

[REDACTED]

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Please find the attached e mail from the Repatriation Medical Authority in response to my request to clarify the inclusion for Sub Mariners who served in Vietnamese waters on the 1980's

The act needs to modify the relevant schedule mentioned in the SoP so that the SoP is all inclusive of those who served in Vietnam post 11 January 1973. It must be remembered that this period is Operational Service. The new legislation, while mentioning Special Operations at paragraph 449, does not mention "Vietnam" within that paragraph.

Schedule 1 Part 2 item 6 does not mention the Operational Service in the 1980's when the Special Ops occurred

Yours

William A. Kearney OAM JP qual.

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[REDACTED]

Dear Mr Kearney,

Thank you for your enquiry.

Vietnam Factor and the SoPs.

Based upon the relative strength of the sound medical and scientific evidence the RMA has applied the so-called "Vietnam factor" to a number of Statements of Principles (SoP) at Reasonable Hypothesis (RH) standard only.

The current RH SoP for malignant neoplasm of the prostate, has a Vietnam SoP factor as follows:

*9(2) being: (a) on land in Vietnam; or (b) **at sea in Vietnamese waters**; or (c) on board a vessel and consuming potable water supplied on that vessel, when the water supply had been produced by evaporative distillation of estuarine Vietnamese waters; for a cumulative period of at least 30 days, at least 5 years before the clinical onset of malignant neoplasm of the prostate; Note: being: (a) on land in Vietnam; or (b) at sea in Vietnamese waters, estuarine Vietnamese waters*

*and potable water are defined in the Schedule 1 - Dictionary.*

The Schedule 1 dictionary definition in the current malignant neoplasm of the prostate SOP is: *being: (a) on land in Vietnam; or (b) at sea in Vietnamese waters; means service in at least one of the areas and at the times described in Items 4 and 8 of Schedule 2 of the VEA. Note: VEA is also defined in the Schedule 1 – Dictionary*

Schedule 2 of the *Veterans Entitlements Act 1986*, as you are no doubt aware, defines operational areas and the relevant operational timeframes.

As the definition in the SoP conforms to these areas and timeframes, the RMA does not consider that there is any room for confusion. Were there to be an inconsistency between the SoP and the Schedule however then, perhaps, there might be some confusion.

#### Schedule 2 of the VEA 1986.

If, as appears from your enquiry, that what you are really seeking is that the contents of Schedule 2 to the VEA be amended with respect to timeframes of service in the during the Vietnam war, then there are other avenues by which these matters might be considered.

I note for example that submissions were made to the Mohr review of service anomalies in respect of RAN Submarine “special operations” in Vietnam falling outside the date range in Schedule 2 to the VEA. The final report by Maj. Gen Mohr - REVIEW OF SERVICE ENTITLEMENT ANOMALIES IN RESPECT OF SOUTH-EAST ASIAN SERVICE 1955-75 considered these RAN submarine “special operations” in Vietnam. I have copied the recommendation of that report below.

#### *“RAN SUBMARINE SERVICE – ‘SPECIAL OPERATIONS’*

##### *The Anomaly*

*A number of submissions were made relating to service in submarines prior to 14 Feb 75 where it is claimed that clandestine operations were undertaken similar to those that were undertaken since that date and subsequently recognised through the award of the ASM Clasp ‘Special Operations’. Further, there have been claims that some operations constituted “warlike” activities and should be recognised accordingly through the award of the AASM 45-75 and repatriation entitlements.*

##### *Recommendations*

*It is recommended that:*

- a. the Chief of Navy be invited to review RAN submarine operations prior to 1975 with a view to recognising the service of personnel involved with ‘special operations’ with the ASM 45-75, with Clasp ‘Special Operations’.*
- b. the period of service in question was not warlike and no further action need be taken with regard to these claims.”*

Alternatively you could raise your concerns, making your case with regard to legislative change to Schedule 2 of the VEA, with the Department of Veterans Affairs directly.

The SoPs as legislative instruments and legislation subordinate to the *Veterans Entitlements Act 1986*

The SoPs made by the RMA are pieces of subordinate legislation made subject to the authority given to the RMA under the VEA ( the enabling act).

As that is the case, even if the RMA were to amend the Statement of Principles for Malignant Neoplasm of the Prostate ( RH) no.3 of 2023 to “include to mention the special Ops in Vietnamese waters in the 1980's” then the SoP as amended would be read subject to Schedule 2 of the VEA and so as to not conflict with that Schedule. The amended SoP would then only be valid to the extent that it did not conflict with Schedule 2.

Requesting that the RMA change the SoP to “include to mention the special Ops in Vietnamese waters in the 1980's” would not therefore avail because of the effect of section 13 of the *Legislation Act 2003* which I have copied below.

**“Legislation Act 2003**

***13 Construction of legislative instruments and notifiable instruments***

- (1) If enabling legislation confers on a person the power to make a legislative instrument or notifiable instrument, then, unless the contrary intention appears:*
- (a) the Acts Interpretation Act 1901 applies to any instrument so made as if it were an Act and as if each provision of the instrument were a section of an Act; and*
  - (b) expressions used in any instrument so made have the same meaning as in the enabling legislation as in force from time to time; and*
  - (c) any instrument so made is to be read and construed subject to the enabling legislation as in force from time to time, and so as not to exceed the power of the person to make the instrument.*
- (2) If the making of a legislative instrument or notifiable instrument would, apart from this subsection, be construed as being in excess of the power to make the instrument, it is to be taken to be a valid instrument to the extent to which it is not in excess of that power.”*

In Summary.

The RMA does not consider that the definition of the Vietnam factor currently or as proposed in the new draft SoP creates any confusion . The RMA does not have the power to amend Schedule 2 of the VEA and its power to make the SoPs is subject to the VEA, as its enabling legislation . If the RMA were to make the changes that you suggest then they would simply be read down.

The best way to agitate for the changes that you are seeking is therefore to make a case for legislative change to the DVA.

Whilst I do apologise for the length of this email, I consider that it is important that you are apprised of the limits on the remit of the RMA and also that you should be provided with the precise legislative basis for those limits.

Hopefully this will be of assistance to you in advocating for submariners who conducted operations in Vietnamese waters.

Amanda Evans  
Registrar  
Repatriation Medical Authority



Australian Government  
Repatriation Medical Authority

Hi RMA,

You have received a message with reference number [REDACTED] from:

Name

[REDACTED]

Email

[REDACTED]

Phone

[REDACTED]

Position

many

Organisation

none

The message follows:

[REDACTED] Service in South Vietnam. The official secret of Sub Mariner's being in Vietnam waters during the 1980's is no longer relevant. So the SoP can now include to mention the special Ops in Vietnamese waters in the 1980's The way it reads now and the way it is proposed under the new draft legislation is confusing.