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Office of the Minister for Social Development and Employment
Cabinet

Charging backdated ACC payments against welfare assistance

Proposal

- 1 This paper seeks agreement to confirm a longstanding policy intent underpinning the Ministry of Social Development's (MSD) practice relating to:
 - 1.1 backdated Accident Compensation Corporation (ACC) payments, and
 - 1.2 charging income against past periods.

Relation to government priorities

- 2 This paper proposes an approach following decisions made by the Social Security Appeal Authority (Appeal Authority) on 5 September 2024 and the High Court on 14 October 2025.

Executive Summary

- 3 On 14 October 2025, the High Court found that MSD is not operating in accordance with current legislative provisions relating to charging backdated ACC payments against past periods. This decision followed an appeal from MSD on an earlier decision of the Appeal Authority, which found that MSD is not properly exercising its discretion when retrospectively reviewing entitlement to assistance.
- 4 These decisions do not align with the longstanding policy intent behind MSD's income charging approach, and do not reflect the principles of a targeted welfare system (where people receive financial assistance relative to their income levels).
- 5 The decisions also create an inequity between clients who receive ACC weekly compensation payments at the time they earn it compared to clients who receive backdated ACC payments earned for a past period. This inequity also means that a person could have received financial support from MSD, despite also receiving ACC compensation for the same period.
- 6 Without retrospective amendment, the Appeal Authority and High Court decisions could have significant financial and operational impacts relating to:
 - 6.1 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
 - 6.2 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

6.3 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.

7 This paper seeks Cabinet agreement to confirm longstanding policy intent relating to charging income against past periods and amend the Social Security Act 2018 to give effect to these decisions. It further seeks agreement to introduce an amendment that has retrospective effect, to mitigate operational and financial impacts and maintain equity across ACC compensation recipients.

8 Subject to Cabinet confirming the policy intent, this paper also seeks agreement to pass the amendment Bill under urgency in the first quarter of 2026, s (9)(2)(g)(i)

Background

9 On 14 October 2025, the High Court upheld an Appeal Authority decision that MSD was operating outside of the existing legislative authority (section 252 of the Accident Compensation Act 2001) when reassessing clients entitlements for supplementary assistance after they receive a backdated ACC payments.

10 An earlier Appeal Authority decision also found MSD was not properly exercising its discretion (under clause 13, schedule 3 of the Social Security Act 2018) when deciding to charge a backdated ACC payment as income for a past period. While this decision was made in respect of ACC income, its scope covers all decisions by MSD to charge any type of income against a past period.

11 Without legislative amendment, the combination of these decisions has significant financial implications, and operational implications for MSD.

MSD charges ACC income in a specific way

12 Many people will receive weekly compensation from ACC when they are unable to work or undertake usual duties as a result of injury. However, in some cases, it takes time for ACC to make a final determination on their entitlement to compensation. People can rely on MSD assistance during this waiting period.

13 If ACC later determines that the person is entitled to compensation, they will pay the person a backdated payment of ACC weekly compensation. The backdated ACC payment will cover the period of entitlement to ACC weekly compensation, meaning it may overlap with the period when the person received MSD assistance.

14 When this happens, MSD will:

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- 14.1 seek a refund from ACC of any amount of specified benefit¹ MSD paid the person, that would not have been paid if they had received their ACC weekly compensation at the time²
 - 14.2 retrospectively review any payments of supplementary assistance (for example, Accommodation Supplement, Winter Energy Payment, or Disability Allowance) the person received over the period they were entitled to ACC weekly compensation and determine whether any overpayments should be established (and therefore, any debt recoverable) for the period the ACC payment related to.
- 15 If MSD determines that a person's backdated ACC payment would have reduced their main benefit rate to zero, MSD will consider this person a 'non-beneficiary' for this retrospective period. MSD will then charge the backdated ACC payment as income against past supplementary assistance according to non-beneficiary rules, which can be less generous than beneficiary rules.³

The Appeal Authority and High Court have found parts of this practice are not aligned with legislation

- 16 In 2024, the Appeal Authority heard a case regarding this practice. A client had received a backdated ACC payment covering the period from 2006 to 2018. Following this, MSD sought:
- 16.1 a refund from ACC of \$117,570.81 in main benefit the client had received over the same period
 - 16.2 to recover \$13,923.47 in overpaid supplementary assistance directly from the client.
- 17 The client appealed this practice on the basis that MSD should not have charged the backdated ACC payment as income for a previous period and consequently removed past entitlement to supplementary assistance. The Appeal Authority found that:
- 17.1 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, schedule 3 of the Social Security Act 2018 to charge the backdated ACC payment as income against past entitlement for supplementary assistance
 - 17.2 while section 252 of the Accident Compensation Act 2001 enables MSD to recover main benefit payments directly from ACC, this provision does not affect the client's status as a beneficiary for the period reimbursed. Therefore, MSD cannot treat them as a non-beneficiary when undertaking a retrospective review of the supplementary assistance received in the same period.

¹ This means main benefits, Orphan's and Unsupported Child's Benefit and abated Veteran's Pension.

² MSD is authorised to do this under section 252 of the Accident Compensation Act 2001.

³ For the purposes of this paper, a beneficiary means a person receiving a main benefit as defined in schedule 2 of the Social Security Act 2018, or a person receiving income-tested New Zealand Superannuation or Veteran's Pension.

s 9(2)(h)

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s 9(2)(h)

The Appeal Authority and High Court decisions do not align with longstanding policy intent and create an inequity for ACC compensation recipients

19 I recommend Cabinet note that, while available to them in law, the decisions made by the Appeal Authority and High Court do not align with policy intent for charging income against past periods. The decisions also create a notable inequity for ACC compensation recipients.

The discretion to determine the period in which income is charged is intended to be limited to a specific set of circumstances

20 Having the power to determine the period that income should be charged has been a longstanding policy in the welfare system.

21 In 2002, the Government introduced a provision to the income charging framework in the Social Security Act 2018. The provision sought to clarify that MSD had the power to choose how to charge income over a period, including income that did not relate to any particular period (e.g. amounts regularly gifted to a person for no particular purpose). This allowed MSD to make a discretionary judgement as to whether it was more appropriate to charge income over the period the person:

21.1 received it

21.2 became entitled to it, or

21.3 earned it.

22 The use of this discretionary power was intended to be limited to a certain set of circumstances. While MSD has accepted that the current wording of the law requires MSD to consider a broader range of factors when exercising discretion (including whether retrospective recovery of assistance would create an inequity), this was not intended when the power was introduced into law.

23 While the Appeal Authority's decision related to an ACC compensation case, the scope of their decision also relates to all decisions made by MSD under clause 13 of schedule 3 in the Social Security Act 2018. This clause provides for mechanisms in which to charge any income against past periods – not ACC compensation alone.

24 People can receive income relating to a different period for many reasons. For example, wages paid at the end of a pay period (not the beginning), periodic interest payments made for past investments, and holiday pay. MSD regularly considers the

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time period in which income relates, so that it can accurately be charged against a person's entitlement for the period it relates to.

- 25 Given that this is a core part of the way income is treated in the welfare system, MSD expects the cohort in scope of the broader Appeal Authority's decision to be substantial.
- 26 To confirm longstanding policy intent, I recommend Cabinet agree that when calculating a person's weekly income, MSD must charge that income for the period it represents. This decision relates to all income charged by MSD, not backdated ACC payments alone.
- 27 I further recommend Cabinet agree that, to account for scenarios where MSD is not able to determine the period a person's income represents, MSD must determine the appropriate period to charge that income, having regard to:
- 27.1 the extent to which it was earned in that period or those periods; or
 - 27.2 the extent to which any other entitlement to it arose in, or in respect of, that period or those periods; or
 - 27.3 the period or periods for which it was otherwise received, acquired, paid, provided, or supplied.

Where a person's income reduces their benefit to zero, they should be treated as a non-beneficiary

- 28 Additionally, it is longstanding policy intent that MSD treats a person as a non-beneficiary when the full amount of their main benefit is reduced to zero (as a result of abatement or recovery). Undertaking this review is critical for MSD to determine whether a person is entitled to supplementary assistance as a beneficiary or non-beneficiary.
- 29 In line with the principles of a targeted welfare system, MSD treats people differently according to how much income they receive. If a client has income over a certain amount, they are likely to receive less financial assistance than a client with income under that amount. This is reflected in the benefit abatement regime – the more income a person earns, the less they receive in main benefit until their benefit fully abates to zero.
- 30 One of the ways MSD determines whether a person should receive a greater amount in supplementary assistance is by considering whether a person is:
- 30.1 a beneficiary, who likely has no (or very low) income
 - 30.2 a non-beneficiary, who likely has low-medium income.
- 31 Being determined a beneficiary or non-beneficiary has a material impact for clients applying for supplementary assistance, as detailed in Table 1.

Table 1: Examples for how entitlement to supplementary assistance is impacted by a person's status as a 'beneficiary' or 'non-beneficiary'

	Rules for a beneficiary	Rules for a non-beneficiary
Winter Energy Payment (WEP)	A beneficiary <u>is eligible</u> for WEP.	A non-beneficiary <u>is not eligible</u> for WEP.
Accommodation Supplement (AS)	A beneficiary <u>is not subject to income abatement</u> for AS because their rate falls below the income threshold.	A non-beneficiary <u>is subject to income abatement</u> for AS: their rate of AS is reduced by 25 cents for every dollar of income over the income threshold.

- 32 The High Court’s decision does not reflect the principles of a targeted welfare system. It has found that MSD must consider a person a beneficiary for a past period. This would happen even if their backdated ACC payment abated their benefit amount to zero and, in the standard treatment of income, would have otherwise made them a non-beneficiary. In most cases, the person will receive a higher amount as a beneficiary.
- 33 This decision also creates a considerable inequity across clients receiving ACC income. It means that:
- 33.1 clients whose ACC weekly compensation payment reduces their benefit to zero in the present day will have their MSD payments abated according to non-beneficiary rules
- 33.2 clients whose backdated ACC payment reduces their benefit to zero in a past period will have their MSD payments abated according to beneficiary rules.
- 34 This disadvantages clients who are paid ACC weekly compensation at the time they earn it. Despite being in similar circumstances – receiving compensation for an accident or injury – a person can receive more or less generous treatment depending on the period the compensation relates to.
- 35 The High Court acknowledged the disadvantage this created, but considered the disadvantage faced by the individual (both in having to wait for their ACC weekly compensation to be paid out and then being required to repay their supplementary assistance) was greater.⁴
- 36 However, when considering the design of the welfare system overall, it is important that equity is maintained for people in similar circumstances. It would be inequitable for a person to be financially advantaged solely because of the period their compensation relates to. Further, if a person receives financial assistance from MSD in lieu of ACC weekly compensation, it is appropriate that they are re-tested for that financial assistance following the receipt of ACC weekly compensation. Otherwise, they would have effectively been paid for the same need, twice.

⁴ “I acknowledge the Ministry’s submission that, on one view, it could be seen as unfair and inequitable as present recipients of ACC whose benefits are being offset will have their supplements affected, while those receiving retrospective payments triggering the s 252 process will not. However, in my view a greater inequity will arise ... if a recipient of ACC arrears, having had to wait for those payments (and likely having taken the matter through dispute resolution processes to obtain them), was then required to repay the supplementary assistance.” NZHC 3042 [37]

- 37 I therefore recommend Cabinet confirm the longstanding policy intent and maintain equitable treatment of ACC weekly compensation recipients by agreeing that:
- 37.1 when a person has received a backdated ACC payment, MSD must review any supplementary assistance, Temporary Additional Support or Special Benefit that has been granted for that period
 - 37.2 where 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
 - 37.3 where 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 supplementary assistance for that period.

Retrospective amendments are necessary to maintain the policy intent, prevent inequity, and mitigate the significant operational and financial impacts for MSD

- 38 Given that the Appeal Authority and High Court have found that the longstanding policy intents detailed above are not available in law as they are described, legislative amendments to the Social Security Act 2018 are necessary.
- 39 I have considered the options for responding to the Appeal Authority and High Court decisions, including aligning policy with the decisions, and amending the law with prospective effect only. However, both options would perpetuate the inequity between ACC recipients (as described in paragraph 33) and go against the principles of a targeted welfare system (as described in paragraph 32).
- 40 Further, both of these discounted options would have significant financial and operational impacts (as described in the following section). I therefore consider that an amendment with prospective and retrospective effect (to validate all past decisions made by MSD) is the most appropriate.

Retrospective impacts would be significant

- 41 MSD advises me that an amendment without retrospective effect would create significant operational and financial impacts. In line with the decisions of the Appeal Authority and High Court, MSD may need to:
- 41.1 undertake backdated reviews of all clients impacted by the practice that has since been found to be incorrect
 - 41.2 write-off existing debts that were established based on this practice
 - 41.3 refund any repayments already made by clients to MSD under this practice that has since been found to be incorrect.
- 42 MSD considers the scope of these decisions may affect past benefit assessments back to 1998, if not further. MSD has estimated that, for the period of January 1998 to October 2025 there are at least 37,470 clients who could be in scope of review relating to these decisions. These clients have an approximate debt of \$63 million.

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This figure represents both outstanding and recovered debt, meaning a debt write-off alone would not reduce the total cost and the Government would need to refund some clients for debt that has already been recovered.

- 43 Given the level of complexity associated with reassessing and processing backdated ACC reviews, MSD estimates approximately 200 new FTE would be required to assess these cases in a 2-year period. Rough costs associated with this number of FTE are approximately \$68 million over two years. MSD advises me that absorbing this cost within baselines would have a major impact on service levels.
- 44 Therefore, to mitigate the significant financial and operational impacts of the Appeal Authority and High Court decisions, I recommend Cabinet agree to amend the Social Security Act 2018 to retrospectively validate all MSD decisions that are in scope of the Appeal Authority and High Court decisions.
- 45 Further, in line with guidelines of the Legislation Design and Advisory Committee (LDAC), I recommend Cabinet agree to introduce a legislative savings provision that ensures the law as interpreted by the Appeal Authority and High Court is maintained for cases in scope of the decisions where:
- 45.1 the Appeal Authority or High Court have issued judgements in their favour
 - 45.2 the case has been lodged with the Appeal Authority or the Courts but not yet decided, at the time of the Bill's introduction
 - 45.3 an appeal of a decision from either the Appeal Authority or the Courts that has been lodged, but not yet decided, at the time of the Bill's introduction.

Prospective impacts are not fully known and would take time and resourcing to accurately identify

- 46 Going forward, MSD expects there would be substantial impacts associated with changing practice in line with the decisions if legislation were not amended. MSD advises me they will need at least six months to comprehensively identify:
- 46.1 flow-on impacts of the decisions across policy and operations
 - 46.2 all necessary updates to operational policy and processes
 - 46.3 any required changes to IT systems.
- 47 Estimating the size, scope and timing of these factors will be complex, given the interactive nature of welfare policies. Following the six-month scoping process, MSD advises that the scale of changes would be significant, because MSD's income charging approach impacts a large number of clients, payments and business processes. In particular, the changes could have significant resourcing implications if it was determined that manual processing of all income declarations is required for staff to properly exercise discretion.
- 48 I therefore recommend Cabinet agree to amend the Social Security Act 2018 to give effect to the policy proposals in paragraphs 26 and 36, prospectively.

Implementation

Interim steps following the Appeal Authority and High Court decisions

- 49 MSD is working through the 39 cases in scope of the decisions that are currently lodged with the Appeal Authority, in accordance with the High Court and Appeal Authority interpretations of law.

The Budget 2025 Income Charging initiative will have changes for how MSD charges income overall

- 50 In Budget 2025, Cabinet agreed to a new income charging approach for MSD from July 2028 [CAB-25-MIN-0126.61 refers]. ^{§ 9(2)(f)(iv)}

- 51 ^{§ 9(2)(f)(iv)}

Cost-of-living Implications

- 52 As this paper seeks agreement to confirm longstanding policy intent and practice, there are no new cost-of-living implications arising from this paper.
- 53 I note, however, that the 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.

Financial Implications

- 54 The Appeal Authority and High Court decisions as they currently stand (i.e. without a retrospective amendment) will have significant financial implications for the Government. These impacts will be largely mitigated if legislation is amended as recommended.
- 55 MSD will report an unquantifiable contingent liability (relating to reassessing and reimbursing clients in scope of the decisions) to the Treasury as part of the 2025 Half Year Economic and Fiscal Update process.

Legislative Implications

Retrospective amendment

- 56 I acknowledge that, under 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. However, LDAC guidelines stipulate that departure from this

principle can be justified in certain situations, including when Parliament wishes to amend the law in light of a judgement given in court proceedings. I consider the proposed amendment to be a justified departure.

- 57 LDAC guidelines also state that parliamentary legislation should not generally interfere with the judicial process in particular cases before the courts. This means that, even when there are good reasons for a law to apply with retrospective effect and alter the law as determined by a court, it ought not to apply to the particular litigants so as to deprive them the benefits of their victory.
- 58 Therefore, a legislative savings provision for litigants is appropriate. Including a savings provision for relevant cases ensures that they can be resolved according to the law as it was at the time the case is lodged. I have proposed a savings provision that covers cases where judgements have been issued in their favour, and where judgements have not yet been made at the time of the Bill’s introduction. This reflects LDAC guidelines for drafting legislation that justifiably departs from the principle that legislation should not be retrospective.

Timing for the amendments

- 59 As the Appeal Authority and High Court decisions are now public, there is an opportunity for people who may have been treated incorrectly to lodge a claim and seek reassessment (and potentially, reimbursement).
- 60 There is likelihood that, as time passes prior to the amendment being in place, more people will seek to lodge claims in respect of the decisions. This likelihood would also be greater following any Government communications relating to this decision as public interest would likely increase.
- 61 I propose that the amendments should be progressed under urgency in February 2026. This timing allows for sufficient time for the Parliamentary Counsel Office to draft the amendments, s (9)(2)(g)(i)
- 62 The approximate milestones are detailed in Table 2 below.

Table 2: Approximate milestones for progressing the amendment Bill

Date	Milestone
20 – 28 January 2026	Concurrent agency and Ministerial consultation on the amendment Bill
2 February 2026	Cabinet Business Committee consideration
9 February 2026	Cabinet consideration and approval for introduction
February/March 2026	Bill is introduced to the House of Representatives and passed under urgency.

Impact Analysis

Regulatory Impact Statement

- 63 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.

Climate Implications of Policy Assessment

64 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this policy proposal, as the threshold for significance is not met.

s 9(2)(h)

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67 The Bill will be assessed for consistency with the New Zealand Bill of Rights Act 1990 prior to introduction.

Population Implications

68 As this paper seeks agreement to confirm longstanding policy intent and practice, there are no new population implications arising from this paper. However, in line with population trends across recipients of MSD assistance, Māori, Pacific people, and disabled people may be disproportionately impacted by this practice.

Use of external Resources

69 No external resources were involved in the development of these proposals or the preparation of this Cabinet paper.

Consultation

70 This paper was provided for consultation to the Ministry of Business, Innovation and Employment, Accident Compensation Corporation (via the Ministry of Business, Innovation and Employment), the Crown Law Office, Department of the Prime Minister and Cabinet, Ministry of Justice, and the Treasury.

s 9(2)(h)

Communications

- 71 s 9(2)(f)(iv) [REDACTED]
- 72 s 9(2)(f)(iv) [REDACTED]

Proactive Release

- 73 I propose that this paper is proactively released once the amendment bill is passed in the House of Representatives.

Recommendations

The Minister for Social Development and Employment recommends that the Committee:

- 1 note that, on 5 September 2024, the Social Security Appeal Authority decided that the Ministry for Social Development (MSD) failed to take into account all relevant considerations when deciding whether to exercise discretion under clause 13, schedule 3 of the Social Security Act 2018 to charge a backdated ACC payment as income against past entitlement for supplementary assistance
- 2 note that, on 14 October 2025, the High Court decided that while section 252 of the Accident Compensation Act 2001 enables MSD to recover main benefit payments directly from ACC, this provision does not affect the client's status as a beneficiary for the period reimbursed
- 3 note that, despite being available to them in the law, the decisions in recommendations 1 and 2 do not align with longstanding policy intent and create a notable inequity across ACC compensation recipients
- 4 agree that, when calculating a person's weekly income, MSD must charge that income for the period it represents
- 5 agree that, if MSD is unable to determine the period a person's income represents as specified in recommendation 4, MSD must determine the appropriate period to charge that income, having regard to:
 - 5.1 the extent to which it was earned in that period or those periods; or
 - 5.2 the extent to which any other entitlement to it arose in, or in respect of, that period or those periods; or
 - 5.3 the period or periods for which it was otherwise received, acquired, paid, provided, or supplied
- 6 agree that when a person has received a backdated ACC payment, MSD must review any supplementary assistance, Temporary Additional Support or Special Benefit that has been granted for that period

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- 7 agree that where a person's main 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 supplementary assistance for that period
- 8 agree that where a person's entitlement to benefit or rate of benefit changes as a result of that review, MSD may either suspend, cancel, or vary the rate of entitlement for that period
- 9 agree that the amendments will:
- 9.1 have retrospective effect and validate all MSD decisions that are in scope of the Social Security Appeal Authority and High Court decisions as stated in recommendations 1 and 2
 - 9.2 preserve the law as found by the Appeal Authority and High Court through a savings provision for cases where:
 - 9.2.1 the Appeal Authority or High Court have issued judgements in their favour
 - 9.2.2 the cases been lodged with the Appeal Authority or the Courts but not yet decided at the time of the Bill's introduction
 - 9.2.3 an appeal of a decision from either the Appeal Authority or the Courts has been lodged, but not yet decided, at the time of the Bill's introduction.
 - 9.3 give effect to recommendations 4–8 prospectively.
- 10 agree that it is necessary to amend legislation under urgency to confirm the longstanding policy intent and mitigate potential financial and operational impacts
- 11 invite the Minister for Social Development and Employment to issue drafting instructions to the Parliamentary Counsel Office to enable amendments to the Social Security Act 2018 to give effect to the policy decisions in recommendations 4–9
- 12 s (9)(2)(g)(i)
- 13 agree that this paper will be proactively released once the amendment bill is passed by Parliament.

Authorised for lodgement

Hon Louise Upston

Minister for Social Development and Employment