

## In Confidence

Office of the Minister for Social Development and Employment

Cabinet Business Committee

## Social Security (Accident Compensation and Calculation of Weekly Income) Amendment Bill: Approval for Introduction

### Proposal

- 1 This paper seeks approval for the introduction of the Social Security (Accident Compensation and Calculation of Weekly Income) Amendment Bill (the Bill). The Bill amends the Social Security Act 2018 (the Act).

### Policy

- 2 On 15 December 2025, Cabinet noted that [CAB-25-MIN-0465 refers]:<sup>1</sup>
  - 2.1 on 5 September 2024, the Social Security Appeal Authority decided that the Ministry of 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
  - 2.2 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
  - 2.3 despite being available to them in the law, the decisions in paragraphs 2.1 and 2.2 above do not align with longstanding policy intent, and create a notable inequity across ACC compensation recipients.
- 3 Cabinet also agreed that:
  - 3.1 when calculating a person's weekly income, MSD must charge that income for the period it represents;
  - 3.2 if MSD is unable to determine the period a person's income represents as specified in paragraph 3.1 above, MSD must determine the appropriate period to charge that income, having regard to:
    - 3.2.1 the extent to which it was earned in that period or those periods; or

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<sup>1</sup> Paragraph numbers have been changed to reflect the sequence of this paper. See CAB-25-MIN-0465 for original paragraph number references.

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- 3.2.2 the extent to which any other entitlement to it arose in, or in respect of, that period or those periods; or
  - 3.2.3 the period or periods for which it was otherwise received, acquired, paid, provided, or supplied;
  - 3.3 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;
  - 3.4 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;
  - 3.5 where a person's entitlement to a 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;
  - 3.6 the above amendments will:
    - 3.6.1 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 paragraphs 2.1 and 2.2 above;
    - 3.6.2 preserve the law as found by the Social Security Appeal Authority and High Court through a savings provision for cases where:
      - 3.6.2.1 the Appeal Authority or High Court have issued judgments in their favour;
      - 3.6.2.2 the cases have been lodged with the Appeal Authority or the Courts but have not yet been decided at the time of the Bill's introduction;
      - 3.6.2.3 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;
    - 3.6.3 give effect to paragraphs 3.1–3.5 above prospectively;
  - 3.7 it is necessary to amend legislation under urgency to confirm the longstanding policy intent and mitigate potential financial and operational impacts.
- 4 The Bill is required to confirm the longstanding policy intent underpinning MSD's practice relating to backdated ACC payments and charging income. If amendments are not made, the Government and MSD may face significant financial and operational impacts relating to:
- 4.1 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

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- 4.2 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
- 4.3 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.

### **Additional policy decisions**

- 5 Throughout the course of drafting, MSD has identified two minor inclusions to the Bill that require Cabinet's agreement. These decisions will give effect to longstanding practice and align with Cabinet's decisions in December 2025 regarding backdated ACC payments and charging income more broadly.

### *Assessing entitlement to Temporary GST Assistance*

- 6 Cabinet has already agreed to require MSD to review supplementary assistance, Temporary Additional Support, and Special Benefit when it has been granted for the same period that a backdated ACC payment applies to.
- 7 MSD have identified an additional payment that falls in scope of this amendment: Temporary GST Assistance.<sup>2</sup> While Temporary GST Assistance was only in effect for the period of October 2010 to March 2011, it can fall in scope of retrospective assessments following the payout of ACC payment (if the payment overlaps with the period a person received Temporary GST Assistance).
- 8 I therefore recommend Cabinet agree that alongside other types of supplementary assistance, MSD is also required to review Temporary GST Assistance when it has been granted for the same period that a backdated ACC payment applies to. This will confirm current operational practice and longstanding policy intent.

### *Capturing how holiday pay is charged against a person's benefit*

- 9 A person is entitled to a minimum of four weeks paid annual holidays after 12 months of continuous employment. Once accrued, a person may:
  - 9.1 be paid holiday pay in respect of the holidays taken
  - 9.2 cash-up their holiday pay in lieu of going on holiday
  - 9.3 be paid out any outstanding holiday pay at the end of their employment.
- 10 As there are multiple periods in which holiday pay can be attributed (for example, in the 12 months it was earned, or in respect of the holiday that was taken), it is necessary to legislate the specific approach to charging holiday pay. This will provide

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<sup>2</sup> Temporary GST Assistance was a time-limited payment to compensate for the effect of the increase in the rate of GST on people's purchasing power.

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a clear basis for the approach and prevent alternative interpretations of how holiday pay should be charged.

- 11 I therefore recommend Cabinet agree that holiday pay must be charged:
  - 11.1 for the period of leave, when a holiday is taken, or
  - 11.2 for the period the payment is received, when holiday pay is cashed-up and the client remains in employment, or
  - 11.3 from the first working day employment ends:<sup>3</sup>
    - 11.3.1 when the holiday pay is paid and received after employment is ended, or
    - 11.3.2 when the holiday pay is paid and received because the employment is ending but before the date employment ends.
- 12 This confirms longstanding practice and remove the risk of alternative interpretations for how MSD should be treating holiday pay when it is declared as income.

### Impact analysis

- 13 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. This exemption applies because the proposals confirm current practice.

### Compliance

- 14 The Bill complies with each of the following:
  - 14.1 the principles of the Treaty of Waitangi;
  - 14.2 advice from the Treaty Provisions Officials Group on any Treaty of Waitangi provisions (not applicable to the Bill);
  - 14.3 the disclosure statement requirements (a disclosure statement has been prepared and is attached to the paper);
  - 14.4 the principles and guidelines set out in the Privacy Act 2020;
  - 14.5 relevant international standards and obligations.
- 15 The Bill is compliant with the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee (LDAC). However, the Bill does justifiably depart from the principle that legislation should not have retrospective effect or interfere with accrued rights and duties.
- 16 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

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<sup>3</sup> For the purpose of this policy, working day means a day of the week other than a Saturday or a Sunday.

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no more than is reasonably necessary to serve that interest. I consider the retrospective effect of this amendment is in the public interest and does not interfere with the rights of current or past litigants more than is reasonably necessary.

- 17 The Ministry of Justice will complete vetting of the Bill with respect to its consistency with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990.
- 18 The amendment proposes removing discretion and requiring MSD to always review specified types of assistance for recipients of backdated ACC payments. By comparison, MSD will continue to have discretion to review people who receive income from employment.

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s 9(2)(h)



### **Consultation**

- 20 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.

### **Binding on the Crown**

- 21 The Act will bind the Crown.

### **Creating new agencies or amending law relating to existing agencies.**

- 22 The Bill does not create any new agencies.

### **Allocation of decision-making powers**

- 23 The Bill does not involve the allocation of decision-making powers.

### **Associated regulations**

- 24 No regulations are required to bring the Bill into operation.

### **Other instruments**

- 25 The Bill does not include any provision empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments (or both).

### **Definition of Minister/department**

- 26 The Bill does not contain a definition of Minister, department (or equivalent government agency), or chief executive of a department (or equivalent position).

**Commencement of legislation**

- 27 The Bill will come into force the day after Royal assent.
- 28 The savings provision will have effect up to 2pm on the date of introduction of the Bill for the amendment Act. The changeover provision will have effect from 2pm on the date of introduction of the Bill for the amendment Act.

**Parliamentary stages**


- 29 The Bill should be introduced and passed under urgency in February 2026.

**Proactive Release**

- 30 I propose to proactively release this paper, the policy paper, and related minutes following introduction of the Bill, subject to any appropriate redactions.

**Recommendations**

I recommend that the Cabinet Business Committee:

- 1 agree that when a person has received a backdated ACC payment, MSD must review any Temporary GST Assistance that has been granted for that period;
- 2 agree that holiday pay must be charged:
  - 2.1 for the period of leave, when a holiday is taken, or
  - 2.2 for the period the payment is received, when holiday pay is cashed-up and the client remains in employment, or
  - 2.3 from the first working day employment ends:
    - 2.3.1 when the holiday pay is paid and received after employment is ended, or
    - 2.3.2 when the holiday pay is paid and received because the employment is ending but before the date employment ends
- 3 s (9)(2)(g)(i) 
- 4 approve the Social Security (Accident Compensation and Calculation of Weekly Income) Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 5 agree that the Social Security (Accident Compensation and Calculation of Weekly Income) Amendment Bill be introduced in February 2026;
- 6 agree that the Government propose that the Social Security (Accident Compensation and Calculation of Weekly Income) Amendment Bill be passed under urgency and enacted by the end of February 2026.

**I N C O N F I D E N C E**

Authorised for lodgement

Hon Louise Upston

Minister for Social Development and Employment

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