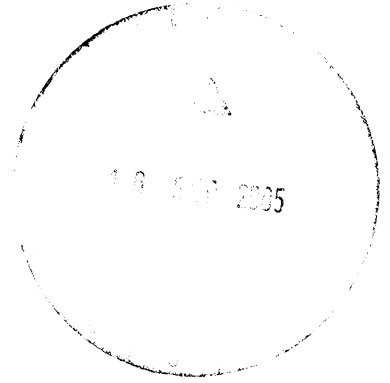




**The Hon De-Anne Kelly BE MP**

Federal Member for Dawson  
Minister for Veterans' Affairs  
Minister Assisting the Minister for Defence



The Hon Chris Pearce MP  
Parliamentary Secretary to the Treasurer  
Member for Aston  
Unit 7, 426 Burwood Highway  
**WANTIRNA SOUTH VIC 3152**

Dear Parliamentary Secretary

Thank you for your representation of 5 July 2005 on behalf of Dr John Carroll of 4 Loch Street, Ferntree Gully, concerning the recognition of Lieutenant E G Kennell RAN and Lieutenant Commander K A Ferguson RANR on the Nominal Roll of Vietnam Veterans. Dr Carroll has also raised a number of issues in relation to the Department of Veterans' Affairs' interpretation of the provisions of the *Veterans Entitlement Act 1986* (VEA).

I requested a further investigation into Dr Carroll's concerns and the Department has provided me with the following advice.

The Nominal Roll of Vietnam Veterans was compiled for the purposes of the study of the health of veterans who served in Vietnam. As such, eligibility for inclusion in the roll is based on having rendered service in the operational area of Vietnam, that is, meeting the legislative requirements for Vietnam operational service as contained in the VEA.

Under the VEA, in order to have operational service in relation to Vietnam a person must have been a member of the Defence Force and rendered continuous full-time service in that operational area. Operational areas are listed in Schedule 2 of the VEA and Items 4 and 8 describe the operational areas and dates relevant to Vietnam.

Section 6 of the VEA provides the legislative basis for operational service. Section 6C deals with post World War II service in operational areas.

Sub-section 6C(1) states:

*Subject to this section, a member of the Defence Force who has rendered continuous full-time service in an operational area as*

*(a) a member who was allotted for duty in that area; or*

*(b) a member of a unit of the Defence Force that was allotted for duty in that area;*

*is taken to have been rendering operational service in the operational area while the member was so rendering continuous full-time service.*

The words 'who has rendered continuous full-time service in an operational area' require that in order to have operational service, the person must have served in the operational area.

Where a person has rendered operational service as required by sub-section 6C(1), the period of operational service is extended by sub-section 6C(3) to provide port to port coverage. It is important to note here that service in the operational area must occur for the person to gain the benefits of the port to port provision. This interpretation of the effect of sub-section 6C(3) has been affirmed by the Full Court of the Federal Court of Australia in the case of *Spargo v Repatriation Commission* (2001) 116 FCR 304.

While LEUT Kennell and LCDR Ferguson were members of a unit of the Defence Force that was allotted for duty in that area, due to their untimely deaths before reaching the operational area of Vietnam, they do not meet the requirement of having served in the operational area and therefore do not meet the legislative requirements for operational service.

In your letter you refer to VEA sections 7A(iii) and 8. I must apologise that the reference in my previous letter to section 7A(iii) was an error. Section 7A deals with the legislative requirements for qualifying service, not operational service. The legislative requirements for operational service are contained in section 6.

Section 8 of the VEA is applied when considering whether the death of a veteran shall be taken to be war-caused. In order to be considered under section 8, the deceased person needs to have rendered operational or eligible war service. As neither LEUT Kennell nor LCDR Ferguson had operational or eligible service this provision does not apply. Eligible war service is defined in Section 7 of the VEA and, excluding operational service, relates to service during World War II. Neither LEUT Kennell nor LCDR Ferguson served during World War II, therefore they can not have eligible war service. Therefore, as they do not meet the requirements for operational service under section 6C, they cannot be considered under Section 8 of the VEA.

I hope that this detailed information assists in explaining why LEUT Kennell and LCDR Ferguson do not have operational service in Vietnam and therefore are not eligible for inclusion on the nominal roll.

Again, I am very conscious of the fact that this is not the outcome that Dr Carroll is seeking. I hope that he does not feel this is in any way a reflection on the service given to our Nation by these two members.

Yours sincerely

A handwritten signature in black ink, appearing to read 'De-Anne Kelly', written in a cursive style. A long, thin diagonal line extends from the end of the signature towards the bottom right of the page.

**De-Anne Kelly MP**

12 SEP 2005