

# Update on Memorandum of Understanding Veteran Discussion Forum 18/19 January 2007

On 18/19 January 2007 a Forum was convened in Wellington to discuss the Memorandum of Understanding (MoU) signed on 6 December 2006 by the Government, EVSA and RNZRSA addressing the concerns of Viet Nam veterans and their families.

This Update is aimed at informing the Viet Nam veteran community of the background, purpose, process and outcomes of the Discussion Forum.

## Background

The MoU provides a basis on which the concerns of Viet Nam veterans and their families can be moved forward. It records in summary the best agreement that could be reached with the Government **at this time** around the Report of the Joint Working Group and its recommendations. The MoU incorporates scope for further enhancements to the treatment and care of veterans and their families. **It is not a full and final document** - it provides a basis for:

- not only implementation,
- but also further development to the agreements reached.

The key to creating maximum benefit from the MoU is how effectively the implementation of its various provisions is conducted, and how we draw maximum potential and positive timely action from the Government related to its agreed position.

## Purpose of the Discussion Forum

Following the announcement of the MoU, some of the comment by veterans and others regarding the MoU provisions and its opportunities, were clearly based on incomplete understanding of its meaning and potential. The Forum provided an opportunity to question and clarify these issues, and in doing so to provide a fuller understanding of the background to the MoU and its meaning.

The Discussion Forum was therefore convened for two principal reasons:

1. RNZRSA and EVSA believed the Viet Nam veteran community was owed a more complete understanding of the potential provided by the MoU than the abbreviated treatment so far made available in media reports.
2. To provide RNZRSA and EVSA with input from a range of sources within the Viet Nam veteran community that will assist in developing effective plans of action to harness the full potential of the MoU provisions during the Implementation Process.

To ensure input from a representative group providing a range of views and opinions, the following were invited to participate in the Forum:

*John Moller*  
*Victor Johnson*  
*Rick Thame*  
*Gavin Nichol*  
*George Mathew*  
*Rob Munro*  
*Evan McKenzie*

*John Masters*  
*Gary Corkin*  
*Elizabeth Lancaster*  
*Baden Ewart*  
*Geoff Braybrooke*  
*Hank Emery*

*Note: John Moller was unable to attend and was represented by Geoff Monks*

RNZRSA was represented by John Campbell and Robin Klitscher and EVSA by Terry Culley and Chris Mullane.

The Forum was hosted by RNZRSA, which also funded the travel and accommodation expenses of the participants.

### **Process and Outcomes**

The Forum process enabled full and frank discussion to take place and all participants were encouraged to express their views. The discussions included consideration of:

- A review of the history of the Agent Orange issue leading up to the Health Select Committee (including the work of Victor Johnson, the Parliamentary efforts of Geoff Braybrooke, the operation of the Agent Orange Trust etc.)
- The Health Select Committee Report and Recommendations
- The Government (Hawkins) Response of December 2004
- The lobbying by EVSA and RNZRSA leading to establishing the Joint working Group (JWG)
- The Open Letter to the Prime Minister
- The Consultation Process and the Analysis of Submissions (including EVSA and RNZRSA submissions)
- The JWG Report and Recommendations
- The Negotiations (including Government responses and EVSA/RNZRSA counters, both oral and written, and the reasons why it was essential to keep the details of progress confidential during the negotiating process)
- A review of the MoU in detail including the expansion opportunities contained within it
- The Joint Implementation Group (JIG) process (including the processes that will be needed for veterans to access the provisions of the MoU; the Expert Panel; the Viet Nam Veterans and Families Trust; interface with the Review of VANZ and the Review of the War Pensions Act etc.)
- Vehicles for continuing input and involvement of veteran subject matter experts
- The way ahead (including issues still outstanding such as tax refund, reparation etc. RNZRSA and EVSA intend to keep these issues alive; although to be practical, and in the absence of totally new arguments, we will need to choose the moment with care.)
- The roles of the veterans organisations in helping all members of the Viet Nam veteran community to become registered and to access entitlements stemming from the implementation process
- Communications strategies (within the veteran community and the public media)

In summary, the principal outcomes of the Discussion Forum include:

- A clearer understanding by Forum participants of the real potential of the MoU provisions
- A greater appreciation of the negotiating strategies and processes employed and the package achieved by the EVSA/RNZRSA negotiating team
- The formation of “advisory groups” to provide continuing input to the EVSA/RNZRSA representatives on the JIG. At this stage these “advisory groups” include subject matter experts on Health Conditions which could be relevant to the Expert Panel (led by Vic Johnson) and the Reviews of the War Pensions Act and VANZ (led by John Masters). Other individuals have undertaken to provide input on various other areas of expertise.
- A communication plan (including future meetings of the Discussion Forum).

Four particularly important points should be borne in mind about the process from here on in:

- The Expert Panel will be appointed by the Government from prominent experts. It will be strictly independent of both RNZRSA and EVSA, neither of which will be members as of right. Obviously, however, it will be necessary to ensure that a knowledgeable Viet Nam veteran of high standing is appointed to it to ensure it takes veterans' perspectives fully into account. Neither VANZ nor the Ministry of Health will be represented on it (although both of course will need to be consulted in the course of its work).
- Neither RNZRSA nor EVSA will “run” the Trust. Although each will necessarily have a seat on the Trust Board, the majority of the Board will be independently appointed from outside both organisations.
- For the JIG, continuity is vital. Government has decided that members of the JWG who conducted the negotiations will therefore continue on with the JIG alongside any others appointed by Government. The difference as we move ahead is that they will seek the advice of the two “advisory groups” mentioned above (and any others that may become necessary as we proceed).
- We have an absolute and public undertaking from the Minister that RNZRSA and EVSA will be closely involved in the review and re-write of the War Pensions Act 1954. This includes the solid undertaking that the underlying principle of “reverse onus of proof” will be unchanged as a cornerstone of the legislation.

## Conclusion

It was very beneficial having together in one room people who have played specific and significant roles during the various stages of the Agent Orange saga and also those who brought to the Forum a depth of understanding from first hand experience of the current War Pension system.

The overall outcome of the Forum can perhaps be best summed up in the words of Geoff Braybrooke at the closing session:

*A number of people have worked hard for the last 30 odd years to get some sort of acknowledgement and just settlement from successive Governments for NZ Viet Nam Veterans. Vic Johnson, John Moller and myself have all tried our best using an “all out assault” approach. We assembled a lot of information and we did a lot of work but we all failed. My two private members bills, in 1983 and 1990, both failed and that is recorded in Hansard. In real terms we achieved nothing materially. What you see here today is a negotiating team that after some 35 years has achieved at least something; not all they wanted but we are now a long way ahead of where we were before the MOU was published in early December last. And with care on the way forward and continuing to maintain the good relationship they have with the negotiating ministers, our negotiators should be able to further improve on the settlement.*

In support of Geoff Braybrooke's comments and to put in perspective what has been achieved so far, it is also useful to consider the following:

- **The HSC Report.** Contained nine (9) recommendations – eight (8) of which are fully included in the MoU, with the ninth able to be addressed through the JIG process
- **The Open Letter.** Signed by 740 members of the Viet Nam veteran community, contained nine (9) issues requiring resolution – all of which are fully addressed in the provisions of the MoU. It should be noted that neither the recommendations of the HSC Report nor the Open Letter mentioned cash compensation. For perspective, therefore, it is important to understand that the first time either the principle or the detail of cash reparation and related issues was recommended in a formal report to any New Zealand Government was the JWG Report of April 2006.

- **The JWG Report.** Based on 304 written submissions (made on behalf of 434 persons) and input from 27 consultation meetings/video conferences attended by 717 people throughout New Zealand and Australia.

**Total JWG recommendations : 69**

**Total accepted by the Government in some form : 55**, comprising:

- Fully accepted : 51
- Partially accepted/modified : 4
- Under further action/positive consideration, including specific items to be addressed by the WPA Review and VANZ Review : 9
- Not accepted: 5

It is important to remember that:

- Most, if not all, veterans were pleased with the recommendations of the HSC Report of October 2004.
- Veterans were understandably outraged at the totally inadequate Hawkins response to the HSC Report in December 2004.
- For many, the Open Letter was the “bottom line” in putting things right.
- Now we do have/will have **ALL** that (which wasn't going to be so), **PLUS a great deal more** .
- Further to the above, and aimed at addressing in some way the JWG recommendations "partially accepted" or "not accepted", there are the provisions in the MoU for:
  - **The Expert Panel** - This Panel will consider relevant medical research and make recommendations to Government on the appropriate rate of War Disablement Pensions for Viet Nam Veterans related to conditions on both of the United States Institute Of Medicine (IOM) Lists - the Prescribed Condition List and the Limited or Suggestive Evidence List. The Panel will also create uniform standards and criteria to ensure that all veterans with equal degrees of disability are treated fairly and consistently. It is also important to note that any changes to the War Disablement Pension rates for conditions arising from the recommendations of the Expert Panel will be backdated to the date of original diagnosis and/or other appropriate milestones identified by the Panel.
  - **The \$7m Endowment**, which for 30 years will generate **\$550,000 - 600,000 per annum of assistance/ex gratia payments** for a wide/flexible range of veteran and family needs and situations not specifically catered for otherwise
  - There will also be **greater pro-active focus on new research including ongoing updates to the list of "prescribed conditions"**. Such updates will likely increase the number of Veterans and Children who become eligible for the ex gratia/lump-sum payments provided for in the Package - there is no time limit on those payments. (Yes, it IS unfortunate that scientific proof lags behind the reality of people's health and suffering).
  - The Review/Rewrite of the War Pensions Act and the Review/Restructure of VANZ and its services is expected to play a **significant** part in improving things for Viet Nam Veterans and their families (as well as for all current and future veterans).

## **Work to be Done**

The real work begins now with implementation.

EVSA and RNZRSA and in fact **all Viet Nam veterans** need to ensure we make use of the provisions of the MoU to the maximum extent possible.

As the processes are established and made known, we need to encourage everyone to take an active part in such things as:

- Placing their own, their families and their deceased mate's families' details and contact information on the Viet Nam Register
- Using the Free Medical (we will need to ensure our welfare and pension reps are able to fully support and prepare each veteran for their personal medical check so maximum benefit is gained in terms of new and upgraded war pension entitlements and medical support).
- Ensuring as many veterans as possible, with their families, attend the “Welcome Home Parade”. It is important people understand this is a New Zealand Defence Force (NZDF) hosted event at which, among other things, NZDF will publicly apologise for the numerous ways it let veterans down through official action and inaction. This is in addition the Government Apology and is an essential part of acknowledging and healing the past.
- Making and helping others make application to the Viet Nam Veterans and Families Trust Fund. This Trust will be required to report to Parliament annually. This is great for transparency, however the worst that could happen is that few apply and the Trust's reports show that they are making few payouts and are accumulating surpluses. This will only confirm government views that they have been overly generous in this provision. We should be endeavouring to show that the \$500,000 - 600,000 annual interest is grossly inadequate to meet the need.

And so on, for all the other provisions of the MoU.

An important task for the JIG collectively (and EVSA and RNZRSA separately) will be to establish good lines of communication through which to inform veterans and families of progress and the processes for accessing the opportunities as they come on line. **(Please bear in mind that the processes will be established as quickly as possible but they are not instant.)**

**Communication is an important role that all of us can assist with. This Update is part of that communication. Please give the Update the widest possible circulation amongst the Viet Nam veteran community.**

John Campbell  
National President  
RNZRSA

23 January 2007

Terry Culley  
National President  
EVSA

23 January 2007