

# Reconsideration

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# Policy

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## 1. Purpose

- 1.1 This Policy provides guidance on administering reconsiderations under the Veterans' Support Act 2014. It should be read with the separate policies on:
- *Reviews*
  - *Appeals.*

## 2. Legislative Reference

- 2.1 The relevant legislation is the Veterans' Support Act 2014 (the 2014 Act), section 205.

## 3. Glossary

- 3.1 For the purposes of this policy, words in bold and in green are defined in a glossary at the rear of this document.

## 4. Reconsideration

- 4.1 Veterans' Affairs can reconsider decisions on its own initiative or by application by an **affected person**.
- 4.2 Reconsideration allows Veterans' Affairs to correct errors it considers it made; **or** look at decisions that have been reviewed and appealed, where relevant criteria have since changed or new information becomes available that would have materially affected the decision. This is to ensure services and entitlements are determined fairly, consistently, and take into account all relevant information.

### Difference between reconsideration, review and appeals

- 4.3 Reconsideration is functionally different from a **review decision**.
- 4.4 Reconsiderations are initiated by new or changed circumstances. If one of the criteria for reconsideration is met, the decision will be considered afresh, whereas a review will consider the way the decision was made.
- 4.5 Appeals are conducted by the Veterans' Entitlement **Appeal Board**, who are independent from Veterans' Affairs. Appeal Board decisions can also consider a decision anew.

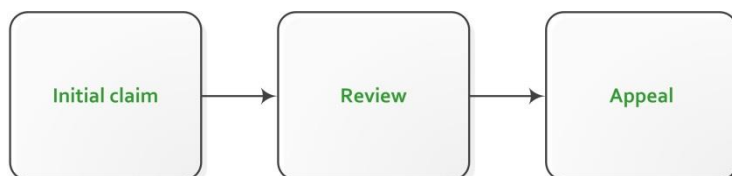
### General principles underlying reconsideration

- 4.6 Reconsideration decisions must be determined in accordance with the general principles of the 2014 Act:
- a. In acknowledgment of the responsibility for the injury, illness, or death of veterans as a result of them being placed in harm's way in the service of New Zealand;
  - b. In accordance with the principles of:

- Providing veterans, their spouses and partners, their children, and their dependants with fair entitlements
- Promoting equal treatment of equal claims
- Taking a benevolent approach to claims
- Determining claims in accordance with substantial justice and the merits of the claim, not in accordance with technicalities, or legal rules of evidence.

*Section 10 of the Veterans' Support Act 2014*

## 5. Basis of reconsideration



*Sections 14 – 21, 215 – 227, and 228 - 246 of the Veterans' Support Act 2014*

- 5.1 There are three levels of decision making under the Veterans' Support Act:
- a. Initial claim
  - b. Review, and
  - c. Appeal.

## 6. Circumstances for reconsideration

- 6.1 There are two sets of circumstances in which reconsideration can occur:
- at any time Veterans' Affairs considers it made a decision in error; or
  - when there has been a change to decision criteria or new information becomes available, but only when the decision has been through both the review and appeal processes.

*Section 205(1) (2) (3) of the Veterans' Support Act 2014*

### Decision made in error

- 6.2 A decision may have been made in error if information was held by and/or available to Veterans' Affairs at the time the decision was made but not considered. This may include, relevant information relating to the **veteran's** service, or medical information.

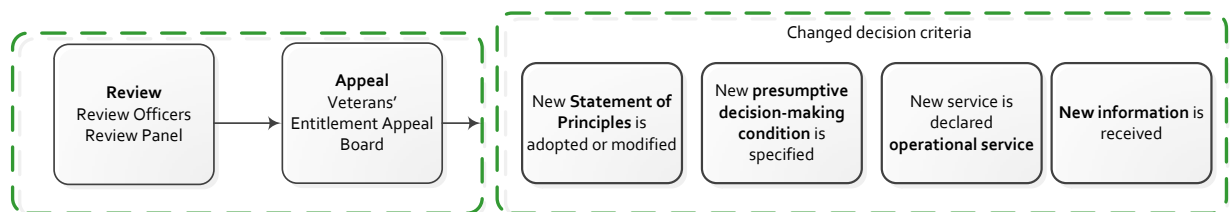
*Section 205(1) of the Veterans' Support Act 2014*

- 6.3 Information that first becomes available after the decision was made, would not represent an error made by Veterans' Affairs. In such circumstances, a new claim can be made.

### Changed decision criteria or new information becomes available

- 6.4 A decision that has been through both the review and appeal processes can be reconsidered in the following circumstances:

- A **statement of principles** (SOP) is adopted or modified that, if it had been adopted or modified earlier, would have materially affected the decision; or
- A **presumptive decision-making condition** is specified or amended in regulations after the decision was made that would have materially affected the decision; or
- Service is declared **operational service** after the decision is made that had it been declared earlier would have materially affected the decision; or
- New information is received that, had it been received before the decision was made would have materially affected the decision.



*Section 205(2) (3) of the Veterans' Support Act 2014*

- 6.5 Where the circumstances in 6.4 apply, but the right of review/appeal was not exercised and the time to do so has expired, a new claim may be submitted.

*Change in statement of principles*

- 6.6 Decisions that have been through both the review and appeal processes can be reconsidered if, after the decision has been made, a SOP is adopted or modified that, if it had been adopted or modified earlier, would have materially affected the decision.

*Section 205(2)(a) of the Veterans' Support Act 2014*

*Change in a presumptive decision-making condition*

- 6.7 Decisions that have been through both the review and appeal processes can be reconsidered if after the decision has been made, a presumptive decision-making condition is specified or amended that would have materially affected the decision.

*Section 205(3) of the Veterans' Support Act 2014*

*New service is declared operational service*

- 6.8 Decisions that have been through both the review and appeal processes can be reconsidered if after the decision has been made, service is declared operational service that would have materially affected the decision.

*Section 205(3) of the Veterans' Support Act 2014*

*New information is received*

- 6.9 Decisions that have been through both the review and appeal processes can be reconsidered if Veterans' Affairs receives new information, that had it been

received before the decision was made would have materially affected the decision.

*Section 205(3) of the Veterans' Support Act 2014*

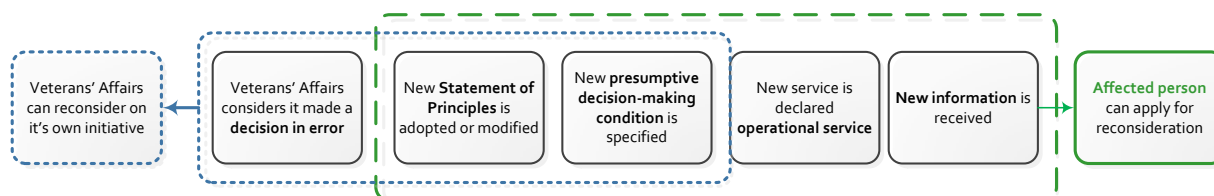
## 7. Who can initiate reconsideration

### By an affected person

- 7.1 An affected person can apply for reconsideration if there is a new modification or adoption of statement of principles, presumptive decision, or declared operational service, or new information, that would have materially affected the decision.

### By Veterans' Affairs

- 7.2 Veterans' Affairs can reconsider decisions on its own initiative if it considers:
- it made a decision in error; or
  - the decision has been through the Review and Appeal process, and the adoption or modification of SOPs or presumptive decisions, or new information is received would have materially affected the decision.



*Section 205(3), (4) and (5) of the Veterans' Support Act 2014*

## 8. Administration of reconsideration

### Claimant's opportunity to make submissions

- 8.1 If Veterans' Affairs decides to reconsider a decision Veterans' Affairs must provide the claimant with an opportunity to make submissions on the matter before the claim is determined.
- 8.2 Veterans' Affairs will write to the veteran informing them of the decision to reconsider and their opportunity to make submissions.

*Section 205(7) of the Veterans' Support Act 2014*

### New decision maker

- 8.3 If Veterans' Affairs accepts an application to reconsider a decision, it must be undertaken by an individual with the appropriate delegations who was not involved in the original decision.

### Relationship with review

- 8.4 A decision to decline to reconsider a decision is not subject to **review**.
- 8.5 Once the decision has been made to reconsider, any decision making that follows (to accept or decline an entitlement or service) is then open to review.

*Sections 205(9) and 215 of the Veterans' Support Act 2014*

### Commencement date for successful reconsiderations

- 8.6 If, on reconsideration, Veterans' Affairs decides that a person has an entitlement or service, it will commence from the date it would have commenced had the original claim been accepted.

*Section 205(8) of the Veterans' Support Act 2014*

## Glossary

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### **Affected person** [policy definition]

Means veteran or other claimant.

### **Appeal Board** [section 7]

Means the Veterans' Entitlements Appeal Board established under Part 7 of the Veterans' Support Act 2014.

### **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.

### **General Manager** [section 7]

Means the General Manager of VANZ appointed under section 200.

### **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.

**Paired organs** [regulation 9]

The following organs are paired organs for the purposes of section 20 of the Act:

- (a) adrenal glands:
- (b) breasts:
- (c) ears:
- (d) eyes:
- (e) kidneys:
- (f) lungs:
- (g) ovaries:
- (h) testicles.

**partner** [section 7]

Means a civil union partner or a de facto partner.

**Presumptive decision making conditions** [section 21]

Veterans' Affairs may specify, in Regulations made under section 265, injuries, illnesses and conditions that must be treated as service-related if a veteran has:

- (a) been exposed to specific events during qualifying operational service; or
- (b) served at specific times in, or during specified periods of, or in specified deployments during, qualifying operational service.

These are currently set out in the **Veterans' Support Regulations 10 – 14**.

**qualifying operational service** [section 8]

Means—

- (a) service on 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.

**review decision** [section 7]

Means a decision made by a Review Officer, a Review Panel, or the General Manager under subpart 2 of Part 7 of the Veterans' Support Act 2014.

**Review Officer** [section 7]

Means a member or a contractor of the Defence Force appointed by the general manager (or by the Chief of Defence Force if section 219(2)(b) applies) to conduct reviews under subpart 2 of Part 7 of the Veterans' Support Act 2014.

**Review Panel** [section 7]

Means a Veterans' Service Review Panel established under section 223 of the Veterans' Support Act 2014.

**statement of principles** [section 14]

Means a statement of principles that, under section 22(6) and regulations made under section 265, applies for the purposes of the Veterans' Support Act 2014.

**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.

## Appendix 1: Diagram of Reviews, Appeals and Reconsiderations

