19 February 2026

Social Services and Community Committee

Tēnā koutou, e te komiti

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

1. The New Zealand Law Society Te Kāhui Ture o Aotearoa (the **Law Society**) provides this brief submission on the Social Security (Accident Compensation and Calculation of Weekly Income) Amendment Bill (the **Bill**). In light of the restricted timeframe for the Select Committee's consideration of the Bill, and therefore public submissions, this submission touches only on one major point – the position of affected individuals with outstanding reviews.

2. Because of the very short time to complete a submission the Law Society does not indicate whether it supports, in part or full this Bill as there is insufficient time to consider this fully. This submission is instead focused on targeted improvements that could be made

3. The Bill proposes to amend the Social Security Act 2018 (the **Act**) to overturn the High Court's judgment in *Chief Executive of the Ministry of Social Development v B*, which found that the Social Security Appeals Authority (**Appeals Authority**) did not err in determining that section 252 of the Accident Compensation Act 2001 is a retrospective deeming provision but does not dismantle a main benefit that was properly constituted.[1] As section 252 does not deem that the recipient never received the benefit for which they were eligible at the time, they continue to be considered a beneficiary as at the time supplementary assistance was paid, and they are therefore not required to repay the latter.

4. The Bill has retrospective effect. Consistent with the Law Society's long held position on retrospective legislation, especially here where we understand it may have negative financial effects on individuals, the Law Society encourages caution and respectfully suggests the Committee should interrogate the need for retrospectivity here and whether the extent of retrospectivity in the Bill, as introduced, is required.[2]

5. The Law Society commends the decision to provide explicitly, at new clause 107(3) of Schedule 1, that the Bill does not apply to current proceedings or to the positions of any party under a contrary decision, whether or not they are finally determined (including any rehearing, retrial, or appeal).

6. New clause 108 of Schedule 1 of the Act will further provide that:

---

1 [2025] NZHC 3042 (14 October 2025).

2 See the Law Society's report *Strengthening the Rule of Law in Aotearoa New Zealand* (2025), paras [7.2] – [7.10].

Proceedings before the appeal authority or a court that are begun, whether or not they are finally determined (including any rehearing, retrial, or appeal), before the changeover—

(a) are not subject to clauses 105 to 107; and

(b) continue as if the amendments (apart from this clause) had not been enacted.

7. The Explanatory Note to the Bill states that these provisions are intended to "ensure that parliamentary legislation does not interfere with the judicial process for relevant cases before the courts or the appeal authority." This is appropriate. There is a "strong convention" arising out of the constitutional principles of comity and the separation of powers that, except in very limited circumstances, Parliament should not pass legislation which:[3]

    a. interferes with the judicial process and in cases before the courts; or

    b. deprives individuals of their right to benefit from judgments obtained in proceedings brought under earlier law or (more relevantly) to continue proceedings asserting rights and duties under that law.

8. Parliament is entitled and empowered to pass laws to clarify its intent where it disagrees with a judicial interpretation. However, where it does so, care is needed not to upset the balance between the branches of government or disrupt fundamental principles underpinning the rule of law. Ensuring that completed and pending proceedings are not impacted is a primary means of maintaining this comity and respecting the rule of law. It also mitigates, partly, against the undesirable retrospectivity of this legislation.

9. This is why legislation that could have such an effect usually and specifically preserves the position of proceedings that are currently before the courts. The Legislation Guidelines state that "even when there are good reasons for a law to apply with retrospective effect … it ought not to apply to the particular litigants so as to deprive them [of] the benefits of their victory [and in] such cases, a saving provision for the actual litigants is appropriate".[4] We are pleased to see that, in some respects, the Bill seeks to achieve this.

10. However, there is one aspect of this for which the Bill requires improvement. The Law Society recommends extending these savings provisions so that those individuals who have made an application for review under section 391 of the Act before the "changeover", will also have their reviews determined in accordance with the 'old law' (as it is termed in the Bill).

11. This is because the Bill preserves the position of only those who have proceedings before the Appeals Authority or the courts. However, before such proceedings can be commenced, an individual must first make – and have determined - an application to MSD for a review by a benefits review committee (section 395 of the Act). The Law Society is aware of significant delays in the review process, impacting on the ability of individuals to lodge an appeal with the Appeal Authority, because they do not yet have a decision from a benefits review committee that they can appeal against.

---

3 LDAC Guidelines at 58-59, [12.1]-[12.2]; Burrows and Carter, at ch 18.

4 LDAC Guidelines at 59.

12. In the Law Society's submission on the Social Security Amendment Bill 2025, we noted that there is no statutorily prescribed timeframe within which a benefits review committee must make a decision. Internal Ministry documentation suggests the total timeframe from request for review, through to decision by the Committee, should be a maximum of 32 working days, however this timeframe is not met in the majority of cases.[5] That information dates to February 2024, and more current information is not available – the Ministry appears not to make public any information about the number, nature, outcome, or timeliness of such reviews – not even in its Annual Report. In considering this point, we encourage the Committee to seek what information it can.

13. It therefore seems highly likely there will be applications for review, yet to be determined by a benefits review committee, and which may have been appealed to the Appeals Authority, if it were not for the Ministry's own delays. Even if they would not have been appealed, we would have expected the benefits review committee to determine the application for review in accordance with the law, which until the 'changeover date' would be that under *Chief Executive of the Ministry of Social Development v B*.

14. Overall, we do not consider there to be a principled basis to distinguish between someone who is before the Authority or the courts (who under this Bill may continue to rely on the old law) and someone who has already taken the positive step of seeking review by a benefits review committee (who under this Bill, it appears, will have their rights assessed under the 'new' law that will come into effect if this Bill is passed). Indeed, for many of those whose reviews are currently pending, the drawing of a distinction creates substantive unfairness because if there were no delays in the system they might already have brought their case to the Authority or the courts. The Bill's protection against retrospectivity for the former class (those before the Authority and the courts) should therefore, at least, apply to the latter class (those who have made an application for review) as well.

15. We note this point is not considered by the Attorney-General's advice on the Bill's consistency with the New Zealand Bill of Rights Act 1990 (Bill of Rights Act), which relies partly on the preservation of existing proceedings to conclude that the section 27 right to justice is not infringed. It is not clear whether the effect of the Bill on those who have applied for review of a relevant decision has been considered, or in fact whether the decision has been made to not preserve the position of those individuals. Given the time that has elapsed since the High Court's decision, the impact of any review delays should be carefully scrutinised by the Committee.

Nāku noa, nā

Frazer Barton
President

5 New Zealand Law Society, *Submission on the Social Security Amendment Bill* (8 January 2025), p. 3.