

# Independence Allowance

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# Policy

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## 1. Purpose

- 1.1 This Policy provides guidance on administering entitlement to the Independence Allowance (**impairment** compensation under Scheme Two). It applies for New Zealand **veterans** whether living in New Zealand or overseas.

## 2. Legislative Reference

- 2.1 The relevant legislation is:
- sections 11, 56, 95-97, and clause 47 of Schedule 2 of the Veterans' Support Act 2014
  - regulations 17(3), 26C and 26D of the Veterans' Support Regulations 2014.

## 3. Eligibility for an Independence Allowance

- 3.1 Veterans are eligible for an Independence Allowance if they have both:
- **qualifying operational service** between 1 April 1974 and 31 March 2002
  - an **accepted injury or illness**, which relates to qualifying operational service in that period and results in permanent impairment.
- 3.2 Veterans who have impairment resulting from an injury or illness relating to qualifying service before 1 April 1974 are not entitled to receive an Independence Allowance. Instead, they may be eligible to receive a Disablement Pension under Scheme One.
- 3.3 Veterans who have permanent impairment resulting from an injury or illness relating to qualifying operational service occurring on or after 1 April 2002 are not entitled to receive an Independence Allowance. Instead, they may be eligible to receive a Lump Sum for Permanent Impairment.

## 4. War Disablement Pension recipients may apply for a Disablement Pension

- 4.1 Scheme Two veterans are not eligible for the Independence Allowance if they currently receive a War Disablement Pension or receive a Disablement Pension after transferring from a War Disablement Pension.
- 4.2 If a Scheme Two veteran in receipt of a War Disablement Pension wishes to seek a reassessment of an accepted injury or illness, or make a claim for a new injury or illness, they must do so by applying for a Disablement Pension under Scheme One. The same applies to Scheme Two veterans who were previously in receipt of a War Disablement Pension and currently receive a Disablement Pension.

- 4.3 See the **Disablement Pension** policy for further information and specific instructions for dealing with arrangements for veterans for whom this applies.

*Clause 6 of Schedule 1 of the Veterans' Support Act 2014*

## 5. Determining eligibility

### Veteran has relevant qualifying operational service

- 5.1 In considering whether the veteran has qualifying operational service for the Independence Allowance, Veterans' Affairs will establish:

- what type of service the veteran has
- whether the veteran has qualifying operational service occurring in the period between 1 April 1974 and 31 March 2002.

- 5.2 Permanent impairment caused by an injury or illness that occurred during qualifying operational service from 1 April 2002 onwards, is compensated through the section 98 Lump Sum Payment for Permanent Impairment.

*Sections 96 and 98 of the Veterans' Support Act 2014*

### Injury or illness was service-related

- 5.3 In considering a claim, Veterans' Affairs will establish:

- whether it is for loss of a **paired organ** or its use; and if so, whether veteran has an accepted injury or illness covering the permanent loss of the other paired organ or its use

*Section 20 of the Veterans' Support Act 2014 and regulation 9 of the Veterans' Support Regulations 2014*

- whether the injury/illness occurred or was aggravated during qualifying operational service; and if aggravated, whether the injury/illness was known to the veteran before he/she started that service, and recorded in his/her NZDF medical records

*Section 19 of the Veterans' Support Act 2014*

- whether it is a conclusively presumed condition arising from the Gulf Conflict that must be treated as **service-related**
- For veterans with qualifying operational service in the Gulf Conflict, conclusively presumed conditions are either of the following:
  - medically unexplained chronic multi-symptom illness, in existence for at least 6 months and defined by a cluster of signs/symptoms such as chronic fatigue syndrome, fibromyalgia, irritable bowel syndrome
  - signs/symptoms of an undiagnosed illness (these may include fatigue, skin symptoms, headaches, muscle pain, joint pain, neurological symptoms, respiratory symptoms, sleep disturbance, gastro-intestinal symptoms, cardiovascular symptoms, menstrual disorders).

*Section 21 of the Veterans' Support Act 2014 and regulations 10 and 14 of the Veterans' Support Regulations 2014*

- whether a **statement of principles** applies (for how to apply Statements of Principles, and what to do if there is no Statement of Principles, see policy on *Statements of Principles*)

*Sections 14 and 15 of the Veterans' Support Act 2014 and regulation 15 of the Veterans' Support Regulations 2014*

- whether further medical assessment is needed.

### Ineligible circumstances

- 5.4 As part of determining whether a veteran is eligible for this entitlement, consideration needs to be given to whether any of the disentitlement provisions of the Veterans' Support Act apply, see *Disentitlement Policy*.

### Injury or illness results in permanent impairment

- 5.5 If a veteran has an injury or illness relating to qualifying operational service occurring in the period 1 April 1974 to 31 March 2002, to be eligible for an Independence Allowance the injury or illness must result in permanent impairment.
- 5.6 As a matter of policy, an injury or illness is considered to result in permanent impairment if it is assessed, on the basis of medical evidence, that the condition: has stabilised; and is likely to have caused permanent impairment.

#### OR

if 2 years have passed since the date of injury or illness, there is medical evidence that the condition has not stabilised, but it is likely that there is permanent impairment resulting from the injury or illness.

*Sections 95, 96 and clause 47 of Schedule 2 of the Veterans' Support Act 2014*

- 5.7 If the veteran's **accepted injury or illness** is a mental condition, a certificate from a suitably qualified medical practitioner must be provided that states that it is likely that permanent impairment has arisen from the mental injury and illness.

*Clause 47 of Schedule 2 of the Veterans' Support Act 2014*

- 5.8 Veterans' Affairs is responsible for paying the reasonable costs associated with the provision of the information required for the certificate.

## 6. Calculating whole-person impairment / payment rate

- 6.1 The American Medical Association Guides to the Evaluation of Permanent Impairment 4th Edition is used to assess each injury/illness and determine the veteran's whole-person impairment rate. The combined tables are used to calculate that rate up to 100%.

- 6.2 When considering the application, the assessor must:

- exclude from the assessment any permanent impairment that does not result from an injury or illness relating to qualifying operational service that occurred during the period 1 April 1974 to 31 March 2002

- exclude from the assessment any injury or illness for which it is determined the claim should be dealt with under Scheme One
- include in the assessment any permanent impairment for which the veteran has received an Independence Allowance.

6.3 The whole-person impairment rate determines the payment rate.

6.4 An injury/illness assessed at 0% impairment is eligible for treatment and rehabilitation (if needed), but not for Independence Allowance payments.

*Sections 84 and 96 of the Veterans' Support Act 2014*

## 7. Application Process

7.1 Independence Allowance claims must be made on the applicable form, and supporting information supplied including:

- copy of identification document (birth certificate, current passport, current drivers licence, or current firearms licence)
- veteran identification (usually, service number)
- original (or certified copy of) veteran's bank statement showing account number and name, or a pre-printed deposit slip stamped by the bank
- medical evidence (for each condition, **medical practitioner**—or dentist, for dental conditions—must complete the relevant part of the form and supply relevant reports)
- any other information held that may assist the claim (other than veteran's NZDF service/medical records, which Veterans' Affairs can get).

*Section 27 of the Veterans' Support Act 2014*

7.2 Veterans' Affairs must within 7 **working days** after receiving the application, acknowledge receipt of the application, and must keep the veteran up-to-date on the progress of the application.

7.3 The decision on a claim is to be made as soon as practicable after receiving the application. Each injury or illness included in an application is considered a separate claim.

7.4 The decision will be given in writing and will include:

- the reasons for the decision
- information about the right of review.

*Section 11 of the Veterans' Support Act 2014*

## 8. Administration of claims after death

8.1 If a veteran dies before their claim is received, it cannot proceed. If the veteran dies after receipt but before determination of a claim, it can proceed and be determined by Veterans' Affairs, but there can be no review of the decision.

- 8.2 Similarly, if a veteran has applied for a review of a decision about entitlement to an Independence Allowance, but dies before the review decision, the review may proceed but there will be no right of appeal by the veteran's estate.

*Section 215 of Veterans' Support Act*

- 8.3 If a veteran applies for an appeal but dies before it is determined, the appeal can be continued by a representative of the veteran.

*Section 228 of Veterans' Support Act; Regulation 53 of Veterans' Support Regulations*

- 8.4 If the outcome of a review or appeal is the granting of an Independence Allowance, the estate will be paid for the period from the day the application was received to the day the veteran died. An estate cannot elect to receive an Independence Allowance lump sum payment.

*Section 96(3) of the Veterans' Support Act*

## **9. Start of entitlement**

- 9.1 Entitlement (if claim is accepted) begins on the day Veterans' Affairs received the claim.

- 9.2 If an Independence Allowance is granted on review or appeal, entitlement begins on the day Veterans' Affairs received the claim.

- 9.3 If an Independence Allowance is granted on reconsideration of a declined claim, entitlement begins on the day Veterans' Affairs received the claim.

- 9.4 If a claim is declined, the review and appeal periods have ended and if the criteria for reconsideration is not met, a new claim may be submitted if the eligibility criterion previously not met is now met (e.g. temporary impairment becomes permanent). In such cases, entitlement begins on the day Veterans' Affairs received the new claim.

- 9.5 If a veteran withdraws an application or an application is closed without resolution and the veteran later makes a new claim, entitlement begins on the day Veterans' Affairs received the new claim.

## **10. End of Entitlement**

- 10.1 Entitlement ceases:

- if the veteran no longer has the accepted injury or illness; or
- 28 days after the veteran dies.

- 10.2 No repayment of a lump sum Independence Allowance (or any part of it) is required if the veteran who received it dies.

## 11. Paying the entitlement

- 11.1 The Independence Allowance is paid at the same rate as the Disablement Pension based on the veteran's level of whole-person impairment.
- 11.2 Payments to New Zealand bank accounts are on a fortnightly basis. Payments to overseas bank accounts are on a 4-weekly basis.
- 11.3 Within New Zealand the payment is not taxed, tested or affected by overseas entitlements. But other countries may view it as income they tax or include in income tests, so overseas residents granted it should be advised of the need to contact the appropriate local agency to check about any such impacts.
- 11.4 Payment rates are adjusted annually in line with the Consumers Price Index. For current rates, see the payments section of the Veterans' Affairs website.

*Section 96 of the Veterans' Support Act 2014*

## 12. Option to lump sum the Independence Allowance

- 12.1 A veteran has the option to receive their Independence Allowance as fortnightly payments (monthly if paid into a bank account outside of New Zealand) or as a lump sum payment covering a one year (52 week) period. Fortnightly (or monthly) payments stop if a veteran elects the lump sum payment option.
- 12.2 A veteran electing to receive a lump sum payment has the option of doing so again each year. Payments revert back to fortnightly (or monthly) if the veteran does not elect to receive a further lump sum payment.

*Section 96 (3) of the Veterans' Support Act 2014 and regulation 26C (3) of the Veterans' Support Regulations 2014*

- 12.3 Applications to lump sum the Independence Allowance must be made on the applicable form.

### Formula to be used to calculate lump sum amounts:

- 12.4 The lump sum payment is based upon the amount payable per week, multiplied by the number of weeks that the payment will be halted for. The lump sum payment is subject to a discount rate. This rate uses the long-term risk free rates of investment returns and inflation that is published by Treasury.
- 12.5 The lump sum amount is to be calculated using the following formula:

$$a \times 51.6075$$

Where:

**a** equals the weekly payment rate of the Independence Allowance

*Section 96 (3) of the Veterans' Support Act 2014 and regulation 26C (3) of the Veterans' Support Regulations 2014*

## Increase to whole-person impairment during the lump sum period

- 12.6 A veteran who has received a lump sum payment is eligible to receive an additional amount if their whole-person impairment increases during the one year period covered by the lump sum and they would have been eligible for a higher weekly rate of Independence Allowance.
- 12.7 The additional amount is to be calculated using the following formula:

$$[2 \times (\mathbf{a} - \mathbf{b})] \times (1 - 1.000562^{-(0.5 \times \mathbf{c})}) \div 0.000562$$

Where:

**a** is the higher weekly rate of Independence Allowance the veteran would have been entitled to if they had not elected to receive the lump sum payment

**b** is the original weekly rate of Independence Allowance the veteran would have been entitled to if they had not elected to receive the lump sum payment

**c** is the number of full weeks remaining in the lump sum period

*Section 96(3) of the Veterans' Support Act 2014 and regulation 26D (3) of the Veterans' Support Regulations 2014*

## Decrease to impairment during the lump sum period

- 12.8 A veteran who has received a lump sum payment does not need to repay Veterans' Affairs any money if their level of whole-person impairment decreases during the period covered by the lump sum payment.
- Regulation 26D(3)(b) of the Veterans' Support Regulations 2014*

## Payment of lump sum when veterans in or about to enter prison

- 12.9 For imprisoned veterans, or veterans about to enter **prison** who elect to receive a lump sum payment instead of periodic payment the following conditions apply, depending on when the veteran makes the election:
- If the veteran makes their election before they go into prison and gets paid the lump sum before entering prison, imprisonment does not affect this entitlement.
  - If the veteran had elected before imprisonment to receive a lump sum, but the sum could not be paid before the date of imprisonment, Veterans' Affairs would stop the payment. Payment would be made on release from prison. However, imprisonment would not affect the calculation of the lump sum amount (i.e. the prison period would count).
  - If the veteran is in prison when they make their election the lump sum is not payable until they leave prison, but the period in prison is taken into account in calculating the lump sum amount.

## 13. Payment when veteran entitled to Accident Compensation Independence Allowance

- 13.1 ACC provides impairment compensation in the form of an Independence Allowance. This is a weekly amount that is paid quarterly.
- 13.2 If a veteran is receiving an Independence Allowance from ACC for the same impairment, a veteran is not entitled to a full Independence Allowance from Veterans' Affairs.
- 13.3 If the Independence Allowance payable under the Veterans' Support Act is paid at a higher rate than the ACC Independence Allowance, Veterans' Affairs will pay a 'top-up' of their entitlement to meet the higher rate from Veterans' Affairs.

*Section 97 of the Veterans' Support Act 2014*

### Treatment of ACC Independence Allowance payments

#### *Veterans in receipt of weekly periodic payments*

- 13.4 Veterans' Affairs must pay the difference between the ACC weekly payment rate and the Veterans' Affairs weekly payment rate of Independence Allowance.

#### *Veterans in receipt of a Single Payment Offer (SPO)*

- 13.5 ACC claimants in receipt of an Independence Allowance can choose to receive a SPO (which is for a five year period) rather than quarterly payments over those five years. The single payment uses a formula that takes into account things like the age, gender and life expectancy of the claimant, and always results in the payment being less than the total amount the claimant would receive if they chose to receive quarterly payments over five years.
- 13.6 The lower rate payable under the SPO is not used as it contains discounting that has been applied by ACC. Veterans' Affairs must use the current ACC weekly payment rates when calculating the top up amount payable to the veteran.

#### *Adjustment of ACC Independence Allowance payment rates*

- 13.7 The amount of the ACC payment rate may change due to the annual CPI adjustment, or a change to the veteran's rate of impairment for their condition. This has an impact on the amount of the top-up payable by Veterans' Affairs.
- 13.8 The table below sets out the treatment for each type of adjustment:

	<b>ACC CPI adjustment</b>	<b>ACC amount changes through review of impairment</b>
<b>VA weekly payment</b>	Increase to VA top-up amount: Adjust from date of change (1 July each year) and pay arrears	Increase to VA top up amount: Adjust from date of change and pay arrears
	Decrease to VA top-up amount: Reduce from date of change as veterans are required to advise VA of changes	Decrease to VA top-up amount: Reduce from date of change as veterans are required to advise VA of changes

<b>VA one year lump sum</b>	Increase to VA top-up amount: Recalculate the formula and pay residual payment if arrears payable	Increase to VA top-up amount: Recalculate the formula and pay residual payment if arrears payable
	Decrease to VA top-up amount: Reassess at end of one year period	Decrease to VA top-up amount: Reassess at end of one year period

## 14. Reassessment of Independence Allowance

- 14.1 If a medical practitioner certifies that the level of impairment of a stable and permanent injury or illness has changed since it was last assessed Veterans' Affairs must undertake a reassessment. A veteran is not entitled to more than one reassessment in a 12 month period of a stable and permanent injury or illness.
- 14.2 If a medical practitioner certifies that a previously non-stable injury or illness is now stable and permanent Veterans' Affairs must undertake a reassessment. If accepted as being stable and permanent, future reassessments may occur as set out above.
- 14.3 In the case of a mental injury or illness the certificate must be provided by a medical practitioner who is suitably qualified (to Veterans' Affairs satisfaction) to assess mental injury or illness.
- 14.4 If, following the reassessment of the veteran's accepted injury or illness, the reassessment indicates there has been a change in the veteran's whole-person impairment, the veteran may receive an increase or decrease in their Independence Allowance to reflect the increased or decreased impairment.

## 15. Reviews, appeals and complaints

- 15.1 If a veteran disagrees with a decision on eligibility for an entitlement or service, see policies on **Reviews and Appeals**. If they are dissatisfied with how their Disablement Pension is administered, see policy on **Complaints**.

## Glossary

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### accepted injury or illness [policy definition]

Means an injury, illness or condition that Veterans' Affairs accepts relates to qualifying operational service that occurred between 1 April 1974 and 31 March 2002.

### impairment [section 7]

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

### medical practitioner [section 7]

Means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine.

### 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.

### paired organs [regulation 9]

The following organs are paired organs for the purposes of section 20 of the Veterans' Support Act 2014:

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

### prison [section 29]

Means—

- (a) a prison within the meaning of section 3(1) of the Corrections Act 2004; or  
[which under that Act reads as follows:  
(a) means a prison established or deemed to be established under section 32;  
and  
(b) to avoid doubt, includes any land or building declared to be a prison.]  
Note: These relate to Corrections prisons and Police jails.
- (b) a service prison within the meaning of section 2(1) of the Armed Forces Discipline Act 1971; or  
[which under that Act reads as follows:  
Means a building or part of a building set aside under this Act as a service prison.
- (c) an overseas prison.

**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.

**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.

**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.