

Reconsideration

Version 2
October 2020

Contents

Policy	3
1. Purpose.....	3
2. Legislative Reference	3
3. Reconsideration	3
Difference between reconsideration, review and appeals.....	3
General principles underlying reconsideration	3
4. Reconsideration decision makers	4
5. Basis of reconsideration.....	4
The decision was made in error.....	4
Changed decision criteria	5
6. Who can initiate reconsideration	6
By an affected person.....	6
By Veterans' Affairs	6
7. Administration of reconsideration.....	7
Claimant's opportunity to make submissions.....	7
New decision maker	7
Relationship with review	7
Commencement date for successful reconsiderations	7
Glossary	8
Appendix 1: Diagram of Reviews, Appeals and Reconsiderations	11

Policy

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. Reconsideration

3.1 Veterans' Affairs can reconsider decisions on its own initiative or by application by an **affected person**.

3.2 Reconsideration allows Veterans' Affairs to correct administrative errors or look at decisions again if relevant criteria have changed. This ensures services and entitlements are determined fairly, consistently, and taking into account all relevant information.

Difference between reconsideration, review and appeals

3.3 Reconsideration is functionally different from a review decision.

3.4 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.

3.5 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

3.6 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.

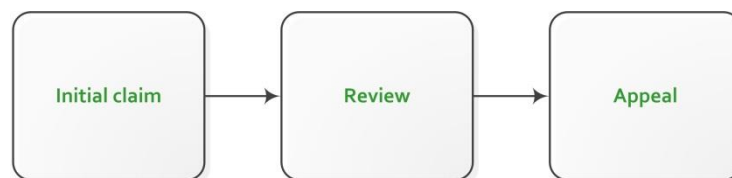
Section 10 of the Veterans' Support Act 2014

4. Reconsideration decision makers

4.1 Applications for reconsideration of decisions about entitlements are determined by the **Deputy Head of Veterans' Affairs**.

4.2 Applications for reconsideration of decisions about services are determined by the **Manager of Veterans' Services**.

5. Basis of reconsideration



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

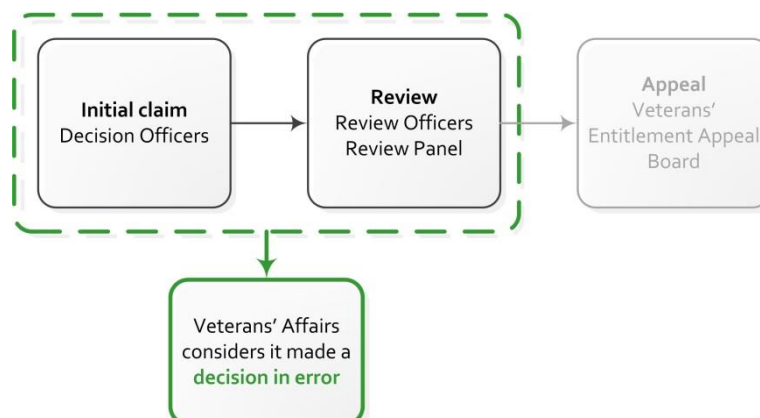
5.1 There are three levels of decision making under the Veterans' Support Act:

- Initial claim
- Review, and
- Appeal.

5.2 Whether a decision can be reconsidered at the claim, review, or appeal stage depends on the reason for seeking reconsideration.

The decision was made in error

5.3 Veterans' Affairs can reconsider its decision on any claim or review if it considers a **decision was made in error**.



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

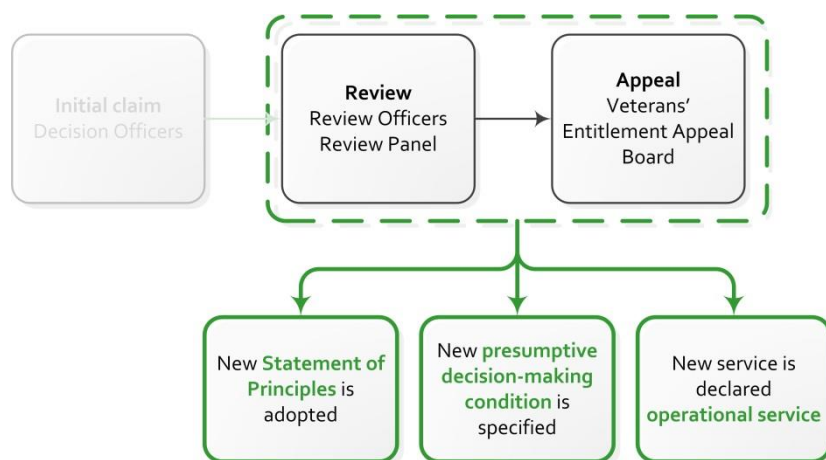
Decision in error

- 5.4 A decision may have been made in error if there was missing or incorrect information relating to material information in the claim, such as information relating to the veteran's service, or their diagnosis of a condition.
- 5.5 When determining if a decision was made in error the substance of the decision is not reconsidered.

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

Changed decision criteria

- 5.6 Review and appeal decisions that were not successful in whole or part can be reconsidered if certain conditions are met:
- A **statement of principles** is adopted that, if it had been adopted earlier, would have 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 would have materially affected the decision.



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

- 5.7 Initial claim decisions can not be reconsidered on these grounds.

Change in statement of principles

- 5.8 Decisions that **affect a person** can be reconsidered if, after the decision has been made, **statement of principles** are adopted that would have affected the decision.

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

Change in a presumptive decision-making condition

- 5.9 Decisions that **affect a person** can be reconsidered if, after the decision has been made, a **presumptive decision-making condition** is changed and would have materially affected the decision.

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

New service is declared operational service

- 5.10 Decisions that **affect a person** 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

- 5.11 If Veterans' Affairs received new information and if it had been received before the decision was made it would have materially affected the decision.

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

6. Who can initiate reconsideration

By an affected person

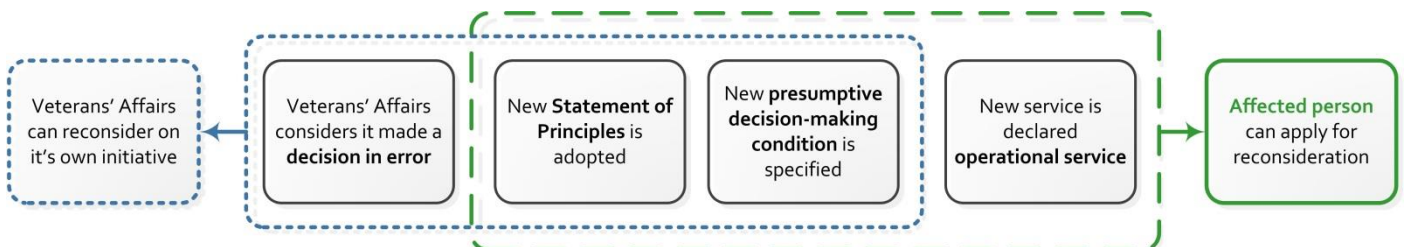
- 6.1 An **affected person** can **apply** for reconsideration if there is a new modification or adoption of statement of principles, presumptive decision, or declared operational service that would have materially affected the decision.

Affected person

An affected person is a veteran, spouse, partner, child or dependant of the veteran who was or would have been a recipient of the service or entitlement.

By Veterans' Affairs

- 6.2 Veterans' Affairs can reconsider decisions on its own initiative if it considers:
- The decision was **made in error**
 - A new modification or adoption of **statement of principles** or **presumptive decisions** would have materially affected the decision.



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

7. Administration of reconsideration

Claimant's opportunity to make submissions

- 7.1 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.
- 7.2 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

- 7.3 If Veterans' Affairs accepts an application to reconsider a decision, it must be undertaken by a staff member with appropriate delegations who was not involved in the original decision.
- 7.4 If there is no Veterans' Affairs staff member who was not involved in the original decision it must be determined by the **Deputy Head of Veterans' Affairs** or **Manager of Veterans' Services**.

Relationship with review

- 7.5 A decision to decline to reconsider a decision is not subject to **review**.
- 7.6 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

- 7.7 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

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

