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## SEATO Nurses - 10 years on

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Gerardine (Ged) Kearney  
Federal Secretary

Lee Thomas  
Assistant Federal Secretary

Australian Nursing Federation  
PO Box 4239 | Kingston | ACT 2604

T: 02 6232 6533

F: 02 6232 6610

E: [anfcanberra@anf.org.au](mailto:anfcanberra@anf.org.au)

<http://www.anf.org.au>

## 1. **Introduction**

- 1.1 It's over 10 years since the plight of members of the civilian surgical teams who served in Vietnam was raised by a civilian nurse who became seriously ill with a condition associated with exposure to herbicides and identified in studies documenting the cancer incidence of Vietnam veterans. In 1999, after her claim for benefits under the Veterans' Entitlements Act 1986 was rejected, the matter went before the Veterans' Review Board. The Board affirmed the decision however it expressed regret that the nurse was not able to be compensated under the Act and identified an anomaly whereby the Act makes a distinction between different conflicts when it comes to Commonwealth employees performing special missions outside Australia. It identified two options: an amendment to the Act or a claim to Comcare.
- 1.2 Despite a positive finding from an independent review into service anomalies in February 2000, recommending that members of the civilian surgical and medical teams operating in Vietnam be deemed as performing qualifying service for repatriation benefits, the Government has refused to acknowledge the nurses' claims on the basis that they were not attached to the ADF. Comcare, the Commonwealth workers compensation scheme is the only option for those nurses who have developed illnesses and injury as a result of their service in Vietnam. For a number of reasons explained later, this scheme is not suited to deal with war related injury and illness.

## 2. **Background**

- 2.1 In 1962 the Australian government was asked by the USA to supply an Army training team, as well as surgical services and medical care to the South Vietnamese people and the large refugee population from North Vietnam. Both groups were part of the bipartisan SEATO contingency planning by the Department of External Affairs and the Department of Defence – as was the later commitment of ground troops in 1965.
- 2.2 The SEATO Civilian Surgical teams were the first official Australian Medical/Surgical support group sent into South Vietnam (Australian military medicine not arriving until May 1966 and members of the RAANC not until May 1967). The Civilian team was also the last Australian medical/surgical group to leave. The overall time in Vietnam ranged from October 1964 to New Year's Eve 1972. Approximately 450 civilian nurses, doctors and other health personnel served on these teams. This represents the largest group of Australian doctors and nurses to serve in South Vietnam during the war.
- 2.3 SEATO nurses were sent to Vietnam by the Australian government to serve in the civilian surgical and medical teams as part of Australia's strategic and military commitment to the Vietnam war.

### 3. **Current Issues**

- 3.1 Many of the nurses have suffered the same illnesses and medical conditions as the Vietnam veterans that are similarly war related. Conditions including post traumatic stress and other anxiety disorders, auto immune disease, non-Hodgkins lymphoma, cancers and other immune system disorders. The attached claims summary sets out a number of the health conditions subject to claims under Comcare.
- 3.2 Nurses have been refused access to benefits under the VEA simply because the teams were administered through the Department of External Affairs and not “attached to” or “under the command of the Australian Defence Force (ADF)”.
- 3.3 The recommendation by the Mohr Review in February 2000 that the teams be deemed as performing qualifying service for repatriation benefits noting that “... they were integrated with the ADF and performed like functions ...”, has been rejected by the Government. Justice Mohr also noted in the Report that the teams were awarded the Australian Active Service Medal due to the fact that they were integrated with the Australian Defence Force and performed like functions with their ADF counterparts.
- 3.4 The Government has argued, quite wrongly, that people need to come under military command to be covered by the VEA. In terms of the World Wars the Act provides access to benefits for civilians employed by the Commonwealth on a special mission outside Australia and in the course of carrying out that mission, incurred danger from hostile forces of the enemy. The Act makes no requirement that they be under military command or attached to the ADF.
- 3.5 Other civilian groups have been given access to benefits under VEA through a “Ministerial Determination” under section 5R of the Act, for example persons representing an approved philanthropic organization such as the Australian Red Cross and the Salvation Army. Such groups were “deemed” to have been attached to the Defence Force.
- 3.6 In August 2000 the ALP and the Democrats supported an amendment to the legislation following submissions by individual nurses and the ANF to the Senate Inquiry into the Veterans’ Affairs Legislation Amendment (Budget Measures) Bill 2000 seeking an amendment in accordance with Justice Mohr’s recommendation. The Government members rejected the amendment, however in a dissenting report the ALP members stated:

*“The Government used the technicality that nurses and surgical units were not under the control of the ADF, a current prerequisite in the Act, to reject Mr Justice Mohr’s recommendation. Although we support the general principle that the Act is for servicemen and women, it is within the authority of government to amend the legislation to provide an exemption where there are compelling reasons to do so. We believe that this is such a case.”*

- 3.7 In 2002 individual nurses and the ANF made further written and verbal submissions to another review of veterans' entitlements chaired by Justice John Clarke. The report released in February 2003 supported the Government's policy position that the teams were not attached and under the command of the ADF and therefore not eligible for benefits under the VEA.
- 3.8 It also noted that while the Minister had wide discretionary powers under s5R of the VEA to deem certain people to be members of the Australian armed services for purpose of access to benefits under the Act, the Committee considered it "consistent with the intent of the VEA to restrict such benefits to those who were attached to the services during a war ...."
- 3.9 The Clark report recommended further dialogue with Comcare representatives to resolve any difficulties in the claims process.

#### 4. **Ongoing Problems with Comcare**

- 4.1 Despite the processes put in place to facilitate claims through Comcare, nurses are still disadvantaged in comparison to the veteran community. Fundamentally, because it is a workers' compensation scheme it is not designed to deal with the complexities arising from injuries incurred as a result of the trauma of war – this is precisely why there is a different system for veterans. Critical differences apply such as:
- 4.1.1 A more beneficial standard of proof under VEA. Comcare requires a higher standard of proof linking service in Vietnam with the particular illness or injury. Consequently, of the 19 claims currently under Comcare (for a range of illness and injury), the vast majority of claims relating to physical conditions have not been accepted. The standard of proof under the VEA is the "reverse criminal standard" (reasonable hypothesis), which recognizes the unique nature of military service and the injuries/disease that can arise in that setting.
- 4.1.2 Vietnam veterans have access to Government funded treatment for all malignant cancers and post-traumatic stress, anxiety and depressive disorders, whether or not they have been accepted as service related.
- 4.1.3 Vietnam veterans can be eligible for a "Gold Card" which allows free treatment for all illness and injury.
- 4.1.4 The Comcare claims process is based on a more formal adversarial approach and as a result the cost of pursuing rejected claims becomes prohibitive.
- 4.1.5 Payments for incapacity under Comcare cease at age 65. Under VEA incapacity benefits continue indefinitely.
- 4.1.6 Review processes under the VEA are carried out by officers familiar with the circumstances giving rise to injuries and illnesses in the context and trauma of war.

- 4.1.7 Additional ' Allowances' are payable to "Veteran's" including but not limited to the Education allowance for their children, pension bonus scheme for those who remain employed after being eligible for the service pension, clothing allowance, attendant allowance, vehicle assistance, recreation allowance and Pharmaceutical allowances.
- 4.1.8 A Veteran's spouse can be eligible for a 'war widows' pension.

## 5. **Recommendations**

- 5.1 That a Ministerial determination be made pursuant to section 5R of the VEA 1986 (or other appropriate mechanism) to extend eligibility for repatriation benefits under the VEA to members of the civilian surgical and medical teams (SEATO members) who served in Vietnam.
- 5.2 That transitional arrangements be put in place for SEATO members with claims currently accepted by Comcare pursuant to the *SRCA* as follows:
  - 5.2.1 SEATO members with claims for compensation accepted by Comcare and currently in receipt of incapacity payments can elect to continue to receive incapacity payments under Comcare until payments cease at age 65 or receive no less than the special rate benefits and access to the "Gold Card" under the VEA;
  - 5.2.2 SEATO members with claims for compensation accepted by Comcare who have or were entitled to claim compensation payments for incapacity that have or would have terminated at age 65 be eligible for no less than the special rate pension and have access to the "Gold Card" under the VEA.

This will enable SEATO members to receive a similar level of income support to Veterans in receipt of the TPI pension and access to a "Gold Card" for medical treatment at age 65.

## **SEATO claims summary**

19 claimants (1 now deceased and claim withdrawn)

11/11 claims for post traumatic stress disorder (PTSD) accepted

3/15 claims for physical conditions accepted; 1 in dispute and 11 rejected

Accepted physical conditions include:

- Cancer lung and bowel
- Malignant lymphomas and secondary condition of cardiomyopathy
- Severe Neuropathic pain in legs and feet

Rejected conditions include:

- Hearing loss
- Mediterranean fever
- Bronchitis
- Breast cancer
- Other cancers
- Arthritis
- Thyroiditis
- Asthma
- Diabetes
- Hyperthyroidism
- Hypertension
- Skin disorders
- Bowel condition
- Spinal condition
- Hashimotos thyroiditis
- Sarcoidosis of lungs
- Rheumatoid arthritis
- Multiple sclerosis

Currently 7 people are receiving incapacity payments. 1 will cease receiving payments on turning 65 later this year. 2 at least have already lost payments as a result of turning 65

14 people are receiving payments for medical treatment in relation to accepted conditions

Approximately 4 have received payments for permanent impairment and 2 are currently being assessed