

# Regulatory Impact Statement

Regulations to support the Veterans' Support Act 2014

## Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the New Zealand Defence Force. It provides a regulatory impact analysis of the proposed regulatory responses to support commencement of the second tranche of the Veterans' Support Act 2014 (the Act), Scheme Two and the Veterans' Independence Programme. The regulatory responses either take the form of legislative instruments ('subordinate legislation') or non-legislative responses (operational policy developed by Veterans' Affairs).

This Regulatory Impact Statement (RIS) does not address regulations for other parts of the Act, Scheme One and some common entitlements, as these have already been enacted.

The analysis within this RIS is constrained by specific direction that the Act sets out in relation to regulatory responses, such as minimum monetary amounts or maximum time periods. Some sections of the Act create express statutory direction that payable amounts are to be fixed by subordinate legislation. The extent to which the Act limits the available regulatory options, such as whether the regulatory response may take the form of subordinate legislation or operational policy, is dependent upon the text of each section, or Part, of the Act.

Section 10 also sets out the principles of the Act. While these do not create any express constraints (such as minimum or maximum monetary amounts or time periods), regulatory responses should be consistent and advance these principles. For clarity, these principles are:

- a. the principle of providing veterans, their spouses and partners, their children, and their dependants with fair entitlements;
- b. the principle of promoting equal treatment of equal claims;
- c. the principle of taking a benevolent approach to the claims; and
- d. the principle of determining claims –
  - in accordance with substantial justice and the merits of the claim; and
  - not in accordance with any technicalities, legal forms, or legal rules of evidence.

Regulatory options will have an impact on:

- a. Veterans' Affairs, as the agency responsible for administering of the Act;
- b. veterans, as the primary group of recipients of services and support under the Act;
- c. veterans' spouses, partners, children and dependants, as a group also entitled to services and support under the Act; and
- d. health and occupational assessment practitioners, as assessors of entitlements that may be subject to regulatory intervention.

In considering the above, options have been assessed against the following criteria:

- a. consistency with the purpose and principles of the Act and with directions of Cabinet;
- b. flexibility to adapt to changes over time, should regulations not work as was intended for veterans and their families; and
- c. whether regulations are required for the Act to be operable.

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## Executive summary and background

1. The Veterans' Support Act 2014 (the Act) received the Royal Assent in August 2014. The Act establishes a new support scheme for veterans of military service to replace the War Pensions Act 1954 (the 1954 Act).
2. The Government introduced the Act following a Law Commission review of the 1954 Act in 2010, which found that statute to be outdated, unwieldy and no longer fit to serve the needs of veterans. To meet the needs of all veterans, from the Second World War to those deployed today, the Commission concluded that it needed to be replaced.
3. The majority of the Act including Scheme One, the Veteran's Pension for Scheme One and Scheme Two veterans, and some of the common entitlements commenced on 7 December 2014. Scheme One covers veterans with qualifying operational service prior to 1 April 1974 and its entitlements are based on those contained in the replaced War Pensions Act. This regulatory impact analysis does not cover regulations concerning these provisions, as these have already been enacted.
4. Before Scheme Two and the Veterans' Independence Programme are brought into force on 7 December 2015, regulations are required to ensure the Act operates as intended, particularly regarding decision-making instruments. These regulations cover matters that were considered too detailed for inclusion in primary legislation, or where change might be required over time as medical and rehabilitation practices evolve.
5. The Act also provides for areas where regulations are optional, and decisions are required on whether to regulate in these areas.

### Scheme Two

6. Scheme Two of the Act is designed for younger veterans of modern-day deployments who require rehabilitation-focused support that is aligned with the Accident Compensation Scheme. It applies to veterans with qualifying service from 1 April 1974 (the commencement date of the Accident Compensation Scheme).
7. The intent of Scheme Two is to provide a broader approach to the assistance from Veterans' Affairs that recognises social and vocational needs, as well as service-related healthcare needs.
8. The provisions under Scheme Two differ from those under the 1954 Act. On the recommendation of the Law Commission, the Act has incorporated modern concepts of disability and wellness to underpin Scheme Two and a shift from 'compensation' to 'rehabilitation'.

### Veterans' Independence Programme

9. The Veterans' Independence Programme is a new entitlement under the Act, available to both Scheme One and Scheme Two veterans.

10. The intent of the Veterans' Independence Programme is to better meet the needs of older veterans and veterans suffering from impairment or ill health who require assistance to live independently in their own home.

## Status quo and problem definition

### Problem

11. In accordance with common practice, the Act allows for more technical administrative matters to be developed through subordinate legislation. This includes a number of Scheme Two entitlements, as well as the Veterans' Independence Programme.
12. The functions and powers of the Act are required to be exercised taking into account the principles defined in section 10 of the Act. As such, any regulatory response, regardless of whether it takes the form of subordinate legislation or operational policy, will be developed with regard to the principles contained in s 10 of the Act.
13. In some instances, without regulations, certain provisions of the Act would be inoperable and Veterans' Affairs would not be able to provide consistent support to veterans and their families in accordance with the intent of the Act and Cabinet decisions. An example of this is child care payments, discussed in greater detail in paragraph 20 below.
14. Not enacting necessary regulations would have a negative impact on the Government's relationship with veterans. Implementing the Veterans' Support Act, and supporting and building relationships between veterans, their respective organisations and the Government, were outlined as priorities for the Minister of Veterans' Affairs for 2015, in his letter to the Prime Minister.<sup>1</sup>
15. There are also some elements of Scheme Two and the Veterans' Independence Programme where creating regulations is not mandatory but is desirable as it would provide a consistent basis for decision-making. The additional clarity from regulations in these instances would also promote efficiency in the administration of benefits by Veterans' Affairs as without a bulwark in the form of subordinate legislation, scope would exist for benefits to be provided to those veterans who would not otherwise be entitled to them. This would not meet the equal treatment of equal claims principle of the Act, and would impact fiscally on the Crown. In respect of other elements, the necessary detail for the implementation of Scheme One and the Veterans' Independence Programme can be achieved through operational policy.
16. As noted, Scheme Two does not operate in isolation, commencing 12 months after Scheme One and aligning with many provisions available under ACC. As such, the range of practical options for any regulatory response (in the form of subordinate legislation or operational policy) is constrained by the earlier decisions where it is desirable to create alignment in the regulatory approach for these entitlements with those available under Scheme One and/or ACC.

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<sup>1</sup> Letter dated 16 January 2015, outlining three-year priorities for the Veterans' Affairs ministerial portfolio.

17. This RIS identifies and analyses regulatory response options and the preferred approach to give effect to tranche two of the Act. These are to be consistent with the objectives and principles of the Act and any further constraints created by relevant sections. Because of the Act's principles, the analysis has given weight to the benefits of operational policy over subordinate legislation, where this will provide greater benevolence to veterans.

## Status Quo

18. If regulations are not adopted, two scenarios will occur, simultaneously:

- Sections that require subordinate legislation will not be operable upon commencement on 7 December 2015. Veterans' Affairs will thus be unable to administer the entitlements created by these sections, and the Act will not operate as intended by Cabinet and Parliament; and
- Sections that do not require subordinate legislation, and may instead be administered through operational policy, will become operable upon commencement on 7 December 2015. There will, however, be no definitions (or monetary amounts and/or formulas) incorporated in subordinate legislation, creating scope for legal, fiscal and reputational risk.

19. In the case of the first scenario, for example, veterans will need to apply to ACC to receive the entitlements available under the Accident Compensation Act 2001, which would be at a lower rate than under the Veterans' Support Act. The Veterans' Support Act pays higher rates in recognition of veterans' service to New Zealand and the benevolence principles of the Act.<sup>2</sup> Not enacting subordinate legislation in relation to these sections would defeat a purpose for their existence. There may also be a small number of situations where a veteran that would be covered by the Act is not covered by ACC, denying any coverage at all. This scenario would create reputational risk for the government.

20. Specific examples of where the absence of regulations would negatively impact on the operation of the Act in this first scenario include:

- Child care payments

Clause 64(2), Schedule 2: The amount of any weekly entitlement to payment for child care per child is set by regulations made under section 265, and different amounts may be set according to the number of children of the deceased veteran.

Without subordinate legislation there would be no basis for payment as the amount payable is specified in subordinate legislation. Children of a veteran who died as a result of qualifying operational service would therefore be denied an entitlement under the Act (although they may still receive payment under the Accident Compensation Act, albeit at a lower rate).

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<sup>2</sup> A large degree of Scheme Two exists purely to pay veterans at a rate 20 per cent higher than under the Accident Compensation Act.

- Amount of lump sum compensation for permanent impairment

Clause 46(1), Schedule 2: The amount of lump sum compensation for permanent impairment that Veterans' Affairs is responsible for paying to a veteran is the appropriate amount specified in regulations made under s 265. (Subclause 5 also refers to the regulations which set the payable amounts).

Without subordinate legislation there would be no basis for payment, as the amount payable is required to be specified in subordinate legislation. A veteran would thus be denied payment (although they may still receive payment under the Accident Compensation Act, albeit at a lower rate).

21. In the case of the second scenario described in para 18, for example indexation, no bulwark would exist in terms of defined monetary amounts nor clear definitions. This would create scope for any operational policy developed by Veterans' Affairs to suffer from "slippage" in the form of exemptions and payments of higher amounts. This risk is potentially increased for Veterans' Affairs, compared with other government departments, as the Act requires a benevolent approach to claims. In practice, this will likely mean an increased payment amount to the veteran.

#### **Memorandum of Understand**

22. As per the Regulatory Impact Analysis Handbook, any RIS is required to reference any memoranda of understanding of relevance to the substance of the paper.
23. A small number of Scheme Two veterans, and their families, are likely to fall within the coverage of the Government's Memorandum of Understanding with the Ex-Vietnam Services Association and the Royal New Zealand Returned and Services' Association. The Memorandum of Understanding confers additional entitlements on this group of veterans, and they will continue to receive coverage under the Memorandum of Understanding regardless of whether regulations are enacted.
24. Veterans whose only qualifying operational service occurred in the Viet Nam War are not eligible for entitlements under Scheme Two, due to the later commencement date of Scheme Two eligibility. However, these veterans are eligible to receive services and support under the Veterans' Independence Programme, which is available to all qualifying veterans, as well as common entitlements to veterans eligible under both Scheme One and Scheme Two.
25. Approximately 3,400 New Zealanders served in Viet Nam. Due to inadequate record keeping,<sup>3</sup> it is unclear how many veterans also are eligible under Scheme Two through later qualifying operational service. These veterans would, as such, be covered by Scheme One, Scheme Two and the Memorandum of Understanding, as well as common provisions, such as the Veterans' Independence Programme.

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<sup>3</sup> This is an issue that has been previously identified, with the total number of qualifying veterans, and therefore the total liability, not known to the government. Statistics New Zealand has previously considered whether the census should attempt to capture this data but concluded that the need for this data was "insufficient" and that the census was considered neither cost effective nor the best way to satisfy the information needed.

26. So far, Veterans' Affairs has identified 10 veterans who are covered by Schemes One and Two. It estimates that a very small portion of additional veterans will be covered, meaning an extremely low percentage of veterans are eligible for coverage under Schemes One and Two.

## Objectives

27. Some regulation-making powers must be used in order for the Act to operate as intended. Other regulation-making powers may not be necessary for the Act's operation, but are desirable as means to implement the objects and principles of the Act, and to minimise legal, reputational and fiscal risk for Veterans' Affairs.

28. Some regulations will have specific objectives, which will be noted in the discussion of those regulations.

29. Nevertheless, special regard must be had to the principles of the Act, set out in the agency disclosure statement. Drawing upon these principles, the following objectives have been developed to assess the options for the regulations and develop the preferred approach:

a. **Consistency with the purposes and principles of the Act and directions of Cabinet.** This requires that proposed regulatory approaches be consistent with the purpose and principles of the Act, in terms of the entitlements conferred and the regulatory approach (subordinate legislation or operational policy).

b. **Flexibility to adapt to changes over time, if desirable.** Any proposed regulatory approach needs to consider whether flexibility is desirable. Flexibility allows for adjustments should regulations not operate as intended or if changes are made to related regimes such as ACC. However flexibility is not desirable by default and needs to be counterbalanced against the clarity more rigid options could provide.

c. **Whether subordinate legislation is required to make the Act operable.** Some sections of the Act give express statutory direction for subordinate legislation to be created that regards specific administrative matters. Without subordinate legislation, these sections of the Act may become inoperable – and no opportunity for an operational policy alternative exists.

30. As these objectives show, there is an inherent need to appropriately balance flexibility with the equally important task of ensuring that the Act is consistently applied. The analysis undertaken in this RIS considers the trade-off between these two competing desires in each case.

## Options and impact analysis

31. The table below sets out the areas where the Act allows for subordinate legislation to be created. These areas are the focus of this RIS. The next section assesses the proposed approach against the objectives set out in paragraph 29 above.

Area of regulation	Description
1. Decision making tools	<ul style="list-style-type: none"> <li>• Accepted late-onset conditions</li> </ul>
2. Financial entitlement and related matters	<ul style="list-style-type: none"> <li>• Lump sum option for independence allowance</li> <li>• Lump sum payment for permanent impairment amount</li> <li>• Assessment methodology for lump sum payment</li> <li>• Child care payment</li> <li>• Indexation</li> <li>• Vocational services and assistance for spouse or partner</li> <li>• Financial advice</li> </ul>
3. Treatment and other related matters	<ul style="list-style-type: none"> <li>• Transport costs for treatment and assessment</li> <li>• Veterans' Independence Programme</li> </ul>

## Decision making tools

32. Decision making tools are parts of the Act that assist Veterans' Affairs in determining whether a person is eligible for an entitlement under the Act.

### Accepted late-onset conditions

33. Scheme Two provides for regulations specifying accepted late-onset conditions.

#### *Options and Proposed approach*

34. It is proposed that regulations define accepted late-onset conditions in order to ensure families of veterans whose death was the result of a late-onset malignancy, or other physical or mental disorder, receive entitlements available under the Act.

35. If accepted late-onset conditions were not defined, the family of a veteran whose death was caused by an event that occurred in qualifying operational service 10 or more years prior to death may not be covered as causality would be difficult to establish over this time period. It is unlikely that other methods (see paragraph 36 below) for determining causality would be as effective. Other methods that were considered were deemed to be unworkable. It is proposed that the list of accepted late-onset conditions be based on those published by the Australian Repatriation Medical Authority, and which are agreed to by the Veterans' Health Advisory Panel.

36. Other options for the development of a list of accepted late-onset conditions were considered, including the independent development of a list by Veterans' Affairs, with assistance from New Zealand Defence Force, or using regulations from other jurisdictions as a basis of such a list (as suggested by the Law Commission in its report).

However, research found that no comparable jurisdiction maintained any lists of late-onset conditions for similar purposes. An independent development of a list was considered overly burdensome and expensive, and would have not provided any additional benefits.

37. The New Zealand Returned and Services' Association submitted that the regulations should allow for the backdating of eligibility for support to the dependants of veterans, who die of a condition that is posthumously accepted as a late-onset condition. This is beyond the scope of subordinate legislation which may be created in respect of section 7 and would be more appropriately addressed in operational policy.

*Analysis*

<i>Regulatory criteria</i>	<i>Explanation</i>
Are the proposed regulations consistent with the purpose and principles of the Act?	<p>Listing conditions with an accepted late-onset factor will increase the ability of Veterans' Affairs to link a veteran's death to a service-related injury or illness.</p> <p>Defining accepted late-onset conditions in regulations will help ensure families of veterans whose death was the result of a late-onset malignancy, or other physical or mental disorder, receive entitlements available under the Act</p> <p>The list of accepted late-onset conditions will also promote equal treatment of equal claims.</p>
Will the proposed regulations be flexible enough to adapt to changes over time, should regulations not work as was intended for veterans and their families?	<p>Flexibility is undesirable here, as this reduces certainty on the conditions which qualify as late-onset.</p> <p>Incorporating in subordinate legislation will also maintain a stable list of these conditions over time.</p>
Are regulations required for the Act to be operable?	No but without regulations eligibility for entitlements would be restricted, running contrary to the Act's intention.

**Financial entitlements and related matters**

38. Financial entitlements include lump sums and child care payments. The majority of financial entitlements require amounts to be set in statutory regulation. For permanent impairment lump sums, an impairment assessment methodology must also be prescribed.

39. The prescribed amounts proposed for the financial entitlements comply with Cabinet’s agreement to a total funding package for the Act based on maintaining entitlements comparable to those in the 1954 Act.

**Lump sum option for independence allowance**

- 40. Under the Act, Scheme Two veterans who suffered a permanent impairment as a result of qualifying operational service during the period starting 1 April 1974 and ending at the close of 31 March 2002 are eligible for an Independence Allowance. The Independence Allowance is a fortnightly payment, with rates based on the Scheme One disablement pension.
- 41. Section 96(3) allows veterans receiving the Independence Allowance to stop receiving periodic payments in exchange for a lump sum payment. This payment is to be made “in accordance with regulations made under section 265” but must not be more than the amount equivalent to 5 years of the allowance.
- 42. The periodic payment amount is based on the veteran’s level of impairment, calculated using the same method as for the disablement pension under Scheme One. This is a statutory requirement. As per section 56 of the Act, the rate of a disablement pension (and thus Independence Allowance) is set by subordinate legislation, with different rates for different levels of whole-person impairment. Whole-person impairment refers to a measurement methodology, which quantifies a person’s level of impairment in terms of percentage based on the impact impairment has on their whole person. The disablement pension regulations stipulate that a veteran’s level of whole-person impairment is determined in accordance with the American Medical Association *Guides to the Evaluation of Permanent Impairment* (4th ed).

*Options and Proposed approach*

43. It is proposed that veterans receiving the independence allowance be able to convert one, two or five years of periodic payments into a lump sum. This would be converted using the following formula:

$$p \times 26.0714 \times y(1 - d)$$

Where:

- *p* equals the fortnightly payment amount
- *y* equals the number of years converted to lump sum (one, two or five)
- *d* equals the risk-free spot discount rate, as published by the Treasury, applicable to the period selected in *y*
- n.b. - 26.0714 converts fortnightly payments into an annual amount

- 44. The use of the Treasury’s risk-free spot discount rate ensures that a veteran is neither advantaged nor disadvantaged through opting to receive a lump sum payment or periodic payment of their independence allowance. It also factors in the additional costs the Crown is required to pay. This approach reflects feedback received from the Treasury during consultation.
- 45. The Ministry of Social Development undertook modelling of several lump sum scenarios on behalf of Veterans’ Affairs, including an actuarial model, similar to ACC’s and a non-discounted model. The non-discounted model was discarded based on the Treasury’s

engagement, whilst the ACC-styled actuarial model was not preferred as it was considered more administratively burdensome and forecasting showed little difference in the fiscal cost that Veterans' Affairs would incur. It was also questionable whether the actuarial approach would maintain consistency with the Act's "equal treatment of equal claims" principle. NZDF, on behalf of Veterans' Affairs, also consulted its auditors, Audit New Zealand, on the proposed model. Audit New Zealand was comfortable with the proposal. There was no feedback from any veteran during consultation in respect of this methodology.

46. It is also proposed that where a veteran is terminally ill, they may only receive the lump sum payment for up to one year. This is to ensure fair and equal treatment for all veterans and their families, having regard to the principles and purpose of the Act. There is a risk of unequal treatment between veterans should a terminally ill veteran receive a lump sum payment for the period of five years, but pass away shortly afterwards, compared with those who remain on the independence allowance as their payments cease upon death. This is also consistent with the terminal-illness conditions of the disablement pension or war disablement pension.
47. It is proposed that regulations stipulate that lump sum payments be paid only to the veteran or claimant, unless the exception under clause 51 of Schedule 2 applies, whereby lump sum payments may be paid to the estate of a veteran, if the veteran dies after the completion of the assessment of permanent impairment but before payment of the lump sum.

### Analysis

<i>Regulatory criteria</i>	<i>Explanation</i>
Are the proposed regulations consistent with the purpose and principles of the Act?	The enactment of the formula through subordinate legislation, the ability to convert for different numbers of years up to the statutory maximum of 5 years, and use of a discount rate to eliminate any advantage or disadvantage through opting for a lump sum or fortnightly payment, create consistency with the equal treatment of equal claims principle.
Will the proposed regulations be flexible enough to adapt to changes over time, should regulations not work as was intended for veterans and their families?	<p>Flexibility is undesirable in relation to this section, as it increases scope for different approaches being undertaken in determining lump sum payment amounts. This would therefore undermine the equal treatment of equal claims principle.</p> <p>Some flexibility is provided through the multi-year option approach, but this still enables consistent application of the payment amounts.</p> <p>The use of the Treasury's published risk</p>

	free discount rate spot rate will ensure the discount rate moves over time in line with monetary policy, as it is updated over time by the Treasury.
Are regulations required for the Act to be operable?	Yes, as payments are required to be made in accordance with subordinate legislation made under section 265.

48. Other periods (three or four years) were considered for the lump sum in addition to the proposed options of 1, 2 or 5 years. The legislation does not allow for lump sums to be paid for a period greater than five years, which limited the ability to propose any lengths beyond this. Providing additional options was considered to be overly burdensome upon Veterans' Affairs in administering the lump sum option. Consultation also revealed that no issue was taken by any veteran or veterans' organisation with the proposed periods. The Royal New Zealand Returned and Services' Association did request clarification in the subordinate legislation that a re-payment of a lump sum by the estate of a deceased veteran will not be required, should a veteran in receipt of the lump sum pass away during the period covered by the payment. The Act does not create any such power for Veterans' Affairs to require repayment in such circumstances.

#### Lump sum payments

49. Lump sum payments are for veterans who are permanently impaired if the injury or illness which caused the permanent impairment occurred on or after 1 April 2002, in accordance with entitlements available through ACC. Section 98 of the Act states that the lump sum is either:

- a. the amount payable to the veteran under the Accident Compensation Act 2001, if the veteran is entitled to lump sum compensation for the impairment under that Act, plus an additional amount equivalent to 20 per cent of that payment; or
- b. The amount that, if the veteran is not entitled to lump sum compensation for the impairment under that Act, would be payable if the veteran's impairment were covered under that Act.

50. Regardless of whether payments are made by ACC or Veterans' Affairs, the lump sum amount is the amount payable under the Accident Compensation Act plus 20 per cent. In cases where the veteran has received a lump sum payment for the impairment from ACC, Veterans' Affairs is to pay the difference.

51. Section 98 requires regulations be created to specify payment amounts for impairments below for which a lump sum is payable under the Accident Compensation Act 2001 (presently 10 per cent).

52. Under clauses 45 and 46 of Schedule 2, a lump sum is payable for whole-person impairments of five per cent or greater. Clause 46 also requires that the minimum lump sum compensation for permanent impairment be \$2,500.00 for veterans whose whole-person impairment is five per cent.

#### *Proposed approach*

- 53. It is proposed that regulations create a payment scale from five per cent to nine per cent whole person impairment, corresponding with the present scale in operation under the Accident Compensation Act. These amounts are a legislative requirement. Amounts higher than this may be determined in accordance with the Veterans' Support and Accident Compensation Acts.
- 54. It is proposed that the payment scale extend to 85 per cent to align the Scheme One and Scheme Two whole-person impairment entitlement scales. This is 5 per cent higher than that used by ACC, where maximum payment is capped at 80 per cent, but creates consistency with the equal treatment of equal claims and benevolence principles.
- 55. This scale is consistent with the requirements of the Act, being based on that used under the Accident Compensation Act 2001, with a 20 per cent higher rate, as specified in the Act. The payment scale can be found in Appendix One, and was been developed by an actuary engaged by Veterans' Affairs.

*Anticipated fiscal cost*

- 56. The associated fiscal costs are not impacted by the proposed regulations; these costs were created by the principal legislation, rather than the proposed subordinate regulations.
- 57. Subsequent analysis by the Ministry of Social Development has confirmed that the proposed regulations are not anticipated to create any additional costs.
- 58. The total anticipated fiscal cost for lump sum impairment payments, as reforecast by the Ministry of Social Development for the Budget Economic and Fiscal Update exercise (BEFU 15) is as follows (\$,000):

2015/16	2016/17	2017/18	2018/19
321	287	309	255

*Analysis*

<i>Regulatory criteria</i>	<i>Explanation</i>
Are the proposed regulations consistent with the purpose and principles of the Act?	The enactment of the formula through regulations creates consistency with the equal treatment of equal claims principle of the Act. While the higher cap figure is consistent with the benevolence principle contained in s 10 of the Act.
Will the proposed regulations be flexible enough to adapt to changes over time, should regulations not work as was intended for veterans and their families?	Flexibility is undesirable in relation to this section, as it increases scope for different approaches being undertaken in determining lump sum payment amounts. This would therefore undermine the equal

	<p>treatment of equal claims principle.</p> <p>The lump sum amount is also subject to indexation, which will maintain currency with movements in the Consumer Price Index.</p>
Are regulations required for the Act to be operable?	Yes, as the lump sum payable for whole-person impairment between 5 to 9 per cent is “an amount specified in regulations”. Regulation at the higher end of the scale is not required.

59. Subordinate legislation will also minimise legal risk, and associated fiscal and reputational risks, through explicitly defining the lump sum payment scale. Subordinate legislation is only required for 5 to 9 per cent whole-person impairment, as the principal legislation is prescriptive in how amounts for impairments from 10 to 80 per cent should be compensated. The absence of subordinate legislation stating the payable amounts for impairments from 10 to 80 per cent would, however, reduce clarity and increase scope for legal challenge were a lump sum deemed unsatisfactory.

#### Assessment for entitlement to lump sum compensation

60. Clause 48, Schedule 2 requires an assessment for lump sum compensation, for the purposes of section 98, be undertaken in accordance with subordinate legislation made under the Act. This allows for subordinate legislation to create and define an assessment methodology for assessing the degree of a veteran’s impairment, for the purpose of determining a veteran’s entitlement to lump sum compensation for the purposes of section 98.

#### Proposed approach

61. Similar regulations were developed for assessment for entitlement to the War Disablement Pension under Scheme One. The Scheme One regulations require the use of the American Medical Association’s *Guides to the Evaluation of Permanent Impairment* (4th ed). This assessment tool is also used for assessment of permanent impairment entitlement under the Accident Compensation Act 2001, as well as under workers’ compensation schemes in a number of international jurisdictions, such as Victoria, Australia and several states in the United States.

62. The use of the *Guides* under Scheme One has also provided insight on the performance of the assessment tool in assessing whole-person impairment for injuries sustained in theatres of war. The 4th ed of the *Guides* is considered to be well suited to deal with multiple impairments veterans are likely to claim for under Scheme Two. As such, it is proposed that Scheme Two also use the 4th ed of the *Guides* to assess whole-person impairment. While scope existed for other editions of the *Guides* to be used, such as the 6th ed, this would have created a lack of alignment with Scheme One and ACC. In turn, this would have potentially created confusion for medical assessors, who may not be familiar with there being two separate entitlement schemes for veterans (in the form of

Scheme One and Scheme Two), potentially leading to whole-person impairment being assessed using the wrong methodology.

63. Alignment with ACC’s methodology was also deemed to be important, as lump sum compensation for veterans may be provided for by ACC or Veterans’ Affairs. A different assessment methodology would increase the likelihood of inequitable treatment of veterans depending on which organisation initially process their claim.
64. Ministry of Business, Innovation and Employment, as the agency responsible for maintaining ACC regulations, noted during consultation that it will not be moving to the 6th edition in the foreseeable future. This confirms the basis for the proposed approach of using the 4th ed instead of the 6th; adoption of the 6th edition would result in Scheme Two’s assessment methodology standing on its own from Scheme One and ACC.
65. ACC informed Veterans’ Affairs during consultation that in addition to the 4th edition of the *Guides*, it also uses the ACC User Handbook to AMA4. Veterans’ Affairs considers using the ACC User Handbook to AMA4 unnecessary.

*Analysis*

<i>Regulatory criteria</i>	<i>Explanation</i>
Are the proposed regulations consistent with the purpose and principles of the Act?	<p>Requiring the use of the 4th ed of the <i>Guides</i> for all assessments for lump sum compensation is consistent with the equal treatment of equal claims principle between Schemes One and Two.</p> <p>The proposed regulations will also align with ACC’s approach to assessment for lump sum compensation, which will also promote equal treatment of equal claims where ACC initially accepts a veteran’s claim and Veterans’ Affairs pays the required 20 per cent top-up.</p> <p>Consultation with the Ministry of Business, Innovation and Employment indicated that the associated ACC regulations may be amended, to use the 6th edition in future, (albeit in the long term). This will be monitored by Veterans’ Affairs.</p>
Will the proposed regulations be flexible enough to adapt to changes over time, should regulations not work as was intended for veterans and their families?	<p>Flexibility is not desirable in this instance, as it would undermine the equal treatment of equal claims principle, and would not work well given the alignment with ACC and Scheme One. It may also be administratively inefficient.</p> <p>Clarity is also required for those affected</p>

	by the Act to carry out their tasks effectively, particularly health practitioners carrying out whole-person impairment assessments.
Are regulations required for the Act to be operable?	No, but desirable to ensure consistent operation of the Act, as described above.

**Child care payments**

66. The Act provides an entitlement for the children of veterans who suffered a “service-related” death. This entitlement mirrors an entitlement under the Accident Compensation Act 2001 for children whose parent(s) suffered an accidental death.

*Proposed approach*

67. It is proposed that the child care payments be based on those available under the Accident Compensation Act 2001, but paid at a rate 20 per cent higher, with Veterans’ Affairs paying the top-up. This would be consistent with other regulations (such as the lump sum compensation for permanent impairment) and would also recognise the benevolence the Veterans’ Support Act promotes.

68. An alternative option, of mirroring ACC rates, was considered. This has some merit, as payments are for providing a service on the child’s behalf, rather than a direct monetary entitlement to the child. However, it was concluded that paying in line with ACC would not reflect the intent of Scheme Two, nor the legislation; if Parliament had intended mirroring of ACC rates, the appropriate clause of the Act would reflect this.

*Anticipate fiscal cost*

69. The fiscal cost has been calculated by the Ministry of Social Development as set out below (actual dollar amounts). These amounts can be absorbed within present baselines. Note that these amounts are for the additional 20 per cent top-up by Veterans’ Affairs, in addition to payments made by ACC after it has accepted a claim to provide the initial payment amount:

2015/16	2016/17	2017/18	2018/19	2019/20
\$976	\$1,745	\$3,563	\$5,452	\$7,423

*Analysis*

<i>Regulatory criteria</i>	<i>Explanation</i>
Are the proposed regulations consistent with the purpose and principles of the Act?	<p>Yes – in line with the benevolence principles, and the broader intent of Scheme Two, the proposed regulations pay ACC rates, plus 20 per cent.</p> <p>The option not to pay the additional 20 per cent was disregarded as being inconsistent with the benevolence</p>

	<p>principles of the Act.</p> <p>The additional 20 per cent is also consistent with other top-up amounts applied to ACC payments, such as lump sum compensation for permanent impairment.</p>
<p>Will the proposed regulations be flexible enough to adapt to changes over time, should regulations not work as was intended for veterans and their families?</p>	<p>Flexibility is not desirable here, as this would increase scope for departure from the equal treatment of equal claims principle.</p> <p>Child care payments are subject to indexation which will maintain currency with movements in the Consumer Price Index.</p>
<p>Are regulations required for the Act to be operable?</p>	<p>Yes – the Act creates express statutory direction for subordinate legislation to be made stipulating the monetary amounts payable.</p>

#### **Indexation of weekly compensation**

70. The Act requires that the rate of weekly income compensation be adjusted in accordance with a prescribed formula(s) relating to movements in average weekly earnings.

71. The Act allows regulations be made for the purpose of prescribing a formula(s), although they are not required.

#### *Proposed approach*

72. It is proposed that the formula be prescribed in regulations, to ensure transparency in how the weekly income compensation will be adjusted each year.

73. Similar regulations exist under the Accident Compensation Act 2001 for the purposes of indexing weekly compensation to movements in average weekly earnings. Due to the similarities in the section text, the proposed regulations are modelled on the Accident Compensation Act.

74. If average weekly earnings decrease, entitlements would not decrease. This is to ensure consistency with the benevolence principle and other legislation, such as the Social Security Act 1964, which does not allow for indexation to reduce amounts payable.<sup>4</sup> The consistency with other legislation was noted by the Ministry of Social Development during consultation. By its nature, it is difficult to forecast the fiscal cost of this – present Ministry of Social Development and Treasury forecasts do not anticipate “deflation” in the short-to-medium run however.

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<sup>4</sup> Social Security Act 1954, section 61HA(4).

75. In line with ACC's adjustment date, indexation would occur on 1 July each year.

*Analysis*

<i>Regulatory criteria</i>	<i>Explanation</i>
Are the proposed regulations consistent with the purpose and principles of the Act?	Yes – This is the only practicable option. The proposed formula reflects the principle of providing fair entitlements, as veterans and their families will not be disadvantaged through their entitlement not being adjusted in line with increases in the average wage. This is wholly consistent with other legislation and the Act's principle of benevolence.
Will the proposed regulations be flexible enough to adapt to changes over time, should regulations not work as was intended for veterans and their families?	There is very limited scope in regards to indexation, as the Act is prescriptive in how indexation is to be applied. In any case, it is undesirable to allow for flexibility in relation to indexation. Enacting the indexation formula in regulations creates certainty for veterans, their families and other individuals engaging with the legislation.
Are regulations required for the Act to be operable?	No – section 30 creates a framework that allows for indexation adjustment without regulations.

**Indexation of other entitlements**

76. The Act requires that the rate of the lump sum payment for permanent impairment, the survivor's grant and child care payments for children of deceased veterans be adjusted in line with movements in the New Zealand Consumers Price Index (or any group or subgroup within the Index).

77. These are Scheme Two entitlements; Scheme One and common entitlements that are required to be adjusted in line with movements in the Consumer Price Index were regulated prior to their commencement in December 2014. As the weekly payment rate for the independence allowance is based on the equivalent rate payable under the disablement pension, that entitlement will also be adjusted, as the disablement pension is required to do so.

*Proposed approach*

78. It is proposed that the formula be prescribed in subordinate legislation, to ensure transparency in how the weekly income compensation will be adjusted each year.

79. As subordinate legislation for the purposes of adjusting Scheme One and common entitlements in line with movements in the Consumer Price Index exist, it is proposed that the formula that exists for this purpose extend to the Scheme Two entitlements. However,

this formula will be modified in relation to the date against which indexation is to occur: Scheme One and common entitlements are index adjusted on 1 April each year, in line with the tax year. However, it is proposed that Scheme Two entitlements be index adjusted on 1 July each year, in line with ACC's indexation date.

80. It is also proposed that where the Consumer Price Index experiences a decrease ("deflation"), that prescribed amounts do not decrease. This has been proposed in line with the benevolence principle of the Act, so that veterans and their families do not have entitlements decreased. This is also in line with an agreement the government made in replacing the War Pensions Act with the Veterans' Support Act – that entitlements would not decrease under the new legislation.
81. As noted by the Ministry of Social Development during consultation, not decreasing payments due to indexation is also consistent with other legislation, such as the Social Security Act 1964 and the New Zealand Superannuation and Retirement Income Act 2001.

*Analysis*

<i>Regulatory criteria</i>	<i>Explanation</i>
Are the proposed regulations consistent with the purpose and principles of the Act?	<p>Yes – the proposed formula reflects the principle of providing fair entitlements, as veterans and their families will not be disadvantaged through their entitlement not being adjusted in line with increases in inflation, as reflected in the Consumer Price Index.</p> <p>Alignment of the indexation date with ACC's will help keep alignment between entitlement payment rates, although the proposal of not decreasing entitlements where the Consumer Price Index experiences a decrease may create misalignment. Not decreasing amounts is considered to be in line with the Act's benevolence principle.</p>
Will the proposed regulations be flexible enough to adapt to changes over time, should regulations not work as was intended for veterans and their families?	<p>There is very limited scope in regards to indexation, as the Act is prescriptive in how indexation is to be applied. In any case, it is undesirable to allow for flexibility in relation to indexation. Enacting the indexation formula in regulations creates certainty for veterans, their families and other individuals engaging with the legislation.</p>
Are regulations required for the Act to be operable?	<p>No – section 31 creates a framework that allows for indexation adjustment without regulations.</p>

## Vocational services for spouse or partner

82. A veteran's spouse or partner is entitled to vocational services and assistance if a veteran has a service-related injury or illness and is subsequently unable to work or undertake vocational rehabilitation, or has suffered a service-related death.
83. As per section 90 of the Act, vocational services and assistance are to be provided in accordance with subpart 3 of Part 4 of the Act, and regulations made under section 265.

### *Proposed approach*

84. It is proposed that vocational services and assistance not be subject to subordinate legislation. Instead, it is proposed that vocational services and assistance be managed through operational policy.
85. It is likely that using subordinate legislation would act as a limitation in flexibility on the types of services and assistance that could be provided. This is inconsistent with the purpose of vocational services and the desire to provide a range of services based on need (which can be expanded, or detracted, as the case may be via operational policy).
86. This approach is considered to provide sufficient certainty in legal terms because the Act already provides direction in how vocational services and assistance should be provided by Veterans' Affairs and the overall nature of what is intended. Any direction from within subordinate legislation would become a constraint on Veterans' Affairs ability to be flexible in the provision of these services and assistance, which would inhibit the ability to personalise services and assistance to the veteran's spouse or partner in accordance with their individual needs. Enabling the flexibility for Veterans' Affairs to provide personalised services and assistance is consistent with the Act's principle of determining claims on their merits.

### *Analysis*

<i>Regulatory criteria</i>	<i>Explanation</i>
Are the proposed regulations consistent with the purpose and principles of the Act?	<p>Subpart 3 of Part 4 of the Act already provides sufficient direction in how the entitlement should be administered. No subordinate legislation is therefore proposed. It is instead proposed that the administrative detail of the programme be regulated through operational policy. Having regard to the considerations identified in the Agency Disclosure Statement, this will place Veterans' Affairs in a better position to give effect to the full intent of the entitlement in accordance with the principles and purpose of the Act.</p> <p>Subordinate legislation may also inhibit the ability of Veterans' Affairs to be flexible in provision of entitlements,</p>

	affecting the ability to reflect the Act's benevolence entitlement.
Will the proposed regulations be flexible enough to adapt to changes over time, should regulations not work as was intended for veterans and their families?	<p>No subordinate legislation is proposed, but the proposed approach will maintain flexibility; subpart 4 of the Act provides clarity on how the entitlement should be provided, meaning any subordinate legislation would reduce flexibility with no responding benefit in terms of clarity.</p> <p>Operational policy will include a framework that ensures equal treatment. This is desirable, as the types of vocational services and assistance a veteran's spouse or partner may require are likely to be wide-ranging, and vary according to personal circumstances, creating difficulty in forming regulations contemplating a wide variety of scenarios.</p>
Are regulations required for the Act to be operable?	No - subpart 3 of Part 4 of the Act already provides sufficient direction in how the entitlement should be administered.

#### Financial advice

87. In certain circumstances, veterans are entitled to financial advice from an authorised financial adviser under the Financial Advisers Act 2008, with Veterans' Affairs meeting the cost.
88. Section 157 presently defines some circumstances, but creates scope for additional circumstances to be defined in subordinate legislation. The circumstances presently provided for are lump sum payments made under section 98 and aggregate payments made under clause 55 of Schedule 2, if equal to or greater than the prescribed amount.

#### *Proposed approach*

89. It is proposed that most matters relating to the provision of financial advice not be subject to subordinate legislation. As set out in the Agency Disclosure Statement, Veterans' Affairs will be in a better position to give effect to the principles and purpose of the Act if it regulates the provision of financial advice through operational policy. It is proposed that only the prescribed amount be set by subordinate legislation. The prescribed amount refers to the threshold which an eligible payment must meet or exceed before a veteran is entitled to the cost of financial advice being met by Veterans' Affairs. It is proposed further that operational policy limits the maximum amount Veterans' Affairs will contribute towards the provision of financial advice.
90. The Act gives express statutory direction that the prescribed amount be set in subordinate legislation. It is proposed that the prescribed amount be set at \$15,000.00 – meaning that where payments of the types identified in para 88 are \$14,999.00 or less,

no entitlement to financial advice would exist. Veterans' Affairs operational policy would cap payments for the provision of financial advice at \$1,500.00 per payment. The \$15,000.00 threshold is a similar figure to that which is offered in Canada. This figure was developed with the assistance of the Institute of Financial Advisors.

91. The impact of this is veterans who receive smaller amounts, or payments outside the scope of those identified, will not be able to receive support in obtaining financial advice, from Veterans' Affairs.

*Analysis*

<i>Regulatory criteria</i>	<i>Explanation</i>
Are the proposed regulations consistent with the purpose and principles of the Act?	The proposed approach, in terms of operational policy and subordinate legislation, is considered to be consistent with the purpose and principles of the Act. This is because the threshold set through the prescribed amount is considered to be benevolent, creating a relatively low-threshold for payments to become eligible for financial advice costs.  This is also consistent with the Canadian approach, which informed the Law Commission's report that led to the introduction of the Veterans' Support Act 2014.
Will the proposed regulations be flexible enough to adapt to changes over time, should regulations not work as was intended for veterans and their families?	Flexibility is undesirable as this would undermine equal treatments of the equal claims principle. However, should the cost of financial advice increase over time, flexibility exists in operational policy to increase the maximum payable amounts for financial advice.
Are regulations required for the Act to be operable?	Yes – the Act creates express statutory direction that the prescribed amount is to be stipulated in subordinate legislation.

**Treatment and other related matters**

92. Treatment entitlements concern entitlements related to the provision of treatment services.

**Transport costs for treatment and assessment**

93. Under the Act, the costs of transport taken by a veteran for treatment and/or assessment of a service-related condition are approached differently, depending on whether the veteran qualifies under Scheme One or Scheme Two. It had originally been envisaged

that Scheme Two would align with ACC instead of Scheme One. This would have resulted in a recipient under Scheme Two receiving less than a recipient under Scheme One.

94. While alignment with ACC’s regulations may be administratively efficient in determining transport entitlements for Scheme Two veterans, adherence to the Act’s principles is still required. In this instance, adherence to the Act’s approach of benevolence, and the principle of equal treatment for equal claims, require Schemes One and Two to be aligned. Administrative efficiency therefore should be subservient to the principles and purpose of the Act in this instance.
95. An additional reason for aligning the two Schemes is that ACC’s regulations deny coverage to veterans outside New Zealand. This is inconsistent with other entitlements provided by Veterans’ Affairs, which do not qualify entitlements on the basis of the location of a veteran, as well as the equal treatment of equal claims principle.
96. Aligning the Scheme Two regulations with the ACC regulations would also create additional administrative costs for Veterans’ Affairs. Using Scheme One’s travel for treatment entitlements as a basis for Scheme Two regulations creates no additional costs compared to the amounts provided for in the 2012 Cabinet decisions.
97. Cabinet had previously agreed that the regulations required for transport costs be modelled on those used for similar entitlements under the Accident Compensation Act 2001 (SOC MIN (12) 21/6E). This was based on the recommendations of the Law Commission, which recommended that both Scheme One and Two costs align with ACC entitlements. However, Cabinet did not agree to align Scheme One and ACC entitlements, as this would have gone against the public assurances by the Government that it would not reduce any entitlements in transitioning from the War Pensions Act 1954 to the new Veterans’ Support Act.

*Proposed approach*

98. The proposed approach therefore is to create a common set of entitlement provisions for Scheme One and Two veterans in relation to transport costs for treatment and assessment. It is proposed that this is achieved through subordinate legislation and the agreements between ACC and Veterans’ Affairs that section 87 of the Act permits.
99. The agreement will state that Veterans’ Affairs is responsible for the transportation costs of a veteran if they are receiving coverage through ACC. This will ensure that a veteran is not disadvantaged by ACC being their service provider, instead of Veterans’ Affairs.

*Analysis*

<i>Regulatory criteria</i>	<i>Explanation</i>
Are the proposed regulations consistent with the purpose and principles of the Act?	<p>Yes – aligning payment rates with Scheme One will promote equal treatment of equal claims.</p> <p>Equality of claims across the Schemes is also important in situations where a veteran is eligible for entitlements under</p>

	both Schemes. This will minimise confusion amongst veterans as to what they are entitled. If the original proposition to align with ACC was implemented, it would adversely affect Scheme Two veterans' vis-à-vis their Scheme One counterparts. This is contrary to the principle of equal treatment for equal claims.
Will the proposed regulations be flexible enough to adapt to changes over time, should regulations not work as was intended for veterans and their families?	Flexibility to amend payment rates is reduced, as the payment rate for private vehicle use will be set in regulations, using a dollar amount. This, however, creates clarity.
Are regulations required for the Act to be operable?	Yes – the Act creates express statutory direction that subordinate legislation defines the extent to which Veterans' Affairs is responsible for contributing to a veteran's transport costs in relation to treatment.

100. In addition, using the regulations to create a common framework creates administrative efficiencies for Veterans' Affairs. Staff would not be required to administer to different sets of entitlements that exist for similar purposes.

101. The proposed approach does however, run contrary to previous direction provided for by Cabinet, when it decided to replace the War Pensions Act with the Veterans' Support Act.

## Veterans' Independence Programme

102. The Veterans' Independence Programme (VIP) is a new entitlement for Scheme One and Two veterans, commencing from 7 December 2015. The purpose of the programme is to provide services and support to veterans "to the extent that they cannot undertake activities that are required in order for them to live independently."

103. For the purposes of the VIP, activities of independent living are routine and normal tasks or activities undertaken in the domestic environment that enable self-sufficiency. Therefore, a veteran who is not capable of living independently in his or her own home is not eligible for services and support under the VIP. The types of services and support that Veterans' Affairs will provide are of the types referred to in s 140(2) of the Act, but are not limited to the services and support specified in s140 (2).The proposed approach does not vary this definition.

*Proposed approach*

104. While s 144 of the Act does not require subordinate legislation, it is proposed that the level of support Veterans' Affairs will provide be specified in subordinate legislation. This will provide clarity on what the programme will provide and minimise legal risk.
105. It is proposed that the services and support Veterans' Affairs will provide be limited to veterans on the basis of need. This is due to the purpose of the programme, as defined in s 139(1), that services and support be provided "to the extent that [a veteran] cannot undertake activities that are required in order for them to live independently in their home".
106. Need will be determined through an initial needs assessment, which will be the World Health Organisation Disability Assessment Schedule 2.0 (WHODAS) method, to be set by Veterans' Affairs' operational policy. Subsequently, where the initial needs assessment is unable to provide a satisfactory level of information for a Veterans' Affairs official to determine a veteran's needs, further information may be sought from an authorised assessor.
107. Other approaches were considered, such as providing support based on the other entitlements the veteran presently receives from Veterans' Affairs. This, however, would have resulted in a "one-size-fits-all"-styled method of providing services and support, which would have risked providing inadequate services and support (or services and support that did not meet the needs or merits of the recipient). Such an approach would fail to deliver upon the purpose of the programme as set out in s 139(1), and be contrary to the principles of the Act.
108. Upon receipt of evidence, Veterans' Affairs will:
- a. determine what services and support can be provided under the Veterans' Independence Programme to assist the veteran with maintaining their independence within their home;
  - b. consider how long those services and support are needed; and
  - c. identify what services and support the veteran is receiving elsewhere and take these into account when determining what additional services may be provided under the Veterans' Independence Programme.
109. Veterans' Affairs is not responsible under the Veterans' Independence Programme for providing services and support to a veteran who is not capable of living independently in his or her home.

*Anticipated fiscal costs*

110. The proposed subordinate legislation does not expand the Veterans' Independence Programme, and therefore would have minimal impact on the projected costs. The forecast fiscal cost of the Veterans' Independence Programme, as forecast at the Budget Economic and Fiscal Update exercise (BEFU 15) is as follows (provided in \$,000):

2015/16	2016/17	2017/18	2018/19 & Out years
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6,891	11,832	11,471	11,471
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### Analysis

<i>Regulatory criteria</i>	<i>Explanation</i>
Are the proposed regulations consistent with the purpose and principles of the Act?	<p>Yes – aligning the services and support available under the programme with the individual needs of a veteran is consistent with the principle of determining claims in accordance with their merits.</p> <p>An alternative considered option, providing services and support based on the entitlements presently received, would have risked failing to align with the purpose of the programme, as set out in s 139(1) and elaborated upon in para 105.</p> <p>The proposed approach is also consistent with promoting equal treatment of equal claims, as an individual will receive services and support based on their unique needs, rather than a broader and less individualised approach, using an outcomes perspective, rather than an inputs approach.</p>
Will the proposed regulations be flexible enough to adapt to changes over time, should regulations not work as was intended for veterans and their families?	Yes – by not setting in regulations the assessment methodology, nor the types of services and support available, flexibility for Veterans’ Affairs is maintained.
Are regulations required for the Act to be operable?	No. In this instance, they are however desirable to minimise legal risk, and associated fiscal and reputational risk, as Veterans’ Affairs would be acting in accordance with the Act and subordinate legislation.

### Preferred option

111. The preferred option is to prescribe through subordinate legislation only the following matters:

- Decision making tools:

- Accepted late-onset conditions
  - Regulations to list conditions accepted as having a late-onset factor, derived from applicable Australian Statements of Principles and with input from the Veterans' Health Advisory Board.
- Financial entitlements
  - Lump sum for independence allowance
    - Regulations to stipulate formula for calculating lump sum amount and payment periods.
  - Lump sum compensation
    - Regulations to stipulate payment scale, for whole-person impairment percentages above 5 per cent. Maximum rate to be capped at 85 per cent whole-person impairment.
  - Assessment methodology for lump sum compensation
    - Regulations to stipulate use of American Medical Association's *Guides to the Evaluation of Permanent Impairment* (4th ed).
  - Child care payments
    - Regulations to stipulate amounts, based on those presently used by ACC but paid at an additional 20 per cent.
  - Indexation of weekly income compensation
    - Regulations to stipulate how indexation adjustments are to be applied, using average wage index, on 1 July each year.
  - Indexation of other entitlements
    - Regulations to stipulate how indexation adjustments are to be applied, using Consumer Price Index (all groups), on 1 July each year.
- Treatment entitlements
  - Transport costs
    - Regulations to create common entitlements between Scheme One and Scheme Two veterans, in respect of transport entitlements when undergoing treatment or assessment, instead of aligning Scheme Two with ACC.
  - Veterans' Independence Programme
    - Regulations to create common entitlements between Scheme One and Scheme Two veterans, in respect of transport entitlements when

undergoing treatment or assessment, instead of aligning Scheme Two with ACC.

112. It is proposed that the following matters are administered through a combination of statutory regulation and operational policy:

- Financial advice
  - Subordinate legislation to stipulate prescribed amount, while operational policy stipulates amount payable in provision of financial advice and that no further payments types, other than those listed in section 157, be eligible for financial advice provided by Veterans' Affairs.

113. It is proposed that the following matter is administered solely through operational policy:

- Vocational services and support
  - Operational policy to stipulate that services and support are to be provided based on the outcomes of vocational assessment.

## Consultation

114. The public were consulted on the proposed regulations from 8 July to 4 August. The consultation process included publication of Veterans' Affairs' proposed approach to regulations on the Veterans' Affairs website and letters to stakeholders such as the Royal New Zealand Returned and Services' Association, other veterans' organisations, and health professionals' colleges.

115. Government departments have also been consulted on the proposed regulations, including targeted consultation with the Ministry of Social Development, the New Zealand Defence Force, ACC, the Treasury, MBIE, Te Puni Kōkiri, the Ministry of Justice and the Inland Revenue Department.

116. A total of 14 submissions were received, of which six [6] were received from Government Departments.

## Responses from government departments

116. Submissions were received from the following Government Departments

- a. Ministry of Business, Innovation and Employment (MBIE);
- b. Ministry of Social Development
- c. Inland Revenue Department;
- d. Ministry of Justice;
- e. Te Puni Kōkiri;
- f. The Law Commission; and

g. Accident Compensation Corporation (ACC).

117. The Treasury was directly consulted, and advised that the lump sum option for the independence allowance should be discounted, either using a standard discount rate or actuarial methodology (as used by ACC). This advice was accepted and included in the regulations. The Ministry of Social Development was also directly consulted on the lump sum option and undertook modelling of different options, which informed the final proposed approach. The Ministry also noted that the indexation proposals were consistent with other legislative approaches.
118. Neither the Inland Revenue Department nor the Law Commission provided a substantive submission. The Ministry of Justice advised that it did not consider the proposed regulatory approach to in any way impact on the rights and freedoms contained in the New Zealand Bill of Rights Act 1990. The Ministry of Justice did nevertheless raise three queries, although these related to matters which were dictated by the Act, and therefore were beyond the scope of the proposed approach to regulations. Veterans' Affairs will advise the Ministry of Justice that the Act will be reviewed in due course, and that an on-going dialogue during that process is sought by Veterans' Affairs.
119. Similarly Te Puni Kōkiri's submission raised some important issues, particularly how Veterans' Affairs could utilise a whanau ora approach. The issues raised however, were beyond the scope of the proposed regulations that are required to utilise registered health practitioners. Other matters raised included consideration of the implications of lump sum entitlements for population groups with shorter life expectancies, and services appropriate for veterans in isolated communities. Whilst these are not regulatory matters, Veterans' Affairs will consider such matters during policy development and ensure Te Puni Kōkiri's views are sought during further legislative work in relation to veterans.
120. MBIE's submission pertained to the use of the *Guides*. It helpfully advised that it intends to continue using the fourth edition of the *Guides* for the foreseeable future. This information coloured Veterans' Affairs' decision to propose subordinate legislation that stipulates the use the fourth edition of the *Guides*. MBIE also noted, in respect of the Transportation Expense, that ACC regulations that cover these expenses are out of date, and thus payments made under those regulations may be different from those decided by Veterans' Affairs. MBIE advised, further, that the ACC regulations are unlikely to be amended in the foreseeable future. MBIE's submission in respect of this point also coloured Veterans' Affairs' decision to propose regulations to stipulate an alignment between Schemes One and Two.
121. ACC's submission raised issues of alignment relating to the independence allowance payments, the impairment assessment tool, and the weekly compensation index. ACC noted that differences in approach may create confusion and dissatisfaction for shared clients and could be administratively problematic. All of these issues concerned matters which have previously been worked through by Veterans' Affairs and ACC. Further discussions with ACC and Veterans' Affairs have resolved any outstanding concerns ACC has with Veterans' Affairs' proposed approach to regulations. Veterans' Affairs will continue to work closely with ACC during the implementation of the Veterans' Support Act 2014 to resolve any implementation issues as they emerge. ACC also raised a concern about transport for treatment and assessment in instances where Veterans' Affairs will not top up ACC contributions towards transport for treatment or assessment. Veterans' Affairs will pay for the whole cost of transport in these instances.

## Responses from individuals

122. Four submissions were received from individuals. One was broadly supportive of the proposed approach to regulations. The other three submissions pertained to matters which are outside the scope of the proposed regulations, and concerned matters fundamental to the Act itself. While these concerns are not relevant for the purposes of the present regulations (and therefore this RIS), their concerns will be noted, and these individuals will be invited to comment when the Act is reviewed in due course.

## Responses from stakeholder groups

123. Five submissions were received from stakeholder groups. Of the responses two stakeholders supported the proposed approach to regulations. Another stakeholder group provided submissions which in their entirety pertained to matters beyond the scope of the proposed regulations. The other two submitters elected not to provide any substantive comment on the proposed approach to regulations.

124. One of the stakeholder groups that expressed its support of the proposed approach to regulations raised two salient points. The first point pertained to permitting coverage for late-onset conditions to be back dated in order to support the dependants of veterans who die as a result of a condition that is posthumously accepted as a late-onset condition. Veterans' Affairs deliberated over this suggestion and concluded that the Act does not allow for subordinate legislation to address this matter. The second point suggested that regulations confirm that Veterans' Affairs will not claw-back any lump sum payment made to a veteran who dies before the end of the lump sum period. Veterans' Affairs considered that the Act did not give recourse for Veterans' Affairs to seek reimbursement, or "claw-back", in such circumstances.

125. Veterans' Affairs and the NZDF will engage with these departments and stakeholders in future, should it identify any need to modify its regulatory approach, as part of its monitoring process.

## Conclusions and recommendations

126. Some parts of the Act could not operate without certain subordinate legislation – there is no viable solely operational policy option. Other subordinate legislation is highly desirable to ensure the Act works as effectively as possible, consistent with its purpose and principles, and to provide certainty and transparency for veterans and other claimants, as well as for providers of services to veterans.

127. In other areas subordinate legislation is not desirable. Giving effect to the provisions of the Act through operational policy provides flexibility and enables Veterans' Affairs to make changes over time if the provisions are not working as intended for veterans and their families.

128. The policy options are considered to be reflective of the Act, as well as the particular rationale or purposes of Scheme Two and the Veterans' Independence Programme, respectively. The rationale for Scheme Two is alignment with ACC entitlements, but at greater rates in recognition of the benevolence of the Act. The purpose of the Veterans' Independence Programme is to provide services and support to enable a veteran to live

independently in his or her home. Some options are also reflective of expressed statutory direction, where applicable.

## Implementation plan

129. The regulations will come into effect with the commencement of Scheme Two and the Veterans' Independence Programme (second tranche of the Act) on 7 December. As such, the implementation of the regulations is linked to the implementation of the second tranche of the Act.
130. The regulations provide the parameters within which Veterans' Affairs must operate its operational policy. Significant work has been done to develop the new internal policy and processes that will be required in order for the new entitlements to be administered effectively.
131. Communication with veterans has been identified as an integral part of the implementation plan to ensure that veterans will be fully informed of the changes arising from the introduction of the new legislation and regulations.

## Monitoring, evaluation and review

132. The Act is due to be reviewed from December 2016, as required under section 282 of the Act. The review requires the Chief of Defence Force to, in reviewing the operation of the Act, consider whether any amendments to the Act are necessary or desirable and report his or her findings to the Minister. The Minister must then present a copy of the report to the House of Representatives.
133. The review will therefore consider the operation of the sections of the Act which govern the operation of subordinate legislation. The review will also consider and evaluate the operation of subordinate regulations, including the regulations discussed in this Regulatory Impact Statement.
134. In addition, Veterans' Affairs will collect and analyse data on the implementation of entitlements and services under the Act, including those subject to regulation. This analysis will be used to monitor and review whether regulations and policy are operating as intended. Veterans' Affairs will also remain in regular contact with other government departments, if it has been identified that any policy changes by them would affect the regulations.

# APPENDIX ONE

## Veterans' Affairs Scheme Two lump sum payment amounts

Impairment (%)    Amount (\$)

0	0.00
1	0.00
2	0.00
3	0.00
4	0.00
5	2,500.00
6	2,748.33
7	3,021.33
8	3,321.45
9	3,651.37
10	4,014.07
11	4,555.16
12	5,117.11
13	5,696.76
14	6,297.25
15	6,920.23
16	7,562.51
17	8,228.84
18	8,917.67
19	9,632.14
20	10,370.76
21	11,135.02
22	11,924.99

23	12,743.86
24	13,591.63
25	14,468.32
26	15,377.09
27	16,316.40
28	17,287.80
29	18,294.50
30	19,336.57
31	20,413.93
32	21,529.87
33	22,684.32
34	23,880.49
35	25,116.80
36	26,398.13
37	27,722.77
38	29,093.95
39	30,514.93
40	31,984.09
41	33,504.64
42	35,078.12
43	36,707.83
44	38,393.77
45	40,139.05
46	41,945.39
47	43,814.34
48	45,749.12
49	47,751.37

50	49,824.22
51	51,969.34
52	54,189.91
53	56,487.58
54	58,865.48
55	61,326.94
56	63,875.06
57	66,511.49
58	69,241.07
59	72,065.39
60	74,989.18
61	78,015.84
62	81,146.78
63	84,388.56
64	87,744.32
65	91,215.66
66	94,810.67
67	98,529.34
68	102,379.62
69	106,364.75
70	110,488.04
71	114,757.39
72	119,174.48
73	123,747.26
74	128,479.09
75	133,377.85
76	138,446.84

77	143,694.01
78	149,124.25
79	154,745.52
80	160,562.74
81	166,584
82	172,814
83	179,260
84	185,928
85+	192,826