

Social Services and Community Committee

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

February 2026

Excellence and equity in the provision of mental healthcare

ABOUT THE ROYAL AUSTRALIAN AND NEW ZEALAND COLLEGE OF PSYCHIATRISTS

The RANZCP is the peak body representing psychiatrists in Australia and New Zealand. We are a binational college that trains doctors to become medical specialists in psychiatry. We support and enhance clinical practice, advocate for people affected by mental illness and addiction, and advise governments on matters related to mental health and addiction care.

We represent over 8,730 members, including more than 6,000 qualified psychiatrists and 2,500 trainees. Our training, policy, and advocacy work is led by expert committees of psychiatrists and subject-matter experts with academic, clinical, and service-delivery experience in mental health and addiction.

RANZCP members have daily clinical contact with people who live with serious mental illness, many of whom also live with physical injuries and disabilities covered by ACC or are supported by the Ministry of Social Development.

Our members have direct professional insight into the way the ACC and social security systems intersect in the lives of vulnerable New Zealanders, such as tāngata whai ora, whai kaha, and state care abuse survivors. We understand the clinical consequences of financial instability on mental health and recovery. We too have a responsibility to those who were harmed as children at Lake Alice, and we take a principled stance to advocate for all State Care Survivors, who will likely be harmed by the progression of this bill. Our submission is grounded in that clinical expertise and in our unwavering commitment to the health, well-being, and rights of people living with mental illness or long-term mental injury.

INTRODUCTION

The RANZCP strongly opposes the Social Security (Accident Compensation and Calculation of Weekly Income) Amendment Bill (the Bill). We urge the Committee to recommend that the Bill not proceed in its current form. If any reform of the interaction between ACC and social security entitlements is contemplated, the RANZCP urges that it be subject to proper legislative process — including a regulatory impact statement and genuine consultation with affected communities, professional bodies, and Māori organisations.

Our concerns fall into four interconnected areas:

- The Bill retroactively overrides specific, named judicial decisions that found MSD's practices to be unlawful, setting a dangerous precedent for the rule of law and the separation of powers.
- The Bill was introduced under urgency with a retrospective 'changeover' date of 2:00 PM on 17 February 2026 — the day before it was made public — affording fewer than 48 hours for public submissions. This timeline is wholly inadequate to enable meaningful participation by affected people, whānau, or professional organisations. The RANZCP requested an urgent extension to enable the Mental Health and Addiction Policy Forum to present its collective views, and we trust that request will be granted in good faith.
- The Bill will cause direct and serious harm to people, including the survivors of State Care Abuse, people with lived experience of mental health distress, addiction, and acquired brain injury — including some of the most marginalised New Zealanders — by authorising retrospective clawback of critical supplementary support, including disability allowance, accommodation supplement, and winter energy payments.
- The Bill creates a significant deterrent effect on ACC claimants with mental injury pursuing their lawful entitlements, undermining both financial stability and clinical recovery.

The RANZCP recommends that the Bill not proceed in its current form. If the Government wishes to reform the interaction between ACC and social security entitlements, it should do so through a properly consulted legislative process that protects people in need, includes adequate hardship provisions, and does not retrospectively penalise those who received support to which they were lawfully entitled under the courts' interpretation of existing legislation.

DISCUSSION

Section 252 of the Accident Compensation Act 2001 enables the Ministry of Social Development (MSD) to recover main benefit payments from ACC where a person subsequently receives a backdated ACC payment covering a period for which they also received a benefit. This is an established mechanism to prevent double payment of income replacement.

However, three judicial decisions - the High Court in *Chief Executive of Ministry of Social Development v B* [2025] NZHC 3042, and two decisions of the Social Security Appeal Authority ([2024] NZSSAA 12 and [2024] NZSSAA 10) - found that MSD's practice of treating persons as non-beneficiaries for past periods, for the purpose of reviewing their supplementary assistance entitlements, was not authorised by the legislation as it stood. On that interpretation, a person whose underlying benefit was reimbursed to the Crown did not thereby lose their status as a beneficiary for the supplementary support they had received in that period.

These decisions protected people from unexpected clawback of payments — disability allowances, accommodation supplements, and winter energy payments — received and spent in good faith.

What the Bill Does

The Bill reverses these decisions. Its key provisions include:

- New section 198A of the Social Security Act 2018, which explicitly authorises MSD to review supplementary assistance entitlements for past periods when a person receives a backdated ACC payment that reduces their main benefit entitlement to nil. MSD must treat the person as a non-beneficiary for that past period for the purpose of supplementary assistance.
- Amendments to Schedule 3 of the Social Security Act 2018, so that income is attributed to the period to which it relates rather than the period in which it is received — changing the calculation of weekly income to the Government's preferred approach.
- Transitional provisions (clauses 105–107) that explicitly name and override the three judicial decisions and apply the new provisions retrospectively from a 'changeover' time of 2:00 PM on 17 February 2026.
- A savings provision for proceedings already commenced before the changeover, but no protection for people whose cases have not yet been decided or who have not yet commenced proceedings.

The 'specified supplementary assistance' subject to retrospective review includes accommodation supplement, winter energy payment, disability allowance, temporary additional support, and special benefits and special assistance under the Temporary GST Assistance Programme.

Constitutional Concerns

The RANZCP is deeply concerned by the constitutional implications of this Bill. The use of retrospective legislation to override specific, named judicial decisions is exceptional and must be approached with the

greatest caution. It signals to people experiencing poverty and disadvantage that when courts vindicate their rights, Parliament can simply erase that vindication.

The High Court in *Chief Executive of Ministry of Social Development v B* found that the Ministry had been operating outside its legislative authority. Rather than accepting that it must prospectively find and reform its practices, the Government has chosen to retroactively legitimise conduct that a court found unlawful.

This approach:

- Undermines public confidence in the judicial system and in the rule of law.
- Establishes a precedent that social security beneficiaries cannot rely on court decisions to protect their entitlements.
- Disproportionately impacts those who are least able to protect themselves through other means.

The RANZCP does not accept that the Government's interest in recovering supplementary payments — where recipients received those payments in good faith, in reliance on what was at the time understood to be the law — constitutes sufficient justification for this approach. The explanatory note contains no regulatory impact statement. The Bill was introduced under urgency. There was no prior consultation with affected communities or professional bodies.

IMPACT ON TĀNGATA WHAI ORA

Who Is Affected

RANZCP members work daily with people who are ACC claimants living with mental health conditions. Those likely to be affected by this Bill include:

- People with mental injury (as defined under the Accident Compensation Act 2001) resulting from or consequent upon a physical injury covered by ACC — for example, depression or post-traumatic stress disorder following a serious accident.
- People who have suffered a treatment injury that resulted in, or substantially worsened, a mental health condition.
- People with pre-existing mental health conditions whose physical accident has compounded their overall health and functional capacity.
- People who receive ACC weekly compensation as a result of their inability to work, and who also require supplementary assistance to meet their basic living costs.

Many of these individuals receive backdated ACC payments because claims can take months or years to process. A backdated payment covering a long period does not represent a surplus; it is compensation that should have been paid earlier but was delayed by the claims process. It is frequently already spent on survival, medical costs, accommodation, and essential costs accumulated during the wait.

Survivors of Abuse in State Care

The RANZCP wishes to draw specific attention to the impact of this Bill on survivors of abuse in state care. As a college, we hold a specific professional and ethical obligation to advocate for the beautiful children who were harmed in state care – including those subjected to abuse at the Lake Alice Child and Adolescent Unit, and in institutions throughout Aotearoa. The enduring consequences they carry today demand the Committee's full and careful attention.

In 2024, the Royal Commission of Inquiry into Abuse in Care released its final report, and [Beautiful Children: Inquiry into the Lake Alice Child and Adolescent Unit](#). It found that abuse and neglect in state and faith-based institutions was not isolated or incidental - it was widespread and systemic, occurring across more than seven decades between 1950 and 2019. Approximately 200,000 people experienced abuse or neglect in state care. Māori were disproportionately represented, subjected to what the Commission described as overt and targeted racism. Many survivors carry the consequences of that abuse - in their bodies, their relationships, and their mental health - to this day.

Many are now ACC claimants. Some receive ACC for physical injuries sustained in care. Others receive it for mental injury resulting from what was done to them. Many also receive supplementary assistance from MSD - disability allowance, accommodation supplement, winter energy payment - because the harm they experienced limits their ability to work and to meet the costs of daily life.

The Crown caused that harm. This Bill compounds it. Community Law Centres Aotearoa, which intervened in the High Court case this Bill overrides, has confirmed that a portion of the approximately 40,000 people likely to be affected are survivors of abuse in state care. It has been stated directly that those survivors have had money taken from them, and debt created unlawfully through MSD overreach - and that this Bill constitutes an attempt to validate that overreach.

This is not an abstract rule-of-law concern. It is a specific, documented injustice being enacted in the name of administrative consistency. Many survivors of state care abuse carry a profound and legitimate distrust of Crown institutions. That distrust has been earned through lived experience. A debt notice from MSD is not, for these people, merely a financial event - it is a message from the same system that failed them, telling them once again that institutional interests take precedence over their well-being. “ Correspondence demanding repayment can reactivate trauma responses, deepen disengagement from helping systems, and cause people to withdraw from both welfare support and health care. This is a recognised clinical mechanism, not a theoretical risk. The harm is not hypothetical.

The RANZCP urges the Committee to engage directly with survivor groups and with organisations representing people with lived experience of state care before making any recommendation on this Bill. These communities have the right to be heard. The submission process, as designed, made that effectively impossible. The Committee has the power to remedy that, and we urge it to do so.

Harm to Tāngata Whenua

Māori were disproportionately placed in state institutions, and the Royal Commission found that they were subjected to racism within those institutions that compounded the harm they experienced. Māori survivors are therefore disproportionately represented among those who will be harmed by this Bill.

This raises serious concerns regarding the Crown's obligations under Te Tiriti o Waitangi. Those obligations require the Crown to actively consider the impact of legislation on Māori, to ensure that policy does not produce inequitable outcomes for Māori, and to engage with Māori communities in good faith before significant decisions affecting them are made. None of these obligations have been met through the process by which this Bill has been introduced. The timeline afforded no meaningful opportunity for Māori communities or kaupapa Māori organisations to respond. This must be remedied before any legislative step is taken.

Clinical Consequences of Retrospective Clawback

Financial stress is a well-documented driver of adverse mental health outcomes. Research consistently demonstrates that people experiencing financial insecurity have significantly elevated rates of anxiety, depression, suicidality, and deterioration of existing mental health conditions. For people already managing mental health conditions, an unexpected demand to repay support payments received in good faith is not solely a financial problem — it is a clinical one.

For people who have also experienced trauma — including survivors of abuse in state care — these consequences are compounded. Financial shock triggered by institutional action can reactivate trauma responses and profoundly disrupt a person's sense of safety and self-efficacy. This is a recognised clinical mechanism, and the RANZCP asks the Committee to understand it as such.

RANZCP members are concerned that retrospective clawbacks of disability allowance, accommodation supplement, and other supplementary support will cause direct harm in the following ways:

- Triggering or exacerbating acute mental health episodes — including depression, anxiety disorders, and suicidal ideation — because of sudden and unexpected financial distress.
- Disrupting ongoing mental health treatment: when people cannot afford transport, medication, or necessities, consistent engagement with treatment plans becomes untenable.
- Threatening housing stability: clawbacks of the accommodation supplement directly risk tenancy, and housing instability is among the most significant contributors to deteriorating mental health.
- Deepening distrust of government systems: for people who are already marginalised, a retrospective clawback of payments received in good faith will further erode trust in the institutions responsible for their support — trust that, once lost, is extraordinarily difficult to restore.

A person managing a serious mental health condition — who received their disability allowance in accordance with what was at the time understood to be the law, spent it on essential costs, and is now presented with a debt notice for thousands of dollars — may experience profound and enduring clinical harm. That harm will traverse into the everyday wellbeing of whai ora, impact their whānau, and overall, their survival.

Deterrence from Pursuing ACC Entitlements

The RANZCP is also concerned about the deterrent effect this Bill will have on ACC claimants living with mental health conditions. If people understand that receiving a backdated ACC payment may trigger a review of supplementary assistance they have already received and spent — potentially creating a significant debt — many will be deterred from pursuing their full ACC entitlements.

This is a perverse and clinically harmful outcome. ACC entitlements — including weekly compensation and rehabilitation support — are often essential to recovery from injury. Deterring people from accessing those entitlements prolongs injury, disability, and dependence on the social security system.

This risk is particularly acute for people living with mental health conditions. These individuals face additional barriers to navigating complex government systems, are more likely to experience the prospect of retrospective liability as overwhelming and are therefore disproportionately likely to forgo entitlements they are lawfully owed.

For people with trauma histories, the choice between pursuing legitimate ACC entitlements and risking institutional debt is not a neutral administrative trade-off. It replicates a dynamic of systemic coercion that many have previously experienced in their interactions with state institutions. Legislation that creates such choices is not consistent with a trauma-informed approach to public policy, nor with the Crown's obligations to the communities the Royal Commission has brought to national attention.

Inadequacy of the Savings Provisions for Existing Social Security Appeals

The Bill includes a “savings provision” for justice proceedings or appeals to the Social Security Appeal Authority that began before 2:00 PM on 17 February 2026. Those proceedings are stated to continue as if the amendments had not been made.

While the RANZCP acknowledges this provision, it is wholly insufficient. Most people affected by this Bill will not have commenced legal proceedings. They are not lawyers; they do not know how to or have the capacity to initiate judicial review proceedings or appeals to the Social Security Appeal Authority. The protection of their rights should not depend on whether they happened to have taken formal legal action before an administratively determined cutoff time.

The RANZCP submits that:

- The savings provision should be extended to protect all those who received a binding decision from MSD or the Appeal Authority based on the legal position confirmed in the judicial decisions, not only those who had commenced proceedings.
- People who received supplementary assistance during the relevant periods in good faith should not be exposed to retrospective debt based on a legal change made without prior notice.
- The Committee should explore whether alternative savings provisions could protect the legitimate reliance interests of affected people without entirely foreclosing future reform of the underlying policy settings.

RECOMMENDATIONS

The RANZCP makes the following recommendations to the Committee:

1. The Bill should not proceed in its current form. The RANZCP recommends that the Committee report to the House accordingly.
2. Any replacement or amended legislation requires genuine and sufficient opportunities for affected communities, disability advocates, survivor groups, and professional clinical bodies to engage. The Committee should engage directly with survivor groups and with organisations representing people with lived experience of state care, mental health distress, and mental injury before making any recommendation on this Bill. These communities have the right to be heard, and the submission process, as designed, did not afford them that opportunity.
3. If the Government wishes to reform the interaction between ACC and social security supplementary assistance entitlements, it should do so through a properly consulted legislative process — with a regulatory impact statement, full public submissions, meaningful engagement with Māori communities and organisations, and adequate lead time before any changes take effect.
4. Any reform should apply prospectively only. Retrospective clawback of supplementary assistance received in good faith — based on a legal interpretation subsequently changed by Parliament — is unjust and should not be permitted.
5. If the Bill proceeds in any form, comprehensive hardship provisions must be included, preventing MSD from pursuing clawbacks where repayment would cause serious financial hardship or risk the health, housing, or well-being of the person concerned.
6. The savings provisions must be significantly broadened to protect not only those who commenced proceedings before the changeover, but all those who received supplementary assistance in reliance on the legal position confirmed by the courts.
7. The Committee should consider the impact of this Bill on people living with mental health conditions and psychiatric disabilities, who are disproportionately represented among ACC and social security beneficiaries, and who face the greatest clinical risk from financial instability and retrospective debt.

8. The Committee should consider the impact on Māori — including survivors of state care abuse — and the Crown's obligations under Te Tiriti o Waitangi, which require meaningful engagement and equitable outcomes. Neither obligation has been met through the process by which this Bill has been introduced.

CONCLUSION

The Social Security (Accident Compensation and Calculation of Weekly Income) Amendment Bill represents a serious legislative overreach. It retroactively overrides judicial decisions that protected New Zealanders who are among the most marginalised in our society, including tāngata whai ora, tāngata whai kaha, survivors of state care abuse and those with lived and living experiences of mental distress, and survivors of sexual harm and abuse.

It does so through an urgent process that afforded no meaningful opportunity for consultation. The consultation period for the public was open for less than 48 hours, and a select committee report is due back to parliament within a week of the bill becoming publicly accessible.

The urgency that shrouds this process makes meaningful consultation impossible, and the passing of such a bill will cause real and foreseeable harm to people with mental health challenges and significant trauma experiences, who are among the most vulnerable members of our society. And it will cause real, foreseeable, and clinically significant harm to people managing mental health conditions — including survivors of state abuse who have already borne too much at the hands of Crown institutions.

RANZCP members will be working alongside the whai ora who bear the consequences of this Bill — those whose financial crises deepen, whose housing becomes unstable, whose treatment is disrupted, and whose already strained trust in government institutions is further eroded. We cannot, in conscience, support legislation that produces those outcomes. We urge the Committee to recommend against the Bill proceeding.

We would like to present an oral submission.

Nāku noa, nā



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