

Departmental Disclosure Statement

Social Security (Accident Compensation and Calculation of Weekly Income) Amendment Bill

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 the Ministry of Social Development.

The Ministry of Social Development certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

5 February 2024.

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Part One: General Policy Statement

Introduction

This Bill amends the Social Security Act 2018 to confirm longstanding policy intent underpinning the Ministry of Social Development's (**MSD**) practice relating to—

- backdated Accident Compensation Corporation (ACC) payments; and
- charging income against past periods.

The objectives of this Bill are to—

- reflect the principles of a targeted welfare system (where people receive financial assistance relative to their income levels):
- prevent inequities between people who receive ACC weekly compensation payments during, or soon after, the period for which their entitlement to those ACC payments arises, and people who receive, long after a past period, backdated ACC payments earned for that past period.

Background

On 14 October 2025, the High Court held that MSD is not operating in accordance with current legislative provisions relating to charging backdated ACC payments against past periods. It held that while section 252 of the Accident Compensation Act 2001 enables MSD to recover main benefit payments directly from ACC, that section 252 does not affect a person's status as a beneficiary for the period reimbursed. Therefore, MSD cannot treat the person as a non-beneficiary when undertaking a retrospective review of the supplementary assistance received in the same period.

This decision followed an appeal brought by MSD against an earlier decision of the Social Security Appeal Authority (the **appeal authority**) holding that MSD failed to take into account all relevant considerations (including any inequities that would be created through retrospectively recovering payments) when deciding whether to exercise discretion under clause 13 of Schedule 3 of the Social Security Act 2018 to charge the backdated ACC payment as income against past entitlement for supplementary assistance.

What Bill does

Treating person as non-beneficiary when their benefit reduces to zero

The amendments ensure that,—

- if a person has received a backdated ACC payment, MSD must review any specified supplementary assistance that has been granted for that period:
- if a person's entitlement changes as a result of that review, MSD may either suspend, cancel, or vary the rate of entitlement for that period:
- if a person's specified benefit reduces to zero because they have received a backdated ACC payment, MSD must treat that person as a non-beneficiary when reviewing entitlement to specified supplementary assistance for that period.

Charging a person's income according to period to which income relates

The amendments ensure that when calculating a person's weekly income, MSD must determine the period to which any income relates based only on—

- the extent to which it was earned in that period; or
- the extent to which any other entitlement to it arose in, or in respect of, that period.

To account for scenarios where MSD is not able to determine the period to which any income relates in the way set out above, the amendments require MSD to determine the appropriate period to charge that income having regard to the period for which it was otherwise received, acquired, paid, provided, or supplied.

To ensure consistent treatment of annual holiday pay income (which can have multiple attributable periods to which it relates), the amendments require MSD to charge holiday pay—

- for the period of leave, when a holiday is taken; or
- for the period the payment is received, when holiday pay is cashed-up and the client remains in employment; or
- on and after the first working day after employment ends,—
 - when the holiday pay is paid and received after the time that employment ends; or
 - when the holiday pay is paid and received because the employment is ending but before or at the time that employment ends.

Amendments relating to transitional, savings, and related provisions

Application provisions give the above policy amendments retrospective effect. They make the above policy amendments effective before, on, and after commencement. This ensures that historic cases are subject to the same treatment as current and prospective cases.

The amendments also validate particular pre-commencement decisions in line with the policy of the amendments. This provides certainty that decisions made by MSD are lawful if they are in line with the amendments, or they are in line with the pre-amendment law (disregarding specified High Court or appeal authority decisions).

The amendments include savings for—

- proceedings begun, and not finally determined (including any rehearing, retrial, or appeal), before the changeover:
- the position of any particular party under any contrary High Court or appeal authority decision in proceedings begun, whether or not they are finally determined (including any rehearing, retrial, or appeal), before the changeover.

These savings ensure that parliamentary legislation does not interfere with the judicial process for relevant cases before the courts or the appeal authority.

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
CHIEF EXECUTIVE OF THE MINISTRY OF SOCIAL DEVELOPMENT v B [2025] NZHC 3042 https://www.justice.govt.nz/jdo_documents/workspace___SpacesStore_6d459f35_98ad_4fd2_86d0_02e42d316d9d.pdf B v Chief Executive of the Ministry of Social Development [2024] NZSSAA 10 https://www.justice.govt.nz/assets/Documents/Decisions/2024-NZSSAA-10-5-September-2024.pdf	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
This Bill seeks to confirm longstanding policy intent and the Ministry for Regulation has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor economic, social, or environmental impacts.	

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
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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?	YES
<p>See the proactively released Cabinet paper CAB-25-MIN-0465 on the Ministry of Social Development's website for full analysis on potential costs and benefits, and cost of living implications. https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/information-releases/cabinet-papers/index.html</p> <p>Without amendment, the Appeal Authority and High Court decisions could have significant financial and operational impacts relating to:</p> <ul style="list-style-type: none"> • writing-off debt or repaying clients for recovered debt from supplementary assistance payments which, if progressed, is estimated to cost \$63 million for cases established between 1998 and October 2025 • reassessing at least 37,470 past and current clients who may fall in scope of the High Court's decision which, if progressed, is estimated to require 200 new FTE (with an associated cost of \$68 million) if completed within two years • changing practice and systems in line with the Appeal Authority and High Court decisions (which would take a minimum of six months to scope before work could begin on implementation), with a potentially major impact on MSD service levels. <p>As this amendment confirms current practice, there are no new cost-of-living impacts. However, confirming this practice continues to enable MSD to reassess and, where appropriate, seek recovery of overpayments from a client. This creates debt to Government and reduces a person's total income over the period they need to make repayments.</p>	

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

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?

Not applicable.

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?

Due to the timing of this amendment, and because it confirms current practice, there has been limited opportunity to undertake fulsome Treaty analysis. However, MSD acknowledges that Māori are disproportionately represented in the welfare system. Therefore, Māori may be disproportionately impacted by this Bill.

This Bill does not impact any existing commitments between MSD and iwi/Māori.

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

Advice provided to the Attorney-General by the Ministry of Justice, 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 <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/advice/>

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)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

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?

NO

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

ACC, a Crown Entity, was consulted on the Bill via the Ministry of Business, Innovation and Employment.

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?	NO
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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
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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
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
<p>Section 12 of the Legislation Act 2019 and as a general principle, legislation should not have retrospective effect or interfere with accrued rights and duties. LDAC guidelines stipulate that retrospective legislation that will alter a court decision needs to be justified as being in the public interest and impairing the rights of litigants no more than is reasonably necessary to serve that interest. The amendments are considered to be in the public interest and do not interfere with the rights of current or past litigants more than is reasonably necessary.</p> <p>The Government considers that the relevant High Court and Appeal Authority decisions do not reflect longstanding policy intent and therefore wish to amend the law accordingly. Retrospective effect is necessary to ensure that past, current, and future cases are treated consistently. It will also prevent significant operational and financial implications for the Crown and MSD.</p> <p>The policy amendments have retrospective effect - they apply before, on, and after Bill commencement. This ensures that historic cases are subject to the same treatment as current and prospective cases. Unless otherwise captured by the savings provision, a case will not be able to seek reassessment (and potentially reimbursement) according to the pre-amendment law.</p> <p>The amendments validate particular pre-commencement decisions. This provides certainty that decisions made by MSD are lawful if they are in line with the amendments, or if they are in line with the pre-amendment law (disregarding specified High Court or Appeal Authority decisions).</p> <p>The amendments saves pre-amendment law for relevant cases that have been determined or are awaiting determination from the Appeal Authority or Courts before 2pm on the date of Bill introduction (the changeover). This reflects the principle that parliamentary legislation should not generally interfere with the judicial process in particular cases before the courts.</p>	

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

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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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?	NO
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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?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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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
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