



## **Papua New Guinea (Members of the Forces Benefits) Regulation 2016**

---

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 27 October 2016

Peter Cosgrove  
Governor-General

By His Excellency's Command

Dan Tehan  
Minister for Veterans' Affairs

---



---

# Contents

<b>Part 1—Introduction</b>	<b>1</b>
1 Name.....	1
2 Commencement .....	1
3 Authority.....	1
4 Schedules .....	1
5 Definitions .....	1
6 Prescribed authority .....	3
<b>Part 2—Pensions</b>	<b>4</b>
<b>Division 1—Claims for pensions</b>	<b>4</b>
7 Who may claim pension.....	4
8 Application for pension.....	4
9 Determination of claims.....	4
10 Acceptance of claim subject to conditions .....	5
<b>Division 2—Rates of pensions</b>	<b>6</b>
11 Rates of pension—general .....	6
12 Rate if deceased member had more than one wife .....	6
13 Rate if instalment period straddles indexation day.....	6
14 Indexation of pension rates .....	7
15 Rounding up of rates ending in 5 cents .....	8
16 Date from which pension is payable .....	8
17 Payment by instalments .....	8
<b>Division 3—Cessation of pensions</b>	<b>9</b>
18 Cessation of pension payable to dependants of member .....	9
19 Cessation of pension payable to widow .....	9
<b>Part 3—Assistance and benefits</b>	<b>10</b>
20 Medical treatment .....	10
21 Travelling expenses .....	10
22 Decoration allowance.....	10
23 Education and training benefits.....	10
24 Application for benefits etc.....	10
<b>Part 4—Miscellaneous</b>	<b>11</b>
25 Appointment of trustee etc .....	11
26 Review of decisions .....	11
27 Signature to forms.....	12
<b>Part 5—Application, savings and transitional provisions</b>	<b>13</b>
28 Definitions .....	13
29 Pending applications .....	13
30 Savings—appointment as trustee .....	13
31 Savings—rights of review of decisions.....	13
<b>Schedule 1—General pension rates</b>	<b>15</b>
1 Table A—pensions payable in respect of a deceased member.....	15
2 Table B—pensions payable for a member who is totally incapacitated .....	15
<b>Schedule 2—Percentage of pension payable for a partially incapacitated member</b>	<b>16</b>
1 Pensions payable for a member who is partially incapacitated .....	16

---

<b>Schedule 3—Repeals</b>	17
<i>Papua New Guinea (Members of the Forces Benefits) Regulations 1961</i>	17

## Part 1—Introduction

### 1 Name

This is the *Papua New Guinea (Members of the Forces Benefits) Regulation 2016*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	3 November 2016

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under the *Papua New Guinea (Members of the Forces Benefits) Act 1957*.

### 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

### 5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) member of the Forces;
- (b) the Defence Force;
- (c) the war.

- (1) In this instrument:

*Act* means the *Papua New Guinea (Members of the Forces Benefits) Act 1957*.

## Section 5

---

**attendant** means a person who has been authorised by the prescribed authority to accompany a member who is travelling for the purpose of obtaining medical treatment.

**child** means a child under the age of sixteen years of a member, being the member's son, daughter, stepson, stepdaughter, adopted child or exnuptial child but does not include an exnuptial child born more than 9 months after the end of the member's war service unless the member:

- (a) has adopted the child; or
- (b) married the mother of the child.

**deceased member** means a member whose death was due to war service.

**decoration** includes a medal and a bar to any decoration or medal.

**dependant**, in relation to a member, means:

- (a) a widow of the member; or
- (b) if the member has died, a child of the member.

**indexation day** means:

- (a) for a rate of pension specified in item 2 of Table A of Schedule 1—  
1 January; or
- (b) in any other case:
  - (i) 20 March; and
  - (ii) 20 September.

**medical treatment** means medicinal, surgical and all other forms of treatment with a view to:

- (a) restoring a person to physical or mental health; or
- (b) alleviating suffering;

and includes the supply, renewal and repair of artificial replacements, surgical aids and appliances.

**member** means a member of the Forces.

**partially incapacitated**, in relation to a member, means that the member:

- (a) is suffering from an incapacity of a kind for which the Commonwealth is liable under section 5 of the Act; and
- (b) is not totally incapacitated.

**pensioner** means a person to whom a pension or allowance is payable under the Act or this instrument.

**totally incapacitated**, in relation to a member, means either:

- (a) the member has been blinded as a result of war service; or
- (b) the member:
  - (i) is totally incapacitated as a result of war service, that is to say, the member's incapacity from injury or disease that has been accepted as related to the member's relevant war service is of such a nature as, of itself alone, to render the member incapable of undertaking

---

Section 6

remunerative work for periods aggregating more than 8 hours per week; and

- (ii) is, by reason of incapacity from that injury or disease alone, prevented from continuing to undertake remunerative work that the member was undertaking and is, as a result, suffering a loss of salary or wages, or of earnings on the member's own account, being a loss that the member would not be suffering if the member were free of that incapacity.

**wife** means a wife whether by custom or otherwise and includes wives of a polygamous union where those unions are in accordance with recognised custom and where the marriage was contracted before or during the period of service of the member or within fifteen years after his discharge from the Forces.

- (2) For the purposes of the definition of ***totally incapacitated*** in subsection (1), a member who is incapacitated from injury or disease that has been accepted as related to the member's relevant war service is not taken to be suffering a loss of salary or wages, or of earnings on the member's own account, by reason of that incapacity if:
  - (a) the member has ceased to engage in remunerative work for reasons other than his incapacity from that injury or disease; or
  - (b) the member is incapacitated, or prevented, from engaging in remunerative work for some other reason.

## 6 Prescribed authority

For paragraph 9(4)(a) of the Act and this instrument, the Repatriation Commission is the prescribed authority.

## **Part 2—Pensions**

### **Division 1—Claims for pensions**

#### **7 Who may claim pension**

A claim for a pension may be made:

- (a) by a member, in respect of his own incapacity; or
- (b) by a dependant of a member, in respect of the death of the member; or
- (c) by a person authorised by the member to act on the member's behalf; or
- (d) by a person authorised by the dependant to act on the dependant's behalf.

#### **8 Application for pension**

- (1) A claim for a pension must:
  - (a) be in the form approved by the prescribed authority; and
  - (b) be lodged with the prescribed authority.
- (2) However, a written application for a pension (otherwise than in the approved form) may be accepted as a claim if:
  - (a) the prescribed authority so determines; and
  - (b) the claimant subsequently lodges a claim in the approved form.

#### **9 Determination of claims**

- (1) The prescribed authority must investigate each claim for a pension and determine:
  - (a) whether the incapacity or death of a member, in respect of which the pension is claimed:
    - (i) has resulted from any occurrence that happened during the period of the member's service in the Defence Forces during the war; or
    - (ii) has arisen out of, or is attributable to, that service;
  - (b) whether a person who has claimed to be a dependant is a dependant, and the nature and extent of the dependency; and
  - (c) subject to Division 2, the rate of pension payable to the claimant.
- (2) In investigating the claim, the prescribed authority may request from the claimant or any other person such information as is necessary to enable it to make the determination.
- (3) The prescribed authority must inform the claimant whether:
  - (a) the claim has been allowed, and if so, whether it is subject to one or more conditions; or
  - (b) the claim has been rejected.



## **10 Acceptance of claim subject to conditions**

If a claim is subject to one or more conditions, the prescribed authority must inform the claimant of the nature of the condition or conditions.

## Division 2—Rates of pensions

### 11 Rates of pension—general

- (1) For subsection 5(1) of the Act, the fortnightly rate of a pension payable to a person is as follows:
  - (a) if the pension is payable for a deceased member—the rate specified for the person in Table A of Schedule 1 (indexed in accordance with section 14);
  - (b) if the pension is payable for a member who is totally incapacitated—the rate specified in Table B of Schedule 1 (indexed in accordance with section 14) (the **total incapacity rate**);
  - (c) if the pension is payable for a member who is partially incapacitated:
    - (i) for a kind of incapacity mentioned in Schedule 2—the rate worked out by applying the percentage mentioned in Schedule 2 for the kind of incapacity to the total incapacity rate; or
    - (ii) for another kind of incapacity—the percentage of the total incapacity rate determined by the Minister under subsection (2).
- (2) The Minister may, by written instrument, determine a percentage for subparagraph (1)(c)(ii), having regard to:
  - (a) the nature of the member's incapacity; and
  - (b) the duration of the member's incapacity; and
  - (c) the percentages of the total incapacity rate for the kinds of partial incapacity mentioned in Schedule 2.

### 12 Rate if deceased member had more than one wife

If, by recognised custom, a deceased member had, at the time of the member's death, more than one wife:

- (a) each of the wives is taken to be a widow of the member; and
- (b) the rate of pension payable for each of the widows for a fortnight, rounded to the nearest multiple of \$0.10, is:

$$\frac{\text{Widow rate}}{\text{Number of widows}}$$

where:

**number of widows** is the number of wives covered by paragraph (a), less the number of widows (if any) to whom a pension has ceased to be payable under subsection 19(1).

**widow rate** is the rate specified for a widow in Table A of Schedule 1 (indexed in accordance with section 14).

### 13 Rate if instalment period straddles indexation day

- (1) This section applies if a pension is payable for a person for a period (the **instalment period**):

- (a) beginning before an indexation day; and
  - (b) ending on or after the indexation day.
- (2) The rate of pension payable to the person for the instalment period, rounded to the nearest multiple of \$0.10, is:

$$\text{Old rate} \times \left( \frac{\text{Days}_{\text{before}}}{\text{Days}_{\text{period}}} \right) + \text{New rate} \times \left( \frac{\text{Days}_{\text{after}}}{\text{Days}_{\text{period}}} \right)$$

where:

**days<sub>after</sub>** means the number of days in the instalment period on and after the indexation day.

**days<sub>before</sub>** means the number of days in the instalment period before the indexation day.

**days<sub>period</sub>** means the number of days in the instalment period.

**new rate** is the rate of pension payable to the person on and after the indexation day.

**old rate** is the rate of pension payable to the person immediately before the indexation day.

## 14 Indexation of pension rates

- (1) The rates of pension mentioned in Tables A and B of Schedule 1 are indexed on each indexation day for the rate.
- (2) This Part has effect on and after an indexation day as if the indexed rate were substituted for the rate in effect on the day before the indexation day.
- (3) For a rate (other than the rate specified in item 2 of Table A), the indexed rate, rounded up to the next multiple of \$0.10, is:

$$\text{Old rate} \times \text{Pension MBR factor}$$

where:

**old rate** is the rate of pension in effect on the day before the indexation day.

**pension MBR factor** is the pension MBR factor worked out under subsection 59LA(1) of the *Veterans' Entitlements Act 1986*.

- (4) For the rate specified in item 2 of Table A, the indexed rate, rounded to the nearest multiple of \$0.10, is:

$$\text{Old rate} \times \text{Orphan pension factor}$$

where:

**old rate** is the rate of pension in effect on the day before the indexation day.

**orphan pension factor** is the factor worked out under subsections (5) and (6).

## Section 15

---

- (5) Orphan pension factor, rounded to the nearest multiple of \$0.10, is worked out using the following formula:

$$\frac{\text{Current orphan pension rate}}{\text{Previous orphan pension rate}}$$

where:

**current orphan pension rate** is the rate of pension under paragraph 30(2)(a) of the *Veterans' Entitlements Act 1986* applicable on the indexation day.

**previous orphan pension rate** is the rate of pension under paragraph 30(2)(a) of the *Veterans' Entitlements Act 1986* applicable on the day before the indexation day.

- (6) Orphan pension factor is worked out to 3 decimal places but, if the factor would, if it were worked out to 4 decimal places, end in a number that is greater than 4, the factor is to be increased by 0.001.

## 15 Rounding up of rates ending in 5 cents

If, before the rounding required by section 12, 13 or 14 (other than subsection 14(3)), an indexed rate under any of those sections would be a multiple of \$0.05 but not \$0.10, the indexed rate must be rounded up to the nearest multiple of \$0.10.

## 16 Date from which pension is payable

The prescribed authority may approve the payment of a pension from a date not more than 3 months before the date of lodgement of the claim for pension.

## 17 Payment by instalments

Pensions are payable in such instalments as the prescribed authority determines, and may be paid in advance.

## **Division 3—Cessation of pensions**

### **18 Cessation of pension payable to dependants of member**

- (1) If:
  - (a) a pension is payable to a dependant of a member; and
  - (b) the dependant is under 16 years of age when the pension starts being paid to him or her;payment of the pension ceases upon the dependent turning 16 years of age.
- (2) If:
  - (a) a pension is payable to a dependant of a member (not being a person who was a dependant of a deceased member); and
  - (b) the dependant is 16 years of age or over when the pension starts being paid to him or her;payment of the pension ceases when, in the opinion of the prescribed authority, the dependant ceases to be a dependant.
- (3) If a pension is payable to a dependant of a deceased member, payment of the pension ceases when the prescribed authority is satisfied that the dependant would, if the deceased member were still alive, have ceased to be a dependant.

### **19 Cessation of pension payable to widow**

- (1) A pension payable to a widow of a member ceases upon the widow's remarriage.
- (2) However, despite subsection (1), if the prescribed authority determines that a widow of a deceased member who remarries should not, by reason of that remarriage, having regard to recognised custom and the circumstances of the particular case, be deemed to have ceased to be a dependant of that member, the prescribed authority may determine that the pension payable to that widow is to continue.

## Part 3—Assistance and benefits

### 20 Medical treatment

The prescribed authority may provide medical treatment for a member in respect of an incapacity due to war service.

### 21 Travelling expenses

If it is necessary for a member, who is eligible for medical treatment under this Part, to travel in order to obtain that medical treatment, the prescribed authority may grant:

- (a) the fares and travelling allowances for the journey (including the return part of the journey) incurred by the member; and
- (b) if it is necessary for the member to be accompanied by an attendant—the fares and travelling allowances for the journey (including the return part of the journey) incurred by the attendant.

### 22 Decoration allowance

- (1) If a member was awarded a decoration in respect of the member's service during the war, the member is entitled to payment of a gratuity, annuity, allowance or addition to pension.
- (2) The gratuity, annuity, allowance or addition to pension is payable at the same rate, and in accordance with the same conditions as are prescribed from time to time by or under the *Veterans' Entitlements Act 1986*, in respect of a person to whom that Act applies.

### 23 Education and training benefits

A person, whether or not under 16 years of age, who is a child of:

- (a) a deceased member; or
- (b) a totally and permanently incapacitated member; or
- (c) a blind member;

is eligible for the grant of educational and training facilities.

### 24 Application for benefits etc.

- (1) An application for benefit, advantage or assistance must:
  - (a) be in the form approved by the prescribed authority; and
  - (b) be lodged with the prescribed authority.
- (2) However, a written application for benefit, advantage or assistance (otherwise than in the approved form) may be accepted as an application if:
  - (a) the prescribed authority so determines; and
  - (b) the claimant subsequently lodges an application in the approved form.

## **Part 4—Miscellaneous**

### **25 Appointment of trustee etc.**

- (1) This section applies if:
  - (a) the prescribed authority is satisfied that, having regard to the age, infirmity, ill-health or improvidence of a pensioner, it is expedient that payment of a pension, allowance or monetary benefit payable to the pensioner should be made to another person on behalf of, or as trustee of, the pensioner; or
  - (b) a pensioner consents to payment of a pension, allowance or monetary benefit payable to the pensioner being made to another person on behalf of, or as trustee of, the pensioner.
- (2) The prescribed authority may, by instrument in writing:
  - (a) authorise payment of the pension, allowance or monetary benefit to be made to another person on behalf of the pensioner; or
  - (b) appoint a person to be the trustee, or itself assume the office of trustee, of the pensioner in respect of the pension, allowance or monetary benefit.
- (3) If the prescribed authority has appointed a person to be the trustee, or has itself assumed the office of trustee, of a pensioner in respect of a pension, allowance or monetary benefit, the pension, allowance or monetary benefit:
  - (a) may be paid to the person so appointed, or the prescribed authority, as the case may be; and
  - (b) may, subject to the directions of the prescribed authority, be disbursed or accumulated by the person so appointed or the prescribed authority, as the case may be, for the benefit of:
    - (i) the pensioner; or
    - (ii) a dependant of the member; or
    - (iii) a person who is or has been dependent on the pensioner.
- (4) The prescribed authority may, by instrument in writing, revoke an authorisation or appointment, or an assumption of the office of trustee.

### **26 Review of decisions**

A person may apply to the Administrative Appeals Tribunal for review of the following decisions:

- (a) a decision by the prescribed authority under section 9 that a person's claim has been rejected;
- (b) a decision by the prescribed authority under section 9 that a person's claim has been allowed subject to one or more conditions;
- (c) a determination by the Minister under subsection 11(2) of the percentage of the total incapacity rate payable to a member who is partially incapacitated;
- (d) a decision by the prescribed authority under section 18 or 19 that a pension is no longer payable to a person;

## Section 27

---

- (e) a decision by the prescribed authority under section 21 that travelling expenses, or travelling expenses of a particular amount or kind, not be provided to a member or an attendant;
- (f) a decision by the prescribed authority under section 22 that a member is not entitled to a gratuity, annuity, allowance or addition to a pension;
- (g) a decision by the prescribed authority under section 22 about the amount or rate of a gratuity, annuity, allowance or addition to a pension payable under that section;
- (h) a decision by the prescribed authority under section 23 that a person is not eligible for the grant of educational and training facilities.

Note: A person affected by a reviewable decision must be given notice of the person's review rights, see section 27A of the *Administrative Appeals Tribunal Act 1975*.

### 27 Signature to forms

- (1) If, under this instrument, a form is required to be signed by a person, the person must sign the form with the person's personal signature.
- (2) If a person is unable to sign his or her name in writing, the person may make a mark as his or her signature. The mark is taken to be the person's personal signature if:
  - (a) it is identifiable as such; and
  - (b) it is made in the presence of a witness who signs the form as a witness.



## **Part 5—Application, savings and transitional provisions**

### **28 Definitions**

In this Part:

*commencement* means the day this instrument commences.

*old law* means the *Papua New Guinea (Members of the Forces Benefits) Regulations 1961*, as in force immediately before the day this instrument commences.

### **29 Pending applications**

*Pending applications for a pension*

- (1) If:
- (a) a person made a claim for a pension under regulation 6 of the old law; and
  - (b) the claim had not been determined by the prescribed authority before commencement;
- the claim is taken to be made under section 8 of this instrument.

*Pending applications for benefit, advantage or assistance*

- (2) If:
- (a) a person applied for benefit, advantage or assistance under regulation 19 of the old law; and
  - (b) the application had not been determined by the prescribed authority before commencement;
- the application is taken to be made under section 24 of this instrument.

### **30 Savings—appointment as trustee**

If:

- (a) a person was appointed by the prescribed authority to be a trustee under regulation 20 of the old law; and
  - (b) the appointment was in force immediately before commencement;
- then, the person is taken to have been duly appointed by the prescribed authority on commencement under section 25 of this instrument.

### **31 Savings—rights of review of decisions**

Despite the repeal of the old law by Schedule 3 of this instrument, an application may be made to the Administrative Appeals Tribunal under regulation 21 of the old law for review of:

- (a) a decision by the prescribed authority made before commencement under a provision of the old law if, at commencement, the period for making an application for review has not ended; or

**Section 31**

---

- (b) a decision by the Minister made before commencement under a provision of the old law if, at commencement, the period for making an application for review has not ended.

## Schedule 1—General pension rates

Note: See subsection 11(1) and section 12.

### 1 Table A—pensions payable in respect of a deceased member

The following table specifies the rate of pension payable in respect of a deceased member.

<b>Table A—Pensions payable in respect of a deceased member</b>		
<b>Item</b>	<b>Class of persons eligible for pension</b>	<b>Rate of pension payable per fortnight (\$)</b>
1	Widow of member	794.80
2	Dependant of member under 16 years of age	99.20
3	Any other dependant of member	6.20

Note: The rate of pension is indexed in accordance with section 14.

### 2 Table B—pensions payable for a member who is totally incapacitated

The following table specifies the rate of pension payable in respect of a member who is totally incapacitated.

<b>Table B—Pensions payable for a member who is totally incapacitated</b>		
<b>Item</b>	<b>Class of persons eligible for pension</b>	<b>Rate of pension payable per fortnight (\$)</b>
1	Member	1,320.00

Note: The rate of pension is indexed in accordance with section 14.

Clause 1

---

## **Schedule 2—Percentage of pension payable for a partially incapacitated member**

Note: See subparagraph 11(1)(c)(i).

### **1 Pensions payable for a member who is partially incapacitated**

The following table specifies the percentage of the total incapacity rate of pension, specified in Table B of Schedule 1, payable to a person with a kind of incapacity mentioned in the table.

<b>Percentage of pension payable for partially incapacitated member</b>		
<b>Item</b>	<b>Kind of incapacity</b>	<b>Percentage (%)</b>
1	Loss of 2 or more limbs	100
2	Loss of both eyes	100
3	Loss of one eye, together with loss of one leg, foot, hand or arm	100
4	Loss of both arms	100
5	Loss of both legs	100
6	Loss of both feet	100
7	Loss of both hands	100
8	Loss of hand and foot	100
9	Loss of all fingers and thumbs	100
10	Amputation of leg at hip, or arm at shoulder joint	80
11	Severe facial disfigurement	80
12	Total loss of speech	80
13	Loss of leg or foot	75
14	Loss of arm or hand	75
15	Total deafness	70
16	Loss of vision in one eye	50

## **Schedule 3—Repeals**

### ***Papua New Guinea (Members of the Forces Benefits) Regulations 1961***

#### **1 The whole of the Regulations**

Repeal the Regulations.