

# Lump Sum Payment for Permanent Impairment

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# Policy

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## 1. Purpose

- 1.1 This Policy provides guidance on administering veterans' eligibility under the Veterans' Support Act 2014 (the Act) to a Lump Sum Payment for Permanent Impairment (Lump Sum Payment).

## 2. Legislative Reference

- 2.1 The relevant legislation is:

- the Act, section 98, and clauses 45-51 of Schedule 2
- Veteran' Support Regulations 2014, Regulation 26E.

## 3. Eligibility for a Lump Sum Payment

- 3.1 A veteran is eligible for a Lump Sum Payment if they suffer a permanent **accepted disability** that occurs on or after 1 April 2002.

*Section 98(1) of the Veterans' Support Act 2014*

- 3.2 The veteran must:

- have survived the injury or illness for not less than 28 days; and
- have had an assessment completed by an assessor.

- 3.3 The assessment must have established that the veteran's injury or illness has resulted in whole-person impairment of 5 per cent or more.

- 3.4 A veteran is eligible for a Lump Sum Payment 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.

*Clauses 45(1), 47 and 48 of Schedule Two of the Veterans' Support Act 2014*

- 3.5 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*

3.6 Veterans' Affairs is responsible for paying the reasonable costs associated with the provision of the information required in paragraph 3.5.

## 4. Where a veteran is not eligible for a Lump Sum Payment

4.1 Unless Veterans' Affairs is satisfied on reasonable grounds that in the circumstances, the exclusion would be unfair to the veteran (e.g., because desertion, or absence without leave was brief or the offence was minor in nature) a veteran is not eligible for a Lump Sum Payment if their injury or illness:

- occurred while the veteran was a deserter or absent without leave within the meaning of the relevant armed forces disciplinary legislation applicable at the time of the injury or illness (the findings of a military tribunal within the meaning of the Armed Forces Disciplinary Act 1971; that a veteran was a deserter or absent without leave would be conclusive proof);
- occurred while the veteran was committing an offence under New Zealand law or committing an act overseas that, had it been done in New Zealand, would have been an offence under New Zealand law;

4.2 A veteran is also not eligible for a Lump Sum Payment if their injury or illness:

- was predominantly caused by or significantly aggravated by the use of alcohol or tobacco products, the misuse of illegal or prescription drugs, or the contracting of a sexually transmitted disease

### **UNLESS**

the injury or illness was itself a psychological condition (for example alcohol use disorder) that was attribute to or aggravated by the experiences of the veteran during qualifying operational service; or in the case of or, in the case of a sexually transmitted disease, the disease was the result of suffering a sexual assault.

4.3 A Lump Sum for Permanent Impairment will not be granted for an injury or illness that is due wholly or substantially to the ageing process.

*Section 28 of the Veterans' Support Act 2014*

4.4 During any period when a veteran is a **prisoner** in any **prison**, Veterans' Affairs must not provide a Lump Sum Payment for Permanent Impairment or any Lump Sum Payment for Permanent Impairment-related payments.

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

- 4.5 Veterans' Affairs may arrange assessments to determine if an injury or illness is service-related while a veteran is in prison. If accepted any resulting lump sum payment may be paid when the veteran leaves prison.

*Section 29(1)(a) of the Veterans' Support Act 2014*

- 4.6 Scheme Two veterans who are currently receiving, or who have previously received a War Disablement Pension (and are now receiving a Disablement Pension) are not eligible for a Lump Sum Payment.
- If a Scheme Two veteran in receipt of a War Disablement Pension wishes to seek a review 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.
  - Refer to **Transitional Arrangements section** in the **Disablement Pension** policy for further information and specific instructions for dealing with transitional arrangements for veterans for whom this applies.

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

## 5. Applications for a Lump Sum Payment

- 5.1 Applications for a Lump Sum Payment must be made in writing on 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, but not limited to:
- veteran identification (service number and a certified birth certificate, current passport, drivers licence or firearms licence)
  - 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** must complete the section of the form requiring details of the medical diagnosis for each condition and provide relevant reports).

*Section 27 of the Veterans' Support Act 2014*

- 5.2 In considering the veteran's application, Veterans' Affairs is required to establish:

whether the veteran is in receipt of a War Disablement Pension, Disablement Pension, Independence Allowance or a lump sum payment for an injury or illness claimed relating to 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 (**full list of current accepted paired organs is available here**); and

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

- Whether the veteran has **qualifying operational service** on or after 1 April 2002; and

*Sections 83 and 98 of the Veterans' Support Act 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; and

*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; and

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

- whether the veteran is suffering from an injury or illness to which a **Statement of Principles** applies; and
- whether the veteran is suffering from an injury or illness to which no Statement of Principles applies; and

**(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 claimed condition is required.

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

- 6.1 Veterans' Affairs will conduct a whole-person impairment rating for every condition the veteran has applied for and where this has not previously been completed. 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.

- 6.2 When considering the application, an assessor will assess 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 2002 onwards;
  - the veteran has already received a Lump Sum Payment for under this Act.
- 6.3 If the veteran has more than one condition, the combined effect of those conditions will be calculated and the combined tables in the AMA Guides are used to calculate the overall whole-person impairment rating of up to 100 per cent.
- 6.4 The amount paid to the veteran is based on the whole-person impairment rating.

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

## **7. Start of Entitlement, Decision Timeline and Notice to the Veteran**

- 7.1 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
- 7.2 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.
- 7.3 Veterans' Affairs will give notice of its decision on a claim in writing, providing:
- the reasons for the decision, and
  - information about the veteran's right of review.
- 7.4 When a disability is accepted, entitlement begins on the day Veterans' Affairs received the application.

## **8. Payment of the Lump Sum Payment**

- 8.1 The amount of lump sum paid is based on the whole-person impairment rating and is neither taxed nor asset tested.

*Regulation 26E of the Veterans' Support Regulations 2014*

- 8.2 **See the Veterans' Affairs website on Rates and Allowances for the current payment rates for the Lump Sum Payment.**

- 8.3 The lump sum rates are adjusted annually in line with the Consumer Price Index.

## 9. Relationship with other entitlements

### Accident Compensation

- 9.1 ACC also provides impairment compensation in the form of a lump sum payment.
- 9.2 If a veteran has received a lump sum payment from ACC for the same impairment, they may receive a 'top up' of their entitlement to meet the higher rate from Veterans' Affairs.

*Section 98 of the Veterans' Support Act 2014*

- 9.3 Veterans' Affairs must advise the veteran that we expect him/her to first test his/her eligibility for a lump sum payment for permanent impairment under ACC.
- 9.4 Veterans' Affairs will proceed with assessing whether the veteran meets the Veterans' Affairs' eligibility criteria. If so, Veterans' Affairs will provide the veteran with entitlements or services even if ACC has not yet reached a decision regarding cover.
- 9.5 If ACC does decide to provide cover, it will take over the lead in provision of entitlements and services to the veteran. Veterans' Affairs will seek reimbursement of any Veterans' Affairs payments made to the veteran, taking into account any 'top up' payments may wish to make.

## 10. Reassessment of Lump Sum Payment

- 10.1 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.
- 10.2 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 in 10.1.
- 10.3 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.

*Clause 50 of Schedule Two of the Veterans' Support Act 2014*



## 11. Lump sum payment changes following reassessment

- 11.1 If, following reassessment of the veteran's accepted disability/disabilities, the reassessment indicates that there has been an increase in the veteran's accepted disability, the veteran will receive an additional Lump Sum Payment to reflect the increased impairment.
- 11.2 For example, if a veteran received a Lump Sum Payment of \$5,000.00 in 2005 for 15 per cent whole person impairment (WPI) for osteoarthritis left knee, and in 2015 was reassessed at 20 per cent WPI, the veteran will receive the Lump Sum Payment amount for 20 per cent WPI, less the current year's rate for 15 per cent WPI.
- a. 20 per cent WPI (\$10,370.76) less 2015 rate for 15 per cent WPI (\$6,920.23) = payment of \$3,450.53.
- 11.3 If the veteran's accepted disability or disabilities have improved, or indeed if the veteran is assessed as no longer having a particular accepted disability, the veteran's whole-person impairment rate will be recalculated to a lower percentage. There is no ability to recoup any of the money paid to the veteran, but the overpayment will be taken into account at the next reassessment.
- 11.4 For example, if the veteran received a 20 per cent WPI Lump Sum Payment (\$10,370.76) and then had their impairment reassessed to 18 per cent, the veteran does not need to repay any money. If the veteran is later reassessed in 2015 to 23 per cent WPI, the veteran will receive the lump sum amount for 23 per cent WPI, less the 2015 rate for 20 per cent WPI.
- a. 23 per cent WPI (\$12,743.86) less 2015 rate for 20 per cent WPI (\$10,370.76) = payment of \$2,373.10.

## 12. Where a veteran dies after receiving Lump Sum

- 12.1 No repayment of a Lump Sum for Permanent Impairment (or any part of it) is required if the veteran who received it dies.

## 13. Living Overseas

- 13.1 This policy for the Lump Sum Payment applies equally to all New Zealand veterans, irrespective of their country of residence.
- 13.2 Veterans living overseas should be aware that the Lump Sum Payment may be considered to be taxable income in their country of residence.

## 14. Reviews, Appeals and Complaints

- 14.1 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 an entitlement or service **see separate policy on Complaints**.

## Glossary

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

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

### **health practitioner** [section 7]

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

### **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 Act:

- (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.

**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.

**qualifying service** [section 8]

Means:

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

**terminal medical condition** [section 53]

Means an advanced progressive disease likely to cause death within the 12-month period referred to in subsection 53(1) of the Veterans' Support Act 2014.

**treatment provider** [section 7]

- (a) means a chiropractor, dentist, medical laboratory technologist, nurse, nurse practitioner, occupational therapist, optometrist, osteopath, physiotherapist, podiatrist, or medical practitioner; and
- (b) includes a member of any occupational group as added for the purposes of this definition by regulations made under section 265 and subject to any criteria specified in those regulations, including (but not limited to) whether and, if so, the extent to which members of an occupational group are recognised by the Accident Compensation Corporation as treatment providers for the purposes of the Accident Compensation Act 2001.

**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.

**working day** [section 7]

Means a day of the week other than:

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day; and
- (b) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
- (c) a day in the period commencing on 25 December in any year and ending with 15 January in the following year.