

# **Regulatory Impact Statement**

## **Law Commission Review of the War Pensions Act 1954**

### **Agency Disclosure Statement**

This Regulatory Impact Statement has been prepared by Veterans' Affairs New Zealand (VANZ).

It provides an analysis of whether to accept the recommendations of the review of the War Pensions Act 1954 (the 1954 Act) undertaken by the Law Commission. The Law Commission recommended a number of changes to improve the services and support currently offered to veterans, and to rewrite the legislation. VANZ has carried out extensive analysis on the issues covered by the Law Commission.

In recommending change to the law affecting the provision of services to veterans, this Regulatory Impact Statement notes that the principles underpinning the current legislation will be maintained.

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## **Status Quo and Problem Definition**

The current War Pensions Act was introduced in 1954. It outlines the services provided to veterans, primarily the payment of pensions for injury as the result of military service. The current legislation is based on the broad principle that veterans who have been injured or impaired as a result of operational military service should in return be entitled to a beneficial level of assistance in comparison to other New Zealanders. It also acts as a form of compensation for workplace injury for those with service in a routine environment prior to 1 April 1974. The degree to which the benefit is applied depends on whether the service was in a routine or war and emergency environment.

The 1954 Act is outdated. Minor amendments have been made since its introduction, but it remains a piece of legislation that is hard to understand and apply. The 1954 Act uses terms that are no longer used in modern statutes, and key provisions are unclear. The complexities cause difficulties for both administrators and veterans. The lack of clarity in the legislation results in the decision-maker being required to use a large amount of discretion in the decision-making process. It is often unclear how the decision-maker is meant to apply the provisions for granting a Disablement Pension, which leads to inconsistency in their decisions. There are no specific provisions for deciding who is covered by the 1954 Act's provisions, and what constitutes a 'war' or 'emergency'. The provisions relating to evidential requirements are also confusing and the 1954 Act does not provide statutory definitions for attributability, aggravation or disablement.

The focus of the 1954 Act does not fit well with the current New Zealand Defence Force (NZDF) deployment environment. The 1954 Act was created with a focus on physical injuries incurred in war. It does not adapt well to the types of psychological and environmental conditions that modern veterans serve in, and the impact of these on health and wellbeing. In addition, the schedule of disabilities does not work well in the modern setting, and the practice that has evolved of awarding veterans a disability rating of more than 100 per cent is not consistent with the assessment of disablement used by other providers such as ACC.

The 1954 Act has not been adequately amended to take into account the fact that some veterans qualify for entitlements under both the war pension scheme and ACC, and others only qualify for entitlements under the war pension scheme. This has the potential to create a perception of unfairness. Some ACC entitlements are also more generous than entitlements under the War Pensions Act 1954. This undermines the main principle of the war pension scheme, which is that veterans who have been injured or impaired as a result of operational military service should in turn be entitled to a beneficial level of assistance in comparison to other New Zealanders.

The 1954 Act does not provide any framework for rehabilitation and requires claims for impairment compensation to be finalised prior to any assistance being provided.

## **The Veteran Community**

The veteran community ranges in age from 19 year old veterans of current deployments, such as Timor Leste and Afghanistan, to the remaining Second World War veterans whose age range is between 80 and 100 plus. The Second World War population still makes up the majority of the veteran community but this will change over time. The veterans of post-1990 deployments are a growing group of veterans and will, within the next 5 to 10 years, become the largest group of veterans.

The derived population estimate, using existing data from the 1971 census and the data related to post-1971 deployments, indicates that the veteran population as a whole will decline by 28% over the next five years. The number of veterans in the population is expected to rapidly decline over this period, dominated by a steep decline in the number of

Second World War veterans, and the fact that the deployments since the Second World War did not have large numbers of service personnel involved.

As a consequence of this demographic profile, it is critical that any legislation needs to be structured in a way that ensures that the needs of the ageing veteran population continue to be met, and that the support provided to the veterans of modern day deployments compliments the support available through ACC. The Law Commission has recommended that this be achieved through the use of two separate schemes. Scheme One would apply to veterans with service prior to 1 April 1974, and Scheme Two would apply to veterans with qualifying operational service from 1 April 1974, when ACC was introduced.

## **Objectives**

The objectives are:

- To provide additional state support for veterans and their families in circumstances where the health and wellbeing of veterans and their families has been adversely affected as a result of the veteran being put in harm's way in support of the government policy of the day.
- To have legislation that reflects the principles of modern disability management, and allows for the provision of rehabilitation. Modern disability schemes are not fundamentally based on the granting of entitlements, but instead provide assistance to restore the health of claimants, and assist them to return to being fully functioning members of society. The legislation for Scheme Two will need to compliment the ACC scheme, which provides universal accident cover for all New Zealanders, including members of the NZDF.
- To have legislation that enables an accurate level of impairment to be determined without the decision-maker being required to apply a large amount of discretion.
- To have legislation that clearly sets out the entitlement criteria for services, including Disablement Pensions, and allows for easier administration of claims and services.

## **Regulatory Impact Analysis**

In 2007, the previous Government referred the 1954 Act to the Law Commission for review as part of the Law Commission's 2007/08 work programme [CAB Min 07 36/1B refers]. At that time, the Government was concerned that the current Act no longer met the needs of the veterans it was intended to serve, and that it did not take account of modern disability management principles. It was also recognised that the administrative and decision-making processes in the Act were inefficient, and caused delays and frustrations for veterans.

The Law Commission released an Issues Paper in July 2008 setting out their preliminary views on a modernised system of veterans' entitlements. It identified the problems and issues of the 1954 Act, and presented options for reform. The Law Commission invited submissions on these views and incorporated this feedback into their final report, 'A New Support Scheme for Veterans: A Report on the Review of the War Pensions Act 1954'. In June 2010, this report was tabled in the House.

The Law Commission provided an independent, unbiased evaluation of the current war pension scheme in their 2008 Issues Paper. Their detailed 283 page paper set out the current war pensions provisions, noted the current support offered to other New Zealanders, and identified the support offered to veterans in other countries. The Law Commission then offered options for reform. After consultation with veterans, current military personnel, and public submissions, the Law Commission presented their final report in June 2010. The report contained 170 recommendations that propose replacing the War Pensions Act 1954

with new legislation, and recommends significant changes to the administration and decision-making processes currently used.

Internationally, there have been changes in the way that service-related disability has been addressed. Military disability and compensation schemes overseas have been updated to enable the provision of rehabilitation to veterans, particularly those of working age.

The proposed options take account of the recommendations made by the Law Commission.

**Options**

Two options were considered:

1. The Status Quo – maintaining the War Pensions Act 1954.
2. Modernising the legislation to ensure the provisions cater for the needs of all veterans, simplify the administration and clarify the key provisions. This could be achieved by accepting the following key Law Commission recommendations:
  - Making rehabilitation the gateway to further assistance such as permanent impairment compensation for Scheme Two veterans;
  - The use of decision-making tools such as presumptive lists and SoPs to allow the decision-maker to assess whether a condition is attributable or aggravated by service; and
  - The adoption of the AMA Guides to assess a veteran’s whole person impairment, and the adoption of a maximum impairment level of 100%.

The analysis of the options considered whether:

- The option would deliver the stated objectives, and
- The benefits, risks and costs of each option.

**Summary assessment**

Options	Objectives				Increased Fiscal Costs	Improves on Status quo?
	Additional support	Modernised approach	Accurate disablement assessment	Clear entitlements		
Status Quo	Yes	No	No	No	n/a	n/a
Modernise Act (Accept LC report)	Yes	Yes	Yes	Yes	2014/15: \$3.801 mil Outyears: \$8.564 mil	Yes

## **Option One - Status quo**

The status quo is assessed in the status quo and problem definition section of the RIS.

## **Option 2 – Modernising the legislation to ensure the provisions cater for the needs of all veterans, simplify the administration and clarify the key provisions.**

This option would require replacing the 1954 Act with updated legislation and accepting the following key Law Commission recommendations:

- Making rehabilitation the gateway to further assistance such as permanent impairment compensation for Scheme Two veterans;
- The use of decision-making tools such as presumptive lists and SoPs to allow the decision-maker to assess whether a condition is attributable or aggravated by service; and
- The adoption of the AMA Guides to assess a veteran's whole person impairment, and the adoption of a maximum impairment level of 100%.

## **Meeting Stated Objectives**

Option Two meets all of the stated objectives. The new legislation would enable the provision of additional state support for veterans and their families.

Replacing the 1954 Act with updated legislation will ensure that the needs of veterans of modern day deployments are provided for. These younger veterans are not well-catered for under the 1954 Act.

Rewriting the legal tests into plain English and streamlining the decision-making and administration process would address the concerns that were raised by the Law Commission in their report.

## **Benefits**

Making rehabilitation the foundation of the new legislation will enable veterans to return to pre-injury capability to the maximum extent possible. The focus will be on compensating for any ongoing impairment, after rehabilitation and treatment.

The proposed new legislation would include two distinct schemes, one for veterans with recognised service prior to the implementation of universal accident compensation (ACC) on 1 April 1974, and one for those with recognised service after this date.

The scheme for veterans with recognised service prior to 1 April 1974 would mirror many of the provisions of the 1954 Act and continue to pay a periodic pension. This would ensure that older veterans are not disadvantaged.

It is proposed that the current 160% scale for Disablement Pensions, where the level of Disablement Pension is based on the cumulative assessment of each disability, be replaced with a 100% scale calculated on whole of person impairment. This would ensure that the level of pension paid reflects the level of impairment. To ensure veterans currently on a Disablement Pension are not disadvantaged, the current Disablement Pensions would be grandfathered and the new assessment process would only be applied to new claims and reviews.

The proposed legislation would also remove the barrier to accessing assistance around the home by removing the requirement to apply for a Disablement Pension to access assistance.

It would base the provision of assistance on the needs of the individual veteran, not the level of Disablement Pension.

The scheme for veterans with recognised service post-1 April 1974 would focus on the provision of medical, psychosocial and vocational rehabilitation. Rehabilitation would be the gateway to other assistance such as income compensation and lump sum permanent impairment compensation. There would be an obligation on both VANZ to provide rehabilitation, and the veteran to take part in the rehabilitation.

It is proposed that rehabilitation will be available prior to assessment for impairment compensation so that the veteran has the best chance of rehabilitating. Where rehabilitation is not possible, the intention is to provide support to the veteran and their family to ensure that they are able to maintain the best possible quality of life.

The scheme for veterans with recognised service post-1 April 1974 would reflect the provisions of ACC. The new legislation would top up entitlements paid by ACC. The Law Commission recommends that the payment rates for impairment compensation should be set at a level equivalent to ACC's rates, with an additional top up payment paid at 20% of the ACC rate. The additional 20% payment is designed to reflect the fact that government has a tradition of taking responsibility for the impact of service in support of government policy and providing support over and above that provided to other New Zealanders.

It is proposed that weekly income compensation to veterans with qualifying operational service who are under the age of 65 and unable to work due to a service related impairment will be available in both schemes. For veterans with service pre-1 April 1974, the Law Commission recommends that weekly income compensation would be paid at the rate of 80% of the average wage. This has been used as the basis of the costings.

The administration of the legislation would be vested in the General Manager of Veterans' Affairs New Zealand with a clear framework for administrative decision-making.

The Law Commission recommends that the legislation should establish an independent veterans' advisory board to provide advice to the Minister, and a code of claimants' rights.

For veterans with service post-1 April 1974, the income compensation would be paid at 100% of their pre-incapacity earnings for the first year they are unable to work, and then paid at 85% of their pre-incapacity earnings. This mirrors the assistance available through ACC to other New Zealanders who are unable to work, and retains the beneficial level of care for veterans who have been injured whilst in the service of their country as it is paid at a higher rate than that available through ACC. It also ensures that the veteran is provided with financial support during their rehabilitation.

In both schemes there will be support for both partners and dependent children. The Law Commission recommends that the surviving partner and children of veterans, who are deemed to have a service-related death, receive weekly income compensation at levels higher than that paid by ACC. This will be presented as an option to Cabinet and has been used as the basis of the costings.

Rewriting the legal tests into plain English would ensure that veterans clearly understood the legal basis for decision-making and would give clarity to the existing process. This could be supported by decision-making instruments specifying the connection between specific disabilities, service and impairment. These instruments would need to be determined using scientific evidence. The Law Commission recommends a scientific advisory group to do this.

Modernising the administrative structure of the 1954 Act would make it easier for veterans to understand the processes that claims go through. These changes would address the Law Commission's concern that the 1954 Act lacks clarity and is difficult to administer.

## **Risks**

There is a risk of an expectation that all of the recommendations in the Law Commissions report will be implemented as written. The Law Commission consulted extensively with veterans and the RNZRSA, which may have created an expectation that the recommendations made in their report would be accepted in full.

The Law Commission made a number of recommendations that will not be included in the new legislation. The Law Commission were not able to obtain costings for a number of these recommendations. The Law Commission found that the lack of available data on the number of veterans in the population was a significant limitation in determining likely costs. The Law Commission recommended that the Government obtain rigorous costings before making decisions on the implementation of the recommendations in its report.

## **Costs**

The costing that has been undertaken has been calculated using a population figure based on a derived estimate using existing data from the 1971 Census and the data related to post-1971 overseas deployments. Using this as the basis, the potential estimated cost of adopting all the Law Commission's recommendations would be \$112 million in the first year of implementation, with a reducing cost in the outyears as the size of the veteran population declines.

This includes the cost of the recommendations to introduce a comprehensive medical cover for all veterans over 80, (LC Recs 104 & 150), a change in the eligibility for Veterans Pension (LC Recs 95 & 160) and an increase in the rates of War Disablement Pensions (LC Rec 85). The estimated savings from removing the entitlement for veterans over 80 years of age to apply for a Disablement Pension has been included in this costing (LC Recs 82 & 140).

The costs associated with the proposals in this document will be limited to changes to the debt write off provisions, the introduction of income support for veterans under 65 who are unable to work as a direct result of their service-related disabilities and the aligning the scheme for modern day veterans to ACC. The estimated cost of implementing the proposals is \$3.801 million in 2014/15 rising to \$10.148 million in 2015/16 then falling to \$8.564 million in 2017/18.

The rates at which current entitlements are paid would be retained, as will the tax exemption for Disablement Pensions and any lump sum payments. In addition to these payments, veterans will receive fully funded medical care for disabilities that are accepted as being service-related. Disablement Pensions would continue to be paid in addition to other income, including NZ Superannuation or Veterans' Pension.

There would also be costs associated with implementation to allow for staff training, contacting clients about changes to the legislation, the development of new processes, implementation of decision-making instruments, and changes to forms and documents.

The new legislation would retain the beneficial evidential provisions present in the current legislation, but would rewrite them in plain English to ensure that veterans clearly understand the legal basis for decision-making. This would be supported by decision-making instruments specifying the connection between specific disabilities, service and impairment. These instruments would be determined using scientific evidence. The Law Commission recommends a scientific advisory group oversee this.

## **Comment**

Option two, the replacement of the 1954 Act with new legislation, is the preferred option. This is based on the analysis undertaken by the Law Commission and the recommendations in their report. This is the only option that addresses the criticisms of the 1954 Act.

Within 5 to 10 years, the veterans of post-1 April 1974 deployments will be the largest group of veterans. It is critical that the legislation is replaced with modern legislation that complements the ACC legislation, as this will also reduce the long-term dependency on a periodic pension for veterans of deployments post-1 April 1974. Currently, a veteran aged in their early 20's can be awarded a periodic pension under the 1954 Act, and be paid a pension for that disability for the rest of their lives. This can result in a 60-plus year dependency on support from the state, with no provision for rehabilitation.

## **Consultation**

The submissions to the Law Commission have informed the development of the proposed schemes for veterans. A thorough consultation process was undertaken by the Law Commission when it released its initial Issues Paper. Consultation meetings were held throughout New Zealand at RSAs and on New Zealand Defence Force camps and bases where people could express their views. 139 written submissions were received, and considered by the Law Commission prior to the release of their final report.

VANZ has undertaken consultation targeted at other agencies that are directly impacted by the Law Commission's recommendations. VANZ has consulted with the Accident Compensation Corporation, Department of Labour, Honours Unit of the Cabinet Office, Inland Revenue Department, Ministry of Education, Ministry of Health, Ministry of Justice, Ministry of Social Development, New Zealand Defence Force, Office of the Privacy Commissioner, Te Puni Kokiri, Treasury and DPMC. PCO have been informed of the intention to replace the existing legislation.

Consultation has also been undertaken with the Ministerial Advisory Group on Veterans' Health concerning the implementation of a statutory authority to implement the decision-making instruments. Broader consultation with stakeholders regarding the proposed legislation will be part of the legislative process.

## **Conclusions and Recommendations**

VANZ recommends new legislation should be introduced to replace the War Pensions Act 1954 and the associated subordinate legislation. This would allow the legislation to be rewritten in a simplified manner making the intent clearer. It would make the legislation easier to interpret and apply. It would also ensure that the legislation is updated to reflect modern concepts surrounding the treatment of disablement and rehabilitation.

The provision of two schemes would ensure that the ageing population is provided with the support and assistance required to meet their needs, whilst allowing younger veterans greater access to rehabilitation to enable them to return, where possible, to their pre-injury quality of life. New legislation would also enable changes to be made to acknowledge the introduction of ACC.

## **Implementation**

New legislation would require consequential amendments to the Accident Compensation Act 2001, the Defence Act 1990, the Social Security Act 1964, Social Security (Debt Recovery Suspension) Regulations 2007, Social Security (Period of Income Assessment) Regulations 1996, Social Security (SuperGold Card) Regulations 2007, Health Entitlement Cards Regulations 1993, Social Security (Temporary Additional Support) Regulations 2005,



Student Allowances Regulations 1998, Policing Act 2008, Child Support Act 1991 and the Income Tax Act 2007.

New legislation would introduce significant changes to the way support is provided to veterans. Successful implementation of new legislation will require training of VANZ, NZDF and MSD staff, and the completion of several operational requirements.

The research and development of decision-making instruments would need to be completed, and the supplement to the American Medical Association Guides to the Evaluation of Permanent Impairment (AMA Guides) would need to be developed. The interface between VANZ, ACC, and the NZDF ACC Unit would also need to be established to ensure that claims for Scheme Two veterans were handled correctly. New processes and forms will need to be developed.

Veterans would need to be communicated with to ensure that they were aware of changes to the legislation and the implications for them. The specialist medical and scientific advisory panel and the Veterans' Advisory Board would need to be established. Adjustments would also need to be made to some computer systems.

On implementation, veterans with service from 1 April 1974 will be grandparented using the transition arrangements set out in Cabinet Paper B - Eligibility. As the intent in Scheme One would be to translate the current 160% scale to a 100% scale, the veterans in Scheme One would have their current pension entitlements grandparented until such time as they chose to review their level of pension. They would then be assessed under the new criteria, with the proviso that no one will have their payments reduced.

### **Monitoring, Evaluation and Review**

The Law Commission recommends that the legislation be periodically reviewed every five years. I propose that the legislation be reviewed on a periodic basis and amendments made when required to ensure it remains responsive to the changing needs of the veteran population.