

**JOINT WORKING GROUP  
ON  
CONCERNS OF VIET NAM  
VETERANS**

**REPORT TO THE GOVERNMENT**

**APRIL 2006**



**Joint Working Group on Concerns of Viet Nam Veterans**  
Te Kāhui Pikau Take Ika ā-Whiro Whitināmu

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26 April 2006

The Minister of Defence  
The Minister of Veterans' Affairs

The Report and Recommendations of the Joint Working Group on Concerns of Viet Nam Veterans is enclosed for your and the Government's consideration.

It meets the Terms of Reference for the Joint Working Group issued by the then Ministers of Defence and Veterans' Affairs in July 2005.

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(Chair)

John Campbell  
Robin Klitscher  
(RNZRSA Representatives)

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Chris Mullane  
(EVSA Representatives)

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(Government Representative)

## **FOREWORD**

In the week beginning 30 January 2006, the Joint Working Group held consultation meetings in Palmerston North, North Shore and Papakura. In the same week, families and friends attended the funerals of five New Zealand veterans of the Viet Nam War.

Kevin Forde, Ben Morunga, Douglas Powell, John Rowland and Murray Walters followed some 800 of their former comrades, nearly a quarter of those who served with New Zealand's forces from 1964 to 1972 in the then Republic of South Vietnam.

Behind these numbers is a story of national denial, and personal stories of individual and family pain and loss. In 2004, the Health Committee of Parliament formally acknowledged what had long been denied, that New Zealand service personnel in Viet Nam were exposed to a toxic environment, and this has affected the health of many who served, their families and their descendants.

The recommendations in this report are one step towards putting things right. They should be seen as a package: a public acknowledgement of the denial faced by all Viet Nam veterans; reparation for those harmed by the delays in recognising the consequences of their service; ongoing support for those adversely affected; and a commitment to continuing review and action as more becomes known about the toxic environment of Viet Nam and its effects.

The Joint Working Group commends this plan of action to the Government.

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## 1.1 A Brief History

(1) In December 1972, the last New Zealand service personnel left what was then the Republic of South Vietnam. Nearly 3,400 had served there, in New Zealand uniform, from June 1964. Thirty-seven had died on active service. Many more were wounded, some seriously.

(2) But the war and the suffering were not yet over. The fighting continued until the fall of Saigon in 1975. For many New Zealand veterans, a different kind of conflict was just beginning.

(3) There were two related themes in the post-war struggle of New Zealand's Viet Nam veterans. One was a form of national rejection of the value of their service, linked to political opposition to the war and social changes in the 1960s and 1970s. The other was Agent Orange.

(4) United States forces widely used herbicides for defoliation and crop destruction in Viet Nam from 1961 to 1971. These included Agent Orange and a range of other herbicides. Millions of litres of herbicides were sprayed during the programme.

(5) Defoliant use in Viet Nam in areas where New Zealanders were operating was not a secret – even in the 1970s. It was witnessed and described by many of those serving in Viet Nam. Information from the American Defense Department on the spraying of herbicides in Phuoc Tuy Province, where New Zealand forces operated, was passed to the New Zealand Defence Force as far back as 1980.

(6) A 1984 class action lawsuit claimed the United States Government and chemical companies caused death and injury to tens of thousands of Viet Nam veterans through the spraying programme. A \$US 180 million settlement was reached with veterans and their families.

(7) The settlement, among other things, provided for a small trust fund for New Zealanders. The New Zealand Government appointed former High Court Justice Mahon to chair the fund. The fund was exhausted before the health effects for many veterans became apparent.

(8) Despite the Agent Orange settlement agreement, the New Zealand Government did not formally acknowledge New Zealand veterans might have been exposed to Agent Orange and other defoliants. Nor did successive Governments appear to accept responsibility for any of the problems facing Viet Nam veterans.

(9) In 1996, the veterans themselves began preparations for “Parade ’98 – Viet Nam Remembered”. Through Parade ’98 and related activity, Viet Nam veterans became aware of their common problems. For many it was the first time in 25 to 30 years they and their families had either privately or publicly acknowledged these problems.

(10) At the same time, the Government began to consider Agent Orange issues. In July 1998, it set the terms of reference for the Reeves Inquiry.<sup>1</sup> This examined the health of children of Viet Nam and Operation Grapple<sup>2</sup> veterans. The department of Veterans’ Affairs was set up in 1999 and, in 2000, commissioned an Otago Medical School research team, led by Dr Deborah McLeod,<sup>3</sup> to review all available research on the health of the children of Viet Nam and Operation Grapple veterans.

(11) The Reeves and McLeod reports were based on a false assumption: that New Zealand forces were not significantly exposed to dioxin-contaminated herbicides, or other chemicals, during their service in Viet Nam.

(12) Why this assumption could have been made, given the information held at that time by the New Zealand Defence Force, is a source of angry speculation for many.

(13) Meanwhile, veterans continued to present with serious medical conditions. Several spoke up strongly as advocates for their comrades, but none were heard until April 2003 when the Health Committee of Parliament decided to take up the matter.

(14) The Health Committee’s terms of reference can be summarised as to:

- Identify and examine evidence that New Zealand defence personnel were exposed to Agent Orange and other defoliants during the Viet Nam War, including new evidence;
- Evaluate the McLeod and Reeves reports;

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<sup>1</sup> Advisory Committee on the Health of Veterans’ Children, Reeves, Sir P, Faulkner, M, Birks, A, Feek, C, and Helm, P, *Inquiry into the Health Status of Children of Vietnam and Operation Grapple Veterans*, Wellington New Zealand, Department of the Prime Minister and Cabinet, 1999.

<sup>2</sup> The British nuclear tests in the Pacific in 1957 and 1958.

<sup>3</sup> McLeod, D, Cormack, D, Kake, T, *The Health Needs of the Children of Operation Grapple and Vietnam Veterans: A Critical Appraisal Undertaken for Veterans’ Affairs New Zealand Defence Force*, General Practice Department Report No. 4, August 2001.

- Assess health risks to defence personnel in Viet Nam and exposure effects on families identified in relevant international studies; and
- Assess current levels of health services for Viet Nam veterans and their families and whether further services were required.

(15) During their Inquiry, Colonel John Masters MC, a former commander of 161 Battery in Viet Nam, presented a United States official map to the Committee. This identified areas of chemical defoliation, including Nui Dat and Phuoc Tuy Province, where New Zealand forces served.

(16) The Committee tabled its report in October 2004.<sup>4</sup> It found that New Zealand forces were exposed, and that this exposure had adverse health consequences.

(17) The response, in December, of the then Minister of Veterans' Affairs included an apology to veterans, and a statement of the actions being taken by the Government to address the needs of Viet Nam veterans and their families. Veterans' organisations, the Royal New Zealand Returned and Services Association (RNZRSA) and the Ex-Vietnam Services Association (EVSA), submitted that the response was inadequate.

(18) Separately, an open letter signed by over 700 veterans and family members protested the inadequacy of the Government's response. Between the veterans' organisations and officials from the offices of the Ministers of Defence and Veterans' Affairs, work then began on setting up an Agent Orange Joint Working Group (the JWG) to report to the Government.

(19) From March to July 2005, the JWG met to develop an agreed approach to addressing the concerns of Viet Nam veterans. In line with the terminology of the Health Committee, the JWG and the Government agreed that the name of this group be "The Joint Working Group on Concerns of Viet Nam Veterans". Although Agent Orange lies at the heart of the JWG's role, the mandate extends to other concerns of New Zealand's Viet Nam veterans.

(20) The terms of reference for the JWG were established in July 2005, and in the same month the Prime Minister announced the appointment of

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<sup>4</sup> *Inquiry into the exposure of New Zealand Defence personnel to Agent Orange and other defoliant chemicals during the Viet Nam War and any health effects of that exposure, and the transcript of evidence.* 1.6E October 2004.

former State Services Commissioner, Michael Wintringham, as independent Chair of the JWG.

(21) By October 2005, the terms of reference had been made public and requests for submissions issued. Since then, the JWG has comprised the Chair, representatives from the RNZRSA and EVSA, and a senior official from the Ministry of Social Development.

## **1.2 Assumptions and Principles**

### **1.2.1 Introduction**

(1) This report covers a lot of ground. It addresses issues on which there is little likelihood of achieving unanimity. Some, such as the exact extent of direct aerial spraying of New Zealand forces with dioxin-contaminated herbicides, depend on a record which is good but incomplete. Others, such as the health impacts of exposure on New Zealand veterans (as opposed to United States or Australian veterans, for example) are problematic statistically, given the small size of the New Zealand cohort. In these instances, the JWG has adopted working assumptions which it considers sensible and defensible.

(2) The JWG's recommendations for action are also underpinned by principles. Recommendations based on the principles of putting resources where there is most need, for example, will be different from those based on a principle of universal treatment.

(3) Because of their influence on the commentary and recommendations in this report, the JWG has made explicit both the assumptions and principles on which they are based. These are set out below, and should inform some important parts of this report.

### **1.2.2 Foundation document**

(1) The starting point of the report and recommendations of the JWG is the report of the Health Committee of October 2004. The Health Committee confirmed that:

- New Zealand service personnel were exposed to a toxic environment during their service in Viet Nam;

- This exposure had serious, adverse health consequences for many veterans; and
- The health consequences of this exposure could be passed to the progeny of Viet Nam veterans.

(2) Accepting this as the starting point has profound implications for the JWG's report and recommendations:

- Some former servicemen have died earlier, as a result of their service in Viet Nam, than they would have otherwise;
- The failures of successive Governments over many years to acknowledge the exposure and health risks, and to take action, mean there was no health alert, and in many cases no early diagnosis that would have saved lives – or at least provided a better quality of life for some. People have died unnecessarily;
- Some children of veterans have been born with disabilities or health problems as a consequence of a parent's exposure to a toxic environment during their service in Viet Nam; and
- All veterans have faced uncertainty about their health, and the impact of this anxiety has been exacerbated by years of denial.

### 1.2.3 Not just Agent Orange

(1) The JWG's mandate is to address the *concerns* of Viet Nam veterans and their families. These concerns are about more than dioxin exposure and its health consequences. They include the denial of that exposure and a justified suspicion among many veterans that the JWG's work will be yet another promise unfulfilled. They also include longstanding concerns about the lack of acknowledgement of their service on behalf of the country, and what many former short-term soldiers in particular see as the expediency of their treatment by the Government and the Defence Force on their return from Viet Nam.

(2) Access to health services, and service delivery issues more generally, featured in their concerns. These impact on this report in two ways:

- A number of the recommendations address these concerns specifically; and

- Their cumulative effect strengthens the case for a liberal approach to putting things right.

#### 1.2.4 Toxic environment

(1) The term “toxic environment” was used in the Health Committee’s report and has been the term used consistently by the JWG. It encompasses more than direct aerial spraying of Agent Orange (a systemic defoliant containing the herbicide 2,4,5-T which, in turn, was contaminated by the dioxin TCDD<sup>5</sup>). Even if New Zealand troops were not directly sprayed, they operated in areas which had been defoliated by aerial spraying, they travelled, lived and fought in these areas, and dug their firing positions in the contaminated earth. Some filled their water bottles from contaminated streams. In the dry season others breathed in the dust from helicopter rotor wash.

(2) Aerial-delivered herbicides other than Agent Orange were also used in their areas of operation.

(3) New Zealand soldiers hand-sprayed camp perimeters and living areas with dioxin-contaminated herbicides, often with little or no protective equipment.

(4) It should also be noted the dioxin levels in herbicides provided for military use were much higher than the equivalents provided for commercial agricultural spraying – presumably for reasons of cost and speed of production.

(5) There were three other contributors to the toxic environment. Pesticides were widely used to control malaria-carrying mosquitoes; we have heard how Dapsone, a controversial anti-malarial treatment, was administered to New Zealand troops; and it is likely the rubber plantations where New Zealand troops were based contained residues of agricultural chemicals, including lead-arsenic and other heavy metals.

(6) The effects of this chemical cocktail are not yet fully understood. This fact alone argues for continuing engagement and action on this issue.

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<sup>5</sup> Trichlorophenoxyacetic acid.

### 1.2.5 The non-discrimination principle

(1) The statements above relate to risks and probabilities. It is well nigh impossible to claim in any one case a serious health condition is a consequence of exposure to a toxic environment. That should not get in the way of redress, for three reasons:

- The wrongs are so serious (fatal for some) they must be put right, as far as possible, even if a direct causal link cannot be established in any one case;
- All Viet Nam veterans face a health risk, even if currently well; and
- The presumption in favour of the claimant, often termed the “reverse onus of proof”, embedded in the law and practice of dealing with New Zealand war veterans, should apply also in this case.

### 1.2.6 What health consequences?

(1) In considering any redress, or eligibility for subsidised medical treatment or a war disablement pension, there should ideally be some consensus on what conditions are automatically accepted as being related to exposure to the toxic environment in which New Zealand’s service personnel operated during the Viet Nam War. This is not easy, for three reasons:

- This is ultimately about statistical method, with its combination of difficult mathematics and fine judgments about association and correlation;
- The base data on which statistical analysis is conducted is often imperfect. For example, the death of a veteran may be recorded as heart failure without listing contributory conditions; and
- Even if a strong *association* can be established, this is not necessarily a *causal* linkage.

(2) The Government has stated overseas research will be the basis of New Zealand policy towards its Viet Nam veterans. The United States of America and Australia have the advantage of readily accessible data and

research methods, and significantly larger cohorts of veterans than New Zealand.

(3) The main source used to inform this report and recommendations is the study, and regular updates, of the Institute of Medicine of the United States National Academy of Sciences: *Veterans and Agent Orange*<sup>6</sup>. This was cited in the Health Committee's report and has the advantages of being comprehensive, broadly accepted, and regularly updated. The JWG understands it is accepted by Australia as a basis of policy for Australian Viet Nam veterans.

### 1.2.7 How many generations?

(1) A number of the submissions received by the JWG made reference to the proposition that the effects of a veteran's exposure could recur through seven generations. Although this may have some scientific basis, no one knows for sure. This report has referred to the "progeny" of Viet Nam veterans or the "children and grandchildren" of veterans. We have tried to strike a balance between recognising the intergenerational effects of a veteran's service, but not jumping ahead with policy proposals based upon insufficient evidence or research. In summary:

- The health conditions to be automatically accepted as linked to exposure to the toxic environment of Viet Nam be limited, at this stage, to the person exposed and their children and grandchildren; and
- For great-grandchildren and future generations, a separate policy decision needs to be taken, in good time, on their coverage, based on up to date and authoritative research, and having regard to United States and Australian policies for the descendants of Viet Nam veterans.

(2) The JWG considers this approach strikes a balance between setting up policies that overreach the current state of knowledge on this issue and giving some confidence the long-term intergenerational consequences will continue to be addressed.

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<sup>6</sup> Institute of Medicine, *Veterans and Agent Orange: Update 2000*, Institute of Medicine, Division of Health Promotion and Disease Prevention, Washington DC, 2002

### 1.2.8 Universal or targeted?

(1) This major issue was addressed, either implicitly or explicitly, in many of the submissions, and preoccupied the JWG in its subsequent deliberations. The question is, if there are to be reparation payments, should these be targeted to those most seriously affected, or be made to all?

(2) The arguments for a universal payment are:

- All veterans have been affected in some way, or have a health risk as a result of their service; and
- All veterans have endured years of rejection of their claims that their service has brought unlooked for, and in some cases tragic, consequences.

(3) The argument for targeting is:

- The consequences of service in Viet Nam have fallen unevenly on veterans. Some have died, some have life-threatening illnesses, some are well, some have healthy children, some have children with serious health issues.

(4) In the event, we have recommended the principal redress should be directed to those who have serious life-threatening conditions associated with service in Viet Nam; to the spouses of those who have died with these conditions; and to the progeny who have serious conditions associated with a forebear's service in Viet Nam.

(5) There is a basis for a modest universal payment based principally on the tax treatment of those serving in Viet Nam.

### 1.2.9 Earnings-related compensation

(1) Two propositions about the basis of the New Zealand war pension system were made to the JWG:

- The sums provided were inadequate to give a reasonable standard of living to the recipients; and
- The basis of the system should be earnings-related.

(2) ACC was often cited as a more appropriate model where a service-related disability resulted in an ex-serviceman or woman giving up a job.

(3) These are important proposals. They are major public policy matters, of application to all veterans and with implications for both ACC and social policy more generally. They could not be dealt with administratively, or by tinkering with existing legislation. For these reasons, they lie well outside the terms of reference and capacity of the JWG.

#### **1.2.10 The problem of anticipated earnings**

(1) A number of submissions to the JWG pointed out the losses, in earnings and financial security, as well as the direct costs incurred by families coping with a father's serious illness, during what could have been his peak earning years. There has undoubtedly been an opportunity cost for these families. But assessing what "might have been" in an individual case is impossible.

(2) The JWG set this issue aside also, and has sought instead to recognise the direct costs incurred by individuals or families consequent upon illness.

#### **1.2.11 A liberal approach**

(1) New Zealand has traditionally accorded its returned servicemen and women respect, and treated them differently to others who draw upon the state for support. The distinction between "entitlements" (for servicemen and women) and "benefits" (for others) is one indication. Another is the presumption in favour of the claimant in the awarding of war disablement pensions, compared with the process for determining eligibility for welfare benefits. The JWG has tried to reflect that spirit in this report and recommendations.

(2) An obvious example is in the association or linkage of health conditions to service in Viet Nam. If there is a reasonable basis for association, then the presumption is the condition is a result of service. Other approaches could deny due acknowledgement and reparation to those who *have* suffered serious health conditions. We consider the approach we have taken is responsible as well as liberal.

(3) This has also driven our approach to the tax issue on page 50ff. Some could argue those serving in Viet Nam were treated according to the tax law in force at the time. In our view, a more generous response is warranted.

(4) Where the current system does not adequately recognise the most serious consequences of exposure to the toxic environment of Viet Nam, and more generally to the conditions of the modern battlefield, we have recommended changes, including changes to legislation.

(5) Some of these proposals will have implications for other groups of veterans. We recognise this, and also that this country's treatment of the veterans of Viet Nam, and of other deployments, will send a message to those considering a career in New Zealand's armed forces.

#### **1.2.12 Not full and final**

(1) Although the remedies proposed in this report are comprehensive, they will not put this matter finally to rest:

- The loss of loved ones, the suffering of families, and the anger of years of inaction, run too deep to be quickly assuaged;
- As veterans (and their children and grandchildren) age, they may well present with more conditions associated with their service in Viet Nam; and
- Medical knowledge about the consequences of exposure to the toxic environment of Viet Nam will continue to expand.

(2) The remedies proposed in this report are, in our view, a good start. But they will need to be supported by a continuing commitment on the part of Governments, and their agencies, to do the right thing by the Viet Nam veteran community, to remain on top of overseas research related to Viet Nam veterans, and build this into future policies.

#### **1.2.13 The perfect versus the practical**

(1) The JWG is only too well aware of the numbers of New Zealand's Viet Nam veterans who have died, or who are dying. Some of those making submissions requested us to take longer in the interests of "getting it 100

percent right”. Others urged us to act swiftly, in some cases knowing they were suffering from a terminal illness.

(2) Each Viet Nam veteran who dies, without seeing this issue brought to some acceptable stage of resolution, has been failed by this country. On the assumptions that –

- the measures we have proposed in this report will be broadly accepted, and speedily and liberally implemented;
- the needs of Viet Nam veterans and their families will be continuously monitored and addressed; and
- some continuing opportunities for reconciliation, as proposed in this report, will be provided;

– we have opted for a practical, and timely, major first step.

(3) We consider the package proposed in this report will go a long way towards putting right a wrong that has persisted for too long.

## 2. ACKNOWLEDGING THE PAST

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## **2.1 Apology and Acknowledgement**

### **2.1.1 Introduction**

(1) The brief history in section 1.1 represents years of pain and suffering for many of New Zealand's Viet Nam veterans and their families. The Government has said it will apologise formally to veterans and their families for this history. This is an important start. But the prospect of such an apology raises a number of questions – an apology for what, to whom, by whom, and in what context?

(2) It is also fair to say there were mixed views, among veterans and their family members, on whether they wanted (or would accept) an apology, and by whom any apology should be made. This ambivalence arises in part from a misunderstanding of the nature of such an apology (as much a formal acknowledgement of the injustices of the past as it is an expression of regret); in part from the understandable suspicions held by veterans of the motives of Governments of all parties in dealing with their concerns; in part from a deeply held concern such a statement will be seen as an apology for their “service” in Viet Nam (of which they remain proud) rather than for subsequent injustices; and in part a strong, residual commitment of many veterans to the Sovereign to whom they swore allegiance and whose representative is the Governor-General.

(3) The JWG has considered these arguments and concerns in the context of a start to a process of reconciliation. The Government needs to make such a formal statement. But, as this section discusses and recommends, acknowledgement and action cannot rest with the Government alone.

### **2.1.2 The Government**

(1) The JWG endorses the intention of the Government to make a statement of apology. It is an important first step in the process of bringing some resolution to this longstanding issue. The Government has a particular responsibility to help put things right. It is the nature of military service that men and women are sent by Governments into danger. Servicemen and women are not in a conventional employment relationship with the Crown, protected by employment law. Among other abridgements of rights, they forgo the right to sue for failures by their employer, which can result in tragic consequences for them.

(2) But this, in turn, imposes a special obligation on the Government to address the consequences of such failures. Many veterans referred to the “duty of care” which they felt the Government owed them, and failed to provide.

(3) The statement of apology should reflect this context.

(4) Two previous reports on the exposure of New Zealand troops in Viet Nam to a toxic environment, and the health consequences of that exposure, figured large in both written and oral submissions. The Reeves and McLeod reports were effectively set aside by the Health Committee in 2004. The principal concern of veterans is that these two reports never be used as the basis for health and welfare policies for New Zealand’s Viet Nam veterans and their families. A statement of apology provides an important platform to set these reports firmly in the past.

(5) In our view, the Government’s statement should:

- (a) ***Acknowledge the service*** of the New Zealanders who fought in Viet Nam. They did not “volunteer to go to Viet Nam”, as has been represented by some people over many years. They were Regular Force service personnel who were sent to war by the Government of the day in furtherance of the Government’s policy.

This acknowledgement of service is important in another context. On their return, many of New Zealand’s Viet Nam veterans were vilified as “baby killers” or “murderers”. War is brutal and violent. But the New Zealanders in Viet Nam fought bravely against soldiers – the regulars of the Army of North Vietnam or the irregulars of the Viet Cong – in the best traditions of the ANZAC spirit.

- (b) ***Acknowledge the consequences*** of the war and its aftermath on the service personnel who took part, and on their families. The consequences include the health effects (physical and mental) compounded by the hostile political environment faced by many returnees, and the denial of their exposure.
- (c) ***Acknowledge the denial***, by successive Governments and their agencies, of the just claims of the veterans of their exposure to dioxin-contaminated herbicides and other chemicals, and the consequences of that exposure. The impact of this denial in

exacerbating the suffering of veterans and their families should also be acknowledged.

- (d) ***Acknowledge and apologise for the failures of successive Governments*** to support Viet Nam veterans and their families, in coping with the consequences of their service.
- (e) ***Confirm that previous policy positions***, or officially commissioned reports on the state of the Viet Nam veterans, ***especially the Reeves and McLeod reports, will no longer be the basis of policies for Viet Nam veterans and their families.*** The starting point will henceforth be the 2004 Report of the Health Committee and the report of this Working Group, and those of its recommendations accepted by the Government.
- (f) ***Commit to action*** to put things right, insofar as this can be achieved by Government action.

### **To whom?**

- (6) The statement of apology has three audiences:
  - (a) Most importantly, ***the veterans and their families.*** They have been wronged and an acknowledgement of those wrongs is overdue. Such an acknowledgement will also help reassure them that future Governments will address the health needs of their progeny associated with a forebear's service in Viet Nam.
  - (b) ***The public of New Zealand.*** New Zealand's involvement in the Viet Nam War was deeply divisive of New Zealand society. Thirty-four years after the withdrawal of New Zealand combat forces, strong feelings remain. The Government has an important leadership role in helping New Zealanders distinguish clearly between the decisions of the Government of the day and the service of New Zealand's armed forces, deployed at the direction of the Government.
  - (c) ***Future generations of New Zealanders,*** both the descendants of veterans and the New Zealand population at large. As more becomes known about the consequences of service in Viet Nam, and in other conflicts in which New Zealanders take

part, this will be an important statement for the record. It will form the basis for the commitment of future Governments to provide care for the veterans, and will provide reassurance to the next generation of New Zealanders that, if they choose to serve their country in the armed forces, they and their families will not be left to suffer as have many of New Zealand's Viet Nam veterans and their families.

### **By whom?**

(7) As mentioned above (section 2.1.1), some veterans expressed a preference for the "apology" to be made by the Governor-General in her role as Commander-in-Chief of New Zealand. None of the JWG claim constitutional expertise. But to us it seems the acknowledgement of the failures of previous Governments should come from the present Government, and both the opportunity and the intention to put things right rests squarely with the present Government.

(8) It is important, in the JWG's view, in the interests of bringing some shared national understanding to this issue, the statement of apology be as politically bipartisan and broadly supported as possible. This was the wish of many veterans. The JWG makes the point and leaves it with the Government and the elected representatives of other political parties.

### **Context**

(9) The Government will form its own view on the style and setting of the statement of apology and the announcement of the accompanying reconciliation package. To the extent that it is made directly to veterans and their families, who can judge the significance of the occasion and the commitment of the Government, it will more likely be accepted as a serious attempt to help put things right.

## **Recommendations**

### **The JWG:**

- 1. Endorses the intention of the Government to make a statement of apology to Viet Nam veterans and their families.**

- 2. Recommends that this statement acknowledge the service of Viet Nam veterans; the failures to address their concerns; the effects of those failures; and commits to action.**
- 3. Recommends that, in making this statement, the Government takes account of the context in paragraph (9) above.**
- 4. Recommends that the Government sets aside, as a basis for future policy on Viet Nam veterans, the Reeves and McLeod reports.**
- 5. Recommends that the Government notes the wish of many veterans that, as far as possible, there is a bipartisan approach to addressing their concerns.**

### **2.1.3 The Defence Force and the Army**

(1) As the Working Group continued to hear the submissions and stories of Viet Nam veterans, it became apparent many felt a sense of abandonment by the Defence Force and, because of the numbers of soldiers who served, by the Army in particular. This had three main sources:

- (a) The failure of the Army adequately to “de-programme” its combat troops, or otherwise prepare them for a difficult, often hostile, civilian environment. The Health Committee referred to the clandestine, “small hours”, return home of New Zealand troops after their tour of duty, intended to minimise the risk of anti-war demonstrations. The JWG heard the same stories many times.

We heard also of families not being informed their sons were returning, of returning soldiers being sent on immediate home leave, or cast adrift in Auckland waiting for transport to their home towns. They were told to wear civilian clothes, not talk about their experiences and, for the three-year servicemen particularly, were sometimes given menial chores to fill in time before their discharge.

The shock of the return home should be seen from the perspective of young men who, 48 hours earlier, had been in a

war zone and, a few days before that, may well have been in combat.

In their own attempts to manage their transition to civilian life, some were turned away by the RNZRSA (“you weren't in a real war”) or were vilified by protesters at Anzac Day ceremonies.

For many Viet Nam veterans these experiences have deepened their sense of abandonment by the institution, the Army, which they thought of as a family within which they faced death, and from whom they expected loyalty and support.

- (b) Failures in health care. From what we have heard at consultation meetings, and read in submissions, there were two concerns related to medical treatment provided by the Army:
- The treatment of soldiers in Viet Nam with the anti-malarial drug Dapsone, and the conflicting and confusing references to its properties and safety; and
  - The failure in some cases to assess the medical condition of veterans (especially the short-service soldiers) on their discharge. At the least this would have provided a baseline assessment of their condition against which subsequent health problems could be assessed. For many veterans it was a sign of the “don't care about you any more” attitude they felt on their return from Viet Nam.
- (c) Failures to provide information. By 1980, the NZ Defence Force had received information on the chemical spraying, by the US military, of the areas of Viet Nam in which New Zealand troops were active. The records of exposure produced by the NZDF for the Health Committee in 2003 and 2004 were available when the Reeves and McLeod reports were being prepared, but were not made available to them. Had the records been made available, the conclusions of those two reports may well have been different, and the efforts of the Health Committee and the JWG may not have been needed.
- (d) The medical records of service personnel who served in Viet Nam were also a frequent subject of submissions and discussions. It appears, at some stage, many records may have

been purged. Veterans who sought copies in later years, for example, to help establish the symptoms they had developed, and medication they had been given during hospitalisation or treatment in Viet Nam, found major gaps in their records.

(2) These, or similar, stories featured in many of the submissions. They have shifted many veterans from a view the Army failed them through neglect, to a belief that it participated in a “cover-up”.

(3) The JWG has neither the mandate nor the powers to get to the bottom of these concerns – particularly (c) and (d) above. But it is a major issue for many of the veterans. It will be difficult to achieve some reconciliation for veterans while they remain unaddressed.

(4) There is another issue, of less universal concern but of major importance to the veterans of Rifle Companies Victor 5 (in Viet Nam May 1970 to April 1971) and Victor 6 (May to December 1971).

(5) The Viet Nam Battle Honour on the 1 RNZIR Regimental Colour reads “1967-1970”. Four months of Victor 5’s, and all of Victor 6’s, tours of duty in Viet Nam are not recognised in a way that is of particular importance to both former or serving soldiers. This situation, as the JWG understands it, arises from a rigid, and possibly inappropriate, application of a British convention to recognising battle honours. It may also be inconsistent with the acknowledgement of Victor 1’s deployment (1967) on the colour.

(6) This is yet one more source of grievance for some Viet Nam veterans that could be simply addressed.

#### **2.1.4 Whakanoa**

(1) The term “whakanoa” emerged on a number of occasions during the consultation meetings. Although a Maori concept, it has an equivalent in most societies. Whakanoa involves a number of protocols to reintegrate the warrior into the community, to “cleanse” the aggressive, offensive roles they were required to undertake, and which are at odds with the standards and desirable attributes of civilian life. Many of the traditional paths for this transition: welcome home parades; reunions and sharing with comrades; the respect of the younger soldiers; support from extended families; and the acknowledgement of Governments and civic institutions; were not available to New Zealand’s Viet Nam veterans. Their absence created additional barriers to healing, and further alienated many veterans.

(2) It seemed to us the opportunity to make submissions, to engage with the JWG and share their experiences (of both combat and the return home) with their comrades during our meetings, was important, even after 35 years, to help their reintegration.

(3) Many of those we met were Maori. In two instances in particular, the JWG was robustly challenged to meet Maori veterans and their families on marae. The arguments for and against are outside the scope of this report. But the fact remains that:

- After 35 years, and for obvious reasons, given the history and stories touched on in this report, many veterans are still a long way from achieving whakanoa; and
- Maori cultural needs should be recognised in this process.

## Recommendations

### **The JWG recommends that:**

- 1. The NZDF acknowledges its past failures to use, and take action on, the information it was holding relevant to the Agent Orange issue.**
- 2. The Government and Defence Force note, while the matters of incomplete medical records and a failure to make available information on dioxin exposure of New Zealand service personnel in Viet Nam are unresolved, this will be a continuing source of concern to many veterans.**
- 3. To allay these concerns, the matter be directly addressed by a public statement on the facts of these matters.**
- 4. The NZDF readdress the “South Vietnam” Battle Honour on the 1 RNZIR Regimental Colour to recognise the service of Rifle Companies Victor 5 and Victor 6.**
- 5. The NZDF recognises the role it has to play in helping all veterans achieve a transition to whakanoa, and even at this late stage, the contribution it can still make to help surviving Viet Nam veterans achieve this transition.**

- 6. The NZDF should take steps to formally acknowledge and welcome back the surviving New Zealand veterans of the Viet Nam war.**
- 7. In this process, the wishes and cultural needs of Maori should be recognised.**

## 2.2 Medallic Recognition

### 2.2.1 A campaign medal for Viet Nam

(1) The JWG heard a wide range of views on a “distinctly New Zealand medal” for service in Viet Nam. To some this was very important, to some it mattered less than other things, and some thought it mattered hardly at all. What was very clear, however, was those who thought it important held their view with extraordinary passion. Their argument has two main strands:

- Two campaign awards were instituted at the time, one a joint “ANZAC” medal and the other South Vietnamese. The Australians have recently added a third, which carries a clasp specific to the Viet Nam War on its ribbon. Veterans on this side of the Tasman are pleased the Australians now have a national medal named for the campaign but, given that all ANZAC brothers-in-arms endured exactly the same conditions, they are disappointed New Zealanders do not. While they acknowledge they qualify for the new NZOSM,<sup>7</sup> they point out this is a generic medal for operational service anywhere. Issued only once, it carries no clasp or other device tagging it to Viet Nam or any other campaign; nor is it edge-engraved with name, rank and number, as is normal for campaign medals.
- Viet Nam veterans also insist their service in the Viet Nam War and the service of New Zealanders in East Timor have not been treated with an even hand. Many East Timor veterans received an Australian medal and, in addition, both the NZOSM *and a national campaign medal struck explicitly for*

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<sup>7</sup> New Zealand Operational Service Medal, instituted in 2002 for operational service after World War II.

*the purpose.* Because they received no similar consideration, Viet Nam veterans feel disadvantaged.

(2) There are two broad possibilities – extending an existing General Service Medal by adding a Viet Nam clasp, or striking a new medal altogether. The first course would run the risk of criticism as a mere sop to silence; the second would be more robust but may provoke criticism of medallic proliferation.

(3) Medallic issues are complicated, and call for expertise beyond the JWG. Determining which of these two courses to follow would best be dealt with by the Honours Secretariat and the Defence Force, in consultation with veterans' groups in the normal way.

### Recommendation

**The JWG recommends that the case for a distinct national campaign medal for active service in the Viet Nam War be accepted in principle; and that the Honours Secretariat and the NZ Defence Force should now develop a suitable proposal, in consultation with veterans' groups.**

#### 2.2.2 South Vietnamese gallantry awards

(1) Twelve New Zealanders were awarded the South Vietnamese Cross of Gallantry; three with Palm, five with Silver Star, and four with Bronze Star. Being foreign medals, wearing the insignia requires the permission of the Sovereign. Not only has permission not been given, there is doubt it was ever requested. We believe permission should be granted.

(2) Because the South Vietnamese Government no longer exists, it might be necessary to go beyond normal protocols to establish the detail of the awards. Since two of the three with Palm were made posthumously, however, it seems unlikely the gallantry connotation could be questioned.

(3) Australia has overcome the difficulties of authentication and has recently announced permission to wear this medal – and this has not been lost on New Zealand veterans. We note, however, a New Zealand precedent may also exist. The unit citation awarded to our 161 Battery, RNZA, in

1971 is the Republic of South Vietnam Presidential Unit Citation in the Colour of the Cross of Gallantry with Palm.

(4) A related matter arises from Schedule 10 of the War Pension Regulations 1956, which authorises a small weekly allowance (at present \$8.78) for holders of certain gallantry awards who also draw war disablement pensions. Foreign awards for gallantry are not listed, but neither are the new gallantry decorations brought in with the shift to the New Zealand Royal Honours System several years ago. The JWG understands the RNZRSA will take this matter up separately.

### **Recommendation**

**The JWG recommends that the Government recommend to the Queen that unrestricted permission to wear their insignia should be granted to the 12 New Zealand recipients of the South Vietnamese Cross of Gallantry.**

## **2.3 National Memorial**

(1) Many submissions proposed or made reference to a national memorial, or similar, for the Viet Nam War. There was no unanimity on whether this was for those New Zealanders who died in Viet Nam or for all who served.

(2) These requests should be seen in the context of the view, deeply held by many Viet Nam veterans, that their service has never been adequately acknowledged.

(3) The JWG is broadly aware of the Government's plans for the National War Memorial and its precincts. We note the concerns and wishes of those who made submissions to us on this subject, and refer them to the Government as it finalises the plans for the National War Memorial.

## **2.4 Recording the Viet Nam Stories**

(1) The JWG's terms of reference required it to consider "writing up the anecdotal stories of veterans as part of developing the background record".

The terms of reference for the Chair of the JWG required him to “ensure that the process of establishing the historical record being researched by Ian McGibbon is assisted where possible”.

- (2) There are three matters which fall under this general heading:
- The submissions to the JWG and the transcripts of the JWG’s meetings with veterans will be an important resource for understanding this part of New Zealand’s military and social history. However, those who made submissions did so with the JWG’s undertaking that their information, much of it intensely personal, would be protected for at least 25 years. So, important as this information is, it will not be available through the JWG’s records for a long time.
  - The official history of New Zealand’s operational involvement in Viet Nam is currently being researched and written by Ian McGibbon. The JWG publicised this exercise at its meetings, and invited veterans with material relevant to Dr McGibbon’s research to make it available to him. When this topic was discussed at the consultation meetings, it was obvious many veterans and family members were pleased the official history would also address the “aftermath”, perhaps up to and including the Government’s response to this report, as well as cover the war itself.
  - Although not the main purpose of the consultation meetings, it was important to many of the participants that they could tell their stories to a receptive audience with some official status. Being heard helps the healing. The JWG considers a further opportunity should be provided, both as a recognition of the importance of what veterans and their families have to say and being able to say it, and to record their stories as part of New Zealand’s oral history archive.
- (3) We understand the Ministry of Culture and Heritage’s military oral history effort is currently directed toward Second World War veterans, for obvious reasons. The veterans of conflicts and deployments prior to Viet Nam are likely to be approached before it becomes the turn of Viet Nam veterans.
- (4) But nearly a quarter of Viet Nam veterans have died; the stories that need to be recorded are as much about the aftermath and the effect on families as they are about the war and the soldiers; and it is a story they need to tell. The JWG recommends a start be made on recording the oral

histories of New Zealand's Viet Nam veterans and their families, especially of those who are now seriously ill, both for its own merits and as a sign of the value placed by the country on recording their experiences.

## **Recommendations**

### **The JWG recommends that:**

- 1. Support for an oral history of the experiences, during and after their deployment, of the New Zealand participants in the Viet Nam War, and their families, be provided by the Government.**
- 2. The recording begin in 2006.**

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## **3.1 Reparation and Ongoing Support**

### **3.1.1 Introduction**

(1) Half of the submissions to the JWG requested some form of compensation. The subject came up at each consultation meeting. There was no unanimity on this subject. Some sought individual payments of \$2 million or more. Others said they wished nothing for themselves, but to see some financial recompense made to individuals, or their families, who have suffered serious illness and the resulting financial burden. Some wanted recompense for a loss of anticipated income. Others wanted payment in the nature of punitive damages.

(2) Determining a lump sum payment for New Zealand's Viet Nam veterans is not a straightforward exercise. The consequences of their service have fallen unevenly on veterans – some have died; some are seriously ill and rely on a war pension; some have moderate health and other difficulties; some appear both healthy and successful in their careers. And as to the amount, what price a human life? No payment can compensate for the loss of a loved one who has died too young and in pain.

(3) But neither these nor other difficulties should be an excuse for inaction. The JWG is unanimous in its view the Government owes something to veterans and their families affected by past failures to acknowledge both the exposure of service personnel to the toxic environment of Viet Nam and the consequences of that exposure for the health of veterans and their progeny. The consequences of these failures have included, at worst, the unnecessary deaths of those diagnosed too late with life-threatening conditions; the closing off of treatment choices for others; and for most veterans, increased anxiety about their and their descendants' future health prospects. This is a real human cost.

(4) If the Government owes something to veterans and their families, there are three questions to be answered:

- On what basis should monetary reparation be calculated?
- How much should be paid?
- What balance should there be between lump sum payments and continuing support?

### 3.1.2 On what basis?

(1) Several submissions received by the JWG proposed compensation be based on a sliding scale related to the total percentage of disability at which individual Viet Nam veterans are currently assessed; \$1,000 per percentage point up to 100 percent disability was one proposal.

(2) This and similar suggestions have a certain face validity, and were considered fully by the JWG. But there are problems:

- They make no distinction between disabilities which are common among veterans of all conflicts (hearing loss, for example) and those which are associated specifically with exposure to the toxic environment of Viet Nam;
- The current framework within which these disability percentages are established does not distinguish between life-threatening conditions (cancers, for example) and conditions which may cause pain or discomfort but are not life ending; and
- There can be considerable variation throughout New Zealand in the percentages awarded for the same condition. This is particularly the case with PTSD,<sup>8</sup> where the assessment process is, of necessity, more subjective than for other medical diagnoses.

(3) A different but related proposal concerned the manner in which conditions assessed for war disablement pension purposes are aggregated. Other than in special circumstances specified in the existing war pension legislation, the maximum rate at which a war disablement pension can be paid is 100 percent, notwithstanding there are many instances of aggregated assessments exceeding 100 percent – in some cases very much greater. The assessments are important for the purposes of funding treatment, but in the normal run anything over 100 percent is not paid as a pension increment (see 3.1.5 paragraphs (9) and (10)).

(4) Many submissions saw this as parsimony, and sought disablement pension payment in full for all aggregate assessments above 100 percent. We shall return presently to the special case, but to generalise this approach to cover all cases would fail to distinguish between an accumulation of lesser disabilities that are not life-threatening and a serious disability with

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<sup>8</sup> Post traumatic stress disorder.

terminal implications. The effect would be to the relative disadvantage of the seriously ill.

(5) On balance, the JWG concluded these and similar proposals would not be equitable. The JWG came to the consensus that:

- Reparation should be directed mainly to those who have suffered, or who may yet suffer, serious harm associated with exposure to the toxic environment of Viet Nam. This most directly relates any payments to the consequences of successive Governments' denial and inaction; but
- There should also be an acknowledgement most Viet Nam veterans have been affected in some way by the cumulative and compounding effects of war service; the denials of the health consequences of the toxic environment in which they fought; anxiety about their and their children's future health; and the multiple barriers to achieving a satisfactory transition to civilian life, even if they and their children are physically healthy.

### 3.1.3 How much?

#### *Precedents*

(1) There were few precedents to assist the JWG. In recent years the Government made a payment of \$30,000 to each living New Zealander who had been a prisoner of the Japanese during the Second World War, or to their surviving spouse. The Chair of the JWG also sought information from the Crown Law Office on the quantum and range of settlements reached with people who had been directly and seriously harmed by the actions of Government agencies, for example, in psychiatric institutions. (No details of individual claims were disclosed or discussed.)

(2) Although such comparisons can never be entirely applicable, they provide a rough order of magnitude of the quantum of payments made in such circumstances. The issue of fairness to all New Zealanders (not just veterans) was taken into account by the JWG in forming a view about the quantum of any lump sum payments for Viet Nam veterans.

(3) The circumstances of Viet Nam veterans should be seen in the following light:

- Unlike cases of harm to psychiatric patients, or the distribution of contaminated blood products, Viet Nam veterans' exposure to a toxic environment was not an act by the New Zealand Government or its agencies;
- That said, the toxic environment was not a creation of the enemy, but of "our own side"; and
- The principal failure was the denial and delay over too many years, by successive Governments or their agencies, to act on available information, acknowledge the exposure, and the health consequences of that exposure, and take action to address those consequences.

(4) In the case of the surviving New Zealand prisoners of war of the Japanese, the New Zealand Government, in concert with the Governments of Australia and the United Kingdom, stepped in and made a payment the ex-POWs were unable to obtain from the Government of Japan. In the case of the other settlements referred to above, the Government accepted responsibility and negotiated settlements with those who had been directly harmed by the actions, or serious failures, of Government agencies.

(5) The consistent principle was the payments were made to those who had suffered harm, and in proportion to that suffering. This reinforced the approach by the JWG to lump sum payments described in paragraph (5) of section 3.1.2.

#### *Ivon Watkins Dow*

(6) In this context we need to address the proposition that Agent Orange (or its components) was manufactured in New Zealand by Ivon Watkins Dow, and that this constituted a breach of international conventions on the use of chemical weapons to which New Zealand is a signatory. This was put to us by a number of people who made submissions, and who have strong convictions about this matter.

(7) The significance of their argument is that it places a degree of culpability on New Zealand Governments for the exposure of New Zealand service personnel, as well as for the denial.

(8) This matter is outside the JWG's mandate. We have neither the powers nor forensic skills to establish the validity of these claims. We acknowledge the importance placed upon them by those who raised them

with us, but we can neither form a view on the claims, nor take them into account in determining our recommendations.

### **3.1.4 Lump sum or continuing support?**

(1) Although an apology for past treatment of New Zealand's Viet Nam veterans, and some payments by way of reparation to those directly affected, will go some way towards putting things right, the ongoing health effects of service in Viet Nam will not be so readily resolved:

- Some veterans, now well, will present later with conditions associated with exposure;
- Those suffering the effects today will continue to require support;
- The progeny<sup>9</sup> of veterans will continue to present with conditions associated with their forebears' exposure; and
- Progeny already suffering will continue to require support.

(2) The JWG considered it important a balance be struck between one-off payments to recognise the costs borne by veterans and families related to a veteran's service, and the need for the Government and its agencies to continue to be responsive to, and supportive of, all those adversely affected by service in Viet Nam.

### **3.1.5 The framework for reparation and continuing support**

(1) Having agreed the priority for reparation and support should be those veterans and families most affected by the toxic environment of Viet Nam, and past failures to acknowledge and address the consequences of that exposure, the JWG then faced the problems of:

- (a) Establishing the health consequences of exposure for both veterans and progeny; and
- (b) The limitations of the War Pensions Act in accommodating the effects of nuclear, biological or chemical exposure (as opposed

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<sup>9</sup> In this context, and in the rest of this report and recommendations, "progeny" refers to children and grandchildren of veterans. See section 1.2.7.

to the effects of shot and shell) and the intergenerational effects of such exposure.

(2) This section of the report proposes the Institute of Medicine of the US National Academy of Sciences be used as the core source for determining diseases associated with exposure to the toxic environment of Viet Nam (supplemented by other sound research or information); and recommends changes to the War Pensions Act to address the problems referred to above.

*The Institute of Medicine (IOM) Schedule*

(3) The US Agent Orange Act of 1991 directed the Institute of Medicine of the US National Academy of Sciences to conduct a comprehensive review and evaluation of scientific and medical information on the health effects of exposure to Agent Orange, and other herbicides used in Viet Nam, and their components. Their initial report was published in 1993, with updates in 1996, 1998 and 2000. It will continue to be updated. It is as authoritative as any source, and better than most, on the associations between exposure to the toxic environment of Viet Nam and health conditions.

(4) It is based on a very large cohort – US veterans of the Viet Nam War – and has been accepted by the Australian Government as a basis of policy for Australian Viet Nam veterans.

(5) There is an argument the IOM schedule may be too conservative or restrictive to use as a basis for New Zealand policy on its Viet Nam veterans. New Zealand military deployments in Viet Nam were predominantly “front-line” troops. Logistic and administrative infrastructure was provided by the Australian or US forces. New Zealand troops were, disproportionately, “in the field” and therefore more likely to be exposed. Furthermore, the main area of operation of New Zealand troops, in the south-east of Viet Nam, was especially heavily defoliated. For these reasons, New Zealand should not limit itself to the IOM schedule. The JWG endorses the approach of Veterans’ Affairs New Zealand (VANZ) to access other reputable research and information, from Australia and elsewhere. As it becomes available this will need to inform and enhance the IOM schedule.

(6) The health conditions identified by the IOM as associated with exposure to the toxic environment of Viet Nam range from life-threatening cancers to diseases of the skin and nervous system. These are set out in Annex 1 to this report. This schedule forms the basis of the classification of

three categories of service-related medical conditions of Viet Nam veterans around which the JWG has developed its proposals. These are:

- (a) Life-threatening conditions on the IOM schedule (referred to in this report as *Prescribed Conditions*);
- (b) Non-life-threatening conditions on the IOM schedule (referred to in this report as *Associated Conditions*); and
- (c) All other conditions related to service in Viet Nam.

The proposals are based on:

- (a) An automatic acceptance of the “Prescribed and Associated Conditions” referred to in (a) and (b) above as being a result of service in Viet Nam;
  - (b) The conditions in (c) above being treated as currently, that is, under the presumption in favour of the claimant; and
  - (c) Those Viet Nam veterans with the “Prescribed Conditions” being the principal target of reparation payments.
- (7) There is a separate proposal (section 3.1.11) for modest recognition of the costs to all veterans of their service on behalf of New Zealand.

#### *The War Pensions Act 1954*

(8) In New Zealand, the primary vehicle for addressing the needs of veterans, related to the consequences of their service, is the War Pensions Act. But the framework of the War Pensions Act struggles to take account of the nature of the harm done to Viet Nam veterans and their progeny by factors other than the “traditional” weapons and conditions of war. Despite this limitation, it is the JWG’s view that, as far as possible, support for the service-related health consequences for veterans and their children be dealt with in terms of the principles and framework of the War Pensions Act, amended to fix this problem. It is important, now the consequences of toxic exposure of Viet Nam veterans and its consequences have been accepted, they (and service personnel who may be similarly exposed in the future) are “mainstreamed” within the New Zealand war pensions system.

(9) War disablement pensions are provided under the War Pensions Act. A veteran can have a war disablement pension for any number of disabilities, based on a level of disablement, from 0 to 100 percent. The amount paid for war disablement pensions differs, based on the adjudged percentage of the disability. The 100 percent payment is currently \$8,938 per annum.<sup>10</sup>

(10) Payments beyond this level are generally covered by the provisions of section 23, which provides for a pension up to a maximum of \$14,301 (160 percent of the usual maximum of \$8,938). Section 23 currently recognises the serious consequences of “conventional” warfare: total blindness, permanent and total disability, severe facial disfigurement, amputations, insanity, et cetera. But it does not recognise the serious consequences of the operational environment of Viet Nam, such as life-threatening cancers and other conditions that are lifelong, seriously debilitating, and that have a serious impact on quality of life.

(11) The following proposals provide for the most serious, life-threatening consequences of exposure to the toxic environment of Viet Nam (the Prescribed Conditions) to be recognised under section 23 of the War Pensions Act. This will require an amendment to the Act. This amendment should take account not only of the circumstances of Viet Nam veterans, but recognise the conditions and risks of the modern battlefield which may be faced by New Zealand’s servicemen and women in future. (A proposed amendment is provided in Annex 2.)

#### *Surviving spouse pension*

(12) The surviving spouse pension featured in many of the submissions, particularly from families. It was also a major element in the RNZRSA submission.

(13) The surviving spouse pension is paid to the surviving partner of a Viet Nam veteran if his death occurred during active service in Viet Nam, or if he was in receipt of a war disablement pension of at least 70 percent at the time of his death. The pension is currently \$6,391.32 per annum, but it ceases if the recipient remarries or enters into a new relationship.

(14) There are two issues relating to the surviving spouse pension which affect Viet Nam veterans:

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<sup>10</sup> This is the payment for those under 60.

- It is based on norms of family and social life that applied in the 1950s – a single income family with the male as earner; and
- Viet Nam veterans appear to be dying younger than other groups of veterans.

(15) An effect is that, where a spouse or partner is left with family obligations, and remarries, she loses the modest pension at a time when it could well make an important contribution to the new family situation.

(16) The Australian Government has, within the last four years, amended the relevant legislation so that the war widows pension no longer ceases on remarriage.

(17) The JWG acknowledges that this matter needs to be seen in a broader social context, and with other entitlement and social assistance programmes. Nevertheless, it is important to many of those who made submissions to the JWG, has a particular relevance to the situation of Viet Nam veterans, and a change is strongly supported by the RNZRSA and EVSA. We have recommended this be addressed.

#### *The progeny of Viet Nam veterans*

(18) There are five conditions currently accepted by VANZ which, in the children and grandchildren of Viet Nam veterans, can be associated with their forebear's exposure to the toxic environment of Viet Nam. These are used as the basis for the provision, by VANZ, of services to the children of Viet Nam veterans.

(19) These are considerably fewer conditions than are accepted for the veterans who were directly exposed, and we understand there are only a small number of progeny of Viet Nam veterans who have these conditions.

(20) This may be problematic in achieving a satisfactory outcome for some veterans and their families. Many submissions, oral and written, referred to disabilities or other health conditions of children and grandchildren which are not included in the IOM schedule. The JWG has no ready answer to this problem. In fact, New Zealand's acceptance of these five conditions is more generous than in the United States, for example, where we understand spina bifida only is accepted for federal support. We are agreed that the only responsible course for us is to base our recommendations on the most authoritative information currently available, which is the basis of the schedule of conditions currently accepted by VANZ.

(21) However, there are four actions which could improve responsiveness to the intergenerational consequences of a veteran's service in Viet Nam:

- (a) Formally accept that the children and grandchildren of veterans, who are suffering the health consequences of their forebear's exposure to nuclear, biological or toxic environments, should be supported on the same basis as the veteran. The effect would be to provide a disablement pension as well as the costs of treatment for that condition. This proposal is limited to conditions accepted as linked to a forebear's exposure. This proposal would require an amendment to the War Pensions Act, as set out in Annex 3.
- (b) Expand the list of five conditions to include any sequelae<sup>11</sup> to these conditions. (The sequelae identified by the IOM relate at this time only to spina bifida.) The importance of this step is that, if (a) above is accepted, the sequelae as well as the primary condition will be included in a determination of a child or grandchild's level of disability.
- (c) Formalise and publicise the support currently available to the children of Viet Nam veterans. VANZ currently makes genetic and clinical counselling services available to the children of Viet Nam veterans, and meets the cost of medical expenses which may be required as an extension of therapy. Many of those who engaged with the JWG were unaware of these services.
- (d) Continually review and update both the schedule of medical conditions associated with a forebear's exposure and commit to conducting a more formal review of the intergenerational effects of nuclear, biological or toxic exposure in the generations beyond the grandchildren of the veterans. This is consistent with the working assumption on the intergenerational effects of exposure to the toxic environment of Viet Nam in section 1.2.7.

(22) These proposals are included as recommendations in this report.

(23) As stated in paragraph (20) above, there is only a small number of progeny of veterans with one or more of the five conditions accepted in

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<sup>11</sup> Conditions which are consequences of a previous disease or injury.

New Zealand as related to a forebear's service in Viet Nam. From what we have read, heard and seen over the past six months, there are many other children of Viet Nam veterans with a range of conditions, from psychological disorders and physical disabilities of varying severity, to life-threatening illnesses.

(24) Those with psychological needs will have them addressed, in part, by the proposals above. The position of those with serious physical conditions, other than the five, will be unchanged.

(25) The JWG claim no medical expertise. However, we feel obliged to reflect the suffering and deep concerns of the veterans and families who made their submissions to us. We considered two further possible approaches to broadening the support available for the seriously ill children of Viet Nam veterans:

- One would be to accept two or more of the serious physical sequelae to spina bifida, where links to dioxin exposure have been established, as a basis for meeting medical costs, or for a war disability pension, without a prior diagnosis of spina bifida; and
- Another could be to provide for discretion to the Secretary of War Pensions to enable the Secretary to approve medical costs for the progeny of Viet Nam veterans where, in the opinion of the Secretary, the conditions are lifelong and seriously debilitating.

(26) Both options are far from perfect, they are possibly ways of acknowledging and addressing a problem for which there is no easy answer, but where there is considerable personal and family suffering. However, they would represent a departure from the framework in section 3.1.5.

(27) Recommendations to give further consideration to this issue are included in the following section.

(28) Consideration of all the factors outlined above –

- the need for acknowledgement of the emotional, physical and financial costs of exposure;
- the direction of reparation payments to those who have suffered most;

- the distinction between life-threatening and other conditions associated with exposure;
- the desirability of accommodating support for Viet Nam veterans (and other veterans) within the framework of the War Pensions Act;
- recognition of the intergenerational and family impact of service in Viet Nam; and
- the need to provide confidence that continuing support will be provided to Viet Nam veterans and their families as the story unfolds;

– has led the JWG to the following recommendations.

### 3.1.6 Recommendations – Viet Nam veterans

**The JWG recommends that:**

1. **Viet Nam veterans already diagnosed with a *Prescribed Condition*<sup>12</sup> receive:**
  - (a) **As reparation, a tax-free lump sum payment of \$40,000; and**
  - (b) **Automatic eligibility for a war disablement pension under section 23 of the War Pensions Act, at the maximum rate (currently \$14,301 per annum), backdated to the date of diagnosis, and ongoing medical costs of treatment for the prescribed condition. (Note that no further medical or specialist consultation is to be required where the person is already in receipt of a war disablement pension for the prescribed condition.)**
2. **Viet Nam veterans diagnosed in the future with a *Prescribed Condition* receive:**
  - (a) **As reparation, a tax-free lump sum payment of \$40,000 at date of diagnosis; and**

<sup>12</sup> See pp 39 and 40

- (b) **Automatic eligibility for a war disablement pension under section 23 of the War Pensions Act, at the maximum rate of \$14,301 per annum, from date of diagnosis, and ongoing medical costs of treatment for the prescribed condition.**
- 3. Pending an amendment to the War Pensions Act, as proposed in Annex 2, the recommendations in 1 and 2 above be implemented expeditiously by administrative action.**

*Comment*

(29) Recommendations 1 and 2 above are essentially the same, except that in 1 a veteran, who was diagnosed some years ago with a prescribed condition, would have his war disablement pension backdated to the date of diagnosis.

(30) Both recommendations will require an amendment to the War Pensions Act along the lines proposed in Annex 2.

(31) It is likely most veterans with one of these conditions are already in receipt of a war disablement pension at some percentage of disability. Therefore the backdating will be for the *difference* between the maximum rate under section 23 (160 percent) and the pension rate the veteran has been receiving, from the date of diagnosis of the prescribed condition.

(32) Based on VANZ advice, the JWG estimates there are no more than 30 Viet Nam veterans with one of the prescribed conditions. Whether many more will present is not known. There is a widely held view that the latency period for many of the prescribed conditions is already past and therefore only a small number are likely to present in future. But no one knows for sure.

(33) The reparation payment is a way to recognise the direct costs incurred by veterans and families where a veteran has developed a life-threatening illness. The payment is symbolic as much as a “reimbursement”. As stated earlier in this report, money cannot replace the life of a loved one.

**The JWG recommends that, where a Viet Nam veteran is diagnosed with an *Associated Condition*,<sup>13</sup> there is an automatic presumption that the condition is due to service, and the veteran is eligible for a war disablement pension, at a percentage related to disability, under the current procedures applying for all veterans.**

*Comment*

(34) For this group of veterans, the only difference from the current situation is that there is no requirement to attribute the condition to service in Viet Nam. This is an automatic presumption.

**3.1.7 Recommendations – Viet Nam Veterans’ progeny (children and grandchildren)**

**The JWG recommends that:**

- 1. Progeny of Viet Nam veterans diagnosed with one of the five conditions (and their sequelae) associated with a forebear’s service in Viet Nam, and set out in Annex 3, receive:**
  - (a) As reparation, a tax-free lump sum payment of \$30,000; and**
  - (b) Under the automatic presumption that the condition is due to war service, eligibility for a war disablement pension, at a percentage related to the disability, and medical treatment costs, on the same basis as a veteran.**
- 2. Pending an amendment to the War Pensions Act as proposed in Annex 3, the recommendations to be implemented expeditiously by administrative action.**
- 3. Noting the small number of progeny who are likely to qualify under recommendation 1, the Government considers other options for broadening the support available to the progeny of Viet Nam veterans, including:**

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<sup>13</sup> See pp 39 and 40

- (a) **That progeny of Viet Nam veterans without one of the five currently accepted conditions, but with two or more of the sequelae to those conditions (see Annex 3), be treated on the same basis as 1(b) above; and**
  - (b) **That progeny of Viet Nam veterans who, in the opinion of the Secretary of War Pensions, have conditions which are lifelong and seriously debilitating, qualify for reimbursement of medical expenses.**
- 4. VANZ formalise and publicise the support currently available to the progeny of Viet Nam veterans, and any additions to this support as a result of discussions on these recommendations.**
- 5. The Government commit to addressing the long-term inter-generational effects of exposure to the toxic environment of Viet Nam, by ensuring that relevant research is accessed and incorporated into policies for the descendants of Viet Nam veterans.**

*Comment*

- (1) This recommendation gives formal recognition under the War Pensions Act to the intergenerational effects of exposure to a nuclear, biological or toxic environment.
- (2) By bringing progeny within the coverage of the War Pensions Act, those who have one of the five conditions, and any of the sequelae, will be eligible for a war disablement pension, in addition to any current eligibility for reimbursement of treatment costs for the conditions.
- (3) The five conditions referred to in the proposal are currently accepted by VANZ as attributable to a parent's service in Viet Nam. The proposal provides a statutory, rather than administrative, basis to this acceptance.
- (4) The lump sum payment recognises the costs and limitations on the life choices and quality of life for those affected by their serious conditions.
- (5) Recommendation 1 will require an amendment to the War Pensions Act along the lines proposed in Annex 3.

(6) Recommendation 3 addresses the issue identified in paragraphs (20) and (23)ff above.

(7) Recommendation 4 addresses the issue of the possible effects of exposure, and the need for policies in response, beyond the children and grandchildren of Viet Nam veterans.

### 3.1.8 Recommendations – surviving spouses or surviving partners of deceased veterans

**The JWG recommends that:**

- 1. Surviving spouses or partners of Viet Nam veterans who have died with one of the *Prescribed Conditions*, prior to the measures above coming into effect (that is, their partner died before receiving the lump sum payment of \$40,000), receive an ex-gratia payment of \$25,000; and**
- 2. The Government reviews the eligibility criteria for the surviving spouse pension, in particular those relating to cessation of the pension on remarriage or entering into a new relationship.**

*Comment*

(1) The sum is less than for a veteran with a life-threatening condition. This is broadly consistent with the War Pensions Act provisions relating to the surviving spouse's pension. It recognises that, despite the trauma of loss, the surviving spouse or partner has further opportunities in life, denied to the veteran by his death.

### 3.1.9 Recommendation – families

**The JWG recommends that families of a Viet Nam veteran with a child or grandchild who has (or has died with) one of the (currently five) medical conditions associated with exposure to the toxic environment of Viet Nam, receive an ex-gratia payment of \$30,000. If the family is no longer together (for example, the parents have separated), there should be administrative discretion to allocate the sum equitably to those who have been, or now are, the primary caregivers of the affected child.**

*Comment*

(1) This payment recognises the financial and other costs incurred by families who have raised children with one or more of the five conditions. Eligibility for this payment may be extended, depending on decisions the Government may take on recommendation 3 in section 3.1.7.

**3.1.10 General comment**

(1) The proposals above are not alternatives. For example, a family of a veteran with one of the “prescribed conditions”, and who have a child with spina bifida, will be eligible for the lump sum payment of \$40,000 for the veteran, the lump sum payment of \$30,000 to the parents of an affected child, and an enhanced pension to the veteran if he is not currently under section 23 of the War Pensions Act.

(2) The child will be eligible separately for a lump sum payment of \$30,000.

**3.1.11 All veterans**

(1) Having addressed the circumstances of veterans and families suffering the serious direct health consequences of exposure to a toxic environment, the JWG then faced the question of whether a separate payment to *all* New Zealand Viet Nam veterans was warranted. In forming a view, the JWG took two matters into account:

- The impact, on all who served, of the war, the exposure, the homecoming and the subsequent decades of denial and poor treatment; and
- The tax status of New Zealand service personnel in Viet Nam.

*The tax issue*

(2) At almost all the meetings held by the JWG with veterans, the “tax issue” was raised. The facts are not entirely clear. However, it appears that although the provisions of the then Income Tax Act allowed for the Government to exempt those serving with a New Zealand force in an operational area from paying income tax, the Government of the day declined to declare South Vietnam an operational area. This decision should be seen in the context of the Government’s attempts to manage the

domestic politics of New Zealand's participation in the Viet Nam War. It may have been symbolic presentationally, in that it could be used to demonstrate that New Zealand was/was not a participant in a "war".

(3) The issue is whether New Zealand service personnel were treated less favourably in this regard than service personnel in other deployments.

(4) There were other, petty financial penalties for New Zealand troops in Viet Nam. For example, under the wage controls applying at that time, skills increases were grounds for pay increases. Officers and non-commissioned officers serving elsewhere in 1969 received a skills margin increase. Those serving in Viet Nam did not.

(5) Although some of the tax paid may have been returned in the form of "deferred pay" at the end of the tour, this is by no means certain. It remains a sore point with most Viet Nam servicemen, well out of proportion to the sums of money involved. Married men pointed out that it reduced the amount of money they could remit to the wives and families they had left at home.

(6) The tax issue requires resolution. It is difficult to establish the facts. The record is incomplete and difficult to recreate, but it appears that those serving in Viet Nam would have had a reasonable expectation of tax exemption, consistent with the treatment of New Zealand forces in World War II and Korea.

(7) It is difficult to compare the situation in Viet Nam with deployments since that time. The more recent deployments were often peace-keeping rather than war-fighting, and other factors, such as United Nations allowances and the application of the Social Security Act to operational allowances, make comparisons more difficult.

(8) The JWG believes that attempting to calculate, for individuals, a tax rebate compounded since their year of service would be complex and unnecessary. Our recommendation is to set a notional taxable salary, somewhere between a private soldier and a major, calculate the then tax liability for a person with one dependant, and apply a discount rate since 1968 – the mid year of New Zealand's involvement in Viet Nam – and treat the resulting sum as an ex-gratia payment.

(9) Depending on the assumptions of salary, tax rate and discount rate, the amount could be between \$5,000 and \$8,000 per person.

*The impact of prolonged denial and poor treatment*

(10) It is all but impossible to place a financial value on the various aspects of denial and poor treatment that affected each veteran and family to varying extents. The JWG is of the view that monetary payments in amounts comparable to those recommended for veterans or progeny suffering serious health conditions linked to toxic exposure cannot be justified.

(11) However, given this, the JWG believes that in addressing the tax issue the Government should take a liberal approach at the higher end of the calculations in paragraphs (8) and (9) above in deciding a level of payment for each surviving veteran who served in Viet Nam.

**Recommendations****The JWG recommends that:**

- 1. An ex-gratia payment be made to all surviving New Zealand service personnel who served in Viet Nam, at the level described in paragraph (9) above; and**
- 2. Consistent with the ex-gratia payment made to the New Zealand prisoners of war of the Japanese, the Government may consider making this payment to surviving spouses or surviving partners where the veteran is deceased.**

*Ongoing support*

(12) The JWG considered a proposal that all Viet Nam veterans be eligible, as of right, to a war disablement pension based on a small percentage of disability, say 10 percent, to recognise the impact on all Viet Nam veterans of the circumstances of their service and homecoming. This would provide an annual pension of about \$900. There were two arguments in its favour:

- It would bring many Viet Nam veterans, not currently registered, into the system. This would be a good foundation for periodic reviews of the nature and level of their

disablement, and more regular engagement with the health system; and

- Consistent with the general principle underpinning the approach of the JWG, it would provide a modest level of ongoing support to Viet Nam veterans, rather than a one-time “fix”.

(13) The contrary view is that the proposal distorts an entitlement system, which is set up to assess *individuals* based on the particular circumstances of their service and disablement.

(14) The JWG agreed this is a compelling argument against this proposal, but there is still a need to address the problems identified in the two points above. The JWG agreed it was important to bring as many Viet Nam veterans as possible into contact with the health system, and the support now available (and proposed in this report). The approach is to use the annual medical for Viet Nam veterans, recommended in the following section, as the vehicle for assessing the risks, needs and eligibility for a war disablement pension, and medical treatment, for each Viet Nam veteran. A recommendation to this effect follows 4.1.2.

## **3.2 Support for Children and Grandchildren**

### **3.2.1 EVSA Youth Development Trust**

(1) This report has referred to the small number of progeny of veterans with one or more of the five conditions accepted in New Zealand as related to a forebear’s service in Viet Nam. Even if the recommendation to widen the eligibility criteria is accepted, many disabilities or medical conditions of Viet Nam veterans’ children and grandchildren will not be presumptively linked to their father’s or grandfather’s service.

(2) They will be able to put the case that their condition is linked, and apply for assistance. But if there is no reputable research justifying treating their disability or medical condition as linked, it will be difficult for the applicant to demonstrate that linkage.

(3) The ability to provide modest discretionary grants, for educational purposes, for example, could be a constructive way to bridge the gap between support provided under the war pensions system for conditions

clearly related to a parent or grandparent's service, and those which fail to meet the test.

(4) In this context, the EVSA Youth Development Trust<sup>14</sup> may have a role. Incorporated in 1993, the Trust has the object of assisting "the needs and interests of the children and grandchildren of those members of the New Zealand Defence Force who served in what was known as the Republic of Viet Nam ('South Vietnam') between 1964 and 1972".

(5) The Trust's activities are entirely separate from the EVSA, being governed only by its Trust Deed. Those seeking assistance do not need to be EVSA members or their offspring. The only criterion is a parent or grandparent's service in Viet Nam.

(6) There are five trustees, of which two are EVSA nominees. The patron is the Rt Hon Don McKinnon. The Trust Deed mandates that distributions are limited to the return on investments, so the Capital Fund, which at 31 December 2005 stood at \$159,000, is permanently preserved. The Trust has made 198 grants totalling just over \$71,000.

(7) There are two separate issues involved here:

- The need for such a facility; and
- The best vehicle for delivery of such assistance.

(8) The JWG agrees there is a good case to make such assistance available. The EVSA Youth Development Trust is already in place and, from comments at the consultation meetings, is well regarded by many Viet Nam veterans.

## **Recommendations**

**The JWG recommends that:**

- 1. Assistance for a small grants programme for the progeny of Viet Nam veterans be provided by the Government.**

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<sup>14</sup> Ex-Viet Nam Services Association (Neville Wallace Memorial) Youth Development Trust.

- 2. The EVSA Youth Development Trust be considered as a well-established, effective vehicle for such additional assistance.**
- 3. The Government enter into discussions with the EVSA and RNZRSA on this matter.**

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## 4.1 Viet Nam Veterans and the Health System

### 4.1.1 Introduction

(1) Ideally, when a Viet Nam veteran or their progeny present to the health system, for whatever reason:

- They should be identified as a Viet Nam Veteran or the progeny of a veteran;
- This would raise a “flag” with the health practitioner about the health risks associated with that status; and
- The engagement with the practitioner would be informed by this information; and screening and treatment, for conditions associated with the veteran’s service, would be available.

(2) New Zealand is a long way from this situation. For a start, there is the challenge of initial engagement. Although about 1,300 Viet Nam veterans are in receipt of a war disablement pension, by the standards of other veterans groups a high percentage, the converse is that more than 1,000 Viet Nam veterans are not. Although there are active Viet Nam veterans’ support groups, both formal and informal, it appears many of New Zealand’s Viet Nam veterans live solitary lives, in part at least related to their experiences both in Viet Nam and on return home.

(3) The following four sections –

- Annual medical check;
- National register;
- The veteran’s card; and
- Information for clinicians;

– should be seen as related, and intended to address the special needs of Viet Nam veterans, to help achieve the objective in the first paragraph above.

#### 4.1.2 Annual medical check

(1) Many submissions requested a free annual medical check for all Viet Nam veterans. In a variation of “Catch 22”, those now in receipt of a war disablement pension probably engage regularly with a health practitioner. Those who have not engaged with the health system will not have been diagnosed with a service-related disability, are therefore not eligible for subsidised treatment, and have no incentive to continue to engage with the health system. The tragedy is that some may eventually be diagnosed, too late, with life-threatening conditions.

(2) The JWG supports the proposal for a free, annual, standard medical check for all Viet Nam veterans, to screen for the particular risks faced by this group. (The “Wellman” check is the standard most referred to.)

(3) This proposal links to both the *National register* and *Information for clinicians* (see below). It also relates to the previous section of this report and the discussion in 3.1.11, paragraph (12)ff, on the argument for and against a universal disability pension for all Viet Nam veterans.

### Recommendations

#### The JWG recommends that:

1. **A free annual medical check be provided for all Viet Nam veterans, based on the Wellman check, and supported by information for clinicians to enable screening for the particular risks faced by Viet Nam veterans.**
2. **The first annual medical check of those veterans, who are not yet in receipt of a war disablement pension, include a thorough assessment of the impact of their service and their subsequent treatment, with the objective of determining their eligibility for a war disablement pension.**

### 4.1.3 National register

(1) The terms of reference of the JWG required it to consider “the formation of a national register” of Viet Nam veterans and their families. Why a national register, and a register of whom? Four matters continually raised with the JWG help answer these questions:

- The lack of a definitive list of those who served in Viet Nam. There is general agreement the “Flinkenberg List”<sup>15</sup> is the most accurate. But this is not an official register;
- Related to the point immediately above, the difficulty of contacting, and providing information to, many veterans and their families about the JWG and its mandate and processes;
- The problem of compiling an accurate record of the fate of many Viet Nam veterans, especially in recording the cause of their death. Although a death certificate may state “heart failure” as the cause of death, contributory or associated conditions may not be recorded. This adds a further difficulty to drawing conclusions about the health consequences of New Zealanders’ service in Viet Nam; and
- The increasing difficulty, over time, of people being aware they are the progeny of Viet Nam veterans. For example, where a veteran has separated or divorced, leaving a former partner with a young child (or children), that child, and especially their own children, are at risk of not knowing they are the progeny of a Viet Nam veteran, and the health risks this entails.

(2) Compiling a national register of Viet Nam veterans and their progeny would be a good first step to address many of these concerns. The register should include, or have linkages to, medical information, including the cause of death (and contributory or related conditions) for the veterans and progeny who have died. This could be an important research and policy resource for the future.

(3) There are privacy issues. Holding medical information outside the health system, and the protocols which govern it, can be problematic. (Some veterans registered with the JWG their concern about the apparently

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<sup>15</sup> This is a list of New Zealand service personnel who served in Viet Nam, compiled by Captain C Flinkenberg, RNZA, in 1972 from available records, and edited again in 2002 by Jack Hayes as a project of the EVSA.

broad access to personal medical information by staff within VANZ and War Pensions.)

(4) The register would probably need to be voluntary, and rigorous protocols developed and implemented for its use. We understand VANZ already has a similar project under way. We encourage VANZ to expedite its completion.

(5) On the face of it, the benefits of such a register would apply also to the veterans of other New Zealand deployments, from Operation Grapple to Bosnia, East Timor and Afghanistan. Some of the deployments have involved nuclear or toxic environments. The proximity of unconventional weapons (such as depleted uranium ordnance) may become more common. If those who have served are encouraged to register on either their return from abroad or on retirement from the armed forces, it could help avoid the cost of reconstructing such a register long after the event.

## **Recommendations**

**The JWG recommends that:**

- 1. A national register of Viet Nam veterans and their progeny be established, including those veterans who have died.**
- 2. The register include, or be readily linked to, information on the health status of those registered or, in the case of those who have died, the causes of death (including contributory and associated conditions).**
- 3. Protocols covering access to this information be established that will balance the need to encourage registration with making effective use of this information.**
- 4. Consideration be given to the establishment of similar registers for those who have served in other theatres.**

(6) But compiling a register without taking action to make good use of it for the benefit of those registered would be a waste of effort. Two further steps are needed to put the register to good use. These are proposed in the following sections.

#### 4.1.4 The veteran's card

(1) All veterans who qualify for a war disablement pension currently have a health card, which lists disabilities or health conditions related to their service. In effect, it confirms to a clinician the holder is entitled to subsidised medical care for the listed conditions.

(2) This card has a narrow purpose and is, of course, not held by veterans who have no service-related disability. It also lists personal information (medical conditions) which should have very limited distribution.

(3) A separate card, identifying the holder as a veteran, and the theatre(s) in which he or she served, would:

- Recognise the status of the veteran;
- Confirm for clinicians the veteran's theatre(s) of service, an important step in ensuring the veteran gets the "right" service from the health system (see below); and
- Provide a vehicle for further benefits for veterans should Governments make such decisions in the future.

(4) Although the trigger for this proposal was the particular circumstances of Viet Nam veterans, the same arguments are compelling for such a card to be issued to all veterans.

(5) Should a similar card be provided to the progeny of Viet Nam veterans? Given the intergenerational effects of dioxin exposure, and the proposal elsewhere in this report to treat the children of veterans, with prescribed conditions, on the same basis as veterans, the JWG supports such a proposal. It would not be a *veteran's* card, but serve the second and third of the three purposes above, as they might apply to the progeny of Viet Nam veterans.

(6) In the first instance, the card should be provided for the children and grandchildren of veterans, and a separate decision taken in due course, in line with recommendation 4 in section 3.1.7, on extending the card to future generations.

## **Recommendations**

### **The JWG recommends that:**

- 1. A veteran's card be introduced for all veterans identifying his or her theatre(s) of service.**
- 2. A similar card be introduced for the progeny of Viet Nam veterans, who are on the national register (see section 4.1.3).**
- 3. The Government note that the principal purpose of the card, in the context of the JWG's responsibilities, is to facilitate early access to the right sort of medical services for veterans or their progeny, given the veteran's exposure to a toxic environment.**

#### **4.1.5 Information for clinicians**

(1) Registering Viet Nam veterans and their progeny, and providing a means by which they can identify themselves as such when engaging with the health system, still does not guarantee they will get the services they require. A constant theme in the JWG's consultation meetings was the variability of medical practitioners' understanding of the health needs of Viet Nam veterans and their progeny. Although some made favourable comment about the understanding and proactivity of general practitioners and specialists with whom they had engaged, it remains the case that:

- Veterans or their progeny can present to health professionals with conditions associated with service in Viet Nam, with the health professional having no knowledge or understanding of the association; or
- Veterans or progeny may present with conditions unrelated to service in Viet Nam and the health professional may never screen for other conditions associated with such service.

(2) In both situations, the veteran and his progeny may not get the best quality, or even the right, service. More disturbing than lack of understanding were reports some doctors have told veterans they did not consider Viet Nam service exposed them or their children to any more health risks than faced by the general public. In some respects it is irrelevant what the health professional believes, but when this belief

translates into an unwillingness to screen for conditions generally accepted as associated with service in Viet Nam, this does a major disservice to the veteran and his family.

(3) In Australia and the United States there are specialised veterans' services, including health centres and hospitals. This is not the case in New Zealand, nor is it likely, given the size and spread of our population and the relatively small number of veterans. Therefore, the public health system must be responsive to veterans' needs.

(4) There is a job to be done. Information on the health risks of Viet Nam veterans needs to be provided to health professionals, so a veteran or his progeny, irrespective of the reason for presenting, are routinely encouraged to be screened and regularly monitored for the conditions associated with service in Viet Nam.

(5) The Health Committee recognised this problem, and went a step further. In addition to recommending that VANZ inform health professionals about the specific health needs of Viet Nam veterans, based on the presumption of exposure to a toxic environment, they recommended that veterans be provided with a list of health professionals who are conversant with their specific health needs.

- (6) The JWG agrees with the thrust of this recommendation – provided:
- Such an outcome is not perceived as a reduction in choice of health professionals, to the disadvantage of the veteran; or
  - Creates further difficulty of access for the many veterans living in the more remote parts of New Zealand.

*Post traumatic stress disorder*

- (7) The incidence and outcomes of PTSD among Viet Nam veterans are not widely understood. Three things are certain:
- The symptoms, and their impact on the lives of those who suffer PTSD, are real and debilitating;
  - A disproportionately high number of Viet Nam veterans experience this problem; and
  - It results in “collateral damage” to family members.

(8) The effects, such as social instability, withdrawal and irrational behaviour, are the very ones which make it difficult for the sufferers to: engage constructively with the Government, its agencies, or clinicians, to make a case for assistance; to hold down jobs that require a lot of interaction with others; and obtain the benefit of family support. Alcohol is the answer for some, as the JWG heard on many occasions.

(9) The lack of understanding of the “PTSD problem” needs to be addressed in two areas especially:

- Among medical practitioners (including psychiatrists), psychologists and therapists. The understanding of the consequences of their service for Viet Nam veterans varies widely, as does the support available for the veterans and their families; and
- Within the War Pensions system (specialists, panels and administrators) the response to PTSD claims is variable, to say the least.

(10) Both the RNZRSA and EVSA submissions addressed the PTSD problem. EVSA referred to the initiative at the Ranfurly Veterans Centre to establish a national centre for PTSD, based on an Australian model funded by the Australian Government. The intention is that the centre provide support, training and accreditation to health providers so they can provide better treatment for PTSD sufferers in their home location. The EVSA has sought funding to progress this initiative.

(11) The JWG agrees the issue is of major importance to Viet Nam veterans and their families, and the initiative is one which should be progressed with the Government.

## Recommendations

### The JWG recommends that:

1. **Consistent with the recommendations of the Health Committee, Veterans’ Affairs New Zealand informs health professionals about the specific health needs of Viet Nam veterans, based on the presumption that Viet Nam veterans were exposed to a toxic environment, with the intention that veterans and progeny are**

- screened for conditions associated with this exposure, and regularly monitored for the same.
2. This information also address the nature and effects of PTSD, as it affects Viet Nam veterans in particular.
  3. The same information be made readily available to Viet Nam veterans and their progeny.
  4. This information be regularly updated, based upon the international research referred to in section 3.1.5.
  5. Consistent with the recommendations of the Health Committee, VANZ compile a list of health professionals conversant with the health needs specific to New Zealand Viet Nam veterans, and provide this list to all New Zealand Viet Nam veterans.
  6. Consistent with the recommendations on the EVSA Youth Development Trust, the Government enter into discussion with the EVSA and RNZRSA on the general need to improve services for Viet Nam veterans suffering from PTSD, and the Ranfurly Veterans Centre initiative in particular.

## **4.2 Improved Service Delivery**

### **4.2.1 Introduction**

(1) In written submissions and during the course of the consultation meetings, there were many comments and criticisms of the performance of Veterans' Affairs New Zealand. This formed a major part of the submissions of the RNZRSA and EVSA to the JWG. Many of these comments have general application, that is, they go beyond the specific needs of the Viet Nam veterans' community.

(2) The JWG has *not* been established to review the performance of VANZ, or the War Pensions Service. This is not part of our terms of reference, nor did we do the work needed to form a view on this matter. Furthermore, Viet Nam veterans are only a part of the client base of these two departments.

(3) That said, the JWG engaged with many Viet Nam veterans and their families, and the criticisms were strongly put, consistent, and require a response.

#### 4.2.2 Performance issues

##### *Timeliness*

(1) Many of the submissions referred to unacceptable delays in the process of application for war disablement and veterans' pensions. This situation was often contrasted unfavourably with the approval of applications for the unemployment benefit, or other benefits and programmes administered by the Ministry of Social Development.

(2) A related issue is identified by VANZ itself in its 2005 Briefing to the Incoming Minister of Veterans' Affairs (at p 26). In its briefing, VANZ identifies a continuing growth in demand for its services, putting pressure on both the resources of VANZ and the availability of medical practitioners to help in the assessment of medical conditions which may qualify a person for a war disablement pension.

(3) This is important. Although for some comparatively minor medical conditions delays may be irritating but not stressful, for many Viet Nam veterans such delays compound the anger and frustration reflected elsewhere in this report.

(4) We understand VANZ has recognised the problem and is taking steps to address it. Included in our recommendations is an endorsement of the need to take action on this matter and a request for a report back to the Government on specific proposals to fix it.

##### *Responsiveness*

(5) The case management system lies at the centre of the VANZ system for engaging with its client base. There were two constant themes in written submissions and in the consultation meetings:

- The quality of response to inquiries or requests of veterans was often a function of the competence and enthusiasm of the individual case manager; and
- The quality of response was highly variable.

(6) A further perception was the level of turnover of case managers made the situation worse. The Director of VANZ states that turnover among case managers is low.

(7) The JWG endorses case management. But effective case management requires a skilled, responsive and stable case manager work force, with a workload that allows effective engagement with the client base. Criticism from the Viet Nam veterans, and the veterans' organisations, is such that the issue must be addressed.

#### *Information availability*

(8) The War Pensions system is reactive. It is ultimately the responsibility of those who may be eligible for a pension or other entitlement to make an application. But that, in turn, requires both a knowledge that an entitlement or service may be available, and some understanding of the process for making an application and the organisational structure which delivers it.

(9) VANZ makes information available through conventional means such as hard copy and electronic information. The Director of VANZ also makes personal efforts to communicate with veterans or veterans' groups.

(10) But the main communication channel is via the organisations representing New Zealand's veterans – principally the RNZRSA, and also the EVSA. It is through their network of welfare officers, who act as intermediaries for and advisers to veterans, that much of the information about entitlements and process finds its way to the client base.

(11) This is fine as far as it goes, but has drawbacks:

- It relies on a volunteer force, with different levels of expertise and time to commit to the role; and
- Effectiveness depends on the corporate relationship between VANZ and the veterans' organisations.

(12) Information is often exchanged on informal networks and, as a result, different understandings of available entitlements and discretionary assistance can develop. (For example, there was limited understanding among the veterans with whom the JWG engaged about the current services available to the children of Viet Nam veterans.)

*Guaranteed versus discretionary*

(13) In any system which provides Government-funded support, there is a tension between clearly defined entitlements and administrative discretion. The former has the virtues of transparency and clarity, but can be inflexible and harsh to those at the margins of eligibility. The latter has the opposite benefits and disadvantages. Discretion provides flexibility in dealing with the difficult cases, but can lead to inconsistency of treatment and perceptions of “grace and favour”.

(14) A number of the recommendations in this report, especially as they relate to the progeny of the veterans, are couched as entitlements to help minimise uncertainty about what is available. At the very least, where there is discretion there should be publicity about the ability to apply, and the criteria used in assessing an application.

*Comment*

(15) It is difficult to overstate the extent of frustration (and, in some cases, anger) expressed by many Viet Nam veterans about their engagement with VANZ. In part, VANZ may be the focus of a more generalised anger by Viet Nam veterans about their treatment. But there are actions which should be taken. These include:

- The resourcing of VANZ. Is the department resourced to provide the level and quality of service to its client base expected today of a well-performing Government department?
- To what extent can the department continue to rely, for effective servicing of its client base, on an unpaid, volunteer network of veterans’ welfare officers?

(16) Both of these are addressed in the recommendations following this section of the report.

**4.2.3 Structural issues**

(1) Irrespective of the specific issues touched on above, an underlying more general question is whether a small, Wellington-based department (or, in this case, a semi-autonomous body within the NZDF) is the best model for administering an entitlement system nationwide, especially given the reliance on a regional network of voluntary welfare officers.

(2) This general question was brought into focus by two other matters regularly raised by veterans.

*The one-stop shop*

(3) Even with the assistance available through VANZ case managers and the network of veterans' welfare officers, many veterans found difficulty engaging with the War Pensions system. The structure of Government organisations can be something of a mystery to people outside Wellington. Most Viet Nam veterans are under 65 years of age. Many have employment issues which require contact with Work and Income as well as war disability issues which require contact with VANZ. Many of the veterans met by the JWG had multiple contacts with the local Work and Income office, the War Pensions office in Hamilton (by telephone), a VANZ case manager (by telephone), and their local RNZRSA or EVSA welfare officer.

(4) Not surprisingly, there were many references to the unfulfilled promise of a "one-stop shop" for veterans.

(5) In one sense, it does not matter how the Government organises its departments and agencies. That is a matter of administrative efficiency. What does matter, however, is there is "one door", readily accessible to those who need service. This is not the case for many Viet Nam veterans.

(6) A further matter related to the one-stop shop issue was raised in submissions, and is mentioned in some detail in the VANZ 2005 Briefing to the Incoming Minister (at pp 21 and 22). VANZ is "a semi-autonomous body attached to the New Zealand Defence Force". The advantages of this are said to be efficiency and access to relevant information. In the event, however, evidence suggests this might not be a sound argument. For example, that information about Agent Orange spraying had been on Defence Force files since 1980 but was not made available to Reeves or McLeod most clearly worked to the disadvantage of Viet Nam veterans. Perhaps as a consequence of this, an opinion often heard was that the placement of VANZ with the NZDF risks entrapping the veterans' administration to the view of the service Defence Force. A variation of this was that the arrangement risks isolating VANZ from other agencies with like purposes and processes, such as the Ministry of Social Development.

(7) The JWG is well aware of the pitfalls of assuming that structural change will necessarily cure all ills. In any event, the JWG is neither mandated nor resourced to conduct the kind of in-depth review that would be necessary to resolve these questions. We recommend elsewhere,

however, that an external review of VANZ should be undertaken. Whether its placement within the NZDF is, in fact, the best arrangement should be included in the terms of reference for that review.

*Roles of Secretary of War Pensions and Director of VANZ*

(8) The request to separate these two roles was a constant theme in the submissions. It was based on two perceptions of conflict of interests:

- The role of the Secretary of War Pensions in reviewing cases where a war disablement pension had been administered incorrectly, which is, in effect, a review of the performance of the Director of VANZ; and
- Through the role of Chair of the War Pensions Advisory Board, the Secretary of War Pensions is advising the Minister on policy which is to be administered by the Director of VANZ.

(9) The JWG took these submissions seriously and sought the advice of the Crown Law Office on the substance of the claims. Based on that advice, and on the face of the relevant statutes, there is no formal conflict:

- The Secretary of War Pensions decides applications for pensions. If an application is declined, the veteran has a right of appeal to the War Pensions Appeal Board. The Secretary is not a member;
- The Secretary of War Pensions is the “presiding member” of the War Pensions Advisory Board, whose role is to advise the Minister on matters of policy, approve guidelines relating to War Pensions, and advise on matters to assist the administration of War Pensions. But every matter decided by the Board must be by majority; and
- Section 26 of the War Pensions Act permits the Secretary to review pensions already given. But that review relates to changed circumstances, rather than a review of administrative decisions (which is the role of the War Pensions Appeal Board).

(10) But the perception exists, and needs to be addressed.

(11) This seems as much an issue about the effectiveness of the War Pensions Advisory Board as it is about a conflict of interest. If the Advisory

Board is a principal source of advice to the responsible Minister on policies relating to war pensions and allowances, then its current narrow membership and irregular meeting schedule do not provide much of a basis for it to be effective in this role.

(12) In Part 5 of this report the JWG has proposed the need for some follow-up to maintain the momentum which will be generated if the recommendations in this report are accepted by the Government. This would include reviewing progress, reporting back to the Government on issues arising from the implementation, and otherwise minimising the risk of repeating the mistakes of the past 35 years.

(13) Rather than invent new structures for this process, a revamped War Pensions Advisory Board seems to the JWG the best vehicle for this purpose. It should be expanded; meet more often; and be serviced properly. The War Pensions Act provides for the Secretary of War Pensions to chair the Advisory Board. If the two roles (Secretary of War Pensions/Director of VANZ) are not to be split, then the Chair of the War Pensions Advisory Board should not be the Secretary of War Pensions.

#### **4.2.4 The post-establishment review**

(1) Many submissions referred to the need for a “review of VANZ”. In most cases, the focus or terms of reference of such a review were not explicit. The proposal was an expression of dissatisfaction with the individual’s engagement with VANZ.

(2) An external review of VANZ is a major plank of both the RNZRSA and EVSA submissions to the JWG. The genesis lies in the circumstances of the establishment of VANZ in 1999. In part because VANZ was not to be a separate Government department but a semi-autonomous body within the Defence Force, the RNZRSA and EVSA contention is that this decision was accepted on the understanding that, after two years, there would be a review of these arrangements.

(3) This same matter is referred to in the VANZ 2005 Briefing for the Incoming Minister. The view expressed in this document is that the post-establishment review was conducted in 1999/2000 by the Chief of Defence Force, prior to the appointment of the first permanent Director of VANZ. An additional review of the responsibilities within the War Pensions function was undertaken in April 2001, and led by the Department of the Prime Minister and Cabinet, as part of a review of services to veterans. The VANZ view is that the obligation for a post-implementation review was

discharged. The RNZRSA and EVSA position is that neither review was comprehensive, independent, or in line with the understandings reached during the establishment of VANZ.

(4) The JWG takes the latter view. In any event, given the range of issues listed above, and the good sense of checking, from time to time, whether an administrative model designed eight years ago is still the best option, there is a case for a review.

(5) The review should be aimed at answering a question along the lines: “Are the structural arrangements for delivering services to veterans, set up in 1998/1999 with the establishment of VANZ, the most effective they can be, and what other options are available for improving efficiency, responsiveness and service delivery?”

(6) Addressing this question will also require addressing the functions of VANZ. Would the non-service delivery functions (commemorations, for example) be better assigned elsewhere – to the Ministry of Culture and Heritage or the Department of Internal Affairs, for example?

## Recommendations

### The JWG recommends that:

1. **An independent review of the resourcing and structural arrangements for delivering services to veterans be carried out. The terms of reference for the review to address:**
  - (a) **The placement of VANZ within the state sector structure;**
  - (b) **The functions and responsibilities of VANZ;**
  - (c) **Achieving a one-stop shop for the provision of services to all veterans;**
  - (d) **Minimising transaction costs between Government agencies in delivering services to veterans;**
  - (e) **Minimising delays and multiple steps in the approval processes for veterans’ entitlements;**

- 
- (f) Maximising the benefits of the case management system; and**
    - (g) Determining the baseline funding for the provision of services to veterans.**
  - 2. Pending the review in 1 above, VANZ progress its current initiative to remove the administrative bottlenecks in the approval process for war disablement and veterans' pensions, and report back to the Government on progress.**
  - 3. If not specifically addressed in the review in 1 above, the Government make a contribution, through VANZ, to the costs of the veterans' welfare and advocacy service of the RNZRSA.**
  - 4. The role and membership of the War Pensions Advisory Board be expanded to provide more robust, comprehensive and independent policy advice to the responsible Minister, on matters affecting the range and quality of services to veterans.**
  - 5. This expanded role includes monitoring, and reporting to the Government on, the implementation of the Government's decisions arising from this report.**
  - 6. If the roles of Secretary of War Pensions and Director of VANZ are not to be separated, the Secretary of War Pensions should not be the presiding member of the War Pensions Advisory Board.**

### 4.3 New Zealand Viet Nam Veterans in Australia

(1) About 20 percent of New Zealand Viet Nam veterans live in Australia. The JWG engaged with them in three ways:

1. Three New Zealand Viet Nam veterans resident in Australia were given financial support to travel to New Zealand and make presentations, on behalf of their comrades, at the consultation meetings in North Shore, Greymouth and Wanganui.
2. The JWG held six meetings, via video link, with New Zealand veterans in Brisbane (three), Sydney, Melbourne and Perth.
3. Thirty-two written submissions were received from New Zealand veterans in Australia.

(2) Including those who formally joined themselves to the presentations made in 1 above, the JWG had contact with 177 Australian-based veterans or family members.

(3) New Zealand war disablement pensions are portable to Australia and, once approved in New Zealand by VANZ, are paid by the Australian Department of Veterans Affairs (DVA). New Zealand Viet Nam veterans living in Australia are eligible for payment of treatment costs for service-related medical conditions. This generally requires prior approval from VANZ. In addition, they have some access to services for Australian veterans and families, notably counselling.

(4) New Zealand Viet Nam veterans living in Australia face a number of special barriers or difficulties in accessing services. The JWG accepts that the choice to live in Australia is their own, and that it is difficult to sustain an argument that they warrant special treatment because of that choice. But the numbers of veterans involved are significant, and some modest improvements in service delivery to this group may well reduce transaction costs incurred by VANZ.

(5) The issues they face include:

- *Geographical dispersion* makes it difficult to share information or provide mutual support;

- *The state-based Australian veterans' welfare and support systems* create regional variations not always well understood by New Zealand public servants, and which compound the first point above;
- *Delays in approval for medical treatment* can be stressful, and *delays in reimbursing the costs of medical treatment* can impose severe financial pressure on all veterans and their families. These problems are faced by veterans in New Zealand, but are compounded by distance for those living in Australia; and
- Veterans in New Zealand who apply for service-related entitlements have access to the network of RNZRSA and EVSA welfare officers, who “know their way around the system”. Australian-based veterans are more likely to *be acting on their own behalf*.

(6) Some “low tech” steps could, and should, be taken to minimise these problems. These include:

- The provision of information to Australian-based New Zealand veterans about their entitlements, and administrative processes such as application, appeal and review. This should be written for this group, rather than existing material based on a presumption the reader is living in New Zealand. There will be a cost, but there will be benefits to VANZ as well as to the veterans;
- Training of Australian-based welfare officers. A local intermediary or point of contact who understands New Zealand veterans' entitlements and administrative processes would help both the New Zealand veterans living in Australia and VANZ case managers. This person could provide advice and assistance to veterans on engaging with the New Zealand system, and VANZ in particular. VANZ would in turn benefit, to the extent “re-work” or other transaction costs were reduced.

The JWG has no view on whether the welfare officers should be New Zealand veterans, Australian Returned Services League welfare officers, or employees of the Australian DVA. There may be a different solution in each state. The main thing is they be well trained and have an effective working relationship with key people within VANZ. This would be an important step to reducing many of the concerns and irritants

of Australian-based New Zealand veterans. In the interim, and as a first step, the RNZRSA will be conducting a training programme in Australia for welfare officers;

- As far as possible, the same case manager (or same case managers) within VANZ should deal with Australian-based veterans, in fact specialising in the needs of this group. They could travel to Australia from time to time, both to reinforce the relationship with veterans and their advocates, and to inform themselves of the particular circumstances of this veteran client group; and
- Speeding up the processes for approving and reimbursing medical and other expenses. In section 4.2 we have made a number of general comments and recommendations under this heading. An additional priority for Australian-based veterans is to ensure that documentation required by VANZ in support of claims is, as far as possible, consistent with standard documentation of the Australian state health systems. In other words, the aim should be for VANZ to obtain the information needed to verify a claim without imposing additional requirements or costs on these veterans or their families.

## Recommendations

### The JWG recommends that:

1. **VANZ develop an information kit, specifically for New Zealand veterans living in Australia, on the entitlements available to them, and the most effective ways of accessing those entitlements.**
2. **VANZ train Australian-based welfare officers for New Zealand veterans living in Australia, who can perform the role filled in New Zealand by RNZRSA and EVSA welfare officers.**
3. **Designated case managers in VANZ specialise in the requirements of New Zealand veterans living in Australia, including establishing relationships with Australian veterans' departments and organisations.**

- 4. VANZ streamlines the processes for pre-approval and reimbursement of medical costs and, for New Zealand veterans living in Australia, align their documentation and processes as far as possible with the local Australian health systems.**

## **5. MAINTAINING MOMENTUM**

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## 5. Maintaining Momentum

(1) Given the history of neglect and denial, many Viet Nam veterans and their families remain sceptical whether:

- The JWG will fairly reflect their concerns and recommend effective action to the Government;
- The Government is really serious about facing up to a problem that previous Governments have failed to address; and
- Within state sector organisations, inertia or opposition will chip away at any attempts to put things right.

(2) There is also anxiety that, even if the current concerns of Viet Nam veterans and their families are addressed, such action will be used to draw a line under this issue once and for all. More will become known about the consequences of service in Viet Nam. This may require more action in the future.

(3) These concerns should be accepted and reflected in the Government's response. In the view of the JWG, there are four actions which the Government can take to help address these concerns:

- Make a clear statement of what the Government intends to do, by when;
- Make a public commitment to access and review overseas and New Zealand research and information on the effects of the "Viet Nam experience", and incorporate this into policy for Viet Nam veterans and their families on a continuing basis;
- Maintain regular and open communication on progress with veterans and their representatives; and
- As far as possible, encourage a bipartisan approach in its response to this report and its recommendations.

(4) These steps will help achieve a major improvement in the quality and effectiveness of the relationship between the current and future Governments with a long-neglected group of New Zealand's veterans.

## **6. ACKNOWLEDGEMENT**

## **6. Acknowledgement**

(1) This report and its recommendations are a step, we hope a major one, on what has been a long road, and for many people a sad one. The Government and Parliament now recognise the seriousness of the issue and the validity of the concerns of Viet Nam veterans. The Government has committed to action.

(2) During the years of neglect and denial, a small number of people persisted in keeping the issue alive. Some pursued overseas research, maintained veterans' networks and lobbied persistently. They were often thorns in the side of Governments and their officials. Some worked to achieve recognition for Viet Nam veterans through organising Parade '98. Some have worked quietly among the families of veterans. Others have written about the cost to those touched by this issue.

(3) The JWG acknowledges these people. We will not mention names, with two exceptions. As many veterans referred to them with gratitude, the JWG wish to record the contributions of Victor Johnson and John Moller in their long, and sometimes lonely, campaign to have the Agent Orange issue acknowledged and dealt with in New Zealand.

(4) The JWG hope its work will do justice to their efforts.

## **7. SUMMARY OF RECOMMENDATIONS**

## **2. ACKNOWLEDGING THE PAST**

### **2.1 Apology and Acknowledgement**

#### **2.1.2 The Government**

The JWG:

1. Endorses the intention of the Government to make a statement of apology to Viet Nam veterans and their families.
2. Recommends that this statement acknowledge the service of Viet Nam veterans; the failures to address their concerns; the effects of those failures; and commits to action.
3. Recommends that, in making this statement, the Government takes account of the context in paragraph (9) on page 24.
4. Recommends that the Government sets aside, as a basis for future policy on Viet Nam veterans, the Reeves and McLeod reports.
5. Recommends that the Government notes the wish of many veterans that, as far as possible, there is a bipartisan approach to addressing their concerns.

#### **2.1.4 Whakanoa**

The JWG recommends that:

1. The NZDF acknowledges its past failures to use, and take action on, the information it was holding relevant to the Agent Orange issue.
2. The Government and Defence Force note, while the matters of incomplete medical records and a failure to make available information on dioxin exposure of New Zealand service personnel in Viet Nam are unresolved, this will be a continuing source of concern to many veterans.
3. To allay these concerns, the matter be directly addressed by a public statement on the facts of these matters.
4. The NZDF readdress the “South Vietnam” Battle Honour on the 1 RNZIR Regimental Colour to recognise the service of Rifle Companies Victor 5 and Victor 6.

5. The NZDF recognises the role it has to play in helping all veterans achieve a transition to whakanoa, and even at this late stage, the contribution it can still make to help surviving Viet Nam veterans achieve this transition.
6. The NZDF should take steps to formally acknowledge and welcome back the surviving New Zealand veterans of the Viet Nam war.
7. In this process, the wishes and cultural needs of Maori should be recognised.

### **2.2.1 A campaign medal for Viet Nam**

The JWG recommends that the case for a distinct national campaign medal for active service in the Viet Nam War be accepted in principle; and that the Honours Secretariat and the NZ Defence Force should now develop a suitable proposal in consultation with veterans' groups.

### **2.2.2 South Vietnamese gallantry awards**

The JWG recommends that the Government recommend to the Queen that unrestricted permission to wear their insignia should be granted to the 12 New Zealand recipients of the South Vietnamese Cross of Gallantry.

## **2.4 Recording the Viet Nam Stories**

The JWG recommends that:

1. Support for an oral history of the experiences, during and after their deployment, of the New Zealand participants in the Viet Nam War, and their families, be provided by the Government.
2. The recording begin in 2006.

### 3. PUTTING THINGS RIGHT

#### 3.1.6 Recommendations – Viet Nam veterans

The JWG recommends that:

1. Viet Nam veterans already diagnosed with a *Prescribed Condition*<sup>16</sup> receive:
  - (a) As reparation, a tax-free lump sum payment of \$40,000; and
  - (b) Automatic eligibility for a war disablement pension under section 23 of the War Pensions Act, at the maximum rate (currently \$14,301 per annum), backdated to the date of diagnosis, and ongoing medical costs of treatment for the prescribed condition. (Note that no further medical or specialist consultation is to be required where the person is already in receipt of a war disablement pension for the prescribed condition.)
2. Viet Nam veterans diagnosed in the future with a *Prescribed Condition* receive:
  - (a) As reparation, a tax-free lump sum payment of \$40,000 at date of diagnosis; and
  - (b) Automatic eligibility for a war disablement pension under section 23 of the War Pensions Act, at the maximum rate of \$14,301 per annum, from date of diagnosis, and ongoing medical costs of treatment for the prescribed condition.
3. Pending an amendment to the War Pensions Act, as proposed in Annex 2, the recommendations in 1 and 2 above be implemented expeditiously by administrative action.

The JWG recommends that, where a Viet Nam veteran is diagnosed with an *Associated Condition*,<sup>17</sup> there is an automatic presumption that the condition is due to service, and the veteran is eligible for a war disablement pension, at a percentage related to disability, under the current procedures applying for all veterans.

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<sup>16</sup> See pp 39 and 40

<sup>17</sup> See pp 39 and 40

### **3.1.7 Recommendations – Viet Nam Veterans’ progeny (children and grandchildren)**

The JWG recommends that:

1. Progeny of Viet Nam veterans diagnosed with one of the five conditions (and their sequelae) associated with a forebear’s service in Viet Nam, and set out in Annex 3, receive:
  - (a) As reparation, a tax-free lump sum payment of \$30,000; and
  - (b) Under the automatic presumption that the condition is due to war service, eligibility for a war disablement pension, at a percentage related to the disability, and medical treatment costs, on the same basis as a veteran.
2. Pending an amendment to the War Pensions Act as proposed in Annex 3, the recommendations to be implemented expeditiously by administrative action.
3. The Government consider two further ways of broadening the support available to the progeny of Viet Nam veterans:
  - (a) That progeny of Viet Nam veterans without one of the five currently accepted conditions, but with two or more of the sequelae to those conditions (see Annex 3), be treated on the same basis as 1(b) above; and
  - (b) That progeny of Viet Nam veterans who, in the opinion of the Secretary of War Pensions, have conditions which are lifelong and seriously debilitating, qualify for reimbursement of medical expenses.
4. The Government commit to addressing the long-term inter-generational effects of exposure to the toxic environment of Viet Nam, by ensuring that relevant research is accessed and incorporated into policies for the descendants of Viet Nam veterans.

### **3.1.8 Recommendations – surviving spouses or surviving partners of deceased veterans**

The JWG recommends that:

1. Surviving spouses or partners of Viet Nam veterans who have died with one of the *Prescribed Conditions*, prior to the measures above coming into effect (that is, their partner died before receiving the

lump sum payment of \$40,000), receive an ex-gratia payment of \$25,000; and

2. The Government reviews the eligibility criteria for the surviving spouse pension, in particular those relating to cessation of the pension on remarriage or entering into a new relationship.

### **3.1.9 Recommendation – families**

The JWG recommends that families of a Viet Nam veteran with a child or grandchild who has (or has died with) one of the (currently five) medical conditions associated with exposure to the toxic environment of Viet Nam, receive an ex-gratia payment of \$30,000. If the family is no longer together (for example, the parents have separated), there should be administrative discretion to allocate the sum equitably to those who have been, or now are, the primary caregivers of the affected child.

### **3.1.11 All veterans**

The JWG recommends that:

1. An ex-gratia payment be made to all surviving New Zealand service personnel who served in Viet Nam, at the level described in paragraph (9) page 51; and
2. Consistent with the ex-gratia payment made to the New Zealand prisoners of war of the Japanese, the Government may consider making this payment to surviving spouses or surviving partners where the veteran is deceased.

### **3.2.1 EVSA Youth Development Trust**

The JWG recommends that:

1. Assistance for a small grants programme for the progeny of Viet Nam veterans be provided by the Government.
2. The EVSA Youth Development Trust be considered as a well-established, effective vehicle for such additional assistance.
3. The Government enter into discussions with the EVSA and RNZRSA on this matter.

## **4. IMPROVING SERVICES TO VIET NAM VETERANS**

### **4.1.2 Annual medical check**

The JWG recommends that:

1. A free annual medical check be provided for all Viet Nam veterans, based on the Wellman check, and supported by information for clinicians to enable screening for the particular risks faced by Viet Nam veterans.
2. The first annual medical check of those veterans, who are not yet in receipt of a war disablement pension, include a thorough assessment of the impact of their service and their subsequent treatment, with the objective of determining their eligibility for a war disablement pension.

### **4.1.3 National register**

The JWG recommends that:

1. A national register of Viet Nam veterans and their progeny be established, including those veterans who have died.
2. The register include, or be readily linked to, information on the health status of those registered or, in the case of those who have died, the causes of death (including contributory and associated conditions).
3. Protocols covering access to this information be established that will balance the need to encourage registration with making effective use of this information.
4. Consideration be given to the establishment of similar registers for those who have served in other theatres.

### **4.1.4 The veteran's card**

The JWG recommends that:

1. A veteran's card be introduced for all veterans identifying his or her theatre(s) of service.

2. A similar card be introduced for the progeny of Viet Nam veterans, who are on the national register (see section 4.1.3).
3. The Government note that the principal purpose of the card, in the context of the JWG's responsibilities, is to facilitate early access to the right sort of medical services for veterans or their progeny, given the veteran's exposure to a toxic environment.

#### **4.1.5 Information for clinicians**

The JWG recommends that:

1. Consistent with the recommendations of the Health Committee, Veterans' Affairs New Zealand informs health professionals about the specific health needs of Viet Nam veterans, based on the presumption that Viet Nam veterans were exposed to a toxic environment, with the intention that veterans and progeny are screened for conditions associated with this exposure, and regularly monitored for the same.
2. This information also address the nature and effects of PTSD, as it affects Viet Nam veterans in particular.
3. The same information be made readily available to Viet Nam veterans and their progeny.
4. This information be regularly updated, based upon the international research referred to in section 3.1.5.
5. Consistent with the recommendations of the Health Committee, VANZ compile a list of health professionals conversant with the health needs specific to New Zealand Viet Nam veterans, and provide this list to all New Zealand Viet Nam veterans.
6. Consistent with the recommendations on the EVSA Youth Development Trust, the Government enter into discussion with the EVSA and RNZRSA on the general need to improve services for Viet Nam veterans suffering from PTSD, and the Ranfurly Veterans Centre initiative in particular.

#### **4.2.4 The post-establishment review**

The JWG recommends that:

- 
1. An independent review of the resourcing and structural arrangements for delivering services to veterans be carried out. The terms of reference for the review to address:
    - (a) The placement of VANZ within the state sector structure;
    - (b) The functions and responsibilities of VANZ;
    - (c) Achieving a one-stop shop for the provision of services to all veterans;
    - (d) Minimising transaction costs between Government agencies in delivering services to veterans;
    - (e) Minimising delays and multiple steps in the approval processes for veterans' entitlements;
    - (f) Maximising the benefits of the case management system; and
    - (g) Determining the baseline funding for the provision of services to veterans.
  2. Pending the review in 1 above, VANZ progress its current initiative to remove the administrative bottlenecks in the approval process for war disablement and veterans' pensions, and report back to the Government on progress.
  3. If not specifically addressed in the review in 1 above, the Government make a contribution, through VANZ, to the costs of the veterans' welfare and advocacy service of the RNZRSA.
  4. The role and membership of the War Pensions Advisory Board be expanded to provide more robust, comprehensive and independent policy advice to the responsible Minister, on matters affecting the range and quality of services to veterans.
  5. This expanded role includes monitoring, and reporting to the Government on, the implementation of the Government's decisions arising from this report.
  6. If the roles of Secretary of War Pensions and Director of VANZ are not to be separated, the Secretary of War Pensions should not be the presiding member of the War Pensions Advisory Board.

### **4.3 New Zealand Viet Nam Veterans in Australia**

The JWG recommends that:

1. VANZ develop an information kit, specifically for New Zealand veterans living in Australia, on the entitlements available to them, and the most effective ways of accessing those entitlements.
2. VANZ train Australian-based welfare officers for New Zealand veterans living in Australia, who can perform the role filled in New Zealand by RNZRSA and EVSA welfare officers.
3. Designated case managers in VANZ specialise in the requirements of New Zealand veterans living in Australia, including establishing relationships with Australian veterans' departments and organisations.
4. VANZ streamlines the processes for pre-approval and reimbursement of medical costs and, for New Zealand veterans living in Australia, align their documentation and processes as far as possible with the local Australian health systems.

## **8. ANNEXES**

- Annex 1 Prescribed and Associated Medical Conditions  
(Viet Nam veterans)
- Annex 2 Proposed Amendments to the War Pensions Act 1954  
(nuclear, biological and toxic exposure)
- Annex 3 Proposed Amendments to the War Pensions Act 1954  
(progeny of veterans)
- Annex 4 Terms of Reference of the Joint Working Group on  
the Concerns of Viet Nam Veterans
- Annex 5 Terms of Reference of the Agent Orange Joint  
Working Group Chairman
- Annex 6 Information on Submissions made to the Joint  
Working Group

## PRESCRIBED AND ASSOCIATED MEDICAL CONDITIONS (VIET NAM VETERANS)

### A. PRESCRIBED CONDITIONS

The following health conditions should be automatically presumptively recognised as Prescribed Conditions under the amendments to section 23 of the War Pensions Act in Annex 2:

- Prostate cancer
- Non-Hodgkin's Lymphoma, including any diagnosis of a lymphoma (except Hodgkin's Lymphoma), mycosis fungoides, and old terms such as lymphosarcoma, reticulum cell sarcoma and Kaposi's sarcoma
- Respiratory cancers, including cancer of the
  - lung
  - bronchus
  - larynx
  - trachea
- Multiple Myeloma
- Soft Tissue Sarcomas, including
  - Adult fibro sarcoma
  - Dermatofibrosarcoma protuberans
  - Malignant fibrous histiocytoma
  - Liposarcoma
  - Leiomyosarcoma
  - Epithelioid Leiomyosarcoma (malignant Leiomyoblastoma)
  - Rhabdomyosarcoma
  - Ectomesenchymoma
  - Angiosarcoma (hemangiosarcoma and lymphangiosarcoma)
  - Proliferating (systemic) angioendo-theliomatosis
  - Malignant glomus tumour
  - Malignant hemangiopericytoma
  - Synovial sarcoma (malignant synovioma)
  - Malignant giant cell tumour of tendon sheath
  - Malignant schwannoma, including malignant schwannoma with rhabdomyoblastic differentiation (malignant Triton tumour), glandular and epithelioid malignant schwannoma
  - Malignant mesenchymoma
- Hodgkin's Disease;
- Chronic Lymphocytic Leukaemia.

**B. ASSOCIATED CONDITIONS**

There is a range of other than the prescribed conditions which are presumptively linked to service in Viet Nam. These might be called “associated conditions”; and diagnosis of any of them should mean automatic approval for a War Disablement Allowance. International research may add other conditions to this list, as should New Zealand, through monitoring of this research. The known ones are:

- Peripheral neuropathy (transient, acute or sub-acute; a nervous system condition)
- Diabetes Type II
- Chloracne (skin condition)
- Porphyria cutanea tarda (disorder characterised by liver dysfunction and by thinning and blistering of the skin in sun-exposed areas)
- Post traumatic stress disorder or other serious mental conditions

If a Viet Nam veteran is diagnosed with one of the above conditions, the merry-go-round of repeated medical/specialist checks and panel approvals needs to be taken out of the process. The veteran should have automatic coverage under the War Pensions Act. This and an immediately applied percentage level, together with immediate treatment, should be the norm.

All other conditions presented by Viet Nam veterans should be based on the current principles and operation of the War Pensions Act – always in accordance with the much-improved processes and delivery recommended elsewhere in this document.

**PROPOSED AMENDMENTS TO THE WAR PENSIONS ACT 1954  
(NUCLEAR, BIOLOGICAL AND TOXIC EXPOSURE)**

**PROPOSED AMENDMENTS TO SECTION 23**

**23. Additional pension in certain cases of severe disablement –**

- (1) This section applies to every case where a member of the forces –
- (a) Is suffering from total blindness; or
  - (b) Is suffering from 2 or more serious disabilities (whether specified in Schedule 9 to this Act or not);
  - \*(c) Is suffering from one or more of the list of disabilities noted at Schedule 9A, which relate to exposure to nuclear, biological or toxic environments; or*
  - (d) Is totally disabled and is permanently bedridden or, if not permanently bedridden, is, in the opinion of [the Secretary], so restricted in his activities and pursuits that he is prevented from engaging in normal social and recreational activities –

and a pension for total disablement in respect of such blindness, disabilities, or disablement is for the time being payable under section 19(1) of this Act.

- (2) Notwithstanding anything in this Part of this Act, in any case to which this section applies [the Secretary may, in the Secretary's] discretion, increase the rate of the pension that would otherwise be payable to the member in respect of his disablement by not more than the appropriate rate specified in Schedule 1 to this Act.

*\*(a) In the case of personnel who have been exposed to nuclear, biological or toxic environments and have disabilities that are listed in Schedule 9A, the limits of subsection (1) shall not apply. For each disability listed in Schedule 9A, the War Disablement Pensioner shall receive the full amount of assessed percentage of Whole Person Impairment.*

- (3) Notwithstanding anything in this Part of this Act but subject to subsection (4) of this section, if a person receiving an additional pension under this section is of or over the age of 60 years, that person shall be entitled to be paid, in addition to the total amount payable under section 19 of this Act and subsection (2) of this section, a further amount equal to 10 percent of that total amount.
- (4) In each case entitlement to the further amount provided for in subsection (3) of this section shall commence on the earliest date that the Secretary considers practicable, being a date not earlier than the date of commencement of the pay period during which this subsection came into force or during which the pensioner attained the age of 60 years, whichever is the later.

(\* **Proposed new subsections**)

### **PROPOSED NEW SCHEDULE 9A**

#### DISABILITIES IN RELATION TO NUCLEAR, BIOLOGICAL AND TOXIC EXPOSURE

##### **1. Disabilities in relation to exposure to a toxic environment**

Hodgkin's Disease  
 Multiple Myeloma  
 Non-Hodgkin's Lymphoma  
 Respiratory Cancers (lung, bronchus, larynx and trachea)  
 Soft-tissue Sarcoma  
 Prostate Cancer  
 Chronic Lymphocytic Leukaemia

##### **2. Disabilities in relation to exposure to nuclear fallout and waste**

Cancers

**PROPOSED AMENDMENTS TO THE WAR PENSIONS ACT 1954  
(PROGENY OF VETERANS)**

**PROPOSED NEW SECTION 23A**

**23A. Pensions to descendants in certain cases where the parents of the descendants have been exposed to nuclear, biological or toxic environments.**

- (1) Where descendants of veterans, who have been exposed to nuclear, biological or toxic environments, have health conditions linked to such exposure they shall be compensated by the award of a War Disablement Pension at a percentage to be determined by a medical specialist trained in the use of the American Medical Association Guides to Permanent Impairment.
- (2) Health conditions attracting an award of a War Disablement Pension are listed in Schedule 9B.

**PROPOSED NEW SCHEDULE 9B**

**DISABILITIES IN DESCENDANTS IN RELATION TO NUCLEAR, BIOLOGICAL AND TOXIC EXPOSURE**

**1. Disabilities in descendants of veterans who were exposed to nuclear, biological or toxic environments eligible for a War Disablement Pension:**

Spina Bifida  
Cleft Lip  
Cleft Palate  
Acute Myeloid Leukaemia  
Adrenal Gland Cancer

**2. Sequelae to Spina Bifida where links have already been established:**

**Neurological Disorders – including**

Arnold-Chiari malformation (affects the brain, brainstem and cerebellum)

Hydrocephalus – including secondary Blindness, Seizure Disorder

Syngomyelia (a disorder in which a cyst forms with the spinal cord)

**Neuromuscular Disorders**

Decubitus ulcers (pressure sores)  
 Foot deformities  
 Hip dislocation  
 Kyphosis (curvature of the spine)  
 Lordosis (an abnormal inward curve of the lumbar spine)  
 Paraplegia  
 Tetraplegia  
 Scoliosis (sideways curvature of the spine)

**Urinary Disorders**

Kidney Disease  
 Neurogenic Bladder  
 Solitary Kidney  
 Urinary Tract Infection

**3. Sequelae to Spina Bifida where links must be medically established:**

Cardiovascular Disorder  
 Eye disorder, including Strabismus (squint)  
 Balance Disorder  
 Dislocated Joints  
 Respiratory Disorder

**Psychological/Social Disorders**

Anxiety Disorder  
 Attention Deficit Disorder  
 Central Auditory Processing Disorder  
 Depression  
 Hearing Disabilities  
 Learning Disabilities  
 Mental Retardation

**Skeletal**

Arthritis  
 Limb Deformity  
 Osteomyelitis

**Other Disorders**

Immunological Disorders  
 Diabetes Disorders  
 Chronic Pain

### **TERMS OF REFERENCE OF THE JOINT WORKING GROUP ON THE CONCERNS OF VIET NAM VETERANS**

#### **Purpose**

To recommend to the Government, for its consideration, a package of actions and procedures to address the health and well-being needs of Viet Nam veterans and their families and to develop a historical record of New Zealanders' service in Viet Nam.

#### **Issues to be considered**

- Public recognition of veterans' service in Viet Nam and exposure to a toxic environment.
- The range and availability of assistance to address health and well-being concerns and the extension of assistance to families.
- The status of the Reeves and McLeod reports.
- Knowledge of Medallic recognition of service.
- The adequacy of the War Pensions Act coverage in relation to exposure to a toxic environment.
- The impact of any actions or decision on other veterans' groups.
- Process for consulting with veterans and family members.
- Writing up the anecdotal stories of veterans as part of developing the background record.
- Consideration of the formation of a national register.

#### **To examine**

- 2004 Select Committee Report.
- Propositions put to Government by veterans' groups.
- Any other material that might be relevant.

July 2005

## TERMS OF REFERENCE OF THE AGENT ORANGE JOINT WORKING GROUP CHAIRMAN

### 1. Introduction

The Chair of the Agent Orange Joint Working Group has been appointed jointly by the Ministers of Veterans' Affairs and Defence to provide advice to the Government on how best to meet the needs of Viet Nam Veterans.

### 2. Background

Following a Select Committee inquiry and report, the Government accepted that veterans were exposed to a toxic environment during their service in Viet Nam. A joint working group was established, consisting of representatives from the Royal New Zealand Returned and Services Association (RNZRSA) and the Ex-Viet Nam Services Association (EVSA), and officials from the Offices of the Minister of Defence and the Minister of Veterans' Affairs.

The agreed purpose of the working group is to:

Recommend to Government, for its consideration, a package of actions and procedures to address the health and well being needs of Viet Nam Veterans and their families and to develop a historical record of New Zealanders' service in Viet Nam.

In her address to the Royal New Zealand Returned and Services Association National Council on 11 July 2005 the Prime Minister also noted that, on the advice of the working group, she would offer a formal apology acknowledging that veterans were exposed to a toxic environment in Viet Nam.

### 3. Tasks

- (i) Chair the joint working group.
- (ii) Develop and implement the consultation process, including a questionnaire to go to veterans and their families, and meetings in key centres in New Zealand.
- (iii) Ensure that the process of establishing the historical record being researched by Ian McGibbon is assisted where possible.
- (iv) Ensure that Viet Nam Veterans are receiving their health, pension and medallic entitlements.

- (v) Prepare the draft of the apology to be given to the veterans by the Prime Minister.
- (vi) Report to the Joint Ministers on what actions can be taken to assist in the resolution of the grievances felt by veterans and their families.

#### **4. Time frame and reporting**

The chair will report three monthly or as required. The first report is to be made by 30 September 05. Joint Ministers are to be provided with copies of the minutes of working group meetings. A final report to Government on what actions can be taken to assist in the resolution of the grievances felt by veterans and their families is expected not later than 31 March 2006.

Hon Mark Burton  
**Minister of Defence**

**INFORMATION ON SUBMISSIONS MADE TO THE JOINT  
WORKING GROUP**

<b>Written submissions received:</b> (an additional 130 persons were represented in a substantial written submission)	304
<b>Attendees at Consultation Meetings:</b>	717
<b>Consultation Meetings held:</b> (includes Video Conferences)	27
<b>Total consultation hours:</b>	153