

# Debt Management

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# Policy

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## 1. Purpose

- 1.1 This policy gives guidance on the management of overpayments of a financial entitlement that exceeds the amount a claimant is entitled to under the Veterans' Support Act 2014 (the Act).

## 2. Background

- 2.1 The overpayment of a financial entitlement is a debt to the Crown. **Veterans' Affairs** is responsible for managing the recovery of an entitlement debt.
- 2.2 This policy describes what **Veterans' Affairs** does to address this issue, and why. It functions in conjunction with the Debt Management Procedure, which sets out how **Veterans' Affairs** goes about responding, and who is responsible.
- 2.3 The management and recovery of debts arising from the overpayment of a **Veteran's** Pension is the responsibility of the Ministry of Social Development, so is not covered in this policy.
- 2.4 The policy guidance for overpayments due to suspected fraud is covered in the External Fraud and Prosecution policy.

## 3. Legislative Reference

- 3.1 The relevant legislation: Sections 206-209 and 270-273 of the Act.

## 4. Causes of recorded overpayment

- 4.1 When new entitlement end dates or payment rates are entered in the VA payment database, the database automatically detects if an overpayment has occurred. The possible causes that can lead to overpayment occurring are described below.

### Overpayment due to delay in death notification

- 4.2 All entitlements have a death-related end date. Overpayments made beyond that end date occur if **Veterans' Affairs** does not receive timely notification about the death from an entitlement recipient's next-of-kin or administrator of their estate. To minimise the chance of this type of overpayment, **Veterans' Affairs** actively monitors new death notifications within New Zealand. **Veterans' Affairs** staff may also ask next-of-kin to notify when an entitlement recipient passes away.

### System errors

- 4.3 Due to programming errors, the payment database occasionally miscalculates entitlement payments, incorrectly creating overpayments. As these errors cannot currently be resolved, these systems error overpayments need to be

identified and excluded in the initial overpayment triage (see Debt Management Procedure.)

### Administrative errors

4.4 Administrative errors may occur for a number of different reasons. Examples include when:

- incorrect entry of payment rates, entitlement start or end dates in the payment database
- misinterpretation or failure to apply policies correctly when assessing entitlements, or
- key information not being updated, or delayed updates, in the payment database (e.g. not ending all entitlement after being notified of a recipient's death).

### Entitlement recipient error

4.5 These may occur when an entitlement recipient:

- accidentally provides incorrect or incomplete information or neglects to disclose relevant information that results in them being granted an entitlement for which they are not eligible or causes the entitlement to be paid at a higher rate; or
- fails to report a change in circumstances to **Veterans' Affairs** (e.g. if a surviving spouse/**partner** does not report that they have entered into a new relationship in the nature of marriage).

### Third party error

4.6 A third party may make the same error as an entitlement recipient as described above. A third party includes any authorised person or organisation acting on behalf of the entitlement recipient or a deceased person's estate (e.g. a spouse, civil union **partner**, de facto **partner**, son, daughter, other next-of-kin, lawyer/solicitor or an organisation such as the Public Trust acting as executor of the estate).

### Fraud

4.7 Fraud may occur where:

- a person wilfully makes a false statement or intentionally says or does anything or omits to say or do anything in order to deliberately mislead **Veterans' Affairs** for the purpose of obtaining or continuing to receive an entitlement, a higher rate of entitlement, or other payment or service that they are not entitled to receive (e.g. false claims for travel concessions for travel that was not undertaken or for an entitlement based on disabilities that the person knows to not be service-related); or
- a third party intentionally decides not to report an ongoing entitlement recipient's death in order to continue to access payments (this may be difficult to prove and evidence would be needed that the third party knowingly

accessed and used payments made after the entitlement recipient's death);  
or

- a person fails to advise **Veterans' Affairs** that their earnings have increased in such a way as to reduce any of the income compensation entitlement which they receive; or
- a person fails to supply, without reasonable excuse, information or a statement relating to provision of entitlements, or necessary for detecting fraud; or
- a person demands or accepts a claimant's entitlement by means of a certificate, acknowledgement or undertaking when the entitlement is only to be paid to the **veteran** or other claimant.

*Sections 207-209 and 270-273 of the Veterans' Support Act 2014*

### **Combination of factors**

- 4.8 Two or more factors outlined in this section may simultaneously be at work in any given case.

## **5. Recovering debt**

- 5.1 **Veterans' Affairs** maintains processes for identifying and recovering debts. These are detailed in the Debt Management Procedure.

### **Initial recovery processes**

- 5.2 Where entitlements are ongoing, **Veterans' Affairs** will temporarily reduce the entitlement until the debt has been repaid. **Veterans' Affairs** will notify and or discuss a deduction payment plan with the entitlement recipient before deductions are made. However, **Veterans' Affairs** does not need a recipient's permission to deduct overpayments from existing entitlements.
- 5.3 Where entitlements have ceased, recovery is actioned through an initial debt notification and two follow up letters, if required. To ensure that repayment is sustainable, **Veterans' Affairs** may negotiate the voluntary repayment of a debt through instalments. This negotiation should commence immediately after the debt is established.
- 5.4 As deceased clients make up significant proportion of its debtors, **Veterans' Affairs** maintains a process for identifying and contacting the Executor of a deceased client's estate.

### **Extended recovery processes**

- 5.5 **Veterans' Affairs** reviews all cases where the initial recovery process has not been successful. At this review stage further debt recovery options are to be considered alongside possible debt relief and write-off.
- 5.6 Further recovery options include referral to debt collection companies or legal proceedings. To determine if legal proceedings are warranted, legal advice must be obtained from Defence Legal Services who must approve the

expenditure. Defence Legal Services weigh up the risks and benefits of the individual case to determine if legal action is warranted.

*Section 206(2) of the Veterans' Support Act 2014*

## 6. Offsetting a debt against a potential entitlement

- 6.1 When establishing a debt, consideration should be given to reducing the level of debt by any potential or notional entitlement that the person would have been entitled to receive during the period that the overpayment occurred. For example, if a debt arises as a result of a spouse/**partner** not advising of the death of a **veteran** and continued to receive their pension payments, the amount of debt created should be reduced by the amount of any entitlement payments that the spouse/**partner** would have been entitled to receive during the same period. (see Admin Error in the Debt Management Procedure).
- 6.2 Only the net overpayment remaining after the deduction of all possible entitlements should result in a debt to the Crown. Notional entitlement should be applied even in cases where fraud has occurred.
- 6.3 Notional entitlement can only be applied during the period of overpayment. If the person has ongoing entitlement in their own right, they must apply for it.

## 7. Writing off debt

- 7.1 In certain circumstances **Veterans' Affairs** can write off debts that have occurred as a result of overpayment.

### Write off delegations

- 7.2 See write-off delegations in the Debt Management Procedure.

### Debts resulting from administrative error

- 7.3 No attempt is to be made to recover a debt if:
  - it occurs solely as a result of an administrative error to which the entitlement recipient did not know about or intentionally contribute to the error, and
  - the entitlement recipient has received the overpayment for such a time that they have adjusted their daily living to the extent that it would be damaging and inequitable to demand repayment.
- 7.4 The debt is to be written off regardless of the level of overpayment that has been made (see Admin Error in the Debt Management Procedure).

*Section 206(3)(b) of the Veterans' Support Act 2014*

### Financial hardship

- 7.5 Financial hardship is a situation where a **veteran** (or their estate) is unable to meet their essential living expenses or financial obligations without causing significant distress or harm.

- 7.6 In assessing financial hardship, **Veterans' Affairs** will consider a person's current situation and their future prospects, taking account of factors like age, health and disability.
- 7.7 Where financial hardship is established, **Veterans' Affairs** may adjust the method, timing, or rate of debt recovery to ensure repayment is sustainable and does not compromise the person's ability to meet reasonable and essential living costs (see Financial Hardship in the Debt Management Procedure).

### Uncollectable debt

- 7.8 Some debts need to be written off because:
- the individual cannot be identified, or
  - the individual is bankrupt (bankruptcy is determined by the High Court and recorded on the Insolvency Register), or
  - the cost of recovering the money through legal action is likely to be greater than the value of the debt, or
  - the debt is outside the Limitation Act 2010 period of 6 years to legally recover (6 years from the date the debt first occurred whether or not **Veterans' Affairs** should or could have had knowledge of the debt), or
  - the individual lives overseas and recovery would be difficult or not be cost effective, or
  - for a debt to be recovered from an estate, **Veterans' Affairs** must lodge a claim in writing with the executor within six months of the notice of probate setting out the debt and requesting payment of the debt. If this is not done, the debt will need to be written off as uncollectable.

## 8. Prosecution

- 8.1 Prosecution will only occur where it is found that a person has fraudulently obtained entitlement payments to which they are not legally entitled or has assisted another person to fraudulently obtain entitlement payments which they are not legally entitled to receive. **Veterans' Affairs** will make a complaint and provide information to the NZ Police as the information denotes fraud and may include other criminal activity (see External Fraud and Prosecution policy).

## 9. Living overseas

- 9.1 This Policy applies equally to **veterans** and **other claimants** living overseas.
- 9.2 Where international recovery is needed, **Veterans' Affairs** will assess feasibility based on legal jurisdiction and costs-effectiveness.

## 10. Reviews, appeals and complaints

- 10.1 There is no right of review or appeal under the Act associated with a decision to establish and recover a debt resulting from the overpayment of an entitlement provided under the Act.
- 10.2 If a debtor disagrees with **Veterans' Affairs'** decision and administration of debt recovery, they may make a complaint as set out in the separate policy on Complaints.

## Glossary

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### other claimants

Means:

- (a) persons who have served as members of the armed forces before 1 April 1974 and whose injury or illness was caused by, contributed to by, or aggravated by routine service in New Zealand or overseas; and
- (b) spouses or **partners** of veterans; and
- (c) children of veterans; and
- (d) dependants of veterans; and
- (e) persons (other than the spouse or partner, or a child or dependent, of the veteran) who provide non-professional support to veterans for the purposes of section 107 of the VS Act

### partner

Means a civil union partner or a de facto partner.

### Veterans' Affairs

Means Veterans' Affairs New Zealand (VANZ) established under section 198 of the Veterans' Support Act 2014.

### veteran

Means:

- (a) a member of the armed forces who took part in qualifying operational service at the direction of the New Zealand Government; or
- (aa) a member of the armed forces who took part in qualifying routine service before 1 April 1974; or
- (b) a person:
  - (i) who has been:
    - (A) appointed as an employee of the Defence Force under section 61A of the Defence Act 1990; or
    - (B) seconded to the Defence Force with the permission of the Chief of Defence Force; and
  - (ii) who took part in qualifying operational service at the direction of the New Zealand Government; or
- (c) a person who, immediately before the commencement of Part 3 of this Act, is eligible for a pension under the following provisions of the War Pensions Act 1954:
  - (i) section 19 (but only if the person was a member of the forces);
  - (ii) section 55 or 56;
  - (iii) Parts 4 and 5