

Persons with Legal Authority to act for a Veteran or Other Claimant

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Contents

Policy	3
1. Purpose.....	3
2. Legislative Reference	3
3. Eligibility for a Veteran’s or Other Claimant’s legal representative	3
4. The role of the person with legal authority to act.....	4
5. Process for appointing a veteran’s representative	5
6. Living Overseas	6
Appointing Persons with legal authority to act when the veteran or other claimant lives overseas.....	6
7. Definitions	6
Glossary	8

Policy

1. Purpose

- 1.1 The purpose of this document is to provide guidance on third party representatives with legal authority to act on a **veteran's** or **other claimant's** behalf when they are unable to do so themselves and have thus delegated authority to make decisions on their behalf or a Court has done so.
- 1.2 This paper should be read together with the separate paper on:
 - *Veterans' Representatives.*

2. Legislative Reference

- 2.1 Sections 207-210 of the Veterans' Support Act 2014 (the Act).

3. Eligibility for a Veteran's or Other Claimant's legal representative

- 3.1 A veteran or other claimant may require a third party to act on their behalf as their legal representative if they are:
 - severely incapacitated
 - a minor
 - are capable but have chosen to give a third party Power of Attorney (e.g. the veteran has a temporary incapacity or is travelling, or is to undergo surgery)
 - deceased.
- 3.2 A person with legal authority to act on behalf of the veteran or other claimant is not to be confused with a third party representative to whom the veteran or other claimant has given authority to support them in their discussions with Veterans' Affairs, but to whom the veteran or other claimant remains capable of giving instruction (**see separate paper on Veterans' Representatives**).
- 3.3 Veterans' Affairs will only accept a person or entity has the legal authority to act on behalf of the veteran or other claimant if that person or entity provides demonstrable proof to the satisfaction of Veterans' Affairs that they have the legal authority to act for the veteran or other claimant in respect of the matter in question.
- 3.4 A veteran may have several persons with legal authority to act. There can be several persons with a Court Order, depending on which aspect of care the person is covering (e.g. welfare guardianship, or property manager). Veterans' Affairs must deal with each person with a Court Order on the matter to which the order relates. A court will usually only grant the order in the absence of a

valid Enduring Power of Attorney (EPOA) or if there is a dispute in respect of the EPOA such as whether the Attorney(s) is/are exercising their duties appropriately.

3.5 There can be several EPOAs or Attorneys in respect of property. The EPOAs will specify who the Attorney(s) are required to (or may) consult with when they are acting. There can be only one EPOA in respect of care.

3.6 If there is any disagreement between Attorneys or an Attorney (s) and their families, it is preferable for the family to resolve that themselves or via a court direction.

4. The role of the person with legal authority to act

4.1 The person with legal authority to act on the veteran's or other claimant's behalf may discuss with Veterans' Affairs:

- a single aspect of a claim (e.g. timing of reassessment of a medical condition) or aspects of multiple claims
- the duration of a single claim (e.g. how long vocational rehabilitation will be provided)
- the duration of all existing claims.

4.2 The person with legal authority to act on behalf of the veteran or other claimant may receive payments, for example,

- of the Children's Pension, Children's Bursary, Dependant's Pension, Child Care Payments for Children of a Deceased Veteran, Survivor's Grant for a claimant who is not yet 16 years old
- to a veteran's **child** over 18 years of age with an intellectual disability or cognitive impairment
- of ongoing entitlements such as a Disablement Pension or Independence Allowance, Lump Sum Payment for Permanent Impairment, Weekly Compensation (e.g. to a person with Power of Attorney for a veteran's finances).

Sections 208 to 209 of the Veterans' Support Act 2014

4.3 The person with legal authority to act for the veteran's or other claimant's estate may make claims for any entitlement (other than a lump sum payment) that Veterans' Affairs:

- is liable to make to the veteran or other claimant that has accrued and is unpaid at the time of the veteran's death, or
- would have been liable to pay if the veteran or other claimant had made a claim for it.

The estate must apply for such payments within 3 years of the date of the claimant's death.

Section 210 of the Veterans' Support Act 2014

5. Process for appointing a veteran's representative

- 5.1 Where a veteran or other claimant needs a person with legal authority to act on their behalf to undertake their dealings with Veterans' Affairs they will need to provide Veterans' Affairs with a completed Appointment of Person with Legal Authority to act for a Veteran or Other Claimant form (the form is obtainable from Veterans' Affairs). If the veteran or other claimant is not capable of completing and signing the form, the person being appointed as legal representative may do so. The form will need to be accompanied by:
- a Court Order (e.g. welfare guardianship, property manager order); or
 - another form of legal documentation such as a statutory declaration attesting to the person's status as the legal representative, a letter from a solicitor (in the case of an entity), an active Power of Attorney, or an active Enduring Power of Attorney, or, where relevant, evidence that the person is Executor of a deceased veteran's estate).
- 5.2 Where the person with legal authority to act requests a bank account change in order to receive the payments on behalf of the veteran or other claimant, Veterans' Affairs will check whether there is a completed Authority to Act form on the veteran's or other claimant's file, including the relevant legal documentation (such as a Property Manager Order or Enduring Power of Attorney). An original bank deposit slip with the name of the person with legal authority to act or a document showing the bank account details that has been signed by the bank such as an EFTPOS machine slip or internet or photocopy of the original deposit slip/statement will be required. All bank account changes will be authorised by a Veterans' Affairs staff member who is other than the staff member who entered the change.
- 5.3 Case Managers will scan the application and any attached documents and add them into the veteran's or other claimant's records.
- 5.4 When an attorney ceases to be able to perform their duties in representing the veteran or other claimant, and if the new attorney is not already a listed legal representative of the veteran or other claimant, Veterans' Affairs must request further documentation in order to confirm and accept this change of representation. If the attorney is stepping down, on their own will, from representing the claimant, a document must be provided confirming this. Alternatively, if the attorney is prevented from undertaking their role as a legal representative for the claimant, due to mental or physical infirmity or death, Veterans' Affairs will request evidence of this before beginning communication with the new attorney. A medical certificate from an accepted medical practitioner or a death certificate will suffice.

6. Living Overseas

- 6.1 The policy for *Persons with Legal Authority to act for a Veteran or Other Claimant* applies equally to all New Zealand veterans, irrespective of their country of residence.

Appointing Persons with legal authority to act when the veteran or other claimant lives overseas

- 6.2 Powers of Attorney and EPOAs only have effect in New Zealand. If, for example, a veteran lives in Greenland but is a New Zealand citizen and he/she has bank accounts in Greenland, New Zealand and Switzerland, the Attorney will only be able to exercise their powers in New Zealand. In order to manage the veteran's affairs in Greenland and Switzerland the Attorney would need to get an EPOA (or their local equivalent) in these places.
- 6.3 Enforcing a New Zealand Court Order in overseas jurisdictions may be possible, but it is reliant on New Zealand having a reciprocal enforcement of judgments arrangement with the relevant country.
- 6.4 A declaration made in a Commonwealth country other than New Zealand shall be made before a Judge, a Commissioner of Oaths, a notary public, a Justice of the Peace, or any person authorised by the law of that country to administer an oath there for the purpose of a judicial proceeding, or before a Commonwealth representative, or before a solicitor of the High Court of New Zealand.
- 6.5 A declaration made in a country other than a Commonwealth country shall be made before a Commonwealth representative (New Zealand Embassy or New Zealand High Commission representative), or before a Judge, or before a notary public, who must sign or seal the declaration.

7. Definitions

- 7.1 **A Court Order** made under the Protection of Personal and Property Rights Act 1988 gives a person the authority to act on an individual's behalf. This should include a medical certificate showing mental incapacity. Among the most common Orders the Family Court may make are:
- **Personal Orders** covering personal decisions involving, for example, medical treatment, putting a person in a rest home or not allowing someone to leave New Zealand;
 - **Welfare Guardian Orders** which let another person make decisions about personal care and welfare; and
 - **Property Manager Orders** which let another person manage the property of someone who can't do it themselves.

- 7.2 **A power of attorney** is a formal instrument in which one person, the donor or principal, empowers another, the attorney or donee, to act as a representative for the purpose or purposes stated in the instrument.
- 7.3 **Enduring power of attorney.** The capacity to create an enduring power of attorney was established by the Protection of Personal and Property Rights Act 1988. The purpose of the legislation is to enable the donor of a power of attorney to appoint a chosen attorney to manage his or her affairs in the event that the donor should become mentally incapable after conferring the authority. An enduring power of attorney may be created in relation to the donor's property, or personal care and welfare, or both kinds of powers may be given.

Glossary

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.

impairment [section 7]

Means a loss or abnormality of psychological, physiological, or anatomical function or structure.

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.

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.

service-related death [section 7]

Means death attributable to 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