

Reviews

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Policy

1. Purpose

- 1.1 This Policy gives guidance on carrying out reviews under the Veterans' Support Act 2014 (the Act) of decisions about core eligibility to Veterans' Affairs entitlements or services. It may be read together with the policy on **Appeals**.
- 1.2 It does not cover the following, which are dealt with under separate processes:
- complaints from veterans or other claimants about how Veterans' Affairs administers their services (see policy on **Complaints**)
 - complaints under the Code of Veterans' and Other Claimants' Rights (see policy on **Code of Veterans' and other Claimants' Rights**).

2. Legislative Reference

The legislative references are:

- sections 10(b), 204 & 214–227, and clauses 4 & 5 of Schedule 1, of the Act
- regulation 53 of the Veterans' Support Regulations 2014.

3. Eligibility for Review

- 3.1 A **veteran** or **other claimant** may apply for a review of a decision by Veterans' Affairs regarding their core eligibility for a Veterans' Affairs entitlement or service. The decision reviewed can relate to one or more of the following:
- eligibility for a Veterans' Affairs **entitlement**
 - eligibility for a Veterans' Affairs service such as rehabilitation, treatment or the Veterans' Independence Programme (NB this is for general eligibility only. Where a veteran or other claimant has an issue about the nature or quantity of a particular service, e.g. number of treatment sessions, the general *Complaints* process is to be used)
 - whether there is a relationship between a veteran's injury, illness or death and the veteran's **qualifying service**
 - whether and, if so, to what extent a veteran's service is qualifying service
 - the degree of **impairment** caused by an injury or illness
 - a Veterans' Affairs decision to decline an entitlement to a Veteran's Pension on the basis that the service on which a claim for entitlement is based is not **qualifying operational service**.

- 3.2 Only a veteran or other claimant may apply for a review of a decision by Veterans' Affairs relating to a Veterans' Affairs entitlement or service. New reviews can not be lodged on behalf of a deceased veteran or other claimant. However, a personal representative or other suitable person on behalf of the deceased veteran or other claimant can continue to progress a review, where an application for review was received by Veterans' Affairs prior to their death.

Section 215 of the Veterans' Support Act 2014 and regulation 53 of the Veterans' Support Regulations 2014

- 3.3 Any payment arising from a review on behalf of the deceased veteran or other claimant will be made to the estate of the veteran or other claimant.

4. Applications for Review

- 4.1 The applicant must apply for a review within six months after receiving notification of Veterans' Affairs' decision in relation to the claim.

- 4.2 However, a review application may be made later if the **Review Officer** is satisfied that the delay was caused by circumstances beyond the applicant's control.

Section 218 of the Veterans' Support Act 2014

- 4.3 The application must be made in writing on the appropriate form provided by Veteran's Affairs and must identify the decision or decisions the applicant seeks to have reviewed and state the grounds on why the review is sought.

- 4.4 The applicant may also provide written submissions and any information (whether prepared by the applicant or any other person) in support of the application.

Section 217 of the Veterans' Support Act 2014.

5. Status of original decision during the review process

- 5.1 The decision(s) under review continue(s) during the application and review process or during any other proceeding relating to the decision.

Section 214(1) of the Veterans' Support Act 2014

6. Reviews undertaken by the Review Officer

- 6.1 Reviews are conducted by a Review Officer where the application for review relates to matters other than service coverage. This includes:

- eligibility for a Veterans' Affairs entitlement or service

- whether there is a relationship between a veteran's injury, illness or death and the veteran's **qualifying service**
- the degree of **impairment** caused by an injury or illness
- a spouse's/partner's relationship with the deceased veteran.

6.2 In a case where the decision in question was made by the Deputy General Manager, the review must be conducted by a Review Officer appointed by the **General Manager**. If the decision was made by the General Manager, the review must be conducted by a Review Officer appointed by the Chief of Defence Force.

Section 219 (1)&(2) of the Veterans' Support Act 2014

7. Conduct of the Review

7.1 The Review Officer must act independently of Veterans' Affairs when conducting the review.

7.2 The Review Officer must not conduct the review if they have had any previous involvement with the claim other than as a Review Officer.

7.3 If a Review Officer is appointed by the Chief of Defence Force, the General Manager must appoint a person to assist them to access the material they require. This person should be an experienced member of VA staff, but not a person who has had any connection with the veteran or the case which is being reviewed, and not a person who has any responsibility for administration of the Veterans Entitlements Appeal Board. They will have direct access to the veteran's information, in collating what is required for the Review Officer; and in responding to any requests for information from the independent Review Officer.

7.4 The Review Officer must:

- decide the review on the basis of its substantive merits under the Act
- conduct the review on the papers without a hearing
- comply with the principles of:
 - (i) natural justice; and
 - (ii) providing veterans, their spouses and **partners**, their **children** and **dependants** with fair entitlements;
 - (iii) promoting equal treatment of equal claims;
 - (iv) determining claims in accordance with substantial justice and the merits of the claim, rather than in accordance with any technicalities, legal forms, or legal rules of evidence; and

- (v) any other relevant provision of the Act and the Veterans' Support Regulations 2014.

Sections 10 and 220 of the Veterans' Support Act 2014

8. Powers of the Review Officer

- 8.1 The Review Officer may require the applicant or Veterans' Affairs to provide any information he/she considers is reasonably necessary to decide the review.
- 8.2 The Review Officer may seek an assessment of the person's impairment, but only if the Review Officer considers that the assessment is reasonably necessary to decide the review.

Section 221 of the Veterans' Support Act 2014

9. The Review Officer's Decision

- 9.1 The Review Officer must:
- confirm the decision; or
 - modify the decision; or
 - revoke the decision; or
 - make any other decision that is appropriate to the circumstances of the case.
- 9.2 If the Review Officer revokes the decision he/she must:
- substitute the Review Officer's decision for that of Veterans' Affairs; or
 - require Veterans' Affairs to make the decision again in accordance with his/her directions.

Section 222 of the Veterans' Support Act 2014

- 9.3 A review decision ceases to be of full effect if all the parties to the review agree to a variation of it for the benefit of the claimant.

Section 214(3) of the Veterans' Support Act 2014

10. Reviews Conducted by the Review Panel

- 10.1 A review will be conducted by the Veterans' Service Review Panel (the Review Panel) appointed by the General Manager where the review relates to a Veterans' Affairs' decision to:

- decline a Veterans' Affairs entitlement or service on the basis that the service on which the claim for the Veterans' Affairs entitlement or service is based is not qualifying service; and
- the service on which a claim for a Veteran's Pension is based is not qualifying operational service.

Section 219(3) and 223(2) of the Veterans' Support Act 2014

11. Membership of the Review Panel

11.1 The Review Panel must comprise:

- an employee or contractor of the New Zealand Defence Force; and
- a person nominated by the Royal New Zealand Returned and Services' Association.

11.2 The members of the Review Panel must have qualifications and experience which, in the General Manager's view, are relevant to the Review Panel's function.

Section 224 of the Veterans' Support Act 2014

12. The Review Panel's Conduct and Powers

12.1 The Review Panel is subject to the same conditions of conduct as the Review Officer, as set out in paragraphs 7.1 to 7.3 above.

12.2 Like the Review Officer, the Review Panel may require the applicant or Veterans' Affairs to provide any information he/she considers is reasonably necessary to decide the review.

12.3 The Review Panel may also seek and receive information from any other person with relevant expertise for the review (for example an historian).

Section 225 of the Veterans' Support Act 2014

13. Immunity from civil liability

13.1 The following persons are immune from liability in civil proceedings for good-faith actions or omissions in carrying out their functions, duties or powers:

- General Manager of Veterans' Affairs;
- Deputy General Manager of Veterans' Affairs;
- other members of the New Zealand Defence Force (including Veterans' Affairs);
- the Review Officer; and

- the RSA member of the Review Panel.

13.2 The Crown itself may however be found in tort liable in respect of the actions or omissions of the above persons' discharge of their responsibilities of a judicial nature or in connection with the execution of judicial process.

Section 204 of the Veterans' Support Act 2014

14. Review Panel Decisions

14.1 The Review Panel's decision process must be as set out for the Review Officer in section 9 above.

14.2 If the members of the Review Panel are unable to agree how to decide a review, the decision under review is to be treated as if it has been confirmed by the Review Panel.

Section 226 of the Veterans' Support Act 2014

15. Advising the Veteran or Other Claimant of the Review Decision

15.1 Veterans' Affairs will advise the veteran or other claimant in writing of the Review Officer's or Review Panel's review decision and of the veteran's or other claimant's right of appeal.

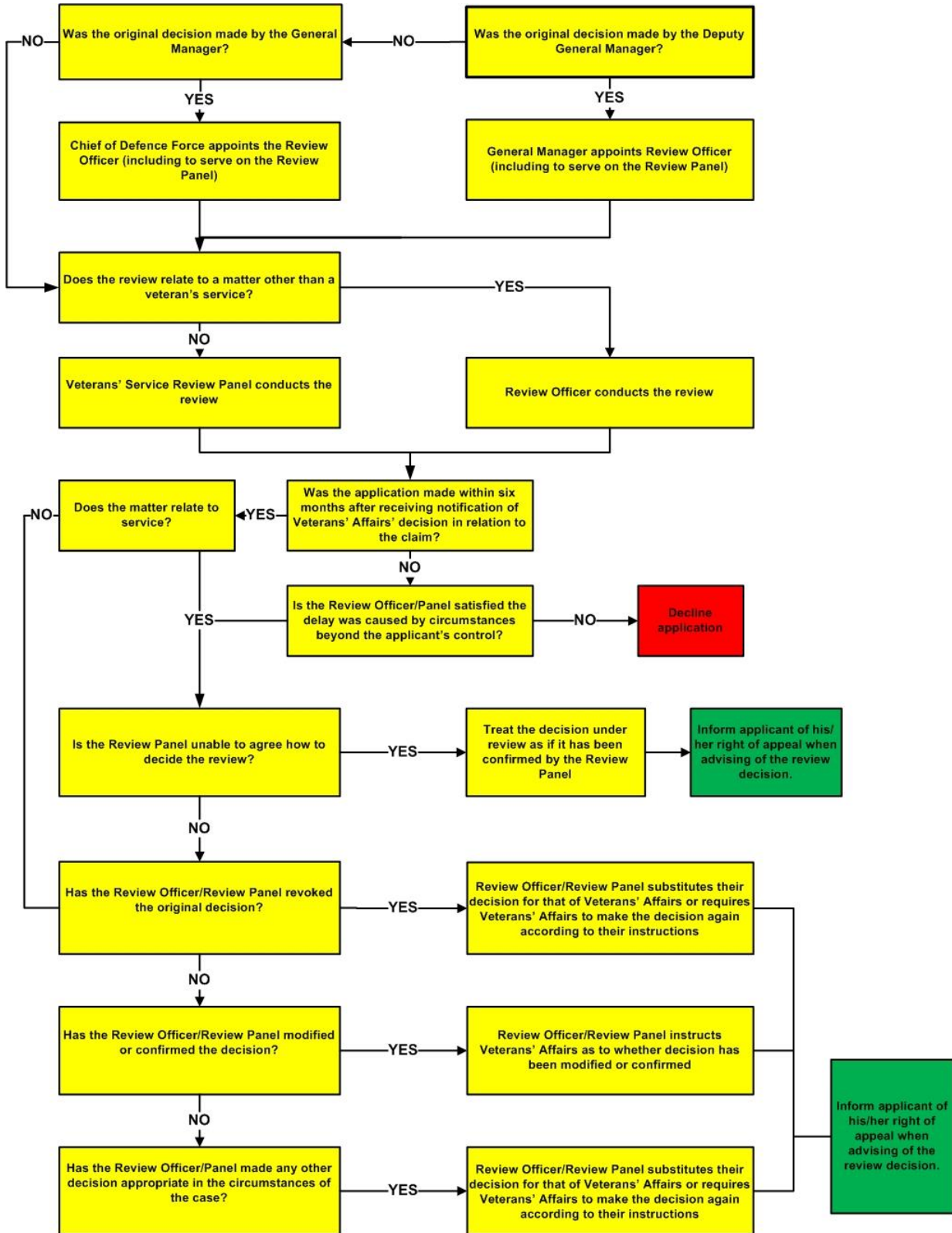
16. Living Overseas

16.1 The policy for Reviews applies to all New Zealand veterans equally, irrespective of their country of residence.

17. Administration of reviews after the death of the veteran

17.1 If a veteran or other claimant applies for a review of a Veterans' Affairs' decision about his/her eligibility for an entitlement or service, but dies before the review decision is made, the review of the decision may proceed, but there would be no right of appeal.

Appendix: Pathway for Entitlements Review Process



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.

Entitlement [policy]

A regular or one-off payment made to a veteran or other claimant. Does not include the payment or reimbursement of costs or services. Includes:

- Disablement Pension
- Weekly Income Compensation
- Surviving Spouse or Partner Pension
- Children's Pension
- Children's Bursary
- Independence Allowance
- Lump Sum for Permanent Impairment
- Weekly Compensation
- Survivor's Grant
- Retirement Lump Sum
- Decorations Allowance
- Decorations Annuity

General Manager [section 7]

Means the General Manager appointed under section 200.

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 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.

qualifying service [section 8]

Means:

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

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.