

Submission on the Social Security (Accident Compensation and Calculation of Weekly Income) Amendment Bill Community Law Centres Aotearoa, 20 February 2026

1. Overview

- 1.1. Community Law Centres Aotearoa (**CLCA**) welcomes the opportunity to submit on the Social Security (Accident Compensation and Calculation of Weekly Income) Amendment Bill (**the Bill**). We note that because of the very truncated timeline our submissions are not as complete as we would like. CLCA would like the opportunity to present its submission orally.
- 1.2. CLCA is the national body that coordinates and advocates for the 24 Community Law Centres (CLCs) across Aotearoa. Our member CLCs work out of over 140 locations to provide free legal services to those who are unable to pay for a private lawyer and do not have access to legal aid. As well as around 250 staff, CLCs' services are supported by over 1,200 volunteer lawyers who provide free legal advice at clinics. Each year, these CLCs provide free legal services to 50,000 clients and free law-related education to almost 30,000 people. In addition, we provide free legal information via the Community Law Manual (the digital version of which has had 5,000 views per day on average) as well as an estimated 200,000 people who contact CLCs directly. Te Ara Ture is the nationwide clearinghouse for pro bono legal services, and it is a division of CLCA. Te Ara Ture matches CLC clients in need of pro bono support with lawyers registered to do pro bono work.
- 1.3. CLCA is a Te Tiriti o Waitangi-based organisation, and we aim to carry out our internal organisational relationships and our work in the community in accordance with Te Tiriti. In 2023, CLCs voted to change CLCA's constitution document to allow for two caucuses, each with equal voting rights for decision-making; one caucus of Tangata Tiriti, and one of Tangata Whenua. The CLCA Board is 50% Tangata Whenua and 50% Tangata Tiriti in its make-up, with Co-Chairs. CLCA intends that te Tiriti will be upheld in its work and applied in daily practice.
- 1.4. The Bill addresses the High Court's decision in *Chief Executive of the Ministry of Social Development v B* [2025] NZHC 3042 (**MSD v B**). CLCA intervened in this case to act as a contradictor. CLCs have significant experience in welfare law, and a number of clients who are directly affected by the Bill.
- 1.5. CLCA does not support the Bill, and we recommend that the Committee reject the Bill in its entirety. The effect of the Bill would be to require beneficiaries to repay supplementary assistance payments, such as accommodation supplement, disability allowance, and winter energy payments, which they received and spent in good faith. The affected beneficiaries will not be in a position to repay these amounts, having applied the supplementary assistance on essential costs such as accommodation, heating and food. None of the affected people have asked to be put in this position. As Justice Grice stated in *MSD v B*, the policy underlying the Bill has the effect of "*the state retrospectively imposing potentially significant debts on persons of limited means, through no fault of their own.*"¹

¹ *Chief Executive of the Ministry of Social Development v B* [2025] NZHC 3042 at [35].



- 1.6. We submit that the Bill will unfairly punish vulnerable people, and disproportionately affect sensitive claims applicants, survivors of abuse in state care and the severely disabled. The reason why these vulnerable people would be disproportionately affected is that there is often a delay in making claims for childhood abuse, for example, and/or it often takes time to resolve sensitive claims of this type due to psychiatric assessments. This means those people must receive support from MSD while they are waiting on cover from ACC.
- 1.7. We note that the Departmental Disclosure Statement estimates that the administration cost of refunding the \$63 million in unlawfully reclaimed assistance would be around \$68 million. We understand that this is due to high complexity of the cases and the large number of relatively small overpayments created for supplementary assistance. Given this, it seems likely that the actual cost of enforcing this Bill going forward may cost a similar amount, if not more than, the amounts retrieved by the State, due to the complexity of the debts established. Considering that the affected persons have committed no wrongdoing and have been significantly wronged in the process of their claim, if the cost of retrieving additional monies from these claimants is so high this is a strong argument in favour of not pursuing these amounts.
- 1.8. In the alternative, CLCA recommends significant changes to the Bill in order to comply with section 12 of the Legislation Act 2019, by limiting the unfairly retrospective effect of the legislation, and to reduce its disproportionate effect on particularly vulnerable people. We urge the Committee to recommend the following amendments:
 - a. Amending the Bill to have prospective effects only, to ensure that those who had their money unlawfully taken from them can be put right.
 - b. If the Committee is not prepared to recommend removing the retrospective effect, then amending the Bill to exempt its effect on those with active benefit Review Committee or Review of Decision matters (not just those who have reached the stage of appeals to the Social Security Appeal Authority). Persons are not able to file appeals with the Appeal Authority or High Court until they have received a decision from the Benefit Review Committee process. The effect of the Bill exempting only those persons with appeals before the Appeal Authority or Court is to arbitrarily penalise litigants who have active claims but are at an earlier stage of the review process. It also unfairly penalises persons who have been engaging with MSD but have been waiting (in some cases many months) for MSD to make a decision before progressing on the review process.
 - c. Amending the Bill to exempt its effect on those who have used the Sensitive Claims Service, Abuse in Care survivors and victims of crime. We explain in section 2 below why the Bill disproportionately affects these people.
 - d. We understand that significant administration costs would be dedicated to disestablishing large numbers of overpayments for relatively small amounts. We suggest the Committee consider amending the Bill to prevent it applying to those with significant debts relating to supplementary assistance. This would exempt those most affected, would likely include the majority of sensitive claims and would reduce administration costs.
 - e. Because of the unfair tax treatment that was only fixed on 1 April 2024, this amendment should only apply to those whose arrears were paid on or after 1 April 2024.



- f. We recommend a special additional provision to prevent recovery of overpayment if doing so would mean that more than the total amount of ACC arrears is being recovered by MSD, taking into account tax liability.

2. The affected people, and the effects of the Bill

- 2.1. Sometimes there is a delay between a person suffering an accident and obtaining ACC cover. A common example is claims for childhood abuse, which are typically not made until years later. In the meantime, many people receive support from MSD while they are waiting on cover from ACC. Where this happens, ACC automatically reimburses MSD the main benefit amount (under s 252 of the ACC Act). That reimbursement happens as an accounting exercise between government departments, with ACC paying the ACC backpay directly to MSD. However, what this Bill will do is also require persons in this position to repay MSD supplementary assistance they received while waiting for ACC cover (such as accommodation supplements, winter energy payments). For those affected, supplementary assistance is not extra money. Such assistance is spent in good faith and are essential to support whānau, to pay overdue bills, to stabilise housing situations, and recover from hardship caused by the lengthy delays in having injuries recognised by ACC. Taking back supplementary assistance puts that stability at risk again. The Bill's effect will be to create (often very large) debts, that beneficiaries are required to pay back years after receiving the assistance. Many will have no means to repay.
- 2.2. The people affected by this Bill are those who have been fighting for many years for recognition of the ACC cover to which they are entitled. These disproportionately include particularly survivors of abuse in care and sensitive claimants. Those with childhood sexual assaults who have been paid Loss of Potential Earnings were not earning at the time of their injury and so are paid 80% of minimum wage, meaning they do not receive substantial lump sums. Additionally, many have significant physical and/or mental disabilities. This cohort is likely to make up the bulk of people affected by the Bill, because by definition claims for childhood abuse are not made until years later (as the ACC Act contemplates), or because claimants have had cover denied by ACC and it takes many years to get that decision overturned by the Courts. Further, Māori are disproportionately represented among those who have experienced abuse in state care, who rely on long-term benefits, who submit sensitive claims, and encounter significant barriers when interacting with ACC and MSD. As a result, the impact of this bill won't be felt evenly across the population but will affect Māori disproportionately.
- 2.3. The effect of the Bill will be to, years later, saddle already vulnerable people with debts despite no wrongdoing on their part. The Bill would have the effect of forcing these people to repay money that was used in good faith for essential living costs, or to force those people to give up part of their modest ACC payments which were intended to be compensation for often horrific experiences and injuries.
- 2.4. For the period that those affected received the benefit, rather than the weekly compensation that they were later deemed entitled to, they were suffering from injuries and disability without receiving the rehabilitative services or support that they would have been provided were they getting their correct entitlement from ACC (resulting in a historic saving to ACC). ACC back pay does not, and cannot, account for this delay in care. Further the



individuals also have an additional tax burden that reduces the overall amount. To describe these affected people as 'better off' or as 'double dipping' is not accurate and is misleading.

2.5. It appears that support for the Bill across the aisle has been motivated by a perception that it is necessary to ensure that beneficiaries are treated fairly and equally. This was the argument that MSD made in favour of its interpretation in the High Court, but, as the Court found, it is mistaken. A person who receives ACC weekly compensation at the time of their injury is not in the same position as a person who fights for years, is forced to live on a main benefit in the meantime, without rehabilitative support from ACC, and then receives compensation in arrears. People in the latter category are already significantly worse off before this Bill. Furthermore, supplementary assistance, such as the Winter Energy Payment, is paid because the recipient needs that support *at that time* and the money is applied to those out-of-pocket costs without the beneficiary ever seeing it. Disability Allowance is paid for medical costs that likely would have been covered by ACC had the individual had cover. Section 252 recognises that those forms of assistance are therefore in a different category to the main benefit (which is functionally equivalent to weekly compensation). To retrospectively treat a person who was not actually receiving the advantages of their ACC entitlement as if they had been receiving those entitlements is a fiction.

2.6. There is a special unfairness to anyone whose ACC arrears were paid before 1 April 2024. That was the date on which legislation changing unfair tax treatment of arrears came into force. Unlike the current Bill, that legislation was not retrospective. ACC arrears received prior to that date were taxed at a higher rate, due to the entire amount being treated as income in the year in which it was received. A significant proportion of the arrears was lost that way.

3. The Reasoning of the Authority and the Court

3.1. The Social Security Appeal Authority (an expert body with the role of interpreting the Social Security Act) and the High Court found in beneficiaries' favour because the Act makes a clear and deliberate distinction between the treatment of supplementary assistance and the main benefit. This is because supplementary assistance payments are for specific costs paid for at the time rather than general income. The purpose of the relevant section (s 252 ACC Act), as held by the High Court, "*is to ensure there is no double recovery of a main benefit, by providing for a mechanism for payment direct between the two relevant agencies ... and does not extend to deem the beneficiary never to have received the specified benefit for which they were eligible at the time of receipt.*" Furthermore, supplementary assistance is treated differently than the main benefit by the IRD and is generally not considered taxable income for this reason.²

3.2. The High Court judgment also explains why this interpretation is consistent with the purposes of the ACC Act and the Social Security Act which are, among other things, to provide "financial support to people to help alleviate hardship". The effect of MSD's decision to establish these debts, rendering poorer or in debt those who are most vulnerable, due to

² <https://www.ird.govt.nz/income-tax/income-tax-for-individuals/types-of-individual-income/benefits-nz-superannuation-student-allowance#:~:text=These%20types%20of%20benefits%20are%20income%2Dtested%20but%20do%20not%20have%20tax%20deducted%20from%20them.%20They%20also%20do%20not%20affect%20your%20Working%20for%20Families%20entitlement.>

delays and issues completely outside their control, was determined by the Court to be contrary to this purpose. The Bill is therefore not consistent with the ACC Act and the Social Security Act.

4. Importance of the rule of law

- 4.1. We raise serious concerns about the impact of this Bill on the rule of law, given it has retrospective effect, and will remove the rights of current litigants and undermine the role of the Courts.

Retrospective effect; creating liability for past events

- 4.2. The Bill will override a decision of the High Court and its effect on relevant policy and conduct of the executive with retrospective effect. This was accepted in the Departmental Disclosure Statement and by Minister Louise Upston when she introduced the Bill to the House. This retrospective effect is inconsistent with:
- s 12 of the Legislation Act;
 - the Legislation Design and Advisory Committee Guidelines (**LDAC Guidelines**);
 - the Regulatory Standards Act 2025, Principle (a) (ii) (retrospective imposition of adverse obligations), and Principle (g) (interpretation of legislation is to be left to the Courts).³
- 4.3. As observed in the leading text on New Zealand statute law, retrospective validating legislation is particularly objectionable when it “attaches a tax or other liability to something done in the past.”⁴ That is precisely what this Bill does, because it retrospectively creates a liability in respect of events occurring long in the past.

Bill affects rights of past and current litigants

- 4.4. The 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.
- 4.5. The Departmental Disclosure Statement states that the Bill is in the public interest and does not directly affect the rights of past or current litigants due to the savings clause. That is incorrect, and reflects a misunderstanding of the benefit review process.
- 4.6. The savings clause in the Bill only exempts persons who have filed an appeal with the Social Security Appeal Authority or High Court. The review process has a number of preliminary steps that must be taken before an applicant can appeal to the Appeal Authority or High Court. Before an applicant can appeal, they must first apply to the Benefit Review Committee, then receive a decision from the Committee. Persons at these earlier stages of the process are also current litigants, but this Bill will remove their rights.
- 4.7. The effect of the approach adopted in the Bill is that those applicants who happen to be at the stage of the process where they have filed a review of decision, followed through to a Benefit Review Committee process, received an unfavourable decision and then been able to

³ Regulatory Standards Act 2025 section 9

⁴ Ross Carter *Burrows and Carter on Statute Law in New Zealand* (6 ed, 2021) at 813.



file an appeal of this process to the Social Security Appeal Authority (a process than can take many months if not years in many cases), will be treated differently than affected persons who have not. Remembering that many affected people are survivors of sexual or family violence, abuse in state care and/or are likely to be significantly disabled, which places huge additional barriers in their accessing justice and challenging decisions of the State.

- 4.8. It also unfairly prejudices those who have been engaging with MSD, including by seeking a review of their decision, but have been waiting (in some cases many months) for MSD to make a decision. People in that position will not have filed an appeal with the Authority because they have no ability to do so until MSD decides their review. The result would be that MSD's inaction would insulate itself from liability and eliminate those recipients' ability to vindicate their rights. For people who have been fighting years to obtain ACC cover in the first place, that is a pernicious and unfair result.
- 4.9. Further, the suggestion that the Bill does not remove the rights of litigants misunderstands the place of the High Court in the application of the law in this area. The case of *MSD v B* was appealed to the High Court on a question of law for the express purpose of setting a precedent and interpreting the law for all affected, not just the individual litigant. Many potential litigants have been waiting at the point of Review of Decision or Benefit Review Committee unable to progress their matter further because their issue was to be resolved by the High Court in *MSD v B*. Other potential litigants have simply been waiting for the decision, having faith in the rule of law that should MSD's actions be considered to be unlawful this would then also apply to them and they would be put right.
- 4.10. The Government has argued that the retrospective effect is not significant because the law seeks to retroactively render past policy and conduct lawful. As noted above, this is not accurate in our view. Past policy is not law, it is an exercise of executive power according to interpretation of the law and, as the High Court has ruled, the past policy, and actions in accordance with this policy, were in fact unlawful. There can be no argument on this point because if the Crown considered that the High Court was incorrect in its ruling, the constitutionally appropriate course would have been to seek leave to appeal, which the Court of Appeal would inevitably have granted given the importance of the issue.
- 4.11. We submit that retrospectively making lawful a consistently applied unlawful policy does not reduce its retrospective effect. CLCA is concerned that the argument to the contrary opens the door to other law changes to retrospectively permit any unlawful Crown action, provided that this past unlawful behaviour had been consistent. This cannot be considered to be the intent of Parliament, the Legislation Act, or the Regulatory Standards Act. Retrospective lawmaking of this kind risks breeding a culture of bureaucratic impunity where agencies are not held to account for unlawful actions.

5. Summary

- 5.1. The Committee should consider that this Bill will exacerbate existing inequalities. Māori are already disproportionately represented in state care, benefit systems, and sensitive claims. Imposing retrospective financial liability in these same areas is, therefore, unlikely to have a neutral or equitable outcome. Likewise disabled people, women and survivors of Abuse in State Care are significantly overrepresented in those affected by this legislation. When legislation is expected to affect some groups more than others, especially survivors of state harm and systems, it requires particular care and deliberate consideration to avoid deepening those disparities and compounding disadvantage in a different form.
- 5.2. CLCA submits that the Committee reject the Bill in its entirety. In the alternative, CLCA submits that the Bill should be amended to ensure that it has prospective effect only, in accordance with the Legislation Act and Regulatory Standards Act.
- 5.3. If the Committee is not prepared to make such a recommendation as to the Bill's retrospectivity, then CLCA submits that the Bill should exempt those with sensitive ACC claims, survivors of Abuse in State Care, victims of crime, and those with active Benefit Review Committee or Review of Decision matters, from the Bill's effect. We recommend that the Committee undertake a specific assessment to show the disproportionate impact this Bill will have on already overrepresented groups in state care and welfare systems and consider/develop a mitigation strategy for the impacts.