

Submission of Acclaim Otago (Inc)

Social Security Amendment Bill about Retrospective Reassessment of Supplementary Assistance Following ACC Back payment

Introduction

1. Acclaim Otago (Inc) is a Disabled Persons Organisation based in Dunedin, New Zealand. We are a support group and collective voice for people disabled by injury.
2. For over two decades we have raised systemic concerns about access to justice within the Accident Compensation scheme and the financial consequences of delayed or incorrect ACC decision-making.
3. This submission addresses the proposed amendments to the Social Security Act that would permit retrospective reassessment and recovery of supplementary assistance where a person later receives backdated ACC compensation.
4. Our submission is grounded in lived experience. The value of considering the real impact of this proposed Bill on real people cannot be overstated. We attach several case studies of deidentified hypothetical examples combined together to demonstrate the practical effects of the Bill.

Overview of Our Concern

5. The Bill creates a mechanism whereby hardship assistance and supplementary benefits lawfully received during a period of ACC dispute can be retrospectively reassessed and treated as recoverable debt once ACC pays arrears.
6. The practical effect is to convert:
 - Temporary hardship assistance into long-term debt exposure;
 - Compensation for injury into a mechanism for Crown accounting recovery;
 - Successful legal challenge of ACC error into financial liability.
7. The Bill shifts the financial consequences of ACC delay, under-calculation, or wrongful decline onto injured people.
8. In our view, this is fundamentally unjust. There is a narrative in Parliament about double dipping. It is important to recognise that:
 - (a) Weekly compensation and main benefits both replace earnings.
 - (b) Supplementary assistance and rehabilitation entitlement address need.
9. These serve different statutory purposes.

The Structural Issue

ACC Delay Is Systemic

10. It is well established that ACC disputes commonly take years to resolve.
11. During that period, injured people often lose 20–100% of their income.
12. Many people rely on some or all of the following:
 - Jobseeker Support
 - Supported Living Payment
 - Accommodation Supplement
 - Disability Allowance
 - Temporary Additional Support
 - Winter Energy Payment
13. These payments are not windfalls. They are subsistence-level support and are spent nearly as soon as they are paid. Living week to week often results in higher overall costs.
14. The Bill treats these payments as if they were advances against future ACC liability, even though:
 - The individual had no certainty of success;
 - The dispute period may have been prolonged by ACC;
 - The person complied with all statutory obligations in good faith.

Retrospective Recalculation Based on Hypothetical Income

15. The Bill permits supplementary assistance to be recalculated on the basis that the person “would have had” higher income during the dispute period.
16. This is a legal fiction.
17. In reality:
 - The person did not receive that income at the time.
 - They lived at subsistence level.
 - They structured their lives around actual payments received.
 - They made lawful declarations based on actual income.
18. Retrospective reassessment transforms lawful entitlements into technical overpayments.
19. This undermines legal certainty and financial stability.

Disproportionate Impact on Vulnerable Groups

19. The Bill will disproportionately affect:

- Survivors of abuse in state care;
- People with mental injury claims;
- People with fluctuating earnings histories;
- Young injured workers;
- Long-term disabled people reliant on Disability Allowance.

20. We are particularly concerned about survivors who come forward following public statements encouraging engagement with ACC.

21. For such individuals, the Bill risks creating a perverse outcome: recognition of harm results in financial destabilisation. This potentially deters survivors from seeking cover.

A 40-Year Backdated Claim Example

22. Our 40-year case study illustrates the structural consequences.

23. A headline arrears figure of approximately \$780,000 reduces, after:

- Main benefit recovery;
- Supplementary assistance reassessment;
- Tax;
- Legal and assessment costs,

to a net payment of approximately \$27,598.

25. Over 30 years, the individual:

- Lived at subsistence level;
- Paid rent;
- Paid for counselling and medication;
- Survived lawfully within the welfare system.

24. The arrears represent lost earning capacity — not surplus wealth.

25. Yet the mechanism prioritises inter-agency recovery over restoration.

Incentivising Delay

26. The Bill creates a structural incentive problem.

27. The longer an ACC dispute continues:

- The greater the amount of supplementary assistance paid;
- The greater the retrospective reassessment;
- The greater the potential recovery.

28. Delay increases debt exposure.

29. This places injured people in a position where time works against them.

30. The financial risk of pursuing correction of an ACC error increases with the duration of the dispute.

31. That is incompatible with access to justice.

Administrative Imbalance

32. The Bill requires reconstruction of years — sometimes decades — of historic entitlement rules.

33. Injured people:

- Cannot realistically audit complex retrospective recalculations;
- Often do not retain decades of documentation;
- May have cognitive or psychological impairments.

36. The power imbalance between state agencies and individuals is amplified.

Human Rights and Public Law Concerns

37. The Bill raises serious issues of:

- Procedural fairness;
- Legitimate expectation;
- Legal certainty;
- Proportionality.

34. Hardship assistance and disability allowance are designed to meet basic needs.

35. Converting such assistance into recoverable debt undermines the social contract underpinning the welfare system.

36. The United Nations Committee on the Rights of Persons with Disabilities has repeatedly emphasised effective access to justice and protection from systemic disadvantage.

37. The Bill risks compounding, rather than remedying, systemic disadvantage.

Comparative Safeguards Under Accident Compensation Act

37. Parliament has already recognised that good-faith reliance should prevent recovery in the ACC context. There is no principled reason why injured people should receive less protection when the recovery is triggered by ACC's own delay

38. The ACC system deals with recovery of overpayments in the following way at section 251 of the Accident Compensation Act.

251 Recovery of payments

- (1) If a person receives a payment from the Corporation in good faith, the Corporation may not recover all or part of the payment on the ground only that the decision under which the payment was made has been revised on medical grounds under section 65.
- (2) The Corporation may not recover any part of a payment in respect of entitlements that was paid as a result of an error not intentionally contributed to by the recipient if the recipient—
 - (a) received the payment in good faith; and
 - (b) has so altered his or her position in reliance on the validity of the payment that it would be inequitable to require repayment.
- (3) The Corporation may not recover payments to which section 65(2) (revision of deemed decisions) applies.

39. Inserting this into the repayment regime would be one way to make sure that it does not produce unjust outcomes, but it should apply to all repayments.

Alternative Approaches

42. If the objective is to prevent duplication, less harmful alternatives exist.

We recommend:

- a. Limiting recovery strictly to main benefit payments only;
- b. Excluding Disability Allowance, Accommodation Supplement, Winter Energy Payment, and hardship grants from recovery;

- c. Imposing a statutory time cap on retrospective reassessment;
- d. Ensuring that the repayment to MSD is no more than 60% of the payment from ACC.
- e. Requiring MSD to demonstrate that recovery would not cause hardship;
- f. Requiring any doubt to be resolved in favour of the claimant;
- g. Ensuring no residual debt can arise from retrospective recalculation;
- h. Establishing a transparent inter-agency settlement mechanism so that accounting adjustments occur between Crown entities rather than against individuals.

Conclusion

- 38. Injured people do not choose delay when resolving their claims, yet they are the ones who are impacted by this.
- 39. They do not choose to rely on hardship assistance.
- 40. They do not choose to litigate for years to correct administrative error.
- 41. The Bill effectively treats subsistence support as a recoverable advance against compensation that was wrongly withheld.
- 42. This shifts systemic failure onto individuals.
- 43. In our view, the proposed retrospective reassessment provisions are unjust and should not proceed in their current form.
- 44. If the Bill proceeds, it must be significantly amended to protect injured people from residual debt and to exclude hardship and disability-related assistance from recovery.
- 45. The attached case studies illustrate how the proposed retrospective reassessment provisions would operate in practice. While each individual's circumstances differ — in age, injury type, employment history, and duration of dispute — the pattern is consistent. In every case, lawful subsistence support received in good faith during periods of ACC delay or dispute is retrospectively transformed into recoverable liability once arrears are paid. These examples demonstrate that the Bill does not merely prevent duplication; it shifts the financial consequences of administrative delay onto injured people and risks leaving them financially destabilised after successfully establishing their entitlement.

Closing Statement – The Human Impact

46. Behind every recalculation is a person who has already endured injury, uncertainty, and prolonged financial insecurity. The individuals described in the attached case studies did not manipulate the system. They relied on subsistence support in good faith while navigating complex disputes, often over many years. They lived week to week. They paid rent, bought food, and funded treatment as best they could.
47. When compensation is finally paid, it is not a windfall. It represents recognition of harm and lost earning capacity. To then convert years of hardship assistance into recoverable debt reframes survival as liability. It tells injured people that correcting an administrative error may leave them financially worse off than if they had never challenged it.
48. The cumulative effect is not merely accounting adjustment — it is destabilisation. It reopens periods of poverty. It compounds trauma, particularly for survivors of abuse and those with mental injury. It creates fear that engaging with the system carries hidden financial risk.
49. Legislation should restore, not diminish. It should correct systemic failure without transferring its cost onto those least able to bear it.
50. At its core, this Bill is not about accounting mechanisms between agencies. It is about whether injured people who have already lived through years of uncertainty will, once again, be asked to carry the burden of delay that was never of their making.

Appendix 1

Case Study 1 – Sarah McKenzie*

Part-Time Care Worker with a Disputed Mental Injury

My name is Sarah McKenzie. I am 42 years old and I worked part-time as a care worker. After a serious assault at work, I developed PTSD. I could not sleep, I was constantly on edge, and I could not return to the environment where I had been attacked.

ACC declined my claim for mental injury. They said the assault did not meet the statutory threshold.

Because I could not work, I relied on:

- Jobseeker Support
- Accommodation Supplement
- Temporary Additional Support
- Winter Energy Payment
- Disability Allowance

I challenged ACC's decision. It took three years and two reviews before ACC finally granted cover and backdated my weekly compensation.

Under the proposed Bill, MSD retrospectively reassesses the supplementary assistance I received during those three years. A debt is created for payments I received while I was waiting for ACC to correct its decision. My arrears are largely offset by repayment of the main benefit. I am left with around \$10,000 — but I also receive a residual debt to MSD that is greater than that amount.

If ACC had accepted cover at the beginning, I would never have needed hardship assistance. I would have received treatment and rehabilitation earlier. I may have returned to work sooner.

The delay was not my fault. Yet I am the one who carries the financial consequence.

Case Study 2 – Mary Smith

Seasonal Worker with Fluctuating Earnings

My name is Mary Smith. I have worked in horticulture most of my life. My income changes from season to season depending on the harvest.

After a serious back injury, ACC calculated my weekly compensation at a very low rate because they did not properly account for my fluctuating earnings. I survived on:

- Jobseeker Support during periods of incapacity

- Accommodation Supplement

I appealed the earnings calculation. It took four years before ACC corrected the mistake and paid substantial arrears.

Under the Bill, MSD retrospectively treats me as though I had always received the higher income during those four years. They reassess my supplementary assistance based on that legal fiction. I then receive a debt notice for years of assistance.

The larger the correction in my favour, the larger the retrospective liability becomes.

In other words, successfully correcting ACC's administrative meant I had to pay a huge debt.

I did nothing wrong. I simply asked for my compensation to be calculated correctly.

Case Study 3 – Moana Te Aho

Survivor Engaging in Good Faith After the State Apology

My name is Moana Te Aho. I am a survivor of abuse in state care. After the Crown's public apology, I applied for ACC cover for mental injury.

For years I had relied on:

- Supported Living Payment
- Disability Allowance for counselling and medication
- Accommodation Supplement

The ACC process was lengthy and retraumatising. Eventually, ACC granted cover and awarded Loss of Potential Earnings (LOPE), backdated several years.

Under the Bill, MSD retrospectively reassesses my supplementary assistance. A debt is raised. My arrears are significantly reduced, and I face repayment obligations.

From my perspective, I came forward in good faith. I was encouraged by public statements about recognition and restoration. Instead of feeling restored, I feel destabilised.

The practical message to other survivors is clear: coming forward may leave you worse off financially.

Case Study 4 – Liam O'Connor

Injured Apprentice – ACC Backpays Late

My name is Liam O'Connor. I was a young apprentice when I suffered a crush injury at work.

ACC accepted that I was injured but disputed that I was incapacitated to the extent I claimed. They also disputed my entitlement to weekly compensation.

I fought the decision for five years while receiving:

- Jobseeker Support
- Temporary Additional Support

Eventually, ACC conceded incapacity and paid arrears of weekly compensation.

Under the Bill, MSD retrospectively reassesses my entitlement to supplementary support during those five years. I receive a debt for payments made while ACC was disputing liability.

The longer ACC delayed resolving my entitlement, the larger the retrospective adjustment became.

Delay increases debt exposure. That creates a structural incentive that works against injured people.

Case Study 5 – David Brown

Disability Allowance Recovery Over 12 Years

My name is David Brown. I live with serious long-term disabilities caused by injury. For 12 years I received Disability Allowance at the maximum rate to cover counselling, medication, and related costs.

Over that period, I received \$42,181.88 in Disability Allowance.

During those same 12 years, ACC did not fund my rehabilitation or treatment.

When ACC later accepted responsibility and paid weekly compensation arrears, MSD recovered the Disability Allowance from my compensation.

ACC now funds the same rehabilitation directly with the provider, so I no longer need to claim Disability Allowance and they don't take the cost of treatment out of my compensation.

The effect is that the support I received while ACC was not meeting its responsibilities is treated as something to be clawed back, rather than recognition of unmet need.

Case Study 6 – Helen Thompson

40-Year Backdated Mental Injury Claim

My name is Helen Thompson. I am 62 years old. I was sexually abused in state care in the early 1980s.

My life went off the rails after that. I struggled with chronic PTSD and major depressive disorder. I spent time in and out of prison. I was imprisoned for 10 years. I am not claiming any compensation or benefits for that time.

In the community, over roughly 30 years, I experienced:

- Long periods of incapacity for full-time employment
- Intermittent part-time work at low wages
- Extended reliance on income-tested benefits

In 2024, I applied for ACC cover for mental injury. The assessment process took two years and involved four psychological and vocational assessments. ACC paid around \$27,000 to its assessors during that period.

ACC declined cover and declined LOPE for most of the 30-year period.

I reviewed the decisions. A family friend lent me \$12,000 so I could get a lawyer and an independent specialist assessment. Shortly before review, ACC settled. They paid about \$600 toward my legal fees and \$1,098 toward the independent assessment.

Approximate Financial Picture (these are estimates based on our experience)

ACC arrears (30 years LOPE at average \$500/week):
\$780,000

Welfare and supplementary assistance received over 30 years (approximate, inflation-adjusted averages):

- Main benefits: \$546,000
- Accommodation Supplement: \$78,000
- Disability Allowance: \$93,600
- Winter Energy Payment: \$10,500

Total welfare support: approximately \$728,100

Under the Bill

MSD retrospectively recalculates each historic week.

Main benefits are offset:
-\$546,000

Supplementary assistance potentially recoverable:
-\$182,100

Gross remaining amount: approximately \$51,900
Tax: approximately \$14,000

Net payment from ACC: approximately \$37,900

I must repay my family friend \$10,302 for legal and medical costs.

I am left with approximately **\$27,598**.

Over 30 years:

- I lived at subsistence level.
- I paid rent.
- I paid for counselling and medication.
- I survived lawfully within the welfare system.

The arrears are not a windfall. They represent decades of lost earning capacity caused by recognised mental injury and the absence of rehabilitation.

The headline figure of \$780,000 reduces to about \$27,598.

MSD recovers \$728,100. Tax is paid. Legal and assessment costs are paid. I am left with roughly the same amount ACC spent on assessors during the two years they were deciding whether to accept my claim.

The process requires reconstructing 30 years of entitlement rules. I cannot realistically audit decades of recalculation. Reopening 30 years of poverty is psychologically overwhelming.

The mechanism converts hardship assistance and disability support into recoverable debt, and compensation into a vehicle for Crown accounting recovery.

**All names are changed to protect the privacy of those who have agreed to share their experiences*