Te Tira Ahu Ika A Whiro
VETERANS' AFFAIRS
New Zealand

Policy

Privacy – managing personal information

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Policy

1. Purpose

1.1 This Policy provides guidance on the information privacy principles governing collection, storage, correction, use, access to and disclosure of personal information. See separate Policy on:

- *Privacy Act requests* for guidance on handling Privacy Act requests, including grounds for refusing access, releasing personal information and complaints about Veterans' Affairs' response.

1.2 Any advice required relating to privacy policy and legislation should be sought from the Policy Team. Privacy incidents or breaches are to be reported to the Veterans' Affairs Advisor, Privacy and Risk Management.

1.3 The Privacy Act 2020 applies to all personal information held by Veterans' Affairs regardless of where the individual the personal information relates to resides. There is no citizenship or permanent residency requirement in order for the individual concerned to make requests under the Privacy Act.

Section 4 of the Privacy Act 2020.

2. Legislative Reference

2.1 Relevant legislative references are:

- Sections 4, 7, 22 (including Information Privacy Principles 1 - 13), 39 - 40, and 57-64 of the Privacy Act 2020.
- Sections 11, 12, 27, and 270 - 272 of the Veterans' Support Act 2014.
- Rules 5 and 9 of the Health Information Privacy Code 2020.
- Regulations 5 and 9 of the Health (Retention of Health Information) Regulations 1996.

3. What is personal information?

3.1 "Personal information" means information about an identifiable individual; and includes information relating to a death that is maintained by the Registrar-General pursuant to the Births, Deaths, Marriages and Relationships Registration Act 1995, or any former Act (as defined by the Births, Deaths, Marriages, and Relationships Registration Act 1995).

Section 7 of the Privacy Act 2020.

4. What is health information?

4.1 Information held by Veterans' Affairs is also subject to the Health Information Privacy Code 2020 and its associated Information Privacy Rules which are in many respects similar to the Privacy Act's Information Privacy Principles. Staff

should familiarise themselves with this Code which can be found on the Privacy Commissioner's website.

4.2 "Health information" means information about:

- the health of an identifiable individual, including their medical history;
- disabilities that the individual has;
- health services or disability services provided to that individual;
- donation of any of that individual's bodily parts or substances; or
- information collected before the provision of any health or disability service to that individual.

4.3 NOTE the definition of health information is so broad that it will cover virtually all health information about an individual.

5. Information Privacy Principles

5.1 The Privacy Act 2020 has 14 information privacy principles (Principles):

- Collection of personal information is covered by Principles 1, 2, 3, 3A, and 4.
- Storage and security is dealt with by Principle 5.
- Requests for access and correction of personal information are covered by Principles 6 and 7.
- Accuracy of personal information is covered by Principle 8.
- Retention of personal information is dealt with by Principle 9.
- Use and disclosure of personal information is covered by Principles 10 and 11.
- Disclosure of personal information outside New Zealand is covered by Principle 12.
- The use of unique identifiers is covered by Principle 13.

Section 22 of the Privacy Act 2020.

6. Collection of personal information (Principles 1, 2, 3, 3A, and 4)

6.1 The Veterans' Support Act 2014 (the Act) lawfully allows us to collect information to:

- enable a comprehensive claims database to be maintained;
- monitor and evaluate the nature, incidence, severity and consequences of service-related illness and injuries;
- provide appropriate entitlements and services under the Act; and
- facilitate the monitoring of the Act, and develop policy.

Section 213 of the Veterans' Support Act 2014.

6.2 There are also legal duties under the Veterans' Support Act that require claimants to provide relevant information to Veterans' Affairs and duties of Veterans' Affairs to deal with claims in a timely manner (for which for example timely information collection is required).

Sections 11, 12, 27(2)(a), and 270 - 272 of the Veterans' Support Act 2014.

6.3 Veterans' Affairs must collect information only for the purposes connected to the organisation's activities and functions (Principle 1) and only by lawful means (Principle 4). (Unlawful means are means used in circumstances that are considered unfair or intrude to an unreasonable extent on the personal affairs of the individual concerned).

6.4 Principle 2 provides that where an agency collects personal information it must collect the information directly from the individual concerned unless these exceptions apply:

- the information is publicly available;
- the individual concerned authorises collection from someone else;
- it is necessary to avoid prejudice to the maintenance of the law;
- it is necessary for enforcement of a law imposing a pecuniary penalty or for the protection of the public revenue;
- it is necessary for the conduct of proceedings before any court or tribunal;
- compliance (i.e. not collecting it from a source other than the individual concerned) would prejudice the purposes of collection;
- compliance is not reasonably practicable in the circumstances; or
- the information is not in a form in which the individual connected is identified or will be used for statistical or public research and will not be published in a form that could reasonably be expected to identify the individual concerned.

6.5 Veterans' Affairs collects personal and health information from a variety of different sources for the purposes of assessing **veterans**' and **other claimants'** claims. This includes information provided by the claimant as well as other people and organisations.

6.6 Principle 3 governs the collection of personal information directly from the individual concerned, while Principle 3A governs the collection of personal information from third parties.

6.7 Personal and health information may be collected via various channels (such as mail, telephone, face to face and email). Veterans' Affairs stores all the information electronically, scanning physical documents received.

Collection of personal information directly from the individual concerned

6.8 When collecting personal information directly from the individual concerned (e.g. collecting personal information about a claimant from the claimant), Veterans' Affairs must ensure (Principle 3) that the individual the personal information relates to (e.g. clients as well as other individuals such as the spouses or **child**ren) is aware of:

- the collection of their personal information;
- the purpose for collecting the information;
- who we may share the information with (the intended recipients of the information);
- whether the collection of information is authorised or required by law and whether the supply of the information by the client is voluntary or mandatory;
- the consequences for the individual if all or part of the requested information is not provided; and
- their rights to access and correct that information.

6.9 Veterans' Affairs should let clients know if the information collected is to be collected for purposes other than for dealing with their claim (or rehabilitation plan and services provided). This could be, for instance, for data analysis either for Veterans' Affairs or for another agency, or because it is required under the law. Veterans' Affairs must inform the client of their rights to access and correct their personal information.

6.10 Principle 3(4) waives the requirement to inform individuals of the matters outlined under paragraph 6.6, if:

- collecting the information would not prejudice the interests of the individuals;
- the information is required for the maintenance of the law, including the prevention, detection, investigation, prosecution and punishment of offences, or for any court or tribunal proceedings, or for the enforcement of a law that imposes a pecuniary penalty, or for the protection of public revenue;
- informing the client would prejudice the purposes of the collection;
- in the circumstances of the particular case informing the client is not reasonably practicable; or
- the information will not be used or published in a form in which the individual is identified; or will be used for statistical or research purposes in a form in which the individual would not be identified.

Collection of personal information from third parties

6.11 Slightly different rules apply where Veterans' Affairs collects information other than from the individual concerned (Principle 3A). This includes situations where Veterans' Affairs collects personal information about a claimant or family member from the claimant, treatment providers, government agencies (e.g. the Accident Compensation Corporation (ACC) or Inland Revenue Department (IRD), or from the claimant's family members.

6.12 When undertaking this indirect collection of personal information, Veterans' Affairs must ensure (Principle 3A) that the individuals it is indirectly collecting information about are aware of:

- the collection of their personal information;
- the purpose for collecting the information;

- who we may share the information with (the intended recipients of the information);
- the name and address of the agency that has collected the information and the other agency that is holding the information;
- whether the collection of information is authorised or required by law and whether the supply of the information by the client is voluntary or mandatory; and
- their rights to access and correct that information.

6.13 Principle 3A(4) has the same exceptions as Principle 3 where an individual does not have to be informed of the above (see paragraph 6.8) and the following:

- the individual has already been informed of the relevant matters (e.g. the agency that directly collected the information from the client informed them it may be shared with Veterans' Affairs);
- the personal information is publicly available;
- informing the individual would cause a serious threat to public health or safety or the health or safety of another individual (e.g. immediate steps are needed to contain the spread of a contagious disease);
- the information will not be used in a way that identifies the individual; or
- the information will be used for research or statistics, and its publication will not identify the individual.

6.14 Other exceptions that are less likely to arise in the Veterans' Affairs context are the collection of personal information for archiving purposes, where informing the client would prejudice national security or certain international relationships, or disclose a trade secret or prejudice someone's commercial position. If you consider that one of these exceptions may apply, seek advice from the Policy Team.

6.15 Principle 3A does not apply to personal information collected from agents of Veterans' Affairs (e.g. contractors, review officers, or personal information from MSD relating to the veterans' pension which MSD administers on behalf of Veterans' Affairs). It also does not apply to personal information collected under an Approved Information Sharing Agreement (AISA). However, it does apply to personal information collected under Memoranda of Understanding or other instruments that are not AISAs.

7. Storage and security of personal information (Principle 5)

Secure storage and checking information for possible breaches

7.1 Veterans' Affairs must take and maintain all reasonable safeguards against the loss, unauthorised access, misuse, unauthorised modification, disclosure, or use of personal information, including:

- keeping physical documents secure, including when there is a business need to take them outside of the premises;

- ensuring that data storage of electronic personal (and health) information is protected from external sources, maintaining regular back-ups to secure storage and applying best practice for information management;
- maintaining a clear desk policy, including locking physical papers away in a secure unit at the end of the **working day**, and ensuring computer work stations are password protected and the screen is locked when staff are away from the desk; and
- checking information before sending it for any possible breaches (misaddress resulting in mistakenly sending to a third party, disclosure of information about a third party etc.).

Archiving and destruction

7.2 Veterans' Affairs will retain client records for as long as lawfully required, to provide ongoing entitlements and services under the legislation to **veteran**s and their families.

7.3 Client records and other records containing personal information will be appraised and disposed of under the General Disposal Authorities and agency-specific disposal authorities authorised by the Chief Archivist. Destruction of records will be documented and conducted securely.

7.4 Records containing personal information which are retained as public archives will have access restrictions negotiated with the controlling archive at the point of transfer, to continue to protect privacy of personal information.

7.5 Health information should normally not be kept for longer than is required for the purposes for which the information may lawfully be used (which in Veterans' Affairs case involves assessment of claims that may cover decades), but can be retained if necessary or desirable for the purposes of providing health or disability services to the individual concerned. Disposal must be conducted in a manner that preserves the privacy of the individual. Despite these requirements of the Health Information Privacy Code, health information is required to be kept by health providers for the minimum retention period of 10 years and may be retained for longer.

Rules 5 and 9 of the Health Information Privacy Code 2020 and regulations 5 and 9 of the Health (Retention of Health Information) Regulations 1996.

8. Access to personal information (Principle 6)

8.1 The individual whose personal information is held by an agency has the right to:

- get confirmation from the agency about whether or not it holds any personal information about them; and
- have access to that information.

8.2 If given access the individual should be told also of their right to ask for the information to be corrected under Principle 7 of the Privacy Act.

Eligibility to access

8.3 Only the person who the information is about (called the "individual concerned" under the Privacy Act) can ask for access to (and correction of) their personal

information, either directly or through their appointed representative (see separate policies on *Representatives of **Veteran**s and **Other Claimants*** and *Persons with Legal Authority to Act for a **veteran** or other claimant*). Staff should ensure that where the request is made by an agent or representative of the individual concerned, the agent or representative has the written authority of that individual to obtain the information or is otherwise properly authorised by that individual to obtain the information.

8.4 When a person is seeking personal information about another person for whom they are not acting as a representative or agent, they must request that information under the Official Information Act 1982 (see separate policy on *Official Information Act requests*).

8.5 It may be possible to check eligibility by replying to the requestor at the same time the request is acknowledged, explaining the eligibility requirements, and providing the name and contact details of a staff member the requestor can contact privately in order to provide assurance of eligibility.

Sections 7, 22, 39, 40, and 57 of the Privacy Act 2020.

Refreshing consents

8.6 As a matter of policy, Case Managers should, in the course of their regular contact with clients, encourage them to keep their consents (e.g. authorities for their representatives, Enduring Power) up to date, and inform them they are able to revoke their consent(s) at any time.

Limitations on staff's access to clients' personal information

8.7 Staff are only to access clients' records on VSS, S:drive or DDMS if required to access them as part of their role. Casual browsing of clients' records is not to occur.

9. Accuracy and correction of personal information (Principles 7 and 8)

Accuracy

9.1 Veterans' Affairs must not use or disclose a client's personal information without ensuring that the information is accurate, up to date, complete, relevant, and not misleading, and should engage the client to ensure the quality of the information (Principle 8).

Who can ask for correction of information

9.2 Only the individual concerned (the person who the personal information is about) or their representative can request a correction of personal information. This action may be in the form of correction of factual information, or attaching a statement of correction to the information held by Veterans' Affairs. Veterans' Affairs may correct information, if warranted, to keep it up to date and accurate, and if reasonable in the circumstances.

Timeframe for correction

9.3 The requestor may ask that the correction be treated as an urgent request. Veterans' Affairs must consider the reason given for urgency when determining priority to be given to it, but must in any case decide within 20 **working day**s of

receiving the request whether to grant the request and notify the requestor of its decision and their right to make a complaint to the Privacy Commissioner in the case of a refusal.

9.4 Veterans' Affairs may extend the time for making correction(s) if:

- there is a large quantity of information to work through and the original time limit would unreasonably interfere with Veterans' Affairs operations;
- consultations necessary to make a decision on the request cannot reasonably be given within the time limit; or
- processing the request is complex and cannot reasonably be made within the time limit.

9.5 Any extension must be notified to the requestor within the original 20 **working days** and specify period of the extension, the reasons for the extension, state that the requestor has the right to make a complaint to the Privacy Commission about the extension, and contain any other necessary information.

9.6 Veterans' Affairs may transfer a correction request to another agency – within 10 **working days** – if it believes that agency holds the information or is more connected to it. Transfer to another agency should not be done if Veterans' Affairs has reason to believe the requestor does not want the request transferred. In this case Veterans' Affairs will inform the requestor of its belief that the information to be corrected is more connected with another agency, and inform the requestor which agency they could transfer their request to.

Sections 58-65 of the Privacy Act 2020.

Advising client service deliverers of corrections to a client's personal information

9.7 When an individual updates their records Veterans' Affairs must ensure that parties delivering services to the individual on behalf of Veterans' Affairs have received the updated information if it is relevant to them.

10. Limits on Use and Disclosure of Personal Information (Principles 10 and 11)

10.1 Privacy Principle 10 of the Privacy Act permits the use and disclosure of collected personal information for purposes other than for which it was collected when:

- the purpose for use is directly related to the purpose for which it was collected;
- the individual concerned is not identified or is to be used for statistical or research purposes and published in a form in which the individual concerned is not identified;
- the individual concerned has authorised that the information to be used for that purpose;
- the source of information is publicly available;
- it is necessary to avoid prejudice to the maintenance of the law by a public sector agency including enforcement of the law and dealing with offences

(the prevention, detection, investigation, prosecution, and punishment of offences);

- for enforcement of a law that imposes pecuniary penalty, or for conduct of proceedings; or
- the use is necessary for preventing or lessening a serious threat to public health or public safety or to the life or health of the individual concerned or another individual.

11. Disclosure of personal information outside New Zealand (Principle 12)

11.1 Veterans' Affairs may only disclose personal information to a foreign person or entity if:

- the individual concerned authorises it after being informed by the foreign person or entity that the information may not be protected by safeguards comparable to those under the Privacy Act;
- the foreign person or entity is carrying on business in New Zealand and the agency (Veterans' Affairs) believes on reasonable grounds that person is subject to the Privacy Act or is subject to privacy laws with comparable safeguards to the Privacy Act;
- the agency (Veterans' Affairs) believes the foreign person or entity is a participant in a prescribed binding scheme or subject to privacy laws of a prescribed country under regulations made under section 214 of the Privacy Act; or
- the agency (Veterans' Affairs) believes the foreign person or entity is required (for example by an agreement between the individual concerned and the foreign person or entity) to protect the information in a way comparable with the safeguards in the Privacy Act.

12. Unique identifiers (Principle 13)

12.1 Principle 13 of the Privacy Act does not permit agencies to use, or require an individual to disclose, unique identifiers that have been assigned by another agency to that individual in order to carry out its functions efficiently (e.g. driver's licence number, passport number). Exceptions to this are when the two agencies are "associated persons" within the meaning of subpart YB of the Income Tax Act 2007, or the unique identifier is to be used by the agency for statistical or research purposes.

12.2 In accordance with section 160 of the Veterans' Support Act, the Ministry of Social Development (MSD) has been delegated the role of administering the Veteran's Pension. MSD therefore has the responsibility of granting, paying and cancelling the Veteran's Pension.

12.3 MSD provides Veterans' Affairs applicants with a Social Welfare Number (SWN) that will be disclosed to Veterans' Affairs staff to ensure efficiency in the payment process. This is an agency to agency arrangement and can be seen therefore

as an exception authorised in law by another statute, the Veterans' Support Act, to the requirement under Principle 13.

12.4 A National Health Index number (NHI number) is a unique identifier that is assigned to every person who uses health and disability support services in New Zealand. As such this may be recorded in order to ensure efficiency when funding medical treatment.

12.5 Under an information sharing memorandum of understanding with the Inland Revenue Department, Veterans' Affairs may, with a claimant's consent, utilise the claimant's IRD number in order to obtain earnings information for establishing entitlement to income compensation or Dependant's Pension.

12.6 New Zealand Defence Force staff are assigned a unique service number in the form of a service number and/or a personnel number. This is recorded to allow Veterans' Affairs to efficiently verify a client's service history in order to provide entitlements and services.

12.7 In order to differentiate between party records, VSS (the Veterans' Affairs client management system) automatically assigns a unique number to each client. This number is for internal use only and is not referenced on any material sent outside the organisation to identify a client.

13. Contracts with other agencies for services delivery

13.1 Any contract or variation of a contract for delivery of services that Veterans' Affairs draws up with a service deliverer must include a privacy of personal information clause(s) that includes commitment to collect, store, use and disclose a client's personal information in accordance the Privacy Act. Provisions should also be made to return or destroy all personal information when the service is no longer being delivered to the client.

Glossary

child [section 7 of the Veterans' Support Act 2014]
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 of the Veterans' Support Act 2014]
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 of the Veterans' Support Act 2014]
Has the same meaning as in section 15 of the Care of Children Act 2004.

member of the armed forces [section 7 of the Veterans' Support Act 2014]
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 of the Veterans' Support Act 2014]
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 **partner**s of veterans, and
(c) **child**ren of veterans; and

(d) **dependant**s 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 of the Veterans' Support Act 2014]
Means a civil union partner or a de facto partner.

qualifying operational service [section 8 of the Veterans' Support Act 2014]
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 of the Veterans' Support Act 2014]
Means service in the armed forces before 1 April 1974 that is not **qualifying operational service**.

veteran [section 7 of the Veterans' Support Act 2014]
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 of the Veterans' Support Act 2014]
Means a **child** adopted by the veteran in accordance with Māori custom.

working day [section 7 of the Privacy Act 2020]
Means any day of the week other than–
(a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, or Labour Day; or
(b) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; or
(c) a day in the period commencing on 25 December in one year and ending with 15 January in the next year.