

Departmental Disclosure Statement

Veterans' Support Bill

2013 No 158

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by Veterans' Affairs New Zealand, an operational unit of the New Zealand Defence Force.

The New Zealand Defence Force certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

11 October 2013.

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Part One: General Policy Statement

The Veterans' Support Bill gives effect to the recommendations of the Law Commission in its 2010 report recommending a new support scheme for veterans of military service, replacing the War Pensions Act 1954.

The 1954 Act was designed primarily to meet the needs of veterans of the Second World War. It was drafted at a time when the understanding of the consequences of war service was much more limited than it is today, and is focused on the physical injuries that occur in a war environment. The 1954 Act has not changed significantly since enactment. The Act needs to be replaced with modern legislation designed to deal not only with the physical risks associated with deployments, but also the psychological and environmental risks that veterans face.

The 1954 Act was also not updated on the introduction of the accident compensation ("ACC") scheme in 1974. The ACC scheme applies to serving and former members of the New Zealand Defence Force to the extent that their operational service results in personal injury by accident. A key objective of the Bill is to bring a rehabilitation focus to the management of veterans' conditions, as well as providing monetary and other forms of support.

Foundational provisions

In accordance with the Law Commission's recommendations, the Bill introduces two separate schemes for veterans' support, under a common administrative and decision-making structure.

Scheme One, which will cover veterans with recognised service prior to 1 April 1974, mirrors many of the provisions of the 1954 Act. It continues the practice of paying a periodic pension to veterans with a service-related impairment and also provides compensation to spouses, children and dependants of eligible veterans.

Scheme Two will cover veterans with recognised service after the introduction of universal accident compensation on 1 April 1974. These are veterans of modern-day deployments. This scheme will focus on the provision of medical, psychosocial and vocational rehabilitation. Rehabilitation will be the gateway to other assistance such as income compensation and lump sum permanent impairment compensation. As recommended by the Law Commission, Scheme Two will be aligned with the entitlements available under the ACC legislation.

The Bill continues the principles and decision-making presumptions of the 1954 Act, which are in common with veterans' support legislation in other countries. The key principles that underpin the Bill are:

- acknowledging community responsibility for the injury, illness or death of veterans as a result of being placed in harm's way in service to New Zealand;
- providing veterans with fair entitlements;
- promoting equal treatment of equal claims; and
- promoting a benevolent approach to claims.

The principles recognise the obligation the state has for the care of a veteran who has health and wellbeing issues that arose as a result of service in an environment of extreme risk.

The new Act will be administered by the Chief of the New Zealand Defence Force, with decision making authority vested in the General Manager of Veterans Affairs New Zealand ("VANZ"). VANZ will be supported by two advisory bodies, the Veterans' Advisory Board (which replaces the existing War Pensions Advisory Board) and a Specialist Medical Advisory Panel. The Panel will assume responsibility for making grants and awards under the Veterans' Medical Research Trust Fund (currently the War Pensions Medical Research Trust Fund, administered by the War Pensions Advisory Board).

The Bill also includes a new provision for a Code of Veterans' and Other Claimants' Rights. Based on other similar codes such as that under the ACC legislation, the Code will confer rights on claimants and impose obligations on VANZ setting out how VANZ should deal with claimants. It will also set out the procedure for lodging and dealing with complaints.

The Bill will enable the Veterans' Affairs Act 1999 to be repealed. The Veterans' Affairs Act enabled the transfer of public servants from other Government Departments to the Civil Staff of the Defence Force when the Office of Veterans' Affairs was created as a semi-autonomous part of the Defence Force in 1999. It is no longer necessary to preserve that power in stand-alone legislation.

Eligibility: Schemes One and Two

The Bill contains the same criteria for coverage as in the 1954 Act, which means that all deployments currently covered under the 1954 Act will retain coverage under the new legislation. Prior to the introduction of universal ACC on 1 April 1974, pension coverage was a form of workplace compensation and covered routine service in New Zealand or overseas as well as service in a recognised war or emergency. From 1 April 1974, coverage has been provided for deployments that are deemed to carry a significant risk of harm to personnel. Risk can be in the form of operational or environmental threats.

Any future deployment by NZDF will be assessed to determine whether it meets the criteria for qualifying operational service, using the same criteria as is currently used. Deployments will be split between the two Schemes based on the dates of coverage for the deployment.

Scheme One will come into force on 1 July 2014, and will cover veterans with service prior to 1 April 1974. This will include those who served in the Second World War through to the Vietnam War. Entitlements will be based on those available under the 1954 Act with some improvements.

Veterans will continue to receive impairment compensation in the form of a periodic Disablement Pension. Veterans who are under the age of retirement and unable to work because of a service-related medical condition will be able to receive a higher rate of income compensation than is available under the 1954 Act.

Surviving spouses/partners, children and dependants will continue to receive the same types of compensation as under the 1954 Act.

Scheme Two will cover veterans with service since 1 April 1974, and will come into force on 1 July 2015. It will have a rehabilitation focus, with provision for rehabilitation plans along similar lines to those under the ACC legislation.

Scheme Two is designed to link to ACC to ensure that the two schemes are complementary. Scheme Two entitlements are closely aligned with the entitlements available through ACC, with a “top up” to preserve the additional support that was provided to veterans under the 1954 Act over and above that available to other New Zealanders. If the veteran is not eligible for ACC then VANZ will pay both the ACC amount and the VANZ “top up” amount. This will ensure all Scheme Two veterans receive the same amount of compensation whether or not their ACC claim was accepted.

The focus of Scheme Two is rehabilitation and restoration to pre-injury capability to the maximum extent possible. The assistance provided to veterans will incentivise wellness and use rehabilitation as the gateway to other assistance.

Veterans who are of working age and are unable to work due to a service-related impairment will be eligible for weekly income compensation. This will be payable at 100% of their pre-injury earnings for the first year of incapacity, and 85% for the period thereafter. This is higher than the 80% compensation paid by ACC to other New Zealanders, and retains the benevolence shown in the current Act.

Scheme Two will provide impairment compensation to veterans in the form of a lump sum payment. The lump sum rates will be set at the equivalent rate payable by ACC plus an additional 20%. In addition the scale will be broader than ACC's. ACC's scale provides compensation for impairment from 10 to 80%. Impairment of less than 10% is not compensated for, and impairment of 80% or more receives the same rate. The VANZ scale will provide for compensation of 5 to 100% whole person impairment, to match the rates of impairment compensation provided for in the 1954 Act.

Compensation for the spouse or partner and children of eligible deceased veterans will also be based on ACC entitlements. A one-off survivor's grant will be payable in the form of a lump sum, as well as ongoing weekly compensation. The spouse or partner will receive 60% of the veteran's earnings prior to death, and the children will share 20% of the veteran's earnings prior to death. This is a slightly higher rate than that paid by ACC.

There will be a number of common provisions available to veterans of both Schemes. Veterans from both schemes will have access to medical treatment and rehabilitation for accepted conditions. The Veteran's Pension for over-65s will be retained from the 1954 Act. This is an equivalent of New Zealand Superannuation, with some additional entitlements. Other common provisions include access to support services such as home help and lawn moving for service-related conditions, and the provision of funeral grants for veterans with a service-related death.

Decision-making

The Bill enables the adoption of decision-making tools to assist the decision-maker in determining whether a condition is linked to a veteran's service.

Decision-making tools such as presumptive lists are used under the current Act, and this will continue. In addition, the Bill provides a mechanism by which the Statements of Principle ("SOPs") used under the Australian legislation can be adopted for use under the New Zealand scheme to define the legal relationship between a specific condition and the veteran's service. The Australian SOPs are based on robust international medical and scientific evidence. Their adoption and use will greatly benefit the decision-making process as it will reduce the amount of discretion applied by decision-maker.

The Veterans' Pension will continue to be administered by the Ministry of Social Development, but under delegation by the General Manager of VANZ.

Review and appeal rights

The Bill provides for a two-tier system of reviews and appeals, which is largely consistent with the mechanisms under the 1954 Act.

Most reviews will be undertaken by review officers appointed by the General Manager of VANZ. However, cases relating to service eligibility will be reviewed by a panel comprising a review officer and a representative of the Royal New Zealand Returned and Services' Association.

A right of appeal will exist to the Veterans' Entitlements Appeal Board, which will replace the existing War Pensions Appeal Board. The Board will consist of up to 4 members, one of whom must be a lawyer and two of whom must be medical practitioners. An appeal will be a *de novo* hearing, but will be determined without regard to legal or procedural technicalities with the ability to receive any relevant information or evidence.

Appeals from Board decisions will be to the High Court, but only on points of law.

Appeals in respect of the Veteran's Pension will be to the Social Security Appeal Authority, and for any decision made on medical grounds there is a right of appeal to the Medical Appeals Board. This is consistent with the current position and the administrative responsibility of the Ministry of Social Development (MSD). However, MSD does not have the experience to deal with service-related issues. Veterans with claims declined on the basis of service eligibility have the same review and appeal rights as the VANZ process outlined above. This continues the process under the 1954 Act.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<i>Towards a New Veterans' Entitlements Scheme: A Discussion Paper on the Review of the War Pensions Act 1954:</i> Law Commission, NZLC IP7, 2008 <i>A New Support Scheme for Veterans:</i> Law Commission, NZLC Report 115, 2010 All reports are available online at www.lawcom.govt.nz .	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
The Government is considering drafting a Treaty to facilitate matters ancillary to the adoption of the Australian statements of principles, though this is not referred to in the Bill.	

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO
N/A	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
Law Commission Review of the War Pensions Act 1954, 27 September 2012 http://www.veteransaffairs.mil.nz/about/whats-new/20130919-Regulatory-Impact-Statement.html	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
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Date:	6 July 2011
Comment prepared by:	Hayden Fenwick, The Treasury
	David Crooke, Ministry of Justice
Name of originating agency:	Veterans' Affairs New Zealand

Quality Assurance Review

We have reviewed the regulatory impact statement (RIS) for the above legislative/regulatory proposal in accordance with the quality assurance criteria set out in the [CabGuide](#).

Text for the *Regulatory Impact Analysis* Section of the Cabinet Paper

As required by the CabGuide, you need to include a *Regulatory Impact Analysis* section within your Cabinet paper. This section must comprise of the following text:

The Regulatory Impact Analysis (RIA) requirements apply to the proposal in this paper and a Regulatory Impact Statement (RIS) has been prepared and is attached.

A Panel comprising Treasury and Ministry of Justice representatives has reviewed the RIS prepared by Veterans' Affairs New Zealand and associated supporting material, and considers that, given the RIS is limited to analysis of whether to accept the recommendations from the Law Commission's review of the War Pensions Act 1954, the information and analysis summarised in the RIS meets the quality assurance criteria.

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
N/A	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
N/A	
2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
Cabinet Papers recording policy decisions and potential costs and benefits are available from the Veterans' Affairs web site: www.veteransaffairs.mil.nz	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
N/A	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
<p>The underlying policy of the Bill is the importance of acknowledging, on behalf of the community, of responsibility for the injury, illness, or death of veterans as a result of them being placed in harm's way in the service of New Zealand and, consequently, the need to:</p> <ul style="list-style-type: none"> (a) provide veterans, their spouses and partners, and their dependents with fair entitlements; (b) promote equal treatment of equal claims; and (c) take a benevolent approach to claims. <p>This approach is consistent with the approach to veterans' entitlements in other jurisdictions.</p>

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?
There are no Treaty of Waitangi implications of this legislation.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES, but no concerns are identified.
<p>Advice provided to the Attorney-General by the Crown Law Office, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/</p>	

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>Offence provisions are set out at clauses 254 to 259 of the Bill. Part 7 of the Bill establishes rights of appeal to the Veterans' Entitlements Appeal Board. Under clause 224 of the Bill there is a right of appeal to the High Court against a determination of the appeal board on a question of law.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
Ministry of Justice comments were sought on the information gathering, decision making, review and appeal, and compliance and enforcement provisions of the Bill.	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
<p>The Bill contains powers for VANZ to obtain such information as is reasonably necessary to establish a veteran's entitlement to support, including medical assessments. The provisions are consistent with the Information Privacy Principles under the Privacy Act 1993, in that information will be collected primarily from the veteran concerned.</p> <p>No provision is made in the Bill for information matching under Part 10 of the Privacy Act. However, Part 9A of that Act will enable VANZ to enter information sharing agreements with other agencies (for example, the New Zealand Defence Force, ACC, and the Ministry of Social Development) for the purpose of establishing and monitoring entitlements.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
The Privacy Commissioner was consulted and had input into the decisions referred to in section 3.5 above.	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The following departments and other entities were consulted in the development of policy and the drafting of the Bill: Accident Compensation Corporation, Ministry of Business, Innovation and Employment, 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, and Treasury were consulted in the preparation of Cabinet papers seeking initial policy decisions on the replacement of the War Pensions Act 1954. The Law Commission had the opportunity to comment on those papers.</p> <p>In developing further policy decisions, the following departments and other entities were consulted: Accident Compensation Corporation, Ministry of Justice, Ministry of Social Development, and Treasury. Discussions took place with the Department of Internal Affairs about the relationship between the Bill and the Inquiries Act 2013.</p> <p>The Department of Prime Minister and Cabinet has been informed throughout.</p> <p>In respect of the adoption of the Australian Statements of Principle, consultation has taken place with the Australian Department of Veterans' Affairs, the New Zealand Defence Force, and the Ministry of Foreign Affairs and Trade, with legal advice provided by Crown Law.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The policy details and operational implications of the legislation have been tested in detail by VANZ, in discussion with the Accident Compensation Corporation and the Ministry of Social Development.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
N/A	

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
N/A	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
The Bill will have no retrospective effect. In addition, the Government's policy in respect of the transition from the War Pensions Act 1954 to the new legislation is to "grandparent" existing rights on the basis that no one will be worse off under the new provisions.	

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
N/A	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
The Bill contains standard immunities for decision makers and members of the Veterans' Advisory Board, the Specialist Medical Advisory Panel, and the Veterans' Entitlements Appeal Board.	

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person’s rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
The power to make decisions in relation to veterans’ entitlements is vested in VANZ, and decisions are subject to review and appeal as described above.	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
The Bill contains the following regulation making powers: (a) to specify conditions that may be accepted as a late-onset condition (clause 7); (b) to add to the categories of treatment provider (clause 7); and (c) to amend Schedule 3 by adding or replacing the name of a Pacific Island country in respect of which the veteran’s pension is available (clause 199)	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
The Bill contains (in clause 250) regulation making powers to address the following matters in the following broad categories: Dexcision making tools; Accepted late onset conditions; Rates/amounts of the range of entitlements; Assessment tools and processes; The formulas for adjusting amounts of entitlements; Administrative details for advisory bodies; and Reviews and appeals.	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
N/A	

