

Independence Allowance

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Policy

1. Purpose

- 1.1 This Policy provides guidance on administering Scheme Two veterans' eligibility under the Veterans' Support Act 2014 (the Act) to the Independence Allowance.

2. Legislative Reference

- 2.1 The relevant legislation is:
- the Act, sections 11, 56, 96-97, clause 47 schedule 2
 - Veterans' Support Regulations 2014, regulations 17(3) and 26C & D.

3. Eligibility for an Independence Allowance

- 3.1 A veteran is eligible for an Independence Allowance if they suffer a service-related **accepted disability** between 1 April 1974 and 31 March 2002 that results in permanent impairment. As a matter of policy, a veteran is eligible for an Independence Allowance if it is assessed on the basis of medical evidence that their 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.

Section 96 and clause 47 of Schedule 2 of the Veterans' Support Act 2014

- 3.2 If the veteran's service related accepted disability is a mental injury or illness, 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

- 3.3 Veterans' Affairs is responsible for paying the reasonable costs associated with the provision of the information required for the certificate.
- 3.4 If a veteran is entitled to an Independence Allowance under the Accident Compensation Act 2001, a veteran is not entitled to a full Independence Allowance from Veterans' Affairs, but is entitled to receive the difference between the Independence Allowance payable under the Accident

Compensation Act 2001 and the Independence Allowance payable under the Veterans' Support Act 2014.

Section 97 of the Veterans' Support Act 2014

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

- 4.1 Scheme Two veterans who are currently receiving, or who have previously received, a War Disablement Pension are not eligible for the Independence Allowance.
- 4.2 If a Scheme Two veteran in receipt of a War Disablement Pension wishes to seek a reassessment of an accepted service-related 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.
- 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. Application Process

- 5.1 Applications for an Independence Allowance must be made in writing using the appropriate application form provided by Veterans' Affairs. The veteran must supply all supporting information required by Veterans' Affairs for the assessment of eligibility, including:
 - veteran identification (service number and a certified birth certificate, current passport, drivers licence or firearms licence)
 - original or certified copy of the veteran's bank statement showing the account number and name, or a pre-printed deposit slip stamped by the bank
 - any other documentation or information the veteran holds relating to their service that can assist with processing the application (this is apart from the veteran's military records which Veterans' Affairs will obtain from NZDF Archives or NZDF Health Services)
 - medical evidence (the medical practitioner should complete the section of the form requiring details of the medical diagnosis for each condition).

Sections 27 and 48 of the Veterans' Support Act 2014

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

5.3 Veterans' Affairs will make a decision on a claim as soon as practicable after receipt of the application. Veterans' Affairs considers each injury or illness included in an application as a separate claim.

5.4 Veterans' Affairs will notify the veteran in writing of its decision and provide:

- the reasons for the decision
- information about the veteran's rights of review.

Section 11 of the Veterans' Support Act 2014

Veteran had qualifying operational service

5.5 In considering whether the veteran had qualifying operational service for the Independence Allowance, Veterans' Affairs will establish:

- what type of service the veteran has (**qualifying operational service**), and when the injury or illness that causes the permanent impairment occurred (qualifying operational service must have occurred in the period between 1 April 1974 and 31 March 2002)
- 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

5.6 In considering whether the veteran's injury or illness was service-related for the Independence Allowance, Veterans' Affairs will establish:

- whether the veteran has an accepted service-related **paired organ** disability, i.e. permanent loss of or the permanent loss of the use of one of any paired organs as a result of service, and the subsequent loss or impairment to the efficiency of the other corresponding organ from whatever cause (**see current list of accepted paired organs**)

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

- whether the injury or illness occurred or was aggravated during qualifying operational service, and, in the case of an aggravation the injury or illness was recorded in the veteran's service medical records if the veteran knew about the injury or illness before he/she commenced qualifying operational service

Section 19 of the Veterans' Support Act 2014

- whether the veteran's medical/service records or medical diagnosis, indicate he/she is suffering from a conclusively presumed injury, illness or condition relating to specified deployments or specific events during qualifying operational service as listed in the Regulations, in which case the injury, illness or condition will be treated as service-related

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

- whether the veteran is suffering from an injury or illness to which a **Statement of Principles** applies
- If the veteran is suffering from an injury or illness to which no Statement of Principles applies, whether the claim is consistent with a hypothesis that is reasonable.

(for instruction on how to apply the Statements of Principles and what to do when there is no Statement of Principles for the injury or illness see separate paper on Statements of Principles)

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

- whether additional medical assessment of the veteran's disability is required.

6. Assessing the whole-person impairment rate to determine rates of payment

- 6.1 When considering the application Veterans' Affairs will conduct a whole-person **impairment** assessment for every condition the veteran has applied for. The *American Medical Association Guides to the Evaluation of Permanent Impairment 4th Edition (AMA Guides)* is used to determine the individual rate of impairment for each accepted disability and the combined tables are used to calculate the overall whole-person impairment rating of up to 100 percent. The amount of Disablement Pension paid to the veteran is based on the whole-person impairment rating.
- 6.2 **See separate paper on Whole-Person Impairment.**
- 6.3 **See Veterans' Affairs website for current rates for each level of impairment.**
- 6.4 When considering the application, an assessor will determine the veteran's percentage of whole-person impairment. The assessor must exclude from the assessment any permanent impairment that:
- does not result from a service-related injury or illness that occurred during the period 1 April 1974 – 31 March 2002;
 - the veteran has already received an Independence Allowance from Veterans' Affairs for.
- 6.5 The amount paid to the veteran is based on the overall whole-person impairment rating.

Clause 48 of Schedule 2 of the Veterans' Support Act 2014

7. Start of Entitlement

7.1 When a condition is accepted, entitlement begins on whichever is the latest of:

- 7 December 2015
- the date qualifying operational service was declared
- the date the permanent impairment arose from an injury or illness related to qualifying operational service.

8. How Payments are calculated

8.1 The amount of Independence Allowance paid is based on the whole-person impairment rating (see section 6) and is neither taxed nor asset tested. It is paid at the same rate as the Disablement Pension.

8.2 **See Veterans' Affairs website for the current payment rates for the Independence Allowance.**

8.3 The Independence Allowance is adjusted annually in line with the Consumer Price Index. If the Index decreases, no adjustment will be made to the payment rate.

8.4 Veterans using New Zealand bank accounts will receive the Independence Allowance on a fortnightly basis.

8.5 If the Independence Allowance is being paid to an overseas bank account it is paid on a monthly basis.

Section 96 of the Veterans' Support Act 2014

9. Option to lump sum the Independence Allowance

9.1 The Act provides veterans with the option to receive a lump sum payment in exchange for stopping their periodic payments for one year. The amount is calculated by Veterans' Affairs, using the formula set out in regulation 26C (3). After one year, a veteran may request their lump sum be renewed for a further year or have their lump sum paid annually for the next four years (giving a total of five years). A veteran is not prevented from applying again for a lump sum payment, after five years.

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

9.2 Applications to lump sum the Independence Allowance must be made in writing on the appropriate application form provided by Veterans' Affairs.

Formula to be used to calculate lump sum amounts:

9.3 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 will be subject to a discount rate. This rate uses the long-

term risk free rates of investment returns and inflation that is published by Treasury.

- 9.4 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 impairment during the lump sum period

- 9.5 A veteran who has received a lump sum payment is eligible to receive an additional amount if their 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.

- 9.6 The additional amount is to be calculated using the following formula:

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

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

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.

Regulation 26D (3)(b) of the Veterans' Support Regulations 2014

10. Veterans in prison

- 10.1 During any period when a veteran is a **prisoner** in any **prison**, Veterans' Affairs must not provide an Independence Allowance or Independence Allowance related payments.

Section 29(1)(b) of Veterans' Support Act

- 10.2 Veterans' Affairs may cover assessments for injury or illness if the veteran was receiving the Independence Allowance before entering prison.

- 10.3 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.

11. Relationship with other entitlements

Accident Compensation

- 11.1 ACC provides impairment compensation in the form of an Independence Allowance. This is a weekly amount that is paid quarterly.

If a veteran is receiving an Independence Allowance from ACC for the same impairment, they may receive a 'top up' of their entitlement to meet the higher rate from Veterans' Affairs.

Treatment of ACC Independence Allowance payments

Veterans in receipt of weekly periodic payments

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

Veterans in receipt of a Single Payment Offer (SPO)

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.

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

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.

The table below sets out the treatment for each type of adjustment:

	ACC CPI adjustment	ACC amount changes through review of impairment
VA weekly payment	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
VA one year lump sum	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

Lump sum compensation for permanent impairment

- 11.2 Veterans who suffer a permanent impairment resulting from a service-related injury or illness that occurred on or after 1 April 2002 are not entitled to receive an Independence Allowance. Instead, they may be eligible to receive a Lump Sum Payment for Permanent Impairment.
- 11.3 **See separate policy on Lump Sum Payment for Permanent Impairment.**

12. Reassessment of Independence Allowance

- 12.1 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.
- 12.2 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.
- 12.3 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.
- 12.4 If, following the reassessment of the veteran's accepted disability/disabilities, the reassessment indicates there has been a change in the veteran's disability, the veteran may receive an increase or decrease in their Independence Allowance to reflect the increased or decreased impairment.

13. End of Entitlement

- 13.1 The Independence Allowance ceases if:
- a veteran recovers from their service-related condition (as supported by medical opinion), or
 - the veteran dies. Veterans' Affairs will stop payments as soon as it is advised of the death of the recipient and will not seek to recover any debt associated with overpayments that occur within the first 28 days following the death.
- 13.2 No repayment of the lump sum Independence Allowance (or any part of it) is required if the veteran who received it dies.

14. Living Overseas

- 14.1 This policy for the Independence Allowance applies equally to all New Zealand veterans, irrespective of their country of residence.
- 14.2 Veterans living overseas should be aware that the payments may be considered to be taxable income in their country of residence.

15. Reviews and Appeals

- 15.1 If a veteran disagrees about a decision concerning eligibility for an entitlement or service see separate policies on **Reviews and Appeals**. If a veteran is concerned about Veterans' Affairs' administration of the entitlement or service see separate policy on **Complaints**.

Glossary

accepted disability [policy definition]

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

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.

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.

prisoner [section 29(3)]

Means,—

- (a) for a prison referred to in **paragraph (a)** of the definition of prison, a prisoner within the meaning of section (3)(1) of the Corrections Act 2004; or
[prisoner under that Act reads as follows:
Means any person for the time being in the legal custody under this Act of the following persons:
(a) the chief executive;
(b) the Commissioner of Police.
- (b) for a prison referred to in **paragraph (b)** of that definition, a service prisoner within the meaning of section 2(1) of the Armed Forces Discipline Act 1971; or
[service prisoner under that Act reads as follows:

Means a person under a sentence that includes imprisonment imposed under this Act by the Court Martial].

- (c) for a prison referred to in **paragraph (c)** of that definition, a person for the time being in legal custody in that 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.