

External Fraud and Prosecution

**Version 2.0
October 2020**

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Policy

1. Purpose

- 1.1 This Policy provides guidelines to be followed where a person (or persons) is suspected or alleged to be carrying out fraud against Veterans' Affairs.
- 1.2 This Policy is meant to assist Veterans' Affairs to determine when to escalate suspicions or allegations of external fraudulent behaviour to the relevant authorities to commence criminal proceedings.
- 1.3 The Policy should be read together with the separate policy on *Debt Management* and the associated *Debt Management Tool*.
- 1.4 This Policy does not cover situations involving a Veterans' Affairs' staff member who is suspected of carrying out fraud against Veterans' Affairs. That situation is covered by the New Zealand Defence Force Civil Staff Code of Conduct and Defence Force Order 81 – Risk Management.

2. Legislative reference

- 2.1 The Veterans' Support Act (the Act) does not provide Veterans' Affairs with investigative powers, or powers to commence and conduct its own prosecutions.
- 2.2 Section 272 of the Act grants Veterans' Affairs fraud detection powers inasmuch as it may require information from:
 - an employer or former employer of a claimant
 - a person who has provided any rehabilitation to a claimant
 - a person who has sought or received any payment in respect of a claimant.
- 2.3 Subpart 3 of the Act, sections 270-275 also create offences in misleading Veterans' Affairs.
- 2.4 Other legislation may also be relevant, including the Serious Fraud Act 1990 if there is sufficient public interest in the suspected fraud and/or a position of public trust is involved in the suspected widespread-fraud (such as medical practitioners or lawyers). In these cases, Veterans' Affairs would escalate their concerns to the Serious Fraud Office. The Crimes Act 1961, sections 228 and 240 are relevant with regard to dishonestly taking or using a document, and using deception to obtain benefits or payments.

3. What is fraud?

- 3.1 The Act does not include a precise definition of fraud. The term 'fraud' is generally used to describe the intentional deception of some person or body for

personal gain. It covers a wide range of activities such as theft, providing false information, bribery and other deceitful behaviour.

3.2 The Act lists specific offences that broadly come under the umbrella of fraud. These are where a person:

- makes any statement knowing it to be false in any material particular
- wilfully does or says anything, or omits to do or say anything, for the purpose of misleading or attempting to mislead Veterans' Affairs or any other person concerned in the administration of this Act
- accepts a payment of a pension or entitlement to which they are not entitled.

Sections 270-273 of the Veterans' Support Act 2014

3.3 The Crimes Act 1961 contains several offences related to fraud, such as theft, making a false statement or declaration, dishonestly using a document, and obtaining a benefit by deceit (see sections 228 and 240).

4. Fraud prevention

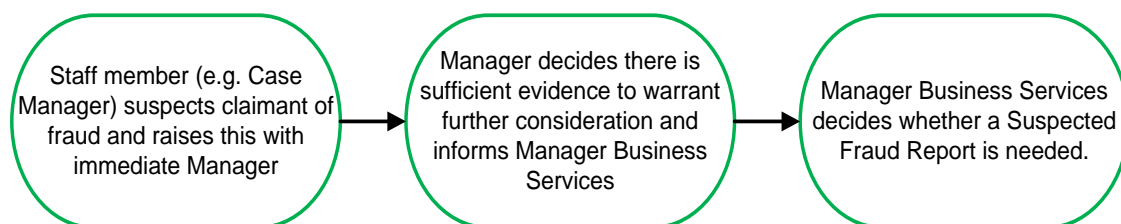
4.1 Veterans' Affairs can assist with limiting the potential for fraudulent behaviour by ensuring the **veteran** or **other claimant** has the correct entitlement in the first place. Other steps may include, but not be limited to:

- being aware of the veteran's or other claimant's circumstances through regular contact and through the receipt of death registration information
- ensuring with each interaction with a veteran or other claimant that correct entitlement checks are carried out and that correct contact details are held
- where one hears or sees something that does not add up, checking it out, asking more questions, or referring to someone who can look into the matter
- red-flagging any veteran or other claimant who has previously been convicted of fraud or had an overpayment created following an investigation
- encouraging veterans to have wills and provide Veterans' Affairs with details of the executor of their estate would facilitate swift action by Veterans' Affairs before estates are dispersed.

5. Internal reporting of suspected fraud

5.1 When a Veterans' Affairs staff member suspects a person of engaging in fraudulent behaviour or an allegation of fraud is received from a third party, they must report it in the first instance to their immediate Manager. If it seems that there is sufficient information to warrant further consideration, that Manager will raise the suspected fraud with the Manager Business Services to

determine whether to complete a Suspected Fraud Report. The Head of Veterans' Affairs should be advised of any suspected fraud and actions underway.



Confidentiality

- 5.2 A suspicion or allegation of fraud does not mean that fraud has actually or possibly been committed. Any suspicions or allegations are to be handled carefully and treated with the utmost confidentiality.
- 5.3 If information regarding a suspicion or allegation of fraud is made public and is subsequently established to be unfounded, the impact on the wrongly accused may be detrimental, may expose Veterans' Affairs to legal proceedings, reputational risk, and or requests for compensation on the grounds of defamation or breach of or interference with privacy.
- 5.4 Care should be taken in dealing with third parties who make allegations, particularly as to any promise or undertakings given on behalf of Veterans' Affairs. The information received from third parties needs also to be managed carefully as a third party may be acting in the absence of proof or with malicious intent. Veterans' Affairs should always assess the credibility of unsolicited third party information and whether such information – which could be requested under the Official Information Act – should be retained.

6. Suspected Fraud Report

- 6.1 The Manager Business Services may establish as appropriate a fraud detection team or officer. The fraud detection process will involve:
 - collecting and assessing any readily available information and documents regarding a suspicion or allegation of fraud and
 - completing a Suspected Fraud Report.
- 6.2 The purpose of completing the Suspected Fraud Report is to determine whether there is foundation to the suspicion or allegation that justifies further action.

Information gathering

- 6.3 The Manager, Business Services or the designated fraud detection team must collect any readily available information and documents regarding a suspicion or allegation of fraud. This can include, but is not limited to:

- all relevant documents held in the claimant's hard copy or electronic file
- if the fraud suspect is a claimant, any information provided by Veterans' Affairs regarding their eligibility to entitlements, services and support
- if the fraud suspect is a third party, any relevant information pertaining to the suspected fraud that Veterans' Affairs has or can attain.

6.4 The Manager Business Services or the designated fraud detection team is responsible for maintaining the integrity of the chain of evidence.

6.5 All relevant documents and evidence needed as part of the Suspected Fraud Report should be kept in a secure location.

Event Log

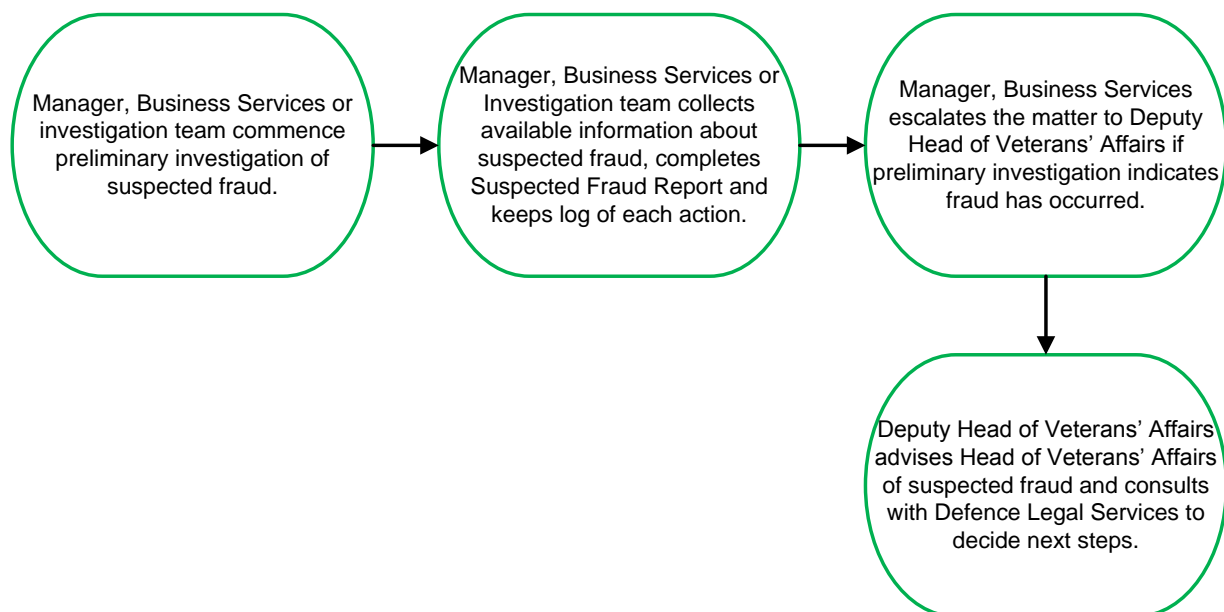
6.6 The Manager Business Services or the fraud detection team must keep a log of each action or event that occurs throughout the compilation of the Suspected Fraud Report.

6.7 This includes the source and date on which each piece of evidence is received.

6.8 If the preliminary fraud detection finds sufficient evidence such that both the person who conducted the fraud detection and the Manager Business Services agree it is likely fraud has occurred or is occurring, the matter should be escalated to the Deputy Head of Veterans' Affairs and copied to the Head of Veterans' Affairs. A log of all fraud reports should be maintained for audit purposes.

7. Prosecution

7.1 On receipt of the Manager Business Services' report indicating it is likely fraud has occurred or is occurring, the Deputy Head of Veterans' Affairs will advise the Head of Veterans' Affairs and then consult Defence Legal Services to decide whether to refer the matter to Police or, if the suspected fraud is widespread in a profession of public trust (such as medical practitioners), the Serious Fraud Office (see paragraph 2.4).



8. Debt recovery

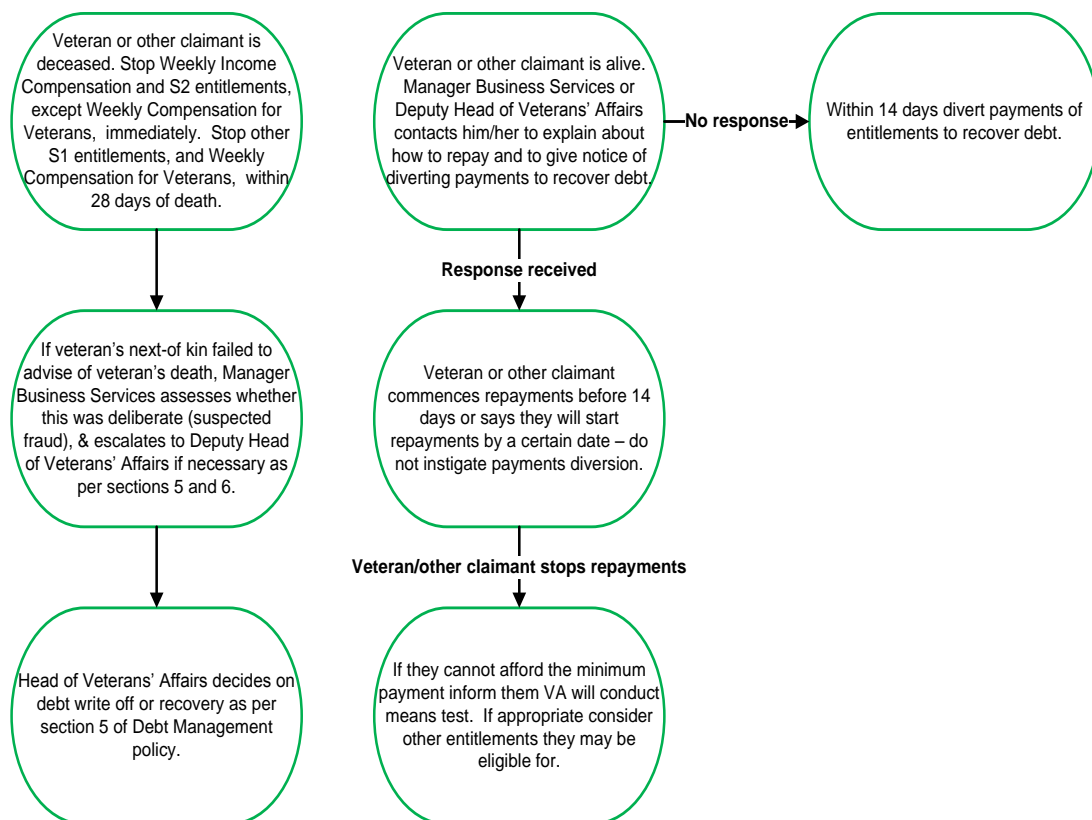
- 8.1 Debt recovery can continue when fraud is suspected or when a prosecution is underway. Depending on the size of the debt and Veterans' Affairs ability to recover the debt the Manager Business Services will make recommendations as to whether the debt should be written off as per the separate policy on *Debt Management*.

9. Repayments and cessation of payments

- 9.1 Where an entitlement ends 28 days from the recipient's death (Scheme One entitlements except Weekly Income Compensation, and Weekly Compensation for Veterans under Scheme Two), Veterans' Affairs will only seek to recover any overpayments made after the 28 days. For entitlements that cease on the date of the recipient's death (Weekly Income Compensation and Scheme Two entitlements except Weekly Compensation for Veterans) payments should be stopped as soon as possible after the recipient's death (i.e. as soon as Veterans' Affairs becomes aware of the death). However, in such cases Veterans' Affairs will not seek to recover any overpayments made in the first 28 days.
- 9.2 If the veteran's next-of-kin have failed to inform Veterans' Affairs of the veteran's death, the Manager of Business Services will need to assess whether the non-disclosure of death was deliberate (suspected fraud) and escalate to the Deputy Head of Veterans' Affairs as per sections 5 and 6. Depending on the size of the debt and Veterans' Affairs ability to recover the debt the Manager of Business Services will recommend to the Deputy Head of Veterans' Affairs whether the debt should be written off as per section 5 of the separate policy on *Debt Management* or debt recovery pursued. The ability to recover debt incurred by third party fraud may depend on a prosecution.
- 9.3 If the veteran or other claimant is still alive, the Manager Business Services or the Deputy Head of Veterans' Affairs must consult with Defence Legal Services to discuss the following possible actions:

- contact the veteran or other claimant with a first letter providing
 - ways of repayment, minimum rate
 - request to contact us
 - reference to the Veterans' Affairs website about How to Repay
 - notice that payments will be diverted to paying off the debt if there is no response within 14 days
- instigate diversion of entitlement payments to recover debt if veteran does not respond
- put a hold on payments diversion if the veteran or other claimant commences repayments before 14 days or indicates they will start repayments by a certain date
- inform the veteran or other claimant who stops repaying because they cannot afford the minimum that Veterans' Affairs will conduct a means test and may be prepared to discuss other entitlements they may be eligible for.

See table below.



10. Living overseas

- 10.1 New Zealand legislation only has effect within New Zealand jurisdictions. As such, there are difficulties in pursuing cross-border fraud – even with the complete cooperation of international law enforcement agencies.
- 10.2 It is important that any fraud detection is continued if the veteran, claimant or other person resides overseas, as there is risk that the veteran, claimant or other person is receiving monies or other entitlements, services and supports they are not entitled to. In these situations, Veterans' Affairs will conduct a preliminary fraud analysis and complete a Suspected Fraud Report, as done for fraud suspected to be occurring in New Zealand. Upon completion, the staff member should supply this to the Manager Business Services who will review and make a decision on the next steps.
- 10.3 The Manager Business Services, in consultation with the Deputy Head of Veterans' Affairs, may decide to:
- require the veteran to undergo re-assessment
 - cancel the payment
 - engage a debt collector agency in the country in which the debtor is residing
 - provide information from the Veterans' Affairs Fraud Report to the police in the relevant country for appropriate action.

11. Reviews, Appeals and Complaints

- 11.1 There is no right of review or appeal in the case of fraud detection and referral for prosecution. However, a person may make a complaint under the complaints process outlined in the separate policy on *Complaints* and if it is found that Veterans' Affairs has made an administrative error or has treated the person concerned unfairly, Veterans' Affairs will make a formal apology and draw up lessons learned for Veterans' Affairs staff to follow.

Glossary

child [section 7]

In relation to a veteran,–

- (a) means a natural child of the veteran; and
- (b) includes–
 - (i) an adopted child of the veteran; and
 - (ii) a child of whom the veteran is or has been a guardian; and
 - (iii) a grandchild or a whāngai of the veteran in relation to whom the veteran acts or has acted as a parent or guardian; and
- (c) includes any other child who would ordinarily be regarded as a child of the veteran because the veteran–
 - (i) is or has been the spouse or partner of one of the child's parents; and
 - (ii) acts or has acted as a parent of the child.

dependant [section 7]

In relation to a veteran, means any of the following persons:

- (a) a person (not being the spouse, partner, or child of the veteran) who –
 - (i) is under 18 years of age; and
 - (ii) is wholly or primarily dependent on the veteran for financial support; and
 - (iii) ordinarily resides with the veteran;
- (b) a person (not being the spouse, partner or child of the veteran) who –
 - (i) is 18 years of age or more; and
 - (ii) is under the care of the veteran; and
 - (iii) ordinarily resides with the veteran because the person is unable to live independently of the veteran due to disability, illness or advanced age;
- (c) a person who –
 - (i) is the child of the veteran; and
 - (ii) is 18 years of age or more; and
 - (iii) is under the care of the veteran; and
 - (iv) is unable to live independently of the veteran due to physical or mental infirmity.

guardian [section 7]

Has the same meaning as in section 15 of the Care of Children Act 2004.

member of the armed forces [section 7]

Means a person who is or has been a member of the New Zealand armed force raised by the Governor-General on behalf of the Sovereign,–

- (a) whether in New Zealand or elsewhere; and
- (b) whether before or after the passing of this Act.

other claimants [section 7]

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 dependant, of the veteran) who provide non-professional support to veterans for the purposes of section 107.

partner [section 7]

Means a civil union partner or a de facto partner.

qualifying operational service [section 8]

Means–

- (a) service in any deployment treated as a war or emergency for the purposes of the War Pensions Act 1954; or
- (b) service on any deployment declared to be operational service under section 9.

qualifying routine service [section 8]

Means service in the armed forces before 1 April 1974 that is not qualifying operational service.

veteran [section 7]

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.

whāngai [section 7]

Means a child adopted by the veteran in accordance with Māori custom.