

# Appeals

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# Policy

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## 1. Purpose

- 1.1 The purpose of this policy document is to provide guidance for the administration under the Veterans' Support Act 2014 (the Act) of appeals under the Act.
- 1.2 This paper should be read together with separate papers on:
  - *Reviews*
  - *Complaints*.
- 1.3 In addition to providing guidance on the administrative support that Veterans' Affairs will provide to the appeals process, this policy also provides guidance on the role of Veterans' Affairs as a **party** to the proceedings. An appendix provides details of the Appeal Board's procedures.
- 1.4 Veterans' Affairs staff who administer the appeals process will not be the same persons who are responsible for preparing Veterans' Affairs' appeal submissions and representing Veterans' Affairs as a party to an appeal (**see also paragraph 10.3**).

## 2. Legislative Reference

- 2.1 The relevant legislation is sections 10, 204, 214, 228 to 239 and clauses 4 and 5 of Schedule 1 of the Act, and regulations 45 to 53 of the Veterans' Support Regulations 2014.

## 3. Veterans' Affairs administration of the Appeals Process

- 3.1 Veterans' Affairs will provide administrative support to the Appeal Board, including:
  - advice to the Appeal Board for developing its procedures
  - receiving applications and determining a veteran's or other claimant's eligibility for an appeal
  - providing secretariat support to the Appeal Board for the appeal, covering:
    - ensuring that the Appeal Board receives Notices of Appeal and that the Appeal Board is assisted with preparations for an appeal (such as with setting the appeal dates and provision of documentation for the appeal)

- logistical support such as travel arrangements for the attendees at appeals
- taking of minutes at Appeal Board meetings and hearings
- publicising Appeal Board decisions
- keeping copies of evidence provided to the Appeal Board.

3.2 Veterans' Affairs staff providing administrative support to the Appeal Board will attend the Board's hearings. **See sections 5 to 8 for further detail on Veterans' Affairs administration of the appeals process.**

## 4. Eligibility for Appeal

4.1 Following a review, a **veteran** or **other claimant** (a veteran, a veteran's **child, dependant, spouse or partner**) who has claimed an **entitlement** or service (e.g. treatment, rehabilitation or Veteran's Independence Programme) under the Act. Veterans' Affairs may also appeal against a **review decision**. Appeals are heard by the Appeal Board. N.B appeals about service will entail general eligibility for service only. Where a veteran or other claimant has an issue about the nature or quantity of a particular service the general *Complaints* process is to be used.

4.2 When notifying the veteran or other claimant of the review decision, Veterans' Affairs must advise the veteran or other claimant of the right to appeal the review decision, the time limit for bringing the appeal and how the person may obtain the form of notice of appeal.

4.3 An appeal needs to be lodged within six months after the date of the review decision, although the Appeal Board may, in its discretion, extend the time for bringing an appeal if it thinks that the extension is in the interests of justice (**See also Appendix on Appeal Board's Procedures**).

*Section 228(4)&(5) of the Veterans' Support Act 2014 and regulation 47 of the Veterans' Support Regulations 2014*

4.4 Only a veteran, other claimant or Veterans' Affairs may lodge an appeal of a review decision relating to an entitlement. New appeals can not be lodged on behalf of a deceased veteran or other claimant. However, if a veteran or other claimant dies after lodging an appeal but before his or her appeal has been determined, the appeal may be continued by his or her personal representative or by any other suitable person.

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

## 5. Notices of Appeal

5.1 The appellant must bring their appeal to the Appeal Board through a Notice of Appeal to the other party on the appropriate form obtained either directly from Veterans' Affairs or from the Veterans' Affairs website.

5.2 The Notice of Appeal must specify:

- The review decision under appeal;
- The grounds for the appeal;
- The full name of the veteran or other claimant;
- A postal, physical, or electronic address to which information and notices concerning the appeal can be delivered to the appellant;
- Whether the veteran, other claimant or Veterans' Affairs proposes to attend the hearing; and
- Any other information required by the form provided by Veterans' Affairs for the purpose, including any evidence on which the appellant intends to rely for the appeal.

*Regulation 48(2)(3) &(4) of the Veterans' Support Regulation 2014*

## 6. Preparations for the Hearing

6.1 On receipt or lodgement of the Notice of Appeal Veterans' Affairs must provide the Appeal Board with:

- the Notice of Appeal; and
- the review decision under appeal; and
- any application, written submissions, statements, reports, and other documents held by Veterans' Affairs that relate to the review decision.

6.2 The documents referred to in the final bullet point above must also be copied to the appellant. If Veterans' Affairs has lodged the appeal, the Notice of Appeal must be sent to the appellant.

*Section 228(6)&(7) of the Veterans' Support Act 2014*

6.3 Veterans' Affairs will arrange a venue for each hearing and notify all parties according to the dates and locations set by the Appeal Board. Notifications must occur no later than 20 working days before the hearing date. **(See also Appendix regarding the Appeal Board's Procedures).**

*Regulation 49 of the Veterans' Support Regulations 2014*

6.4 Veterans' Affairs will provide the Appeal Board with the evidence it wishes to rely upon at the hearing. Veterans' Affairs may also provide further evidence to the Appeal Board if the Appeal Board directs it to. Veterans' Affairs will notify all parties of the requirements regarding the lodgement of evidence.

*Regulation 51 of the Veterans' Support Regulations 2014*

- 6.5 As a matter of policy, if further information is identified or presented before or during the appeal process Veterans' Affairs and the appellant may discuss this and the appellant may agree to withdraw his/her appeal. See also **Appendix on Appeal Board's Procedures**.

## 7. Publicising the Appeal Board Decision

- 7.1 Veterans' Affairs must make decisions of the Appeal Board available on its website, unless the Appeal Board, on application by the applicant or on its own initiative, makes an order prohibiting or restricting the publication of:
- the report of the hearing;
  - the decision or any part of a decision;
  - the name of any person and any details of the decision that would identify the person.

**See also Appendix on Appeal Board's Procedures**

- 7.2 Prior to publishing Veterans' Affairs will notify the appellant of the intention to publish and seek direction from the Appeal Board regarding any restriction or prohibition on publishing the decision or part thereof.
- 7.3 Any person who contravenes an order by the Appeal Board to prohibit or restrict the publication of an Appeal Board decision commits an offence and is liable on conviction to a fine not exceeding \$5,000.

*Section 238 of the Veterans' Support Act 2014*

## 8. Filing the evidence

- 8.1 Veterans' Affairs will keep copies of all evidence and other information provided to the Appeal Board on Veterans' Affairs electronic files, with access limited to the Appeal Board Secretariat. The Appeal Board Secretariat will also hold the evidence on a back-up system.

*Regulation 51 of the Veterans' Support Regulations 2014.*

## 9. Veterans' Affairs as a party to an Appeal

- 9.1 In addition to providing administrative support to the Appeal Board, Veterans' Affairs is also a party to each appeal, whether that appeal is lodged by a veteran, other claimant, or by Veterans' Affairs itself.

*Regulation 46 of the Veterans' Support Regulations 2014*

- 9.2 As a party to an appeal, Veterans' Affairs may make written or oral submissions and will have the same right of response as the other party to the appeal. Veterans' Affairs may also make an appeal to the High Court against an Appeal Board determination on a question of law (**see section 12 of this paper**).

- 9.3 The Veterans' Affairs staff who provide administrative support will not act as a party to an appeal. Veterans' Affairs will nominate a different person(s) to prepare its submission and represent Veterans' Affairs at the hearing.

## **10. Immunities and Privileges of Participants in the Appeal**

- 10.1 Witnesses and persons participating in the appeal hearing (except the counsel) have the same immunities and privileges as if they were appearing in civil proceedings.
- 10.2 Counsel appearing before the Appeal Board have the same immunities and privileges as they would if appearing before a court.

*Section 236 of the Veterans' Support Act 2014*

- 10.3 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
  - members of the Appeal Board.
- 10.4 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*

## **11. Status of Review Decision during the Appeal Process**

- 11.1 A review decision continues to be in full effect, even though an appellant has filed a notice of appeal relating to the review decision. The review decision ceases to be in full effect if:
- all the parties to the review agree to a variation of it for the benefit of the claimant; or
  - the Appeal Board decides to modify it; or
  - the Appeal Board decides to revoke it and substitute the Appeal Board's decision for that of the Review Officer or the Review Panel; or
  - the Appeal Board requires Veterans' Affairs to make the decision again in accordance with the Appeal Board's directions.

## **12. Appeal to High Court on Questions of Law**

- 12.1 An appeal against an Appeal Board determination may be made to the High Court, in accordance with the rules of the court, only on a question of law.

*Section 239 of the Veterans' Support Act 2014*

## **13. Reimbursement of costs and travel expenses of appellant, witnesses and other participants**

- 13.1 The appellant and any person summoned to attend a hearing are entitled to be paid for their reasonable costs and travelling expenses to attend the hearing of an appeal.
- 13.2 The Appeal Board may also order that other persons who participate in the hearing of an appeal be paid for their reasonable costs and travelling expenses.
- 13.3 The level of reimbursement payable is determined by the Appeal Board.

*Section 235 of the Veterans' Support Act 2014*

- 13.4 Appellants, witnesses and other participants, with the exception of Veterans' Affairs staff, will be reimbursed for transportation, accommodation, meals and actual and reasonable out-of-pocket expenses such as unavoidable parking and road toll fees. The reimbursement rates are set out at Appendix II.

**(See also Appendix I on Appeal Board's procedures).**

## **14. Living Overseas**

- 14.1 The international travel expenses of any appellant and any person summoned to attend a hearing will not be funded. Evidence will be heard by remote electronic means.
- 14.2 In all other respects, the policy on the appeals process applies equally to all New Zealand veterans and other New Zealand claimants under the Veterans' Support Act 2014, irrespective of their country of residence.

## **15. Transitional Arrangements**

- 15.1 Any appeal under the War Pensions Act 1954 which has been instituted but not concluded by 7 December 2014 (when the Veterans' Support Act 2014 came into force) may be continued and concluded.
- 15.2 Any right of appeal under the War Pensions Act 1954 which had not been exercised by 7 December 2014 may be exercised and the appeal may be concluded.



## **Appendix I: Appeal Board Procedures**

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### **Composition of the Appeal Board**

Every appeal must be heard by no fewer than three members of the Appeal Board, one of whom must be a **medical practitioner** and one of whom must be the Appeal Board's Chairperson.

*Section 230 of the Veterans' Support Act 2014*

### **Powers of the Appeal Board**

#### **Setting the date for the appeal**

The Appeal Board will set the date and location for the hearing of the appeal. The Appeal Board will notify all the parties of the hearing's date and location no later than 20 working days before the hearing date.

*Regulation 49 of the Veterans' Support Regulations 2014*

Each party to the appeal must, no later than 10 working days before the hearing date, provide all the **evidence** on which that party wishes to rely at the hearing. A party to the hearing may also provide further evidence to the Appeal Board if the Appeal Board directs it to.

*Regulation 51 of the Veterans' Support Regulations 2014*

If further information is identified or presented before or during the appeal process Veterans' Affairs and the appellant may discuss this and the appellant may agree to withdraw his/her appeal.

#### **Documents**

The Appeal Board may, for the purposes of hearing an appeal, require any person to:

- Produce any documents or things in that person's possession or control or copies of those documents or things;
- Allow copies or representations of those documents or things to be made; and
- Verify by statutory declaration any written information, copies of documents, or representations of things provided to the appeal.

*Section 231 of the Veterans' Support Act 2014*

#### **Summoning witnesses**

The Appeal Board may issue a witness summons in writing, using the appropriate form, to any person, requiring that person to attend and give evidence at an Appeal Board hearing. Unless a witness has consented to serve at the appeal by another means, the summons must be served personally on that witness by delivering a sealed copy of the summons to the witness not later than 24 hours before the witness must attend the hearing.

The witness summons must state:

- the place where, and the date and time when, the person is to attend the hearing; and
- the documents or things in that person's possession or control that he or she is required to produce to the Appeal Board; and
- the person's entitlement to be paid costs and travelling expenses (**go to section 12**); and
- the penalty for intentionally, and without reasonable excuse, failing to attend, is a fine, on conviction, not exceeding \$2,000.

The Appeal Board may direct substituted service in accordance with the High Court Rules, i.e. if reasonable efforts have been made to serve a document, and either the document has come to the knowledge of the appellant on whom it is to be served or it cannot be promptly served (clause 6.8 of the High Court Rules).

*Sections 232, 233 and 234 of the Veterans' Support Act 2014*

### **Taking the evidence**

For the purposes of hearing an appeal, the Appeal Board may:

- Receive any evidence or information that, in its opinion, may assist it to determine the appeal, whether or not that evidence or information would be admissible in a court of law;
- Take evidence on oath or affirmation, and for that purpose an oath or affirmation may be administered by the Appeal Board's Chairperson;
- Permit a witness to give evidence by any means, including by written or electronic means or in person or remotely, and, if the Appeal Board considers it appropriate, require the witness to verify the evidence by oath or affirmation.

*Section 229(3) of the Veterans' Support Act 2014*

If the Appeal Board decides that it cannot determine the appeal without hearing oral evidence (whether by attending the hearing or remotely by electronic means), the appeal is to be treated as having lapsed, but the Appeal Board may (on the application of the applicant) revive the appeal.

A veteran who has appealed will be given every opportunity to attend or present their evidence by submission by conference call or other electronic

means available to them. Veterans' Affairs will support the veteran to make sure every opportunity is available.

If the Appeal Board decides it can determine the appeal without hearing oral evidence from the appellant, the Appeal Board may proceed to determine the appeal.

The Appeal Board must first give the appellant prior notice that it intends to make a decision that it cannot determine evidence without hearing oral evidence or a decision that it can determine the Appeal without hearing oral evidence and give the appellant a reasonable opportunity (28 days) to respond.

*Regulation 52 of the Veterans' Support Regulations 2014*

### **Other powers**

The Appeal Board may hold a case management conference at any time and may give a direction to those in Veterans' Affairs who are managing the case if it considers that this will secure the just, speedy, and inexpensive determination of an appeal, or it is otherwise in the interests of justice. This direction can be given on the Appeal Board's own initiative, or on the application of any party to the appeal.

*Regulation 50 of the Veterans' Support Regulations 2014*

The Appeal Board may also, on application or on its own initiative, hear an appeal or part of an appeal in private.

*Section 229(4) of the Veterans' Support Act 2014*

## **The Nature of Appeal Board Determinations**

An appeal made to the Appeal Board is a *de novo* appeal, and the Appeal Board is not bound by any findings of fact made by the decision maker whose decision is the subject of the appeal.

Appeals must be heard and determined in accordance with substantial justice and the merits of the claim and without regard to legal or procedural technicalities.

*Sections 229(1)&(2) and 10(b)(iv) of the Veterans' Support Act 2014*

## **Decision of Appeal Board**

Every appeal must be determined by a majority of the votes of the members hearing the appeal, and the Appeal Board Chairperson has a casting vote if voting is equal.

*Section 230(2) of the Veterans' Support Act 2014*

The Appeal Board must:

- confirm the review decision; or

- modify the review decision; or
- revoke the review decision; or
- make any other decision that is appropriate to the circumstances of the case.

If the Appeal Board revokes the review decision, the Appeal Board must:

- substitute the Appeal Board's decision for that of the **Review Officer** or the **Review Panel** (as the case may be); or
- require Veterans' Affairs to make the decision again in accordance with directions that the Appeal Board gives to Veterans' Affairs.

*Section 237 of the Veterans' Support Act 2014*

The Appeal Board's decision must be in writing and be signed by the members of the Board who heard the appeal.

## Returning the Evidence

After determining an appeal, the Appeal Board will return to the veteran or other claimant all the evidence he or she provided for the appeal if the veteran or other claimant so requires. Veterans' Affairs will keep copies of any evidence provided to it.

*Regulation 51(3) of the Veterans' Support Regulations 2014*

## Publicising the Appeal Board Decision

The Appeal Board, on application by the applicant or on its own initiative, may make an order prohibiting or restricting the publication of:

- the report of the hearing;
- the decision or any part of a decision;
- the name of any person and any details of the decision that would identify the person.

*Section 238 of the Veterans' Support Act 2014*

## Reimbursement of costs and travel expenses of appellant, witnesses and other participants

The Appeal Board will determine the level of reimbursement payable for travel expenses for appellant and any other person the Appeal Board orders to participate in the hearing of an appeal.

*Section 235 of the Veterans' Support Act 2014*

Appellants, witnesses and other participants, with the exception of Veterans' Affairs staff, will be reimbursed for transportation, accommodation, meals and actual and reasonable out-of-pocket expenses such as unavoidable parking and road toll fees. The reimbursement rates are set out at Appendix II.

## Appendix II: Reimbursement of Travel costs

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The reimbursement rates for travel costs set out below apply to appellants, witnesses and other participants in an Appeal, with the exception of Veterans' Affairs staff. Throughout the rest of this appendix these people (except Veterans' Affairs staff) will be called "participants in an Appeal".

Travel costs are made up of three types of costs:

- a. Travel cost of traveling from one location to another
- b. Meals and accommodation reasonably associated with the travel if necessary
- c. Actual and reasonable out-of-pocket expenses associated with the travel.

### Payment rates for travel

Travel means costs incurred for transportation, for example a bus or rail ticket, or the costs to operate private transport for the trip. Where a private motor vehicle is used, the participant in an Appeal does not need to be the driver.

For travel by private vehicle the distance travelled will be calculated in kilometres using [maps.google.co.nz](https://maps.google.co.nz) on the day the application is processed. Only the shortest route will be used in calculating the distance between the locations.

The transportation component of travel costs for a round trip will be paid as follows:

- |                                                                                |                                                 |
|--------------------------------------------------------------------------------|-------------------------------------------------|
| a. Commuter rail, bus and ferry services:                                      | Fare paid                                       |
| b. Private vehicle                                                             | \$0.62 per kilometre for the first 200 km       |
|                                                                                | \$0.27 per kilometre for any travel over 200 km |
| c. Payment for other forms of travel will be assessed on a case-by-case basis. |                                                 |

### Payment rates for meals and accommodation

Meals and accommodation will be paid for or contributed to, provided they are reasonable.

#### Accommodation

Accommodation will be paid if the scheduling of the Appeal hearing must fall in a way where an overnight stay is required for example if the Appeal hearing is:

- a. late in the afternoon or evening meaning the participant in an Appeal is unable to obtain transport home
- b. very early in the morning meaning the participant in an Appeal is unable to travel to the Appeal hearing on the day.

In determining whether an overnight stay is necessary account will be taken of the health of the participant in an Appeal and any recommendation from a health practitioner in relation to the ability of the participant in an Appeal to travel.

No reimbursement for accommodation costs will be provided if the participant in an Appeal stays at a private residence.

The accommodation component of travel costs will be paid or contributed to up to the value of:

- a. one person \$80
- b. two people (where the second person is the escort of the participant in an Appeal and an escort has been approved) \$100

### *Meals*

Where it is necessary for the participant in an Appeal to stay overnight, away from home, reimbursement for the actual and reasonable cost of meals will be provided up to the following specified maximums for the participant in an Appeal and an escort.

- a. Dinner maximum of \$35.00
- b. Lunch maximum of \$15.00
- c. Breakfast maximum of \$12.00

At no point will reimbursement be made for alcohol consumed with a meal.

### **Payment rates for actual and reasonable out-of-pocket expenses**

An out-of-pocket expense means a necessary expense relating to the travel, such as parking and road toll fees. These are assessed on a case-by-case basis.

To be reasonable, these costs need to have been unavoidable or to have reduced other travel costs, such as taking a toll road to avoid a longer route.

Participants in an Appeal will need to supply evidence of these costs, such as pay and display parking tickets.

Participants in an Appeal cannot claim costs for loss of income from missed employment or other costs not directly related to outgoings on travel.

### **Cancelled or rescheduled travel**

No reimbursement will be made for travel that was approved but the participant in an Appeal did not undertake, unless an acceptable reason exists for the participant in an Appeal being unable to travel. This will be assessed on a case-by-case basis.

### **Unreasonable travel costs**

Travel costs will be considered unreasonable where they are either excessive in price or unnecessary – for example a taxi when a private motor vehicle or public transport is available and practical for the travel, or public transport that should have been free with a **SuperGold card**.

## Glossary

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### **accepted disability** [policy definition]

Means an injury, illness or condition that Veterans' Affairs accepts as being service-related.

### **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 an adopted child of the veteran; and
- (c) includes any other child who would ordinarily be regarded as a child of the veteran because the veteran:
  - (i) is or was the spouse or partner of one of the child's parents; and
  - (ii) acted as a parent of the child.

### **child** [clause 7 Schedule 2]

- (a) means a child under 14 years; and
- (b) includes any other child, if the child needs child care because of his or her physical or mental condition.

### **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**

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
- Funeral Expenses
- Motor Vehicle Grant
- Retirement Lump Sum
- Decorations Allowance
- Decorations Annuity

**evidence** [regulation 46]

means any evidence or information, whether or not that evidence or information would be admissible in a court of law.

**medical practitioner** [section 7]

Has the same meaning as in section 5(1) of the Health Practitioners Competence Assurance Act 2003.

**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) dependants of veterans; and
- (c) spouses or partners of veterans.

**partner** [section 7]

Means a civil union partner or a de facto partner.

**party** [regulation 46]

- (a) means a party to an appeal; and
- (b) includes Veterans' Affairs.

**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.

**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.

**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
- (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