy are exempt from New Zealand income tax.
- 7.2 Both the payments and interest earned on them are exempt from Work and Income asset/income testing.
- 7.3 Accordingly, once payment has been made and the Ministerial letter sent, we should 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).

8. Assistance from other organisations

- 8.1 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-2
 - **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/

Glossary

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.