

Persons with Legal Authority to act for a Veteran or Other Claimant

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Policy

1. Purpose

- 1.1 This Policy provides guidance to Veterans' Affairs staff on persons with legal authority to act on a **veteran's** or **other claimant's** behalf when they are unable to do so themselves and have thus delegated authority to make decisions on their behalf or a Court has done so. Staff's role is to give practical advice and support to veterans and other claimants (including advice on the Veterans' Support Act) but their role is not to give legal advice to them. In this area veterans, other claimants or their families may need to obtain legal advice on a range of matters including how to create or terminate a Power of Attorney (POA) or Enduring Power of Attorney (EPOA) in New Zealand and overseas, (if they are resident overseas); and what to do if there is a dispute about the operation of a POA or EPOA.
- 1.2 This paper should be read together with the separate paper on:
 - *Veterans' Representatives.*

2. Legislative Reference

- 2.1 Sections 207-210 of the Veterans' Support Act 2014 (the Act).
- 2.2 The Protection of Personal and Property Rights Act 1988.
- 2.3 The Reciprocal Enforcement of Judgments Act 1934.

3. Power to act for a Veteran or Other Claimant

- 3.1 The Act requires that Veterans' Affairs must provide entitlements under the Act only to the veteran or other claimant to whom Veteran's Affairs is liable to provide the entitlements (section 208(1)). An exception to this is where the law allows a person to act on the veteran's or other claimant's behalf. This is provided for under section 208(2)(a) of the Act.
- 3.2 A veteran or other claimant may require a third party to act on their behalf as their representative under law if they are:
 - severely incapacitated
 - a minor
 - are capable but have chosen to give a third party POA (e.g. the veteran has a temporary incapacity or is travelling, or is to undergo surgery)
 - deceased.

- 3.3 A person with legal authority to act on behalf of the veteran or other claimant is not to be confused with a third party representative to whom the veteran or other claimant has given authority to support them in their discussions with Veterans' Affairs, but to whom the veteran or other claimant remains capable of giving instruction (**see separate paper on Veterans' Representatives**).
- 3.4 Veterans' Affairs will only accept a person or entity has the legal authority to act on behalf of the veteran or other claimant if that person or entity provides demonstrable proof to the satisfaction of Veterans' Affairs that they have the legal authority to act for the veteran or other claimant under New Zealand law in respect of the matter in question. In New Zealand the law governing this is the Protection of Personal Property Rights Act 1988.
- 3.5 A veteran may have several persons with legal authority to act on their behalf. There can be several persons with a Court Order, depending on which aspect of care the person is covering (e.g. welfare guardianship, or property manager). Veterans' Affairs must deal with each person with a Court Order on the matter to which the order relates. A court will usually only grant the order in the absence of a valid EPOA or if there is a dispute in respect of the EPOA such as whether the Attorney(s) is/are exercising their duties appropriately.
- 3.6 There can be several EPOAs or Attorneys in respect of property. The EPOAs will specify who the Attorney(s) are required to (or may) consult with when they are acting. There can be only one EPOA in respect of care.
- 3.7 If there is any disagreement between Attorneys or an Attorney (s) and their families, it is preferable for the family to resolve that themselves or via a court direction or court order. The family could:
- try to resolve that with the veteran or other claimant if their incapacity is temporary; or
 - get legal advice on what their options are to resolve the dispute in New Zealand or in the overseas country the veteran or other claimant is resident in.
 - in general if there are concerns or complaints about the person with existing legal authority to act, there may need to be proceedings under the Protection of Personal Property Rights Act in New Zealand or proceedings in the overseas country to obtain a court direction or order. If the person with existing legal authority to act is a lawyer, complaints about their behaviour may be made to the New Zealand Law Society or equivalent overseas body.
 - In general if there are concerns about misappropriation or theft by the person with legal authority to act of the entitlement payments, this may be a crime that can be referred to New Zealand Police or overseas Police.

4. The role of the person with legal authority to act

4.1 The person with legal authority to act on the veteran's or other claimant's behalf may discuss with Veterans' Affairs:

- any aspect of a claim (e.g. timing of reassessment of a medical condition) or aspects of multiple claims
- the duration of a single claim (e.g. how long vocational rehabilitation will be provided)
- the duration of all existing claims.

4.2 The person with legal authority to act on behalf of the veteran or other claimant may receive payments from Veterans' Affairs, for example,

- of the Children's Pension, Children's Bursary, Dependant's Pension, Child Care Payments for Children of a Deceased Veteran, Survivor's Grant for a claimant who is not yet 16 years old
- to a veteran's **child** over 18 years of age with an intellectual disability or cognitive impairment
- of ongoing entitlements such as a Disablement Pension or Independence Allowance, Lump Sum Payment for Permanent Impairment, Weekly Compensation (e.g. to a person with Power of Attorney for a veteran's finances).

Sections 208 to 209 of the Veterans' Support Act 2014

4.3 The person with legal authority to act for the veteran's or other claimant's estate may make claims for any entitlement (other than a lump sum payment) that Veterans' Affairs:

- is liable to make to the veteran or other claimant that has accrued and is unpaid at the time of the veteran's death, or
- would have been liable to pay if the veteran or other claimant had made a claim for it.

The estate must apply for such payments within 3 years of the date of the claimant's death.

Section 210 of the Veterans' Support Act 2014

5. Process for appointing a person to act

5.1 Where a veteran or other claimant needs a person with legal authority to act on their behalf to undertake their dealings with Veterans' Affairs they will need to get advice and create a POA or EPOA(s) under the Protection of Personal Property Rights Act (and if resident overseas, an EPOA that complies with the law in the overseas country). Veterans' Affairs will need copies.

- 5.2 If a person(s) has been appointed by Court Order to act on the veteran or other claimant's behalf, Veterans' Affairs will need:
- a copy of the Court Order(s), e.g. welfare guardianship, property manager order, made under the Protection of Personal Property Rights Act; and
 - another form of legal documentation such as a statutory declaration attesting to the person's status as the legal representative, a letter from a solicitor (in the case of an entity) or notary public, an active POA, or an active EPOA, if the veteran or other claimant is resident overseas.
- 5.3 Where the person with legal authority to act requests a bank account change in order to receive the payments on behalf of the veteran or other claimant, Veterans' Affairs will check whether there is a completed Authority to Act form on the veteran's or other claimant's file, including the relevant legal documentation (such as a Property Manager Order or Enduring Power of Attorney). An original bank deposit slip with the name of the person with legal authority to act or a document showing the bank account details that has been signed by the bank such as an EFTPOS machine slip, or internet or photocopy of the original deposit slip/statement, will be required. All bank account changes will be authorised by a Veterans' Affairs staff member who is other than the staff member who entered the change.
- 5.4 When the person with legal authority to act ceases to be able to perform their duties in representing the veteran or other claimant, and if the new person is not already a listed representative of the veteran or other claimant, Veterans' Affairs must request further documentation in order to confirm and accept this change of representation. If the person is stepping down, of their own will, from representing the claimant, a document must be provided confirming this. Alternatively, if the person is prevented from undertaking their role as a representative for the veteran or other claimant, due to mental or physical infirmity or death, Veterans' Affairs will request evidence of this before beginning communication with the new person. A medical certificate from an accepted medical practitioner or a death certificate will suffice.
- 5.5 If the veteran or other claimant is deceased, see the separate policy on *Persons with Legal Authority to act as Executor of a Claimant's Estate*.

6. Process for appointing a person to act if the veteran or other claimant is living overseas

- 6.1 The policy for *Persons with Legal Authority to act for a Veteran or Other Claimant* applies equally to all New Zealand veterans, irrespective of their country of residence. Veterans or other claimants living overseas also must follow the procedure steps in 5 above.
- 6.2 A New Zealand EPOA applies only in New Zealand. If the veteran or other claimant lives overseas then s/he will need to create an EPOA in **both** New Zealand and in their country of residence. This is necessary because the law is territorial and only operates in the national jurisdiction/country unless it

applies extraterritorially which is rare. In order to resolve any unclarity as to whether the overseas EPOA will apply in New Zealand, Veterans' Affairs should always forward the standard POA form and explanatory document for completion. Relevant in this regard is the fact that the Veterans' Support Act only applies in New Zealand. The Protection of Personal Property Rights Act (with some exceptions about property) also only applies in New Zealand (see s. 91).

- 6.3 In relation to declaration requirements Veterans' Affairs requires, a declaration made in a **Commonwealth country** other than New Zealand must be made before a Judge, a Commissioner of Oaths, a notary public, a Justice of the Peace, or any person authorised by the law of that country to administer an oath there for the purpose of a judicial proceeding, or before a Commonwealth representative, or before a solicitor of the High Court of New Zealand.
- 6.4 A declaration made in a **country other than a Commonwealth country** must be made before a Commonwealth representative (New Zealand Embassy or New Zealand High Commission representative), or before a Judge, or before a notary public, who must sign or seal the declaration.
- 6.5 If there is a dispute between persons with POAs in New Zealand and the persons with them in the overseas country, there may need to be proceedings in New Zealand or in the overseas country to obtain a court direction or order. Veteran's or claimant's family should get legal advice about this. In some cases New Zealand court orders are enforceable in overseas jurisdictions as if they were made in New Zealand. This depends on whether New Zealand has a reciprocal enforcement of judgments arrangement with the relevant country (see the Reciprocal Enforcement of Judgments Act 1934 and the orders made under the Act; or orders under the Protection of Personal Property Rights Act. Contact the Ministry of Justice for more information).
- 6.6 If there are concerns or complaints by family in New Zealand of the veteran or other claimant about how the person with the EPOA in the overseas country is acting, (e.g. misappropriation or theft or fraud) these could be directed to the police in the overseas country. If the person with the EPOA in the overseas county is a lawyer, a complaint could be made to any lawyers' disciplinary body in the overseas country.

7. Definitions

7.1 **A Court Order** made under the Protection of Personal and Property Rights Act 1988 gives a person the authority under New Zealand law to act on an individual's behalf. This should include a medical certificate showing mental incapacity. Among the most common Orders the Family Court under the Protection of Personal Property Rights Act may make are:

- **Personal Orders** covering personal decisions involving, for example, medical treatment, putting a person in a rest home or not allowing someone to leave New Zealand;

- **Welfare Guardian Orders** which let another person make decisions about personal care and welfare; and
- **Property Manager Orders** which let another person manage the property of someone who can't do it themselves.

7.2 **A power of attorney** is a formal instrument in which one person, the donor or the principal, empowers another, the attorney or donee, to act as a representative for the purpose or purposes stated in the instrument.

7.3 **Enduring power of attorney.** The capacity to create an enduring power of attorney was established by the Protection of Personal and Property Rights Act 1988. The purpose of the legislation is to enable the donor of a power of attorney to appoint in the future a chosen attorney or donee to manage his or her affairs in the event that the donor should become mentally incapable after conferring the authority. An enduring power of attorney may be created in relation to the donor's property, or personal care and welfare, or both kinds of powers may be given.

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.

impairment [section 7]

Means a loss or abnormality of psychological, physiological, or anatomical function or structure.

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.

qualifying service [section 8]

Means–

- (a) qualifying operational service; or
- (b) qualifying routine service.

service-related [section 7]

In relation to an injury, an illness, a condition, or a whole-person impairment, means an injury, an illness, or a whole-person impairment caused by, contributed to by, or aggravated by qualifying service.

service-related death [section 7]

- (a) in relation to Part 3 (Scheme One), means death attributable to qualifying service:
- (b) in relation to Part 4 (Scheme Two), means–
 - (i) the death of a person who, at the time of the person's death, was taking part in qualifying operational service:
 - (ii) the death of a person within 10 years after the person took part in qualifying operational service from a service-related illness or injury:
 - (iii) the death of a person more than 10 years after the person took part in qualifying operational service from an accepted late-onset condition.

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.